

COMPETITION IN COLLEGE ATHLETIC CON-
FERENCES AND ANTITRUST ASPECTS OF THE
BOWL CHAMPIONSHIP SERIES

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

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COMPETITION IN COLLEGE ATHLETIC CONFERENCES AND ANTITRUST ASPECTS OF THE BOWL CHAMPIONSHIP SERIES

THURSDAY, SEPTEMBER 4, 2003

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 9:56 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. (Chairman of the Committee) presiding.

Chairman SENSENBRENNER. The Committee will be in order. The Committee on the Judiciary has exclusive jurisdiction over our Nation's antitrust laws. As Chairman of this Committee, I have made it a priority to periodically examine the state of competition in key markets in which the antitrust laws may be implicated. Today's examination of the antitrust implications of college athletic conferences and the Bowl Championship Series in Division I-A college football reflects this commitment.

The Supreme Court has held that intercollegiate athletic programs and associations are not immune from antitrust scrutiny. Intercollegiate athletic conferences are regional groupings of similarly situated member institutions whose athletes compete against other conference members. Membership in elite college conferences can mean the difference between an athletic program that is a financial burden on a member institution or one that generates millions of dollars in annual revenue.

The jockeying and intrigue surrounding membership in these conferences is an increasingly common feature of modern college sports. The recent controversy surrounding the decision of the University of Miami and Virginia Tech to bolt the Big East Conference in favor of the Atlantic Coast Conference has reinforced concerns that college sports have become increasingly dominated by a number of elite conferences who place their financial interest ahead of their commitment to the principles of fairness and sportsmanship that have traditionally defined intercollegiate athletic competition.

Donna Shalala, the President of the University of Miami, has been called, quote, "The biggest player in college football," for triggering Miami's decision to leave the Big East earlier this year. In a recent interview, President Shalala indicated that she likes complex situations and enjoys making difficult decisions under pressure. Notwithstanding this assertion, she declined my invitation to appear at today's hearing on the advice of counsel. However, because of her leadership role in fundamentally shifting the balance

of conference power in college football, I believe her testimony is integral to better assess the issues we will address at today's hearing. Consequently, I intend for the Committee to receive Donna Shalala's testimony within the next 60 days, whether she decides to submit it willingly or not.

The current system that governs Division I-A college football championship and other major post-season bowl match-ups has led some to allege a violation of the antitrust laws. College football generates hundreds of millions of dollars of annual revenue. Most of this income is derived from exclusive television broadcasting rights. Profit generated by these football programs flows back to participating schools, producing a range of positive benefits.

In addition to protecting the well-being of student athletes, the NCAA's constitution requires it to set eligibility standards which advance satisfactory standards of scholarship, sportsmanship, and amateurism, while preserving the fairness and integrity of college athletics. While the NCAA administers national championships in over 80 men's and women's intercollegiate sports, including "I-AA" college football, the post-season Division I-A college football championship is managed by the Bowl Championship Series.

The BCS was established in 1997 to create a more objective basis for selecting national Division I-A college championships and other major bowl participants. The BCS consists of six athletic conferences, the Big Ten, the Big East, the Pac-Ten, the Southeastern Conference, the ACC, the Big 12, as well as independent Notre Dame. The BCS has an exclusive agreement with the Rose, Fiesta, Sugar, and Orange Bowls. Under the terms of this agreement, champions from each of these six conferences are guaranteed participation in one of the eight bowl slots no matter their record, with two possible at-large berths available to other qualifying BCS and non-BCS teams. The National Championship game is rotated among these bowls on an annual basis.

While the BCS offers some improvement over the earlier bowl alliance, some have expressed concern that it has failed in its primary goal of creating a genuine Division I-A college championship. Others contend that the BCS creates a financial canyon between BCS and non-BCS schools.

For example, during the 2002-2003 season, the BCS generated \$109 million in revenue, only \$5 million of which was distributed to non-BCS conferences. This disparity substantially affects the ability of non-BCS schools to recruit talented players and coaches and affects resources for academic and athletic programs.

In July of this year, non-BCS schools established a coalition to ensure that their institutions receive greater opportunities to compete for the major bowl games that have been dominated by the BCS members. Next week, several non-BCS schools will meet with BCS members and the NCAA in Chicago to explore ways to remedy perceived defects in the current Division I-A college football system.

The purpose of today's hearing is not to impose a solution that will satisfy all of the BCS and non-BCS schools, nor to abolish college athletic conferences. Rather, it is to examine the application of the antitrust laws to college athletics and to help identify ways to ensure that in the realm of college sports, merit prevails over

money, fundamental fairness trumps the fundamentals of good marketing, hard work triumphs over hard cash, and the noble aspirations of amateur athletes do not yield to the cold reality of corporate and university profits.

I now yield to the Ranking Member, Mr. Conyers, for his remarks.

Mr. CONYERS. Thank you, Mr. Chairman, and good morning to you and the Members of the Committee and our witnesses, who all look like they're former football players themselves. Mr. Young is a former football player. We welcome you all here.

We want to examine this question, and I've had a great deal of advice from people that are interested in football, which is one of our cultural activities that involves almost everybody in the country. I just left the football classic of Florida A&M and Alabama State this weekend in Detroit, Phil Camerica Park, or Ford Field. We have the Washington, D.C. team starting its game tonight at nine o'clock. There will be quite a bit of interest there.

We have lots of increasing amount of not only attention, but commerce in this sport, and so if there's anybody here, particularly witnesses that question whether there could be a question about antitrust jurisdiction involved in this sport, please see me or one of our fine lawyers that work for the Judiciary Committee immediately after this hearing.

We've got a problem here and we're interested in your analysis. Well, what's the problem? Well, ever since the founding of the Bowl Champion Series, BCS, they get bigger, they get more involved, they get more profitable, and they get more exclusive. And the question is, who's calling the shots and how much fairness is involved?

One of the things that always amazes me is that we have got 125 universities trying to get involved in the action here, but it always boils down to the same 50 or 60 that seem to always end up controlling this situation.

And so I think the Chairman is doing the right thing. We invite you to come out and let's have a discussion. We'd be happy to benefit from your experience.

Now, sports is one of the things that the barriers of color have been broken for quite a while. I mean, we have African American athletes in just about every sport, football particularly, and we have a long history of great participation of the historically black colleges and universities—great teams, great coaches, Mississippi State, Hampton, Florida A&M. Florida A&M is going—I think is going to be admitted, but they're already being kicked around like a stepchild inside of BCS.

So this friendly hearing is just to let you know that we're watching. We're watching how the Bowling Championship—the Bowl Championship Series handles this idea of fairness, whether it is an antitrust violation or not notwithstanding.

We've had coaches, the winningest coach in college football, Eddie Robinson, he and his team never got within a country mile of these great playoffs. Billy Joel, a great coach, Grambling, Mississippi State, Hampton, Towson at Maryland, nowhere to be found in any kind of consideration, producing many players who went on

individually to become professional players in the National Football League.

So we're happy to have you all here. I've been talking with the Rainbow Push Operation, Reverend Jesse Jackson. We have Mr. Farrell who heads up the committee, the sports committee, and they've been looking at this question of fairness inside of not only football, but all sports in which somehow, no matter how great the players are, they never—there are very few of them who ever get called for coaching positions. I won't even talk about managing. None of the teams ever get into this thing in the way that you would think the teams that are as successful as them are.

And so we welcome you here for your comments and your cooperation with the Committee.

Chairman SENSENBRENNER. The gentleman's time is expired. Without objection, all Members' opening statements will appear in the record at this point.

Today, we have four witnesses. First, Dr. Myles Brand has served as President of the National Collegiate Athletic Association since January 1 of this year. He is the fourth chief executive officer of the Association. Prior to his current position, Dr. Brand served as President of Indiana University from 1994 to 2002. He was also Provost and Vice President at Ohio State University and a dean and department head at the University of Arizona. He has also served on the faculty of several universities as a professor of philosophy.

James Delany is the Commissioner of the Big Ten Conference and is only the fifth person to serve in that position since the Conference's founding in 1896. Previously, Mr. Delany has served as Commissioner of the Ohio Valley Conference, then worked for the NCAA as an enforcement representative. He is also a lawyer and a former Division I college athlete, playing basketball for the University of North Carolina, where he received his bachelor's and Juris Doctorate degrees.

Dr. Scott Cowen is Tulane University's 14th President and a member of the Presidential Coalition for Athletic Reform, a group of 44 college university presidents opposed to the Bowl Championship Series. Prior to becoming Tulane's President, Dr. Cowen was the Dean of the Case Western Reserve University's School of Management. He obtained his doctorate in business administration and M.B.A. from George Washington University.

And now, I would like to yield to the gentleman from Utah to introduce Utah's favorite son, Steve Young, who had a very mixed record at Lambeau Field. [Laughter.]

Mr. CANNON. About the only place where he did not have an almost perfect record. But Steve Young, of course, is well known for his great career in the NFL with the San Francisco 49ers. But he's also an attorney, an acclaimed motivational speaker, a sought-after corporate spokesman, a supporter of numerous charities and foundations, and most importantly, a dedicated husband and father of two children.

During Steve's football career, he won three Super Bowl titles, including a record six touchdown performance in the 49–26 victory over San Diego—the San Diego Chargers in Super Bowl XXIX. He

earned the MVP Award in that game and two league MVP awards and four consecutive passing titles.

Since retiring from professional football, Steve has appeared as a cohost of ABC's coverage of Super Bowl XXXIV and is a regular analyst on ESPN's popular Sunday "NFL Countdown" series. Young founded and chairs the Forever Young Foundation, which is actively involved in children's charities nationwide. He is currently the broadcast host for the Children's Miracle Network, which has raised over \$1 billion worldwide to benefit children's hospitals.

Steve is also an athlete ambassador for Right to Play, which is a humanitarian nongovernmental organization that implements sports and play programs in Asia, Africa, and Latin America. Steve was also active with the Salt Lake Organizing Committee for the 2002 Olympic Winter Games, where he managed 25,000 volunteers. In 2003, Steve was appointed by President Bush as a member of the newly formed President's Council on Service and Civic Participation, working to inspire Americans to volunteer and make a difference in their communities.

Young earned a Bachelor of Science degree in 1983 and his Juris Doctorate in 1994 from Brigham Young University, and we welcome Utah's favorite son here today.

Chairman SENSENBRENNER. Could each of the witnesses please stand and raise your right hand.

Do you and each of you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. BRAND. I do.

Mr. DELANY. I do.

Mr. COWEN. I do.

Mr. YOUNG. I do.

Chairman SENSENBRENNER. Let the record show that each of the witnesses answered in the affirmative.

Without objection, each of the witnesses' full written statements will appear in the record during their testimony. We would ask that each of the witnesses limit their remarks to 5 minutes. The yellow light goes on with 1 minute left and the red light means time is up. Dr. Brand, you are first.

TESTIMONY OF MYLES BRAND, PRESIDENT, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

Mr. BRAND. The NCAA is a voluntary association of 1,260 colleges, universities, and athletic conferences. It is the infrastructure through which representatives of universities set policy. No authority resides with the NCAA unless granted by the member institutions. Each institution retains far more autonomy over its athletics program than is subject to NCAA national policy.

The Association's three membership divisions each have their own governance structure. Division I, decision making is in the hands of 18 university presidents appointed by their conferences to a board of directors. Division I is further subdivided in the sport of football into three parts: I-A, the 117 schools with the broadest financial investment; I-AA, which offers fewer football scholarships; and I-AAA, which does not sponsor football.

There are NCAA football playoffs in I-AA, II, and III, each having been established by a vote of the member schools. The member-

ship in I-A has never voted to conduct an NCAA football championship. Instead, I-A has a tradition of post-season football participation through a series of bowl games conducted during the Christmas and New Year's holidays. These holiday events have created a high level of drama and excitement for college football.

The goal of the BCS is, through the bowls, to match the number one and number two teams in a season-ending game. The participation of the BCS schools in the four major bowls of the series, the Rose, Orange, Fiesta, and Sugar, has long been dominant, with only one appearance by a non-BCS team in the last 20 years.

Unlike the NCAA's administration of other championships, its role in I-A post-season football is minimal, focused primarily on a certification process. The Association's involvement in I-A football was slightly diminished—significantly diminished in 1982 when the U.S. Supreme Court ruled the NCAA's regular season television contract a violation of Sherman antitrust. As a result, schools negotiate television contracts through their conferences. The BCS schools have further negotiated joint television contracts for the post-season four bowl games.

Currently under debate is access to the four BCS bowls by the non-BCS conference institutions and the revenue from increased access. These schools have formed the Coalition for Athletics Reform. There are at least four possibilities in the near term for addressing access within I-A post-season football. First, create an NCAA post-season tournament like those in the other divisions. Second, add a game or three to be played after the bowls to establish a champion on the field. Third, broaden the criteria for ranking teams for the four major bowls, or increase the number of bowls in the next BCS contract. Or four, retain the current system.

Most in the media and many in the public favor a full NCAA playoff. I do not, not because I believe it's academically unsound, but rather because it would diminish the tradition and benefits of the bowls. A large multi-stage tournament would detract too much. The addition of a few post-bowl games or an additional bowl, while still controversial, may be worthy of additional study.

I do understand the concern for greater access to the major bowl games. For those who assign football a high priority in their expenditures, there should be a fair means of competing for post-season play. This is, I believe, the essence of the coalition's position. No school, including the BCS institutions, should be disadvantaged by any new approach.

In that regard, I do not favor redistribution of revenue that accrues to the BCS universities through their football media contracts. The current revenue structure is the result of the free market system at work. Any changes to the current approach must add value to all participants.

In this debate, the NCAA is the neutral party. On September 8, I will facilitate a meeting where representatives of the BCS and coalition schools will begin a conversation to address their issues. I am committed to assisting both groups in reaching a mutually agreeable position that is fair, that represents differences in tradition and investment levels, and that preserves the integrity of the game.

This is the preferred approach to resolving differences. Intervention by external parties will likely be counterproductive. Ultimately, the university presidents are the decision makers and I have confidence they will be statesmen and women.

I urge this Committee to encourage the Division I-A institutions to come together, discuss their issues in good faith, and find solutions that advance intercollegiate athletics and higher education as a whole, and I thank you, Mr. Chairman.

Chairman SENSENBRENNER. Thank you, Dr. Brand.

[The prepared statement of Mr. Brand follows:]

PREPARED STATEMENT OF MYLES BRAND

Chairman Sensenbrenner, Ranking Member Conyers and other distinguished members of the Committee, on behalf of the National Collegiate Athletic Association (NCAA), thank you for inviting me to appear before you today to discuss the Bowl Championship Series (BCS) and the NCAA's role in postseason football bowl games.

I am Myles Brand, and I have been President of the NCAA since January 1, 2003. I have been involved in higher education for more than 35 years as an academician; administrator; and for nearly 15 years before joining the NCAA staff, as president of two major universities—the University of Oregon and Indiana University. During my tenure in the field of higher education, I have worked on various efforts to address growing concerns regarding the detachment of intercollegiate athletics from the educational community and the academic mission of colleges and universities. In many ways, I see my job now as President of the NCAA as an extension of my interest on campus—the education and development of young men and women.

The NCAA is a voluntary association of 1,260 colleges, universities, athletics conferences and related organizations. The NCAA's primary purpose is to regulate and promote intercollegiate athletics in a manner that fully integrates athletics programs with the academic mission of higher education and student-athletes with the student body. As a membership organization, the NCAA serves as the governance and administrative infrastructure through which representatives of colleges and universities enact legislation and set policy to establish recruiting standards and competitive equity among members, protect the integrity of intercollegiate athletics, ensure the enforcement of its rules and provide public advocacy of college sports. The NCAA also conducts 89 championships in 23 sports in which more than 45,000 student-athletes compete for the title of National Collegiate Champion. More than 360,000 student-athletes are competing in sports at NCAA member institutions this academic year.

Critical to understanding intercollegiate athletics is understanding how member colleges and universities create and direct national policy through the NCAA. The relationship between the member schools and the NCAA is often confusing to those outside of intercollegiate athletics. No authority resides with the NCAA unless granted by the member institutions through their representatives. Each institution retains far more autonomy over its athletics programs than is subject to NCAA national policy. For example, conference alignments, such as the recent Big East-Atlantic Coast Conference decision, are purely institutional issues. The presidents and their boards decide with whom they wish to affiliate; they have not assigned the task to the NCAA or any national organization.

The Association's three membership divisions each have their own federated governance structure. Since 1997, Division I has operated with a structure that places decision-making in the hands of 18 university presidents appointed by their conferences to a Board of Directors. The chief executive officers on campus, the presidents, hold the ultimate authority and control of intercollegiate athletics.

Division I is further subdivided in the sport of football into three parts—Division I-A (the 117 institutions with the broadest financial commitment to athletics), Division I-AA (which sponsors football, but with fewer scholarships) and Division I-AAA (which does not sponsor the sport of football). Among the 89 championships noted earlier, there are NCAA football playoffs in Division III, Division II and Division I-AA. These championships were all established by the member schools in those divisions or subdivisions.

The membership in Division I-A, however, has never voted to conduct an NCAA football championship for the institutions in that particular subdivision, although there have been several efforts to address the subject. In 1976, a proposal to establish a Division I-A football championship was introduced on the recommendation of a special committee that had studied its feasibility. The proposal was withdrawn,

however, and never came to a vote. A resolution indicating that the Division I-A membership did not support the creation of a national football championship was adopted in 1988 by an overwhelming majority. In 1994, a blue-ribbon panel was formed to gather information regarding the viability of establishing a Division I-A football championship. The panel forwarded a report to Division I presidents, but no proposal to pursue a playoff was presented.

Instead, Division I-A has a tradition of postseason football participation through a series of bowl games conducted during the Christmas and New Year's holidays, which date back to the early years of the 20th century. Some bowls had agreements with specific conferences for participation of the conference champion, while others opted to fill only one slot through a conference agreement, leaving the other slot open for an at-large team. Significant benefits have derived from the bowl games for the participating institutions, the communities in which they have been conducted and for the popularity of college football. Even before the Bowl Championship Series (BCS) was created, these holiday events brought a level of drama and excitement to postseason football and the communities where they took place that became a fixture of the American sports culture.

Nonetheless, many in the media and the public have maintained a steady push for a playoff that would determine a national champion on the field in Division I-A football. While resisting a multi-team bracket that would have elongated the football season, reduced the influence and excitement of postseason opportunities and abandoned the tradition of holiday bowl contests, schools in those conferences (along with the University of Notre Dame) that had dominated selection to the bowls created in 1992 what would become the Bowl Championship Series. The goal of the series is to match No. 1 and No. 2 teams in the season-ending game. Schools from the Big East, Atlantic Coast, Southeast, Big Ten, Big 12 and Pacific-10 Conferences comprise the BCS today. Their participation in the four major bowls of the BCS—the Rose Bowl, Orange Bowl, Fiesta Bowl and Sugar Bowl—is dominant. In fact, during the 15 years preceding creation of the BCS, there were 120 selections made to the four bowls and only once did a non-BCS school participate, and that was more than 10 years ago.

Unlike the NCAA's administration of other championships, its role in Division I-A postseason football is minimal, focused primarily on a certification process for bowls that ensures uniformity of bowl administration, financial stability and compliance with NCAA playing rules. The Association's involvement in Division I-A football was significantly diminished in 1982 when the United States Supreme Court ruled that the NCAA's regular-season television contract was a violation of the Sherman Antitrust Act. As a result, regular-season television has been the property of the individual member institutions, which have negotiated contracts through their conferences. The BCS schools have further negotiated joint television contracts for the four bowls in the championship series.

The NCAA also has the responsibility in Division I-A football to protect the integrity of the game and the sanctity of the subdivision itself. While there are 117 institutions in Division I-A, the BCS represents an agreement among 64 of those institutions to participate in the series with guaranteed participation for the champions in the six conferences, plus two additional at-large berths. Any team from a non-BCS Division I-A conference (Conference USA, Mountain West, Western Athletic, Sun Belt and Mid-American Conferences), or an independent can qualify if it is ranked in the top six in the BCS standings. Currently at issue and under debate is access to the four BCS bowls by the non-BCS conference institutions and the revenue that would result from increased access. The non-BCS schools have formed the Coalition for Athletics Reform to address their concerns.

There are at least four possibilities in the near term for addressing access within Division I-A postseason football. First, the Division I-A membership could vote to establish an NCAA tournament like the ones that exist in Division I-AA and Divisions II and III. The brackets for those championships range from 16 teams in Division I-AA to 28 teams in Division III. Second, an additional game or three could be played after the bowls to identify on the field a champion. Third, the method of ranking teams for the four bowls could be broadened, or the number of bowls in the next iteration of the BCS contract could be increased. Or finally, fourth, the current system, or something very close to it, could remain in place.

While most in the media and many in the public favor a full playoff in Division I-A similar to that in other divisions, and similar to the National Football League playoffs, I do not. Here, I speak for myself; there is no official NCAA position on this matter. I have mixed feelings about the argument that such a tournament would have severe academic consequences. Only a few schools and a limited number of student-athletes would participate, and the impact would not be greater than football championships in other divisions or championships in other sports. From

the perspective of protecting student-athlete time for academics, it would be better to limit the regular season games to 11, rather than the 12 that is now the case if the calendar permits. Rather, my reason for not favoring a Division I-A playoff is because it would diminish the benefits of the unique postseason opportunities the bowls have provided. This is an exciting feature of Division I-A football worth preserving, and a full-fledged, multi-stage tournament would detract too much from the bowl system.

Others have proposed one or three additional games after the current four bowls to identify the champion on the field. Although still controversial, and for the same reason, namely it diminishes the bowls, these more moderate approaches may be worthy of additional study. They would likely generate significantly greater revenue for many institutions in Division I-A that struggle meeting the demands for multiple sport programs competing at an elite level. However, the decision, it seems to me, should not be based solely on new revenue from media and advertising contracts. Rather, it should be based on enhancing the integrity and excitement of college football at the Division I-A level.

I do understand the concern for greater access to the major bowl games. The expense associated with operating a Division I-A football program is not for every institution. A recently released NCAA study conducted by three distinguished Brookings Institution economists notes that spending in college sports, though a small proportion of a university budget, about 3.5 percent, is not trivial and it is increasing. In the difficult financial times facing universities, there is a need to offset as much of these expenditures as possible with revenue. For those who make the decision to assign football a high priority in their expenditures, there should be a fair means of competing for postseason play. This is, I believe, the essence of the Coalition's position.

It is also important to point out that no school, including the BCS institutions, should be disadvantaged by any new approach. In that regard, I do not favor any redistribution of revenue that accrues to the BCS universities through their media contracts in football. Although there currently is some revenue sharing that takes place, the large majority goes to those who make the greatest commitment and whom the market rewards. In other words, the current revenue structure is a result of the free-market at work.

Any changes to the current approach must add value for all the participants. This goal, if it is achievable, is to find the tide that will raise all ships.

On September 8, I will facilitate a meeting where representatives of the BCS and Coalition schools will begin a conversation to address these issues. Over time and with a willingness to listen to the other side, I believe the presidents of these institutions can reach a mutually agreeable position that is fair, that respects differences in tradition and investment levels, and that preserves the integrity of the game. I am committed to assisting both groups to reach this end. The NCAA can be the facilitator and neutral party that protects the game and the interests of Division I-A student-athletes.

This is the preferred approach to resolve the differences. Intervention by the courts or advocacy for one group over another by elected officials at any level will be counterproductive. We saw the results of such intervention in the recent conference realignment debate, and the emotions attendant to such discussions were only exacerbated.

This is the time for higher education to show its most statesmanlike, most collegial face. Ultimately, the university presidents are the decision makers, and I have great confidence that those presidents participating in the September 8 meeting and any other discussions will do just that. In the meantime, I urge this committee to encourage the 117 institutions involved to come together, discuss their issues, and find solutions that will advance intercollegiate athletics and higher education.

Chairman SENSENBRENNER. Mr. Delany.

TESTIMONY OF JAMES E. DELANY, COMMISSIONER, BIG TEN CONFERENCE

Mr. DELANY. Thank you, Mr. Chairman, Ranking Member Conyers, and Members of the Committee. I am pleased to have the opportunity to represent the views of the ACC, SEC, Pac-Ten, Big East, and Big 12, as well as the Big Ten here today with respect to the Bowl Championship Series.

I would like to say a few words about three separate but related subjects: One, an NFL-style college football playoff; two, the BCS

and its limited purposes; and three, the money produced by these games.

The champion—the commissioners of the six conferences have been instructed by their presidents and chancellors not to explore an NFL-style college football playoff inside or outside the existing bowl structure. This same position has been communicated directly to the NCAA by the Pac-Ten, Big Ten, and SEC presidents on several occasions during the 1990's. President Brand was a CEO of the Big Ten and the Pac-Ten during this time and can confirm these positions. I hope a brief description of how the Big Ten and the Pac-Ten became involved in the BCS will help the Committee understand the reasons we came together, the limited purpose for our BCS participation, and the angst that was created within our conferences when the changes were made.

Prior to 1995, a one versus two college football game had occurred only nine times in 45 years within the bowl system. The bowl games were so tightly structured that it was extremely difficult to create such games. The Rose Bowl was in part responsible for these outcomes because the Big Ten and Pac-Ten champions had played each other exclusively in this game for over a half-century. No conference other than the Big Ten and Pac-Ten had access or revenue sharing with the Rose Bowl. This exclusive relationship was a significant part of the fabric of the Midwest and West Coast college football culture and the Rose Parade was an international TV experience.

In order to fend off a college football playoff, strengthen the bowl system, and create a one-two game annually, the presidents, athletic directors, and coaches of the Big Ten, Pac-Ten, and their partners at the Tournament of Roses agreed to join with the four champions of the ACC, SEC, Big 12, and Big East to create the BCS in 1998. The champions of these conferences agreed to loosen their ties with existing bowl partners so that a one-two game could occur and the six conference championships could continue to play in their traditional bowl alignments.

From the standpoint of the Big Ten and Pac-Ten, that meant once every 4 years, the Rose Bowl would host a one-two game, and the other 3 years, the traditional Rose Bowl game would occur, unless one of the Big Ten or Pac-Ten champions were ranked one or two. Each of the other conferences made a similar gift in order to create sufficient flexibility to allow the one-two game to be created.

Otherwise, major bowl games were unchanged, with two major exceptions. First, any team ranked one or two would now have access to the championship game whether they were in these six conferences or not. And two, any Division I football program that received a ranking of six or better would have automatic access to one of the at-large selections within these four bowls. This was access that had never occurred before. Along with it, regardless of participation, came a \$5 million revenue share with conferences outside the six BCS conferences.

Without automatic access for a Big Ten champion within the BCS, our champions would never have left the Rose Bowl. This is undoubtedly true for each of the other conferences and their bowl partners. In short, our goals, motives, and actions were and are

transparent. We believe that this cooperation was necessary to create a one-two game on an annual basis.

Prior to the BCS establishment, 1978 to 1998, these four bowls invited 160 participants. A hundred-and-fifty-nine came from the six conferences or Notre Dame. We do not believe that the pattern after 1998 is any different than that for the 20 years previous.

The competitive patterns, media patterns, scheduling patterns, bowl patterns pre- and post-BCS are very similar. In other words, we do not see the BCS as causally related to the competitive or market disparity existing among or between Division I football programs and conferences.

The issue of money and access are related and linked. The question we have is, our schools presently do not—the great majority of our schools do not receive institutional support. They are funded by external sources. The majority of the programs in the five conferences not within the BCS are funded with multi-million-dollar subsidies from their institution. The question we have is for what purpose should we shift tens of millions of dollars from our programs, our programs that will then either need to cut opportunities for men and women or receive institutional subsidies, so that the subsidies that are presently provided to institutions in other conferences would be—have their subsidies reduced? On September 8, the presidents of our conferences as well as those of the others will have an opportunity to review both of these issues.

Thank you.

Chairman SENSENBRENNER. Thank you, Mr. Delany.

[The prepared statement of Mr. Delany follows:]

PREPARED STATEMENT OF JAMES E. DELANY

Mr. Chairman and Members of the Committee: My name is Jim Delany, and I am Commissioner of the Big Ten Conference. I have held that position for the last 14 years. Before assuming my current duties, I was Commissioner of the Ohio Valley Conference for 10 years. During my college days, I played basketball at the University of North Carolina under Coach Dean Smith. That was a wonderful experience for me, enabled me to get a first-rate education, and prepared me to seek a law degree, which I also received from North Carolina. As a student-athlete, I twice had the opportunity to play in the NCAA Final Four. I understand the thrill of competing for a national championship, and although we did not win a national championship while I was at North Carolina, playing in the Final Four was among the highlights of my athletic career. I appreciate the opportunity to speak with you today about the Bowl Championship Series and the many benefits that it has brought to college football fans and to the game in general. I also appreciate the opportunity to share with you the views of the Big Ten Conference concerning the BCS arrangement.

The Bowl Championship Series began in 1998 with two primary goals: (1) to bring to college football fans a true national championship game every season matching the number 1 and number 2 teams in the nation in a traditional bowl game; and (2) to create other exciting bowl matchups involving highly regarded teams. It has been remarkably successful in achieving those aims. Last season is probably the best example of the benefits of the BCS. Miami and Ohio State both finished the season undefeated and were ranked number 1 and number 2 respectively in virtually every poll. There was a clear consensus that these were the two best teams in the nation. They paired off in the Fiesta Bowl and gave us one of the greatest college football games ever played. That game, however, would have never occurred without the BCS arrangement. Under the bowl system as it existed before 1998, Ohio State would have been committed to play in the Rose Bowl against Washington State, the champion of the Pacific-10 conference. Miami would have played in either the Fiesta Bowl or some other attractive bowl, but it would not have played against Ohio State. The fans of college football would have been denied a true national championship game and a fitting close to the season.

A full understanding of the BCS arrangement must begin with an understanding of the bowl system in college football and how it developed over the years. The bowl system is a distinctive feature of college football. It began with the playing of the first Rose Bowl in 1902 and has expanded over the years. Today, there are 28 bowls games that play host to 56 college football teams and provide a rewarding post-season experience for approximately 5600 student-athletes. Many of the young men who have participated in bowl games have told me that it is one of the most enjoyable and memorable experiences of their athletic careers. Not only are they rewarded for their achievements during the regular season, but also they get to partake of a variety of attractions and activities in each of the host cities. Bowl games are far more than simply another football game. They are accompanied by parades, parties, and other events that make them far different from post-season games in any other sport in this country. Bowls are, in every sense, a celebration of college football. The bowl committees that host the games work tirelessly each year building community interest and participation. The committees are generally assisted by an army of volunteers who donate their time and talents to the endeavor. Bowl games take place in a diverse range of cities in every geographic sector of the country from Detroit and Boise to Miami, Tempe, and New Orleans. In every sense, bowl games and the bowl experience are part of the great tradition and fabric of college football.

As the bowl system developed over the last century, a number of bowl games developed relationships with various conferences. The first of these involved my own conference, the Big Ten, and the Rose Bowl. Beginning after the 1946 season, we sent our conference champion to Pasadena every January 1 to play against the Pacific-10 champion in the oldest and one of the most venerated bowl games. The Rose Bowl relationship has been a tremendous benefit to the Big Ten and to the Pacific-10 as well. The Tournament of Roses, the sponsor of the Rose Bowl, has provided a tremendous experience for our student-athletes and our fans and supported our institutions financially. At the same time, we like to believe that the Big Ten has been in a very real sense a "partner" with the Rose Bowl. We have annually provided our champion, which is a very fine football team, to play in the game. That has helped the Rose Bowl attract not only local interest and support for the game but to generate broad national interest in its contest. That interest has translated into substantial support by television networks that purchase the rights to the game and promote it heavily. The fans of our participating institutions have traveled in great numbers to the game, purchased tickets and participated in the many events surrounding the Rose Bowl, filled hotel rooms, and helped support the host communities in Southern California. The fans of the institutions in the Pacific-10 have also supported the Rose Bowl in a similar manner. Because of this close relationship and mutual support, the Big Ten/Pacific-10/Rose Bowl arrangement has grown steadily over the years, and we believe that it is fair to say that the Rose Bowl would not be the event that it is today without its long-standing relationship with the Big Ten and Pacific-10.

Similar relationships developed over the years between other conferences and other bowl games. For example, the Southeastern Conference has had a long relationship with the Sugar Bowl. It has sent outstanding champions to that game over the years and its fans have traveled to New Orleans in great numbers to participate not only in the football game but in the many activities associated with the Sugar Bowl and to visit the many attractions that New Orleans has to offer.

The Big 12 Conference, which was once known as the Big Eight Conference, for many years had a very close relationship with the Orange Bowl in Miami and sent its champion there on an annual basis. The former Southwest Conference, which dissolved after the 1995 football season, for many years sent its champion to the Cotton Bowl in Dallas. The Atlantic Coast Conference developed a close relationship with the Citrus Bowl in Orlando in the 1980s and sent its champion to that game until the early 1990s. Even the Big East Football Conference, which was created in the early 1990s, got a very lucrative offer from what was then known as the Blockbuster Bowl to send its champion to that game every year. Other conferences developed similar relationships with different games.

With the growth of these relationships, it became increasingly difficult to match champions from each of these conferences in bowl games. Historically, the champions of the Atlantic Coast, Big East, Big Ten, Big 12, Pacific-10, and Southeastern Conferences, along with Notre Dame, have been among the most highly ranked teams at season's end. Indeed, Notre Dame or a team currently in one of these conferences has won every college football national championship since the end of World War II, except one. Before the early 1990s, the bowl system was not very good at matching the top two teams against one another in a game. In fact, before 1992, the bowl system had paired the number 1 and 2 teams against one another

only nine times in 45 years. With the growth of the conference/bowl relationships and the commitment of different conferences to send their respective champions to different bowl games, the possibility of a bowl game pairing the top two teams grew even more remote. In short, under the bowl system as it existed in the early 1990s, there was very little chance that the national championship would be decided on the field.

The ACC, Big East, Big 12, SEC, and Notre Dame, and the Cotton, Fiesta, Orange, and Sugar Bowls attempted to address that issue in the early 1990s with the formation of what was called the Bowl Coalition. The Bowl Coalition had limited goals. It was designed to pair conference championships against one another and to match other highly regarded teams in exciting and appealing bowl games. The Bowl Coalition did not abolish the traditional relationships between certain bowls and certain conferences. For example, the Big Eight champion continued to play in the Orange Bowl every year, the Southwest Conference champion continued to play in the Cotton Bowl, and the Southeastern Conference champion continued to play in the Sugar Bowl. The Big East Football Conference, however, turned down a lucrative offer from the Blockbuster Bowl to participate in the Bowl Coalition, and the ACC did not renew its relationship with Citrus Bowl and also turned down a very generous offer from the Blockbuster Bowl to make the Bowl Coalition possible. While the Bowl Coalition was far from perfect, it was able to match the top two teams against one another in two of the three years it was in existence.

Neither the Big Ten nor the Pacific-10 committed its champion to the Bowl Coalition arrangement. The member institutions of the Big Ten were simply not willing to alter our valuable and long-standing relationship with the Rose Bowl, especially given the fact that the Bowl Coalition's inability to guarantee a national championship game. We, nonetheless, recognized the Coalition arrangement as a step forward for college football and its fans.

The Coalition arrangement expired after the 1994 season, as did a number of the individual conference/bowl affiliation arrangements. At that time, the ACC, Big East, Big 12, and SEC formed the Bowl Alliance with the Fiesta, Orange, and Sugar Bowls. The Alliance further increased the likelihood of a national championship game by allowing conference champions that had previously been unable to match up in bowl games to be paired against one another. The best example occurred after the 1995 season when Nebraska and Florida were both undefeated and ranked first and second in the polls. Those teams were paired against one another in the Fiesta Bowl with Nebraska claiming the national championship. That game would not have been possible under the prior bowl system because Nebraska would have been committed to play in the Orange Bowl under its conference affiliation agreement, and Florida would have been committed to play in the Sugar Bowl. Thus, the Alliance gave fans a national championship game that they otherwise would not have had.

The Alliance had one notable limitation. The Big Ten, along with the Pacific-10 continued to send our champions annually to the Rose Bowl. Because of those commitments, it was clear that the Alliance could never guarantee an annual national championship game if the number 1 or number 2 team was in either the Big Ten or Pacific-10. That happened on four occasions between 1991 and 1997. Therefore, when the Alliance arrangement expired after the 1997 season, the Big Ten, Pacific-10, and Rose Bowl were approached by ABC Sports and asked whether we would be amenable to some alterations in our long-standing relationship that might permit the creation of an annual national championship game. The Rose Bowl was asked to join with the Fiesta, Orange, and Sugar Bowls in a four-year rotation of a true national championship contest. That proposed arrangement required substantial concessions on the part of the Big Ten, Pacific-10, and Rose Bowl. Specifically, both the Big Ten and Pacific-10 would be required to commit their respective champions to play in a game other than the Rose Bowl when such champion was ranked first or second at the end of the season and the Rose Bowl was not scheduled to host the national championship game. Second, when the Rose Bowl was scheduled to host the national championship game, our conference champion and the Pacific-10 champion would have to play in another bowl game if those teams were not ranked first or second at season's end. These were major alterations to our traditional relationship with the Rose Bowl.

I cannot adequately describe how difficult this decision was for the member institutions of the Big Ten. Because of our more than half-century relationship with the Rose Bowl, there were those in our conference who felt that the proposed alterations were simply too great a change to make, even if they ultimately resulted in an annual national championship game. A Rose Bowl bid had been the traditional reward to our conference champion, and indeed, playing for a spot in the Rose Bowl had become a driving force in our conference championship race and added immeas-

urably to the excitement of Big Ten regular season games. In the end, however, we recognized that others were also making substantial sacrifices to make an annual national championship game possible. The Big 12 and SEC were foregoing valuable and traditional bowl slots for their champions that they could obtain on their own, and the Big East and ACC had opted not to enter into lucrative individual bowl agreements that had been offered to their respective champions. Because an annual national championship game would greatly improve college football and give the fans a true champion decided on the field, we ultimately agreed to commit our champion to the proposed arrangement and to alter our traditional agreement with the Rose Bowl. The Pacific-10 made a similar decision.

The result is the BCS. The BCS involves only four bowl games, the Fiesta Bowl, Orange Bowl, Rose Bowl, and Sugar Bowl, and eight of the 56 bowl slots available to Division I-A college football teams. Under the BCS arrangement, six of the eight slots in those four games are reserved annually for the champions of the ACC, Big East, Big Ten, Big 12, Pacific-10, and Southeastern Conferences. The remaining two slots are open and may be filled by any team in Division I-A college football team. For teams in Division I-A conferences whose champions do not play in one of the BCS bowls every year, there are two ways to qualify automatically for one of the two open slots. First, if one of those teams finishes number 1 or number 2 at the end of the season, then it will play in the national championship game. Second, even if such a team is not in the national championship game, it can qualify for automatic selection if it finishes the season ranked among the top six. Finally, even if such a team does not qualify for automatic selection, it may still be selected by one of the bowls that has an open slot. In fact, in most years, the open slots are filled with selections made by the bowls. This selection process allows those bowls not hosting the national championship game flexibility to create what they believe to be the most exciting matchups with the broadest appeal to the greatest number of fans.

Critics often ask why six of the eight slots in the BCS arrangement are guaranteed to the conference champions of the ACC, Big East, Big Ten, Big 12, Pac-10, and SEC. The answer is relatively simple. Without those guaranteed slots, there would be no BCS, no annual national championship game, and none of the other benefits created by the BCS. It is important to understand that under NCAA rules, each Division I-A team is permitted to playing in one and only one post-season bowl game. Thus, anyone attempting to create a national championship game gets only one opportunity to pair the top two teams. That means that, whatever the mechanism, there must be participation by all of those teams that have traditionally competed for the national championship. Based on current conference membership, those teams are fielded by institutions in the six conferences with guaranteed slots or Notre Dame. The issue, then, is to induce those conferences to commit their champions to play in a particular bowl if they are ranked number 1 or number 2 and to forego other bowl commitments that might make such a matchup impossible. The six conferences whose champions have guaranteed slots in the BCS arrangement all had or individually were offered valuable bowl slots for the champions in the bowl system that existed before the formation of the BCS. One cannot reasonably expect that those conferences will substantially alter or forego those close and valuable relationships to create a national championship game unless the arrangement that is created gives their champions a bowl slot at least the equivalent of what they could have obtained on their own.

The Big Ten provides a good illustration of this point. Given our long-standing relationship with the Rose Bowl, the member institutions of our conference simply would not participate in the BCS or any other bowl arrangement that guarantees an annual national championship game if we were not guaranteed a slot for our champion. We already had such a slot under our arrangement with the Rose Bowl, and the member institutions of our conference are not willing to alter that relationship except to permit an annual national championship game. In short, without the guaranteed slots, we would not have participated in the BCS arrangement. Rather, we would have simply continued our relationship with the Rose Bowl unaltered. That would have deprived college football fans of that tremendous Fiesta Bowl game last year, and given the performance of our champion and the Pacific-10 champion in recent years, may have deprived college football fans of a national championship game on several occasions.

The same is true of the other conferences whose champions have guaranteed slots in the BCS bowls. Without the guaranteed slots, they could be expected to simply renew or rekindle valuable and long-standing relationships that they had with particular bowls. The result would be a return to the old bowl system in which conference champions were not often paired against one another in bowl games and matchups between the top two teams in the nation were infrequent and occurred

only by chance. That would serve neither the interest of college football nor its many fans.

Critics of the BCS also claim that it excludes teams outside the six conferences whose champions have guaranteed slots from the most lucrative bowl opportunities. Nothing could be further from the truth. The open slots exist precisely for the purpose of permitting every Division I-A team to compete for the national championship. Moreover, by guaranteeing that teams from conferences whose champions do not play in a BCS bowl every year will automatically qualify for one of the open slots when they are highly ranked, the BCS arrangement ensures that those teams that have truly exceptional seasons will play in one of the BCS games even if a bowl otherwise might have chosen to select another team that it believes has greater appeal to a broader group of fans.

As for the revenue derived from the BCS bowls, the value of those games exists precisely because of the BCS arrangement. Television networks, advertisers, corporate sponsors, and fans perceive those games to be more valuable than any single bowl game alone that cannot guarantee a national championship arrangement. By creating a national championship game every year and other exciting bowl matchups between highly regarded teams, the BCS arrangement is a new product that is highly valued by the consumers of college football. That value is reflected by the willingness of television networks, corporate sponsors, and advertisers to pay additional sums for a product that would not exist but for the BCS.

The revenues derived from the BCS arrangement are shared among a number of college football conferences. The five Division I-A conferences whose champions are not guaranteed slots in a BCS bowl every year will receive a total of almost \$4.5 million this year for making their teams available to play in a BCS game even if they do not have a team that actually plays in one of the bowls. Furthermore, eight Division I-AA conferences will share a total of nearly \$1.5 million of revenues from these four BCS games even though they will not play in them. Over the duration of the BCS arrangement, roughly \$42 million will flow to five Division I-A and eight Division I-AA conferences regardless of whether they ever place a team in one of the BCS games. For the five Division I-A conferences sharing in this revenue, that is a substantial benefit. Under the prior bowl system, these conferences shared in none of the revenues derived from the Fiesta, Orange, Rose, and Sugar Bowls unless they actually placed a team in one of those four games. That has been a rarity. In fact, prior to the formation of the BCS, only seven times since the end of World War II have teams currently in the five Division I-A conferences played in the Fiesta, Orange, Rose, or Sugar Bowls. In more recent years, those four bowls virtually never selected a team from one of those five conferences. In the 20 seasons from 1978 to the formation of the BCS in 1998, 159 of the 160 slots in those four bowl games were filled by teams currently in the six conferences with automatic annual slots for their champions or by Notre Dame. The one exception is Louisville, which played in the Fiesta Bowl following the 1990 regular season. It is fair to say that the amount of revenues distributed from these four bowls to the five Division I-A conferences whose champions are not guaranteed an automatic slot in a BCS bowl every season substantially exceeds the amount of revenues that these teams had previously earned from actually playing in these games since the end of World War II.

Today, thanks to the BCS arrangement, the bowl system is more open than it has ever been. Any team can qualify to play in the national championship game or one of the BCS bowls or can be selected to play in one of those games. This includes the Rose Bowl, which for more than 50 years played host to only the champions of the Big Ten and Pacific-10, but which in the past two years has hosted teams from three other conferences. Most importantly, however, the BCS arrangement guarantees college football fans an annual national championship game and other exciting bowl matchups. It provides these substantial benefits within the traditional bowl system that has been very good for college football, and it does so without limiting the number of post-season opportunities for student-athletes, the number of total games available to the fans, or the number of advertising and sponsorship opportunities available to the supporters of college football. In short, the BCS is precisely the type of arrangement that comports with both the letter and design of the anti-trust laws. I have no doubt that it will continue to be a great benefit to college football and its many fans. Thank you again for the opportunity to speak with you today about these issues.

Chairman SENSENBRENNER. Dr. Cowen.

TESTIMONY OF SCOTT S. COWEN, PRESIDENT, TULANE UNIVERSITY, AND CHAIRMAN, PRESIDENTIAL COALITION FOR ATHLETICS REFORM

Mr. COWEN. Mr. Chairman, Representative Conyers, and Members of the House Judiciary Committee, I want to thank you for holding this hearing today on a topic critical to the future of intercollegiate athletics at our universities.

I am not a lawyer. Therefore, I am not qualified to address the technical antitrust issues possibly involved with the BCS arrangement. So what I will attempt to do is to personalize this issue by sharing my perspective as a president of a university that is not part of the BCS alliance, a university whose football team went undefeated in 1998 and did not have the opportunity to play in a BCS bowl, much less the national championship; the president of a university that completed a year-long review of intercollegiate athletics and found the BCS arrangement to be one of the contributing factors adversely impacting schools not included in the BCS alliance.

And by the way, if you want to attach a human face to our schools, I would ask you to think of Patrick Ramsey, first round draft choice, Tulane graduate, and the starting quarterback for the Washington Redskins, and I would like you to think of Steve Young, the gentleman to my left, a distinguished graduate of Brigham Young University and one of the all-time great NFL quarterbacks. These are the non-BCS schools.

My concern with the BCS revolves on four issues. My first issue relates to the unfairness and inconsistency of the current system. The BCS system is inconsistent with how we handle all other NCAA-sponsored sports that involve a national championship and it is philosophically at odds with the values we embrace as a system of higher education, that is, access, equal opportunity, and fair play. The current system simply does not meet any test of fairness and is anathema to everything we stand for in higher education.

My second issue is that the system is unnecessarily—restricts access to the BCS bowls and national championship because of the combination of automatic qualifiers, the status of Notre Dame in the alliance, and the BCS ranking system that make it almost mathematically impossible for a non-BCS school to qualify for an at-large position. And by the way, you should know the ranking system was developed by the BCS alliance for the purpose of determining the BCS bowl eligibility, including the national championship. Bottom line, there is theoretical access, but in reality, there is no access for the non-BCS schools.

My third concern is that the BCS is having an adverse impact on the programs of non-BCS schools both financially and in other significant ways. Financially, the numbers speak for themselves. During the first 5 years of the BCS agreement, the BCS schools have earned in excess of \$450 million. The remaining 50-plus schools received \$17 million. Yet, we are all Division I-A schools with the same membership requirements and policies and procedures that guide our operations.

In addition to the financial disparities caused by the BCS arrangement, there are other adverse effects on the programs of non-

BCS schools related to such things as student athlete recruiting and the hiring and retention of coaches.

My final and most important concern is that there are better ways to approach post-season play in football that are more consistent with free market principles and the interests of our fans while adding more value to all Division I-A schools and being respectful of the historical relationships between certain bowls and conferences.

In addition to being President of Tulane University, I am a professor of management with a specialty in strategy, and this is the great irony to me. The great irony is that there are alternative approaches to post-season play in football, including a national championship that would be more beneficial for all Division I-A schools, including those in the BCS conferences.

My BCS colleagues will offer many counter-arguments to support their case, but I can assure you that each one of them can be debunked. I have outlined and addressed the most often-cited counter-arguments in my written testimony, but will provide just one example. Who wants to see Tulane play BYU for the national championship? Answer: The same people who love seeing Rice University, the smallest Division I-A school, win the College World Series, or Marquette in the Final Four. Fans love the underdog and long shot, and history has shown they are more than willing to support a system that allows such match-ups. That is what America is all about.

I hope we, as a group of presidents, can resolve our issues without having to infringe any more on your time or resorting to lawsuits, even though Tulane's consultations with antitrust counsels indicate that this arrangement is vulnerable to violation of anti-trust laws if contested. However, my strong preference to the resolution of this issue is for university presidents to resolve our difference in a collegial and cooperative manner befitting what you should expect of us. That process begins next Monday in Chicago, where 11 presidents and Dr. Brand will begin a dialogue, and I am cautiously optimistic about our ability to come together to address and resolve our differences.

Chairman SENSENBRENNER. Thank you, Dr. Cowen.

[The prepared statement of Dr. Cowen follows:]

PREPARED STATEMENT OF SCOTT S. COWEN

Mr. Chairman, Representative Conyers, and members of the Committee: Thank you for the opportunity to speak to you today regarding the Bowl Championship Series and its impact on NCAA Division I-A athletics. It is my sincere hope that this hearing, and any ensuing discussions it might engender, will cast new light on an issue that has far-reaching consequences for not only those universities that are not part of the Bowl Championship Series alliance but for college athletics as a whole.

As a university president, I am concerned with four issues impacting intercollegiate athletics: the welfare and academic performances of student-athletes; the impact of the BCS alliance on Division I-A athletics; the increasing cost of competition; and the widening gulf between intercollegiate athletics and the basic missions of our universities.

However, given the focus of this committee hearing, I will restrict my comments today to the BCS alliance and its impact on Division I-A intercollegiate athletics in terms of inequities and restricted access.

A PERSONAL AND INSTITUTIONAL VIEW OF THE BCS

I am not a lawyer, so I must leave discussions of technical antitrust issues to those whose training provides expertise in that area. However, in the last year Tulane University has conferred with outside legal counsel about a possible antitrust suit. We choose not to go in that direction at this time even though we have been advised that the BCS alliance is fraught with potential antitrust issues.

So I do not come to you today advocating an antitrust lawsuit but as the president of a non-BCS university, living daily with the impact the BCS alliance has on Tulane University and the 52 other higher education institutions like us.

I also can talk to you as president of a university whose football team enjoyed a perfect 11–0 season in 1998 yet had no practical access to a major bowl game or opportunity to compete for a national title.

And I can talk to you as president of a university whose board of administrators very recently made a difficult decision to remain in Division I-A athletics despite the inequities and lack of access inherent in the current two-tiered system created by the BCS to govern postseason play in football. For more information on the Tulane athletics study and decision, I refer you to our university magazine, which is available here in print and can be found online at <http://www2.tulane.edu/tulanian.cfm>.

Tulane University is certainly not the only school suffering from this inequitable system, but let me use some names we all know to put a face on the issues we're talking about today. While you're hearing about the limits and restrictions faced by the young men playing football at non-BCS schools today, think of Patrick Ramsey, a Tulane graduate, first-round draft pick and starting quarterback of the Washington Redskins, or of Steve Young, who is here with us today, a graduate of Brigham Young University and one of the all-time greatest NFL quarterbacks. These are the faces of football at non-BCS schools.

Each fall, I have the opportunity to address the Tulane Green Wave football team. I look out over the faces of young men who are continuing the university's century-old football tradition, who are hopeful and excited and enthusiastic, and who come into a program that is among the highest-ranked academically in the nation.

I always tell them several things. First, I remind them they are in college to get an education that will help them become productive citizens and future leaders. Second, I tell them they are at Tulane to grow and develop as people, to cross that bridge from adolescence to adulthood. Third, I remind them that as athletes they are at Tulane to be as competitive as they can be.

There also are things I cannot tell them, however, and it both saddens and angers me to the core. I cannot tell them that, should they have a terrific season and play with all their heart and soul, they will have a realistic chance to play for a national title. I cannot tell them that the reward for the end of a long and successful season could be an appearance in a major bowl game. Because the truth is, when it comes to Division I-A football in a non-BCS school, no matter how well these young men play, no matter what kind of season they have—they will have virtually no realistic access to major bowls or championship play.

So when Tulane had a perfect football season in 1998, we had no practical chance for a major bowl or a championship run despite being one of only two undefeated teams in the country. The other undefeated team was the University of Tennessee, which won the national championship for which we did not get the chance to compete. When Brigham Young University was at 12–0 in 2001, the team went into its 13th game of the season knowing it had no shot at a title or even a major bowl game. It finished the regular season 12–1, still with a better win-loss percentage than eight of the top-10 schools in the BCS rankings that season. Marshall University's football team went 11–2 the past two years, and it also had a better record than eight of the top-10 BCS-ranked teams. But Marshall was unable to compete for a championship or play in a major bowl because Marshall is not a BCS school.

Football is the only NCAA sport where this inequity exists; not coincidentally, Division I-A postseason play in football is exclusively controlled by the BCS. In other sports, all of which have a playoff system in place, all Division I-A teams start out on a level playing field. Therefore, you can have Rice University, the smallest Division I-A school in the country, rising to win the College World Series in baseball in 2003. You have Kent State University, who made it to the Elite 8 in the NCAA basketball playoffs in 2002 after a storybook season. And you have Marquette, who reached the coveted Final Four in basketball in 2003.

Do the non-BCS schools win a lot of championships in these other sports? Not necessarily. But the opportunity is there; the access is there. And when the underdog wins, it is a glorious thing.

My stance against the BCS alliance is based on four arguments, as follows.

UNFAIRNESS AND INCONSISTENCY

Our country is based on the idea of equal opportunity for all, and our educational institutions are dedicated today to the principles of access, inclusiveness, fairness and consistency. It goes against everything we hold dear to allow—even encourage—a system that showers financial and reputational rewards on one member while unnecessarily denying or limiting the opportunity for another member to earn the same rewards.

The BCS system governing postseason play is inconsistent with all other NCAA-sanctioned sports, as well as the values and principles that guide our system of higher education. The BCS conferences define the ranking system that determines participation in the BCS bowls and national championship game, and automatically qualify their own members for six of the eight available major bowl slots, regardless of their BCS ranking.

One of the great ironies of this discussion of “haves” and “have-nots,” as the BCS and non-BCS schools are commonly referred to, is that the requirements of Division I-A membership are the same regardless of the group to which you belong. Both BCS and non-BCS schools must meet the same NCAA requirements. It seems we can have consistency, fairness and a level playing field when it comes to membership requirements for Division I-A, but not when it comes to access and equity in Division I-A football.

UNNECESSARY RESTRICTIONS LIMITING ACCESS

The BCS has created a system of limited access that does not offer a level playing field or means of fair play, and it is a system that lies outside the boundaries of what intercollegiate athletics has traditionally considered a right and just means of determining a national champion.

Limited access results from the fact that six of the eight BCS bowl slots are automatically given to the champions of each of the BCS conferences. The two remaining slots are filled based on the results of a ranking system developed by the BCS conferences. A careful analysis of the components of this ranking as well as the overall rules for BCS eligibility make it virtually impossible for a non-BCS school to ever qualify for a BCS bowl, much less the national championship.

One of the most frustrating aspects of these limitations is that they are unnecessary if, in fact, determining a definitive college football champion is the primary goal, as the BCS claims. There are other ways to accomplish this without excluding or limiting access to half of the Division I-A schools—the half who do not belong to BCS conferences.

In fact, I would contend that the only true reasons for the restrictions and limited access in the BCS arrangement are financial ones—namely, ensuring that the lion’s share of the TV revenues and the scheduling benefits remain only with BCS schools.

In short, this is an arrangement that is restrictive, limits access to postseason play in football, and is unnecessarily causing a widening financial gap between BCS and non-BCS schools that is having a cumulative negative effect on all college sports, not just football.

ADVERSE IMPACTS ON NON-BCS PROGRAMS

The BCS alliance has led to an ever-increasing financial gap between the BCS and non-BCS institutions. The financial disparity caused by the BCS can be described by merely stating that the 63 BCS schools earned approximately \$500 million since they began their first contract five years ago, while the 53 Division I-A non-BCS schools shared earnings of \$17 million.

This gap exists despite the fact that the BCS and non-BCS schools need each other in order for intercollegiate football to succeed, and when given a fair opportunity for BCS and non-BCS schools to play against one another, they are quite competitive.

Ironically, some BCS schools have suggested that they might consider leaving the NCAA to form their own association if the non-BCS schools push too hard on this issue. This is anathema to the values of higher education and is not a practical solution for any of us.

The BCS arrangement and its negative impact extends far beyond this disparity in financial distributions, however. Let me give you a few practical examples.

- **Student Recruitment.** BCS schools have an obvious advantage over non-BCS schools in terms of recruiting the top student-athletes, who obviously want to play at schools where they have the best chance at success both on and off the field. On the field, that means having access to competition for a national championship and playing in the most attractive postseason bowls.

- **Non-BCS schools** can sell their prospective student-athletes on a good education, but they can hold out little practical hope of a national championship or even the reward of playing in one of the four biggest bowl games. Thus, many of the top student-athletes continue to choose BCS schools, while the non-BCS schools suffer because they do not have greater access, much less the same access. The strong get stronger, and the rest of us try to keep up.

- **Recruitment and Retention of Coaches.** Just as the top student-athletes want to go where they can perform consistently at the highest level of competition, so do coaches. Success for any coach is measured not only in the win-loss column and the dollar figure on a contract but also in terms of competitiveness and the ability to achieve recognition at the highest level.

Because of the artificial barriers the BCS has erected to limit access to bowl games and championship competition, our non-BCS schools have become virtual training grounds for future BCS coaches. Once a talented football coach achieves any level of success in a non-BCS school, he will inevitably take the first opportunity to move into a BCS setting, and each season we see such a migration. After Tulane's 11–0 season, our football coach, Tommy Bowden, went to Clemson, a BCS school. In 2001, Bobby Johnson left a successful team at Furman College to take the reins at Vanderbilt, also a BCS school.

(Ironically, Vanderbilt University, an excellent academic institution, is often at the bottom of the football rankings in the Southeastern Conference and not always competitive with many of the non-BCS Division I-A football programs. Yet because the BCS conferences believe in revenue sharing among their own members regardless of on-field performance, Vanderbilt receives a full share of the money received by the SEC. This brings up another inconsistency in BCS logic: through their revenue-sharing practice, they recognize that the strength of a conference depends on the strength of each individual member school. Does it not follow, then, that the strength of Division I-A football would benefit from the strength of all Division I-A football programs, and not just the half of them that belong to the BCS?)

- **Facility Improvements.** I talked earlier about the revenue-sharing among BCS schools that brought those schools \$500 million in the past five years as opposed to the \$17 million received by non-BCS schools. \$500 million will help build a lot more stadiums, create more state-of-the-art practice facilities, purchase more top-of-the-line equipment, and fund more upgrades to existing facilities and services for 63 BCS schools than will \$17 million for 53 non-BCS schools. Non-BCS schools must scramble within their own limited budgets to fund these improvements without that revenue, or allow their facilities to be outpaced and fall behind the competition.

If the non-BCS schools do fund the improvements themselves, what suffers as a result? Do academic programs get slashed to pay for athletics? Should faculty salaries be frozen and our non-BCS schools risk an exodus of their best faculty to other schools? Do tuition costs have to go even higher? Do they have to eliminate the so-called "Olympic sports" so dollars can be reallocated to football? These are the difficult, yet realistic, tradeoffs we must consider. Obviously, these options are not in keeping with the mission of any institution of higher education.

The other option is for the non-BCS schools to allow our facilities to stay the same year after year, the result being an even greater erosion in the number of student-athletes who want to play for us and the coaches who want to stay. It's a vicious cycle, and one in which the non-BCS school comes out a loser no matter what option is chosen.

- **Scheduling.** The BCS system also reinforces the two-tiered system in Division I-A football in terms of scheduling. Few BCS schools are willing to play straightforward home-and-home series with non-BCS teams. So in order for a non-BCS school such as Central Florida to play a BCS school, they would have to play several times at the other school's home field in order for the BCS team to play once at theirs. To illustrate further, over the last four regular football seasons (1999–2002), the top 10 BCS teams played 65 home games against non-BCS schools, but only 11 road games—a ratio of 6 to 1. Obviously, this not only creates scheduling issues for the non-BCS schools but also gives the BCS schools undue home-field advantage and denies the non-BCS schools the revenue that would be earned and the competitive advantage of playing higher-profile games on their own home fields.

- **Public Perception.** The cumulative negative effects of the BCS and its two-tiered system in Division I-A football can be seen very clearly when it comes to the court of public opinion. Non-BCS schools are, quite frankly, seen as inferior and less competitive than BCS schools. Because they never get to play in the "big games" and are hindered by scheduling, recruiting and coaching limitations, non-BCS schools are viewed by the public, the TV networks and by prospective student-athletes as being less competitive and, thus, less desirable. Even Jim Delany, commis-

sioner of the Big 10 and one of the architects of the Bowl Championship Series, was quoted in a July 22 Knight-Ridder news service article that an unintended consequence of the BCS was the media's repeated use of the term "BCS" to refer to the conferences affiliated with the four major bowls and to all Division I-A sports programs, not just football. In that article, Mr. Delaney acknowledged that the concerns of the non-BCS schools constituted a valid complaint.

Despite these obstacles created by the BCS arrangement, data indicate that the non-BCS schools are increasingly competitive with many BCS schools. Given this, can you imagine the competitive parity possible in the absence of these BCS-generated obstacles?

• **Impact on Bowl System.** As a two-tiered system of programs has resulted from the presence of the BCS alliance, so, too has there grown an even larger two-tiered system of football bowl games. The Rose, Sugar, Orange and Fiesta bowls are affiliated with the BCS and, as such, rotate the right to host the national championship game each year. These four bowls, because they feature the championship contenders as determined by the BCS, attract the most attention, draw the biggest TV revenues, and grow in size and power. (Ironically, even three of the four BCS bowls have been devalued over the past five years, as indicated by viewer ratings, because people do not see the three bowls that are not hosting the national championship game as being meaningful.)

At the same time, in a desperate bid to draw a share of the wealth and visibility, more bowl games are being formed—six new ones in the past five years—but most do not generate much net income for the participating schools. In fact, though revenue from all bowl games grew more than \$22 million in the past five years, 95 percent of the net revenue went to the BCS schools.

These are just a few of the major negative impacts of the BCS on non-BCS schools: student-athlete recruitment, coaching recruitment and retention, facilities funding, scheduling, public perception and bowl impact. The cumulative effect of these impacts are to hinder the competitiveness of non-BCS schools, limit their access to equal and fair competition, and create a perception of athletic inferiority—all of which feed upon each other in a classic "Catch-22" situation.

LESS RESTRICTIVE, VALUE-CREATING ALTERNATIVE APPROACHES

My last, and perhaps most important, issue with the BCS arrangement is that there are better approaches clearly available to guide postseason play in football—approaches that would create greater value for all Division I-A schools, the networks and the fans while being less restrictive, more competitive and consistent with how we handle all other NCAA sports.

One of the reasons the BCS was formed five years ago was to provide a way for a national championship game to take place in Division I-A football, with a decisive national champion at the end of each season. How could that goal still be achieved, yet within a setting formally sanctioned and operated by the NCAA?

I would argue that a playoff system is one option that should be seriously considered in college football just as it is in all other NCAA Division I-A sports. An eight- or 16-team playoff system could open access to all contenders, generate excitement and could incorporate the current bowl games into its structure.

I realize that many of my colleagues on both sides of the BCS fence oppose a playoff system in football for various reasons.

Some, for example, believe a football playoff system would lengthen the season too much and impinge on student-athlete welfare. Student-athlete welfare is an issue across all sports, but somehow it never becomes an issue when talking about baseball or basketball, where the seasons are longer and the sport is more intrusive on the lives of the student-athletes, but only in football. This logic is inconsistent. This argument also does not take into account that until recent years, football seasons only had 10 or 11 games where we now play 12 or 13. By shortening our regular season, we could devise an effective playoff system without undue hardship on our student-athletes. Any revenue lost from a shortened season would be more than offset by the incremental value inherent in a playoff system.

Others argue that a playoff system would disrupt the historical relationship between college football and the traditional bowl games. In the past two months since Tulane underwent its athletics review and I began looking at the problems inherent with the BCS system, I have received more than 30 proposals for how to set up a workable playoff system for college football. Virtually all of them incorporated the existing bowls.

Some opposed to a playoff argue that a playoff system would be too commercialized for college football, often characterizing this commercialization as "NFL-like." But in a day when all bowls carry the name of a corporate sponsor and come

attached to highly priced network affiliations, I fail to see how a playoff system would increase the commercialization of college football. In fact, the big college bowls are already extremely commercialized, much more so than the NCAA basketball playoff system. If football had a similar system sanctioned and run by the NCAA, I suspect the football championships would be less commercial than they are today.

Finally, the pro-BCS, anti-playoff proponents present an argument we've heard before: that the networks don't have an interest in a playoff that could end up featuring two non-BCS schools playing for a championship. Not only would they be interested—they would be vying for the opportunity to air it. In fact, in a recent interview, former CBS Sports director Neal Pilson estimated in a recent CNN commentary that a playoff system would spark a bidding competition between at least two networks and be much more profitable than the current BCS arrangement with ABC Sports.

THE COUNTER-ARGUMENTS

Obviously, the fact that we are here today looking at the issues surrounding the BCS alliance means that there is disagreement within Division I-A schools as to this system's efficacy and fairness. Those who support the BCS system, including, of course, BCS schools, have a number of arguments and questions they present to make their case.

- **Why now?** BCS supporters want to know why, all of a sudden, the system is coming under such scrutiny. The current dissatisfaction with the system, however, has been building since the BCS was organized five years ago. It has taken five years to see the direction the BCS was going to be taking college football and now, clearly, it is not a direction that is healthy either for college football or Division I-A athletics in general.

Many will argue that the same teams were already going to the big bowl games prior to the formation of the BCS, and that all the BCS did was to set up a system whereby a definitive national championship game could be played.

This is not quite true, however. It is true that prior to the formation of the BCS there were always so-called "Big Football Schools," perennial champions where success fostered continued prosperity. And it is true that most of these schools are in the BCS conferences and continue to compete very successfully.

The difference is that each year prior to the formation of the BCS, the Big Football Schools began their seasons on the same footing as every other school—at 0–0, with no built-in advantages beyond their own potential. Once the BCS and its ranking system were developed, that equity disappeared. Now, all schools start their seasons at 0–0, but 63 have more opportunities and access than the other 53.

The gap is continuing to widen between the BCS and non-BCS schools because of the significant increase in available revenues since the BCS formed, because a national championship is involved, because most of that revenue is going to BCS schools, and because the BCS conferences defined the rules of engagement with virtually no consultation with other Division I-A presidents.

Bottom line: The BCS is quite different than the old bowl system!

- **Who wants to see Tulane vs. BYU in a national championship game?** The implication behind this question is, of course, that non-BCS schools such as Tulane and BYU do not generate any interest outside their own ranks. Beyond the arrogance of this question, I would answer, "You might be surprised." Look at the excitement generated by underdog Rice University in this year's College World Series or Marquette in the NCAA Final Four and the fallacy of such logic becomes clear. Related to this argument is another:

- The networks would not want to broadcast a championship game featuring a Tulane or a BYU. This, of course, is nonsense. The networks will always be interested in a national championship game if there is a level playing field and the participants have earned the right to be there. Nothing sells better on TV than a good underdog story, and the networks know how to tell that story very well.

- **Non-BCS schools already have access to the BCS bowls, so what is the problem?** As I have previously suggested, this is a case of the theoretical versus the practical. In theory, yes, non-BCS schools do have potential access to the BCS bowl games and the national championship. According to BCS rules, six of the eight slots in the four major bowl games automatically go to BCS members. Theoretically, then, the other two slots would be available to non-BCS schools. But the two slots also must be filled with schools ranked in the top six nationally according to the BCS' own rankings. In practicality, the top six has never included a non-BCS school, nor is it likely to do so. The BCS ranking formula has an inherent, built-in bias, which makes it virtually impossible for a non-BCS school to be ranked in the top

six. Add on top of all of this the special treatment given to Notre Dame in the BCS system, and you will never see a non-BCS team play for a national championship and perhaps never even qualify for a BCS bowl.

• **Non-BCS schools cannot compete with BCS schools.** My answer to that is, how can we know until we are given a fair chance to compete? If, in 1998, both Tulane and Tennessee had perfect records, who is to say that a game between the two might not have been extremely competitive? In fact, in the past five years, there have been 16 instances where BCS and non-BCS teams have met in postseason bowl games, albeit not the major bowls. The BCS teams won eight of those games; eight were won by non-BCS teams. That sounds competitive to me.

These are just a few of the counter-arguments often posed by those associated with the BCS. However, I can virtually guarantee that if you are willing to scratch the surface of the BCS' counter-arguments, they are without merit.

THE FUTURE

So, what of the future? I did not come here today to talk about the technicalities of antitrust matters, but to put a human story and face behind the non-BCS schools and their experiences. This is a story about access issues, about the creation of wide financial gaps that create cumulative negative effects and complex problems. It is a system that is unnecessarily restrictive, and one that creates artificial barriers to limit access and, from where I sit, that feels like a real problem whether you call it an antitrust issue or anything else. Tulane University's consultations with antitrust lawyers lead us to believe that there are significant antitrust issues in the BCS agreement. But I sincerely hope this does not have to be settled in the courts.

The non-BCS schools are not asking for a handout. We're not looking to take anything away from the BCS schools. We are not asking for revenue to be given to us that has not been rightfully earned.

What we are asking for is the right to compete. We are seeking the opportunity to try and earn a larger share of the pie. We are asking for greater access to the most lucrative bowl games and the national championship. We are asking for a level playing field. We are asking for every college football team in Division I-A to begin their seasons at 0-0 with realistic opportunities to play for a championship and have practical access to the same postseason bowls.

I do not think we are asking for too much.

A group of 45 non-BCS university presidents already has started a constructive and promising dialog, and in four days a meeting of 11 Division I-A presidents with Dr. Myles Brand of the NCAA will be held in Chicago to start making headway toward the resolution of our differences.

However, if we cannot reach such a resolution, I hope that this committee will hold additional hearings toward taking substantive action that will resolve the matter.

Resolution of these inequities in intercollegiate football will lead to a stronger and healthier system of Division I-A athletics throughout the country as we again open the gates of access to all schools and all teams—equally and without bias.

It also will provide a crucial first step in overall athletics reform that will bring our priorities and systems of operation back in line with the original mission upon which the American system of intercollegiate athletics was founded.

ATTACHMENT 1

NCAA DIVISION I-A UNIVERSITIES

Non-BCS Universities

Arkansas State University
 Ball State University
 Boise State University
 Bowling Green State University
 Brigham Young University
 California State University - Fresno
 Central Michigan University
 Colorado State University
 East Carolina University
 Eastern Michigan University
 Kent State University
 Louisiana Tech University
 Marshall University
 Miami University

Middle Tennessee State University
 New Mexico State University
 Northern Illinois University
 Ohio University
 Rice University
 San Diego State University
 San Jose State University
 Southern Methodist University
 State University of New York at Buffalo
 Texas Christian University
 Troy State University
 Tulane University
 United States Air Force Academy
 United States Military Academy
 United States Naval Academy
 University of Akron
 University of Alabama at Birmingham
 University of Central Florida
 University of Cincinnati
 University of Hawaii
 University of Houston
 University of Idaho
 University of Louisiana at Lafayette
 University of Louisiana at Monroe
 University of Louisville
 University of Memphis
 University of Nevada, Las Vegas
 University of Nevada, Reno
 University of New Mexico
 University of North Texas
 University of South Florida
 University of Southern Mississippi
 University of Texas at El Paso
 University of Toledo
 University of Tulsa
 University of Utah
 University of Wyoming
 Utah State University
 Western Michigan University

Non-BCS Conferences

Conference USA
 Mid-American
 Mountain West
 Sun Belt
 Western Athletic

BCS Universities

Arizona State University
 Auburn University
 Baylor University
 Boston College
 Clemson University
 Duke University
 Florida State University
 Georgia Institute of Technology
 Indiana University Bloomington
 Iowa State University
 Kansas State University
 Louisiana State University
 Michigan State University
 Mississippi State University
 North Carolina State University
 Northwestern University
 Ohio State University
 Oklahoma State University
 Oregon State University

Pennsylvania State University
Purdue University
Rutgers, The State University of New Jersey
Stanford University
Syracuse University
Temple University
Texas A&M University
Texas Tech University
University of Alabama
University of Arizona
University of Arkansas
University of California, Berkeley
University of California, Los Angeles
University of Colorado at Boulder
University of Florida
University of Georgia
University of Illinois at Urbana-Champaign
University of Iowa
University of Kansas
University of Kentucky
University of Maryland College Park
University of Miami
University of Michigan
University of Minnesota - Twin Cities
University of Mississippi
University of Missouri - Columbia
University of Nebraska - Lincoln
University of North Carolina at Chapel Hill
University of Notre Dame
University of Oklahoma
University of Oregon
University of Pittsburgh
University of South Carolina - Columbia
University of Southern California
University of Tennessee, Knoxville
University of Texas at Austin
University of Virginia
University of Washington
University of Wisconsin - Madison
Vanderbilt University
Virginia Polytechnic Institute and State University
Wake Forest University
Washington State University
West Virginia University

BCS Conferences

Atlantic Coast Conference
Big 12 Conference
Big East Conference
Big Ten Conference
Pacific 10 Conference
Southeastern Conference

ATTACHMENT 2

June 15, 2003, Sunday
SPORTS DESK

BackTalk; How Division I-A Is Selling Its Athletes Short

By SCOTT S. COWEN (NYT) 905 words

The role of Division I-A intercollegiate athletics is increasingly out of sync with the goals and values of America's higher education institutions.

This was one of the conclusions reached last week by the Tulane University board as it completed an intensive yearlong review of Tulane's Division I-A athletics program.

Even though some changes in the college athletics landscape are under way, they are not bold enough or happening fast enough. Tulane came close to being the first victim of the inequities and restrictions inherent in the N.C.A.A. system and the Bowl Championship Series alliance. And though we voted to continue our Division I-A programs, we believe other universities may not be able to do the same. It is not a matter of if programs will begin to fall because of the misdirected climate of college athletics; it is a matter of when.

At Tulane, we had to take a hard look at our athletics division -- a clean program with one of the country's highest graduation rates for student-athletes -- not because it was in trouble but because it is a student-centered athletics program being run in a national athletics climate that revolves around entertainment and big money.

We had to perform this review because ours is a program that operates under the increasingly burdensome N.C.A.A. Division I-A membership criteria that threaten to siphon even more resources from the academic mission of our university. And we had to look at our athletics programs and weigh the cost of running them in light of the disparity in intercollegiate athletics being exacerbated by the presence of the B.C.S. alliance. Tulane is a member of Conference USA, which is not a part of the B.C.S. This means that Tulane and other non-B.C.S. football teams have virtually no -- or only limited -- access to the highest-paying postseason bowls governed by the B.C.S. alliance.

In the end, the Tulane University board voted unanimously to remain in Division I-A athletics because we know that we are doing it the right way, and that the N.C.A.A. needs programs like Tulane's to remind it of what it was originally set up to do: provide a framework for college student-athletes to compete at the highest level while also receiving an education that will help them become productive citizens and leaders. With a football student-athlete graduation rate of 80 percent, Tulane led all colleges among those eligible for bowls last year in terms of graduation rates while also fielding successful teams -- attributes that certainly fit the original mission of the N.C.A.A.

But, somewhere, that original mission got lost. As a society we tend to glorify those teams and colleges that excel on the field even though they have student-athlete

graduation rates that are deplorable. In recent years there have been glaring examples of ranked teams participating in postseason play that had student-athlete graduation rates of less than 20 percent. How can this performance be justified, much less rewarded through participation in high-profile events like bowl games? What kind of message does this send to our students and the public about what we stand for? The N.C.A.A. should be moving more rapidly to raise academic requirements before our universities lose credibility. Additionally, the current proposal by the N.C.A.A. president, Myles Brand, to enact incentives and disincentives for participating in postseason play based on the academic performance of student-athletes is a step in the right direction.

At the same time, the N.C.A.A. continues to enact legislation that increases the costs and requirements for Division I-A universities, while the B.C.S. group has resulted in an even wider gap between the financial haves and have-nots. For the have-nots to succeed, too often academics must take a back seat to fund additional spending for athletics programs, coaches and facilities. And institutions are continuously cutting Olympic sports to support football and are sending mixed messages as a result.

As university presidents, we have allowed this cost escalation and change in focus to occur, using the unsupported belief that these investments more than pay for themselves in terms of increased applications, national visibility and donor contributions.

But it is time to act. It is time for universities to take a hard look at their programs. It is time for the N.C.A.A. to take an even harder look at its priorities and mission, and it is time for all of us to think about the real purpose of higher education and where athletics fits into that purpose. Are we here to provide weekend entertainment for TV viewers? To exploit our student-athletes by focusing more on their on-field performance than their classroom achievement?

We are selling our students short, trading our futures for short-term success and throwing away our principles to participate in a system that no longer works. This week, I have invited many of my fellow university presidents to actively challenge the N.C.A.A., the B.C.S. and the current system of intercollegiate athletics in this country. Myles Brand has agreed to join us throughout our discussions; our inaugural teleconference is scheduled for July 22.

And I am calling on everyone else who cares about higher education in this country to help us, to step forward, to be heard and to demand change.

Chairman SENSENBRENNER. Mr. Young.

TESTIMONY OF STEVE YOUNG, NFL SUPER BOWL CHAMPIONSHIP QUARTERBACK, AND FORMER DIVISION I-A COLLEGE FOOTBALL PLAYER

Mr. YOUNG. Thank you, Chairman Sensenbrenner, Ranking Member Conyers, and Members of the Committee. I am pleased to testify before you today as an individual concerned with the issues of fundamental fairness of the BCS.

There are thousands of student athletes today being unfairly impacted by the current BCS system, which virtually excludes any NCAA Division I football team not part of a BCS conference from making a legitimate run at a national title. Let me put it in context for you.

In the 2002–2003 college football season, it is my understanding that a total of \$109 million was paid in revenue from college football bowl games to Division I-A football programs. Of that, \$104 million went to 64 schools coming from the BCS conferences, while a paltry \$5 million was paid to the remaining 54 schools in the five non-BCS conferences and independents.

The fact here is that intercollegiate football is the engine that drives all intercollegiate sports and this massive disparity in revenue impacts all sports, not just football. In particular, there is a disproportional effect on women's sports program, which depend to a large extent on football revenues for their support.

The issue, therefore, is not just about football. Rather, it is about recruiting for all sports. It is about access to a quality education. It is about proper support for Title IX as well as the impact the BCS structure has on the quality of campus life. Indeed, at its center it is about an important issue of fundamental fairness.

The Bowl Championship Series highlights a series of major concerns that need to be remedied. Division I-A football is the only sport within the NCAA structure where student athletes have no access to winning a national championship. This denial of access is fundamentally unfair. It is clearly inconsistent with the traditional background and objectives of the National Collegiate Athletic Association. Teams from non-BCS schools and conferences simply want a level playing field when it comes to competing to win a national title. In soccer, basketball, baseball, golf, tennis, et cetera, equal access is granted. Not so in football.

As Congressional Representatives, you understand the importance of a full and equitable implementation of Title IX. However, the BCS system is clearly at odds with the expressed Congressional intent to achieve equality in intercollegiate athletics. Those institutions without access to BCS funds have a much more difficult time meeting their Title IX obligations. Additionally, schools that are part of a BCS conference are given a substantial competitive advantage in building facilities, hiring coaches, and recruiting athletes to bolster all other sports within their institution, including those for female athletes.

Attending a university where the possibility of achieving a national championship is next to impossible is far less attractive to the serious athlete than attending a school which offers such an opportunity. When I came to be at Brigham University in 1980, it

was my presumption that I would have just as good a chance to compete at the highest level of competition as any other NCAA athlete. As an aside, in 1984, we did win the national championship.

With the implementation of the College Bowl System in NCAA Division I-A football in 1996, the level playing field on which I had competed was significantly altered, to the detriment of the sport and its thousands of student athletes. Hence, if a football player has any aspiration of winning a national championship, they would avoid attending a non-BCS school. Is this what the NCAA was—is that what their desire is? I do not think so.

The impact of the BCS structure goes far beyond intercollegiate athletics. All students at colleges and universities not part of the BCS system are negatively impacted by the enormous sums of money funneled to the 64 4-year institutions that are privileged to be part of the BCS. By dominating the four major bowl games, the BCS schools earn what appears to be monopolistic profits of better than 95 percent of all bowl income.

Non-BCS schools are on the outside looking in. Precious funding for these institutions that would otherwise be allocated to the building of classrooms and libraries, salaries for excellent faculty, and for the support of scholarship and research must be funneled to athletics in order to give them any shot at competing against the privileged 64.

While I have been trained in the law, I am by no means an expert in the antitrust laws in the United States. However, it must be clear to even the casual observer that the BCS represents a powerful combination of a small number of schools which have created a powerful barrier to entry, whose purpose is to exclude all non-members of that elite group from any meaningful participation in post-season play.

At a minimum, this system should bear the scrutiny of the Federal Trade Commission or the U.S. Department of Justice to analyze the issue. Major League Baseball, for example, is granted a specific antitrust exemption annually by this very Congress. Why shouldn't the BCS structure bear at least some level of careful review from an antitrust perspective?

Our country was built by men and women of amazing character who dared to dream of a vision of a new democracy, one in which people of all ages, creeds, and colors could achieve greatness. The ultimate objective of any group of athletes is to combine their efforts and be named the best at what they do. The BCS system is a sad departure from this great American tradition.

When I won the Super Bowl with the San Francisco 49ers in 1995, each team in the National Football League began that season with an even shot at a championship. Can you imagine a scenario in which essentially half the teams in any given pool are automatically penalized by a coalition of their equals and denied the basic opportunity to win a championship? And yet, this is exactly what the BCS structure has created.

Already this year, with the college football season barely a week old, non-BCS teams have proved their mettle against teams from BCS conferences. Teams such as the University of Louisville, Northern Illinois University, and the University of Connecticut, the University of Alabama at Birmingham, and my alma mater, BYU,

have already begun the season with convincing wins over opponents from supposed power conferences. Even Western Michigan barely lost a tight game to their in-State opponent, Michigan State. However, from the outset, these excellent institutions of higher learning, due only to the fact that they are not part of the BCS combination, will all be locked out of competing for a national title.

Perhaps the most pernicious effect of the BCS system is its self-perpetuating nature. The powerful BCS schools continue to be enriched at the expense of the non-BCS schools with a concomitant negative impact on college campuses around the country. The long-term effect of the BCS structure is to drive the non-BCS schools out of the competition at the Division I-A level.

In conclusion, the BCS combination is unfair in its concept and its implementation and in its effect on institutions and student athletes alike. While I am now out of football, I acknowledge the importance of college football in my life. Sadly, under the BCS structure, the opportunity I had for competing for a national championship is being denied to far too many athletes. In today's world of college football, I would have been on the outside looking in.

Again, I thank you for the opportunity to express my personal views. It is my hope that through the efforts of clear-thinking individuals such as yourselves, the system will be changed to reflect the time-honored values of America, fairness and equality. Thank you.

Chairman SENSENBRENNER. Thank you, Mr. Young.
[The prepared statement of Mr. Young follows:]

PREPARED STATEMENT OF STEVE YOUNG

Chairman Sensenbrenner, Ranking Member Conyers, and Members of the Committee. Thank you for the opportunity to come and meet with you today and for providing a Forum by which we can discuss the issues associated with the Bowl Championship Series. I am pleased to testify before you today as an individual concerned with issues of fundamental fairness.

There are thousands of student-athletes today being unfairly impacted by the current BCS system which virtually excludes any NCAA Division I Football team, not part of a BCS Conference, from making a legitimate run at a National Title. This involves young people from at least five NCAA Division I conferences as well as independents, i.e., at least 54 Schools and thousands of athletes.

Let me put what follows in context for you. In the 2002-03 college football season, it is my understanding that a total of \$109 Million dollars was paid in revenue from College Football Bowl games to Division I-A football programs. Of that, *\$104 Million went to 64 Schools coming from BCS Conferences* while a paltry \$5 Million was paid to the remaining 54 schools in the five Non-BCS conferences and Independents. That \$5 Million was not even enough to pay for expenses at those schools, and, according to at least one source, the non-BCS schools lost an average of \$1 Million dollars in their football programs.

As John Adams once said: "Facts are stubborn things." The fact here is that intercollegiate football is the engine that drives all intercollegiate sports and this massive disparity in revenues impacts all sports, not just football. In particular, there is a *disproportional effect on women's sports programs*, which depend to a large extent on football revenues for their support. Thus, as I will note in a moment, all elements of campus life in non-BCS schools are negatively impacted.

The issue therefore, is not just about football; rather, it is about recruiting for all sports, it is about access to a quality education, it is about proper support for Title IX as well as the impact the BCS structure has on the quality of campus life; indeed, at its center, it is about important issues of fundamental fairness.

The Bowl Championship Series highlights a series of major concerns that need to be remedied. Today I will cite a few of those concerns:

LACK OF EQUAL ACCESS

Division I-A football *is the only sport within the NCAA structure where student-athletes have no equal access to winning a National Championship*. This denial of access is fundamentally unfair and is clearly inconsistent with the traditional background and objectives of the National Collegiate Athletic Association. The goal of the BCS system is to pit the two top teams in the country in a game to decide the national collegiate football championship. However, no team outside the BCS coalition has been permitted to play in a BCS Bowl in the first five years of the system. Teams from non-BCS conferences simply want a level playing field when it comes to competing to win a national title. In soccer, basketball, baseball, tennis, golf, etc, equal access is granted. Not so in football.

CONFLICT WITH OBJECTIVES OF TITLE IX

As Congressional representatives, you understand that Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in education programs and activities. Under Title IX, if an institution that is a recipient of federal funds sponsors an athletic program, it must provide equivalent athletic opportunities for males and females. Naturally, it would be the intent of Congress to ensure that Title IX is implemented effectively throughout the country and that athletes, regardless of their sex, be given equal access to compete. However, *the BCS System is clearly at odds with the express congressional intent to achieve equality in intercollegiate athletics*. Those institutions without access to BCS funds have a much more difficult time meeting their Title IX obligations. Additionally, schools that are part of a BCS Conference are given a substantial competitive advantage in building facilities, hiring coaches and recruiting athletes to bolster all other sports within their institution including those for female athletes.

IMPACT ON RECRUITING

Attending a University where the possibility of achieving a national championship is next to impossible is far less attractive to the serious athlete than attending a school which offers such an opportunity. When I came to Brigham Young University in 1980, it was my presumption that I would have just as good a chance to compete at the highest level of competition as any other NCAA athlete. With the implementation of the College Bowl System in NCAA Division I-A Football in 1996, *the "level playing field" on which I had competed was significantly altered to the detriment of the sport* and its thousands of student athletes. The denial of equal access to competing for a national championship not only harms outstanding student-athletes but their sponsoring institutions as well by creating an inequality in recruitment. Members of the basketball teams at universities like Tulane, Louisville, Gonzaga, and the University of Utah, to name a few, join their programs knowing that, at season's end, they will have an equal shot to achieve a national title. But student-athletes participating in football at these very same schools, working out in the same facilities and attending the same classes, have no such hope as it relates to their chosen sport. Hence, if a football player has any aspiration of winning a national championship, they would avoid attending such a University. Is there discrimination in this process? I think so. Is this what the NCAA was designed to do? I do not think so.

EQUAL ACCESS TO A QUALITY EDUCATION

The impact of the BCS structure goes far beyond intercollegiate athletics. All students at colleges and universities not part of the BCS system are negatively impacted by the enormous sums of money funneled to the 64 four year institutions that are privileged to be a part of the BCS. While this, perhaps, is an oversimplification, it is axiomatic that the fundamental and central purpose of higher education is to prepare students with a quality education to enable them to become productive citizens. Among other things, this costs money. By dominating the four major bowl games, *the BCS schools earn what appear to be monopolistic revenues of better than 95% of all bowl income*. Non-BCS schools are on the outside looking in. Precious funding for these institutions that would otherwise be allocated to the building of classrooms and libraries, salaries for excellent faculty, and for the support of scholarship and research, must be funneled to Athletics in order to give them any shot at competing against the privileged sixty four. In turn, this scenario allows the BCS schools a superior chance at providing all the necessary athletic facilities to perpetuate their football programs and the necessary funding for facilities, faculty and research.

ANTITRUST IMPLICATIONS

While I have been trained in the law, I am by no means an expert in the antitrust laws of the United States. However, *it must clear to even the casual observer that the BCS represents a powerful combination of a small number of schools which have created a powerful barrier to entry whose purpose is to exclude all non-members of that elite group from any meaningful participation in post-season play.* This combination may or may not be a technical violation of the somewhat vague antitrust statutes but its effect is clearly to stifle the competition and perhaps even fix prices. These anticompetitive effects provide to BCS schools a fundamentally unfair competitive advantage when it comes to their ability to recruit athletes, build facilities, and pay coaches and university professors.

ACHIEVING THE DREAM

Our country was built by men and women of amazing character who dared to dream of a vision of a new democracy, one in which people of all ages, creeds and colors could achieve greatness. *The ultimate objective of any group of athletes is to combine their efforts and be named the best at what they do. The BCS system is a sad departure from this great American tradition.* When I won the Super Bowl with the San Francisco 49ers in 1995, each team in the National Football League began that season with an even shot at a championship. Can you imagine a scenario in which essentially half the teams in any given pool are automatically penalized by a coalition of their equals and denied the basic opportunity to win a championship? And yet, this is exactly what the BCS structure has created.

CLOSING THOUGHTS

Already this year, with the college football season barely a week old, Non-BCS teams have proved their meddle against teams from BCS Conferences. Teams such as the University of Louisville, Northern Illinois University, the University of Connecticut, the University of Alabama at Birmingham, and my alma mater, Brigham Young University, have already begun the season with convincing wins over opponents from the supposed power Conferences. Even Western Michigan barely lost a tight game to their in-state opponent, Michigan State. However, from the outset, these excellent institutions of higher learning, due only to the fact that they are not part of the BCS combination, will all but be locked out of competing for a National Title and for the \$104 Million dollars going into the coffers of the BCS schools as a result of this ill-devised system.

Perhaps the most pernicious effect of the BCS system is its self-perpetuating nature. The powerful BCS schools continue to be enriched at the expense of the non-BCS schools with the concomitant negative impact on college campuses around the country. *The long-term effect of the BCS structure is to drive the non-BCS schools out of competition at the Division I-A level.* The massive incongruity that is inherent in the current BCS structure needs to be examined in great depth. I am appreciative of these hearings which have provided an initial forum to highlight a system which is exclusive rather than inclusive . . . a system which promotes prejudice rather than equality.

The BCS combination is unfair in its concept, in its implementation, and in its effect on institutions and student-athletes alike. While I am now out of football, I acknowledge the importance of collegiate football in my life; sadly, under the BCS structure, the opportunity I had for competing for a national championship is being denied to far too many athletes. In today's world of college football, I would have been "on the outside looking in." Again, I thank you for the opportunity to express my personal views. It is my hope that through the efforts of clear-thinking individuals such as yourselves, the system will be changed to reflect the time-honored values of America—fairness and equality. Thank you.

Chairman SENSENBRENNER. The chair will enforce the 5-minute rule and has been writing down the Members in the order in which they appear, so we will recognize them, as we have in the past, starting with Mr. Conyers and myself. The chair recognizes himself for 5 minutes.

Dr. Brand, after hearing the disparity in the financial remuneration as a result of the BCS arrangement, last season, \$104 million to BCS schools, \$5 million to non-BCS schools, over the life of the BCS arrangement, \$450 million to BCS schools and \$17 million to

non-BCS schools, I am concerned about the future of the NCAA. Obviously, this can't continue, and the testimony of both Dr. Cowen and Mr. Young shows that the non-BCS schools are not getting their proper share part of this largesse and end up having to divert funds that could be used for academic purposes to keep a sports program alive, or are required to relegate themselves to a sports program that is somewhat akin to small market teams in Major League Baseball, like the Milwaukee Brewers and the Detroit Tigers, who always seem to struggle to stay out of the cellar.

What is the NCAA going to do to prevent this from happening, because I fear that if you don't, you might be the last President of the NCAA.

Mr. BRAND. The NCAA is a membership organization. Its power is derived from the membership. The membership retains certain powers amongst itself, for example, the ability to set contracts in football.

The 1982 Supreme Court decision took the NCAA out of the regular season football contracting business. The BCS schools have banded together with the bowls, of which they've always been partners, to set up a competitive market within those—and a competition. As Mr. Delany pointed out, that has been the case 20 years before the BCS came together.

Chairman SENSENBRENNER. But Dr. Brand, that doesn't get to the point. You know, sure, there is a Supreme Court decision, and sure, there are contracts. And if nothing is done, that's the way it's going to stay. Now, there is nothing really to keep a non-BCS school in the NCAA because they end up getting really short shrift when the pie is divided.

The NCAA does a marvelous job in having national championships in practically everything else, and certainly what most folks talk about during the month of March in sports is a result of something that the NCAA has sponsored very successfully. But I think you are throwing the baby out with the bathwater in allowing this to continue with the unhappiness and the disparity of the amount of money that the BCS schools get with respect to those that aren't a part of this arrangement.

Mr. BRAND. Two points, sir, in response. First of all, as I was going to continue to complete that answer, the NCAA is working with the leadership of both groups, the Coalition and the BCS, to reach a solution that respects the marketplace, at the same time, has a greater degree of fairness and opportunity through access. Also, I would—

Chairman SENSENBRENNER. You think the current arrangement is unfair and does not provide a greater opportunity for access?

Mr. BRAND. I think the question of access is central and I believe that will be the point of discussion of these members.

Chairman SENSENBRENNER. Well, I asked how you feel.

Mr. BRAND. Yes.

Chairman SENSENBRENNER. Do you feel that it's unfair and prevents opportunity of access?

Mr. BRAND. I think improvement can be found to satisfy both parties, yes.

Chairman SENSENBRENNER. I thank you.

Dr. Cowen, I have one brief question. You alluded to the fact that you're hoping to work something out short of filing an antitrust suit. If the round of meetings that is to begin next week in Chicago ends up in failure, will you and the other members of your Coalition file an antitrust suit to try to break up this arrangement?

Mr. COWEN. Mr. Chairman, we have had no formal discussion about that possibility among the five conferences. We do not anticipate, by the way, on September 8, next Monday, we will get a resolution of this issue. I think it's a very complex one. I think what we're looking for on September 8, that there's a beginning of a meaningful dialogue and a willingness on the part of our BCS colleagues to be open to other approaches and our concerns. Quite honestly, one of the successes of September 8's meeting ought to be whether we have another meeting or not.

Chairman SENSENBRENNER. Okay. Thank you. I just make the observation that the National Football League throws all of its TV revenue into the pot and divides it equally, which has given the Green Bay Packers the opportunity to skunk Mr. Young and his 49ers every once in a while. [Laughter.]

I think that's one of the reasons why professional football has done so well, is that at the beginning of the season, every team has got an equal shot at the championship.

The gentlewoman from California, Ms. Sánchez.

Ms. SÁNCHEZ. Thank you, Mr. Chairman.

Mr. Brand, I want to thank you for appearing at today's hearing, and I do have a question. It's not directly related to the topic of this hearing, but I think it's an important one to bring up while you are here.

I understand that the NCAA recently decided to no longer allow schools to participate in exempt charity football games, one of which benefitted the Hispanic College Fund and was a large revenue generator for that fund. This decision obviously has a very adverse impact on the number of scholarships that will go to aspiring Hispanic youth in this country.

My question to you is, as lucrative as the NCAA program is, can you tell me what they plan to do instead of the Hispanic College Fund Football Classic to benefit minority youth in this country, particularly Latinos, to help them get a college education?

Mr. BRAND. Two parts to the answer. First of all, in 1999, the members of the NCAA voted to put an emphasis on post-season play rather than pre-season play. And then starting in 2002, it would phase out all pre-season play, and that's one of the games you're talking about, with the exception of those that had prior contracts. There is one exception that for 2003 and 2004 continues, and that's the Black Coaches' Association game. But other than that, there are no other games and we will phase out all pre-season games accordingly and move toward a post-season game.

How can college sports benefit Latino students—

Ms. SÁNCHEZ. What specifically is the NCAA doing instead of this revenue-generator to help increase opportunities for minority youth in this country?

Mr. BRAND. The NCAA runs approximately 16 programs to provide opportunities for minority students to receive scholarships through the various schools, to provide leadership opportunities, in-

ternships, and other opportunities directly to the students to enable individual students to get a college education, and I must say it's being successful.

Ms. SÁNCHEZ. And those programs that were already in existence before the decision was made to eliminate this——

Mr. BRAND. No, not all of them. Most of them are new.

Ms. SÁNCHEZ. Also, can you tell me how many Latinos nationwide are involved in the athletic departments of the schools associated with the NCAA?

Mr. BRAND. I cannot give you those numbers off the top of my head.

Ms. SÁNCHEZ. Okay.

Mr. BRAND. I'd be happy to mail you that information.

Ms. SÁNCHEZ. If you could provide them post-hearing, I would appreciate that.

Mr. BRAND. I shall do that.

Ms. SÁNCHEZ. Okay. Thank you. I yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from Florida, Mr. Keller.

Mr. KELLER. Thank you, Mr. Chairman. I don't think we're working here. Can you hear me here? Okay. Thank you, Mr. Chairman.

For me, the \$64,000 question is, should the national champion for Division I-A college football be decided under a system that emphasizes a playoff or a payoff, and let me say why I think that. In 2004, the BCS games are projected to generate \$90 million, mostly in the form of lucrative TV broadcast agreements. Mr. Brand, would you candidly agree with me that one of the reasons there is not a playoff system for Division I-A football is because of the millions of dollars distributed to football conferences and colleges under the present system?

Mr. BRAND. No, sir, I decline. I think that's—and let me explain very briefly why. The answer is more money would come to college football if there were a playoff system. The reason there isn't a playoff system is because the majority of schools in Division I-A prefer the tradition and the excitement of the bowl games.

Mr. KELLER. So money is irrelevant to the fact that we don't have a Division I-A post-season playoff.

Mr. BRAND. It is not the controlling factor.

Mr. KELLER. And one of the reasons the NCAA has given for not having a playoff in Division I-A is that the adverse impact it would have on student athletes, so let me ask you, do you have any evidence or statistics you can provide to us today in your sworn testimony that Division I-A college football players have higher graduation rates than Division I-AA football players?

Mr. BRAND. The graduation rates follow what the schools are going to and we recently came out with those numbers, but that is not the key point. I don't——

Mr. KELLER. It's a point for me. Do they? Is there any evidence, since you're concerned about the adverse impact on student athletes, that the Division I-A football players have things such as higher graduation rates, higher GPAs than a Division I-AA football player who has a football system?

Mr. BRAND. Let me speak for myself. I do not have those concerns because I don't believe the academic arguments are compelling here. Others believe they are. I do not. I think the main issue here is whether the bowl structure is valuable in itself and its history and tradition is worth being preserved.

Mr. KELLER. I understand.

Mr. Delany, it seems to me one of the Achilles' heels of the BCS program—and there are certainly some very positive things about the BCS program, as well, but one of the Achilles' heels is while you do allow two at-large independent schools, which is a very positive thing, if a school runs the table, is undefeated, and is ranked number three in the BCS polls and every other poll, while they will be invited to a BCS bowl game, they will not be allowed to play for a national championship. Do you have any suggestion as to how that defect, if it is a defect, might be cured?

Mr. DELANY. You're saying if they're ranked three?

Mr. KELLER. Three.

Mr. DELANY. I really do not. In the structure that we've tried to create here, we tried to create a one-two game, which had not occurred except, I think, maybe about 20 percent of the time over the previous half-century, and we've been able to create it for 5 years. Some of the games were more controversial than others. But, you know, from our perspective, and it's a narrow perspective, the Rose Bowl tradition was worth preserving and we thought that the best approach to keep the bowl system intact, because we don't support a playoff, was to create a one-two game within those four bowls.

Mr. KELLER. Well, see, by—the reason I bring this up, Dr. Cowen complains that Tulane went undefeated in 1998 and was not invited to any—

Mr. DELANY. Yes.

Mr. KELLER.—BCS bowl game, but if the BCS bowl computer, which I guess only a few people in the world really understand, and I'm not one of them—

Mr. DELANY. Nor am I.

Mr. KELLER.—were to determine that Tulane really was a hot shot team here who had what it takes to be invited to a bowl game, even if they ranked them number three and they're undefeated, they still don't get a chance to play for the national championship, isn't that right?

Mr. DELANY. I think it's—it's true that even in the NCAA men's basketball tournament, there are teams with 25 wins who are not invited to the tournament because the strength of their schedule and the teams they've beaten aren't of sufficient quality to earn an invitation. And so I think that, you know, the polls dominate the BCS rankings, but well known, six different computer rankings are used to determine the strength of schedule. It may well be that we'll end up with the coaches and writers only, but that still would create a problem if someone were ranked three.

Mr. KELLER. I'm just concerned that—what kind of quality we have when both the BCS schools and non-BCS schools are all part of the same family, the Division I-A family, but they don't have the same access to the post-season. It seems to me it's akin to having a large family and only offering the cute kids dessert and telling the rest to hurry up and go to bed.

Mr. DELANY. Well, I would only say—I would only say that since the BCS is before you today for discussion, that whatever the BCS has contributed to this existed for 30 or 40 years before the implementation of the BCS. The BCS is not causally related to the performance of the non—of the five conferences that are not involved.

Chairman SENSENBRENNER. The gentleman's time has expired.

The gentleman from New York, Mr. Weiner.

Mr. WEINER. Thank you, Mr. Chairman, and welcome. I freely admit I'm not a big fan nor am I very knowledgeable about college football. I must prefer pro football.

On a related subject, Mr. Young, we recently—the Jets lost our starting quarterback. You're in town. It's just something to keep in mind. [Laughter.]

Explain to me, and I guess Mr. Brand might be the person to respond to the point that Dr. Cowen made about the idea, and I think Mr. Young made it as well, about the idea that at the end of the day, a team, even though they might be in a minor conference, plays the schedule before them and may dominate it. Frankly, that is one of the stories that always intrigues sports fans. We like stories like that.

Let's assume for a moment that the leaders of the Western Athletic, Mountain Western, and Conference USA all play undefeated football, all dominate their opponents, even defeat handily one or two of the big conference teams that might be on their schedule. Is there any way that all three of them can make it into a BCS game?

Mr. BRAND. Not under the present system.

Mr. WEINER. What if the—is that because there's no room for them or because it assumes that the BCS computer would rank them too low despite their great performance?

Mr. BRAND. There are only two slots available out of the eight games right now. You named three schools, and so—

Mr. WEINER. I'm no dummy. There's a reason I mentioned three schools.

Mr. BRAND. That's right, and so it's not available under the present system.

Mr. WEINER. What if the coaches' poll, the AP poll, which might be the same thing, what if the USA Today, the Wall Street Journal computer, the New York Times computer, what if they all say, you know, these teams are extraordinary teams. And let's now go even further. Let's assume that one or two or maybe all of the leaders of the bigger conferences all have a loss on their schedule. Isn't that manifestly unfair, notwithstanding the idea that the bowl system might have encouraged this as well, because I would argue that if you have a dynamic like that, you are going to have Tostitos or some .com say, you know what? I want one of these up-and-coming exciting teams in my bowl game. Isn't that manifestly unfair? And I'm also going to ask you whether that's illegal. So just give me the unfair part first.

Mr. BRAND. I think you ask an excellent question, and I think one of the issues that has to be taken up by the two groups of schools that are going to talk, and which I will facilitate but not make the decision, are just those types of issues, because you're asking not only a question of fairness, you're asking a question

about commerce, too, and I think that issue has to be addressed directly.

I'm not in the position to make the decision. I don't have a vote in this. But I am the facilitator of the conversation and those kinds of questions have to genuinely be addressed.

Mr. WEINER. Dr. Cowen, let me ask you just about the antitrust implications here. When you have a group that has such power over the marketplace, meaning these big conferences through their BCS dominance, that has the ability to take another theoretical competitor, say Tulane for this example, and limit the access to the point where it's almost nonexistent under the dynamic I just described to you, I guess the question is, how can that be—tell me what would be the argument against it, being an anti—I mean, it seems to me like classic anti-competitive behavior at the very least and perhaps antitrust.

Mr. COWEN. As I mentioned in the beginning of my testimony, I'm not a lawyer, so I can't really comment on the antitrust issues. However, it does seem to me that when you have a system and there are such obstacles for one to participate in that system through the way the ranking system is done, the automatic qualifiers are done, the status of Notre Dame, for all intents and purposes, you are excluded. It seems to me that is anti-competitive and it is sub-optimizing the value for all the system the way they are doing the arrangement.

So I guess one would say to me, if it looks like a duck and it walks like a duck, it may be one, and I am led to believe, as I personally have consulted with antitrust counsel, that this could be a violation.

Mr. WEINER. And can I just conclude by asking you, Mr. Young, would you, if you were today coming out of high school and were being recruited and you looked at the math of this, would you still—well, this is not, I mean, putting aside your good experience at BYU, would this be something that would deter you from going to a school like BYU if you had to do it again?

Mr. YOUNG. Let me answer you with an anecdote from this morning. One of my colleagues at ESPN—

Mr. WEINER. That just means the 2-minute warning has begun.

Mr. YOUNG. I'm used to playing with buzzers— [Laughter.]

—and a clock, so this is very comfortable. [Laughter.]

Anecdotally, this morning, one of my colleagues at ESPN's son was being recruited by, ironically, BYU and Arkansas and he told me specifically that his son chose Arkansas because they had a shot at a national championship and BYU didn't. I think that, you know, the BCS essentially has institutionalized what was historically the case, that most of the great teams came out of these conferences.

Mr. WEINER. Right.

Mr. YOUNG. But what it did, and another little anecdote is other writers that I know won't vote for non-BCS schools for the poll because they figure there's no reason to do it. It's just a waste of time. And so what it does is by institutionalizing kind of what has been the history, you eliminate the chance for a BYU to win a national championship in 1984. You eliminate, and by doing that, it's a downhill ball that continues to roll and get bigger, because as you

do that, the money gets bigger and bigger for the BCS schools, and the money gets smaller and smaller for the non-BCS schools.

And I think that you'll see schools like Tulane and BYU have to face the truth that if the BCS stays in power we'll have a BCS conference and then a Division II, you know, some kind of a—that separation will only, as it institutionalizes, get bigger and bigger and the spread will get bigger and bigger.

Chairman SENSENBRENNER. The gentleman's time has expired. We have two votes on the floor. The chair would request Members who have not asked their questions yet to return promptly after the second vote. The Committee is recessed until following the second vote.

[Recess.]

Chairman SENSENBRENNER. The Committee will be in order. The chair would like to thank the indulgence of the witnesses for this rather long pause, but the voting machine had a malfunction and it had to be corrected.

Next up is the gentleman from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman. Mr. Chairman, I would like to thank you for holding this hearing on this very important issue and I want to thank all of these gentlemen for their participation in what is clearly a problem that needs to be resolved.

Mr. Brand and Mr. Delany, in your comments, Mr. Brand, you noted the importance of maintaining competition and free enterprise in the contracting arrangements that are made, and Mr. Delany, you complained, I am not sure correctly, that the situation would be unfair if this enormous disparity that the Chairman described between what BCS teams and non-BCS teams get were altered to provide more funds for them because you say the non-BCS teams use other resources to fund their programs and the BCS teams are largely self-funding operations.

But I would argue to you that that is largely the result of the very system that has been established here that is controlled by the BCS and sets up an operation that allows these schools to generate revenues and self-fund themselves and these other schools would certainly love to have the ability to do the same thing if they had the opportunity.

And Mr. Brand, let me ask you, you cited the Supreme Court decision as a reason why the NCAA couldn't take the bull by the horns and solve this problem, but wouldn't you agree that the BCS has effectively substituted themselves for the position that the NCAA found itself in in 1982 when the Supreme Court ruled that method of colluding to establishing football schedules to be a violation of our antitrust laws.

Mr. BRAND. If you're asking me, do I believe there's an antitrust issue here, I'm really not sufficiently knowledgeable to answer that, whether it resembles the 1982 situation or not. The problem in 1982 with the regular season play was it was totally controlled by the NCAA then and no other conferences had any ability to set the number of games or the payout, and that's why the Supreme Court acted. I can't answer the question whether it sufficiently resembles the current situation to fall under a similar precedent.

Mr. GOODLATTE. Dr. Cowen, do you have an opinion on that?

Mr. COWEN. Once again, I can't comment upon the technical legal issues. What I look for is behavior and impact, and it seems to me that the behavior of the BCS conferences and the impact that the BCS arrangement is having on non-BCS schools in Division I-A in general has been very adverse. So there is, as we say, anti-competitive consequences of what has occurred.

Mr. GOODLATTE. Mr. Brand, I've heard arguments that academic schedules, and I think you raised it, pose significant obstacles to facilitating Division I-A playoffs. However, Division I-AA schools, Division II schools and Division III schools currently have playoff games. Why can't Division I-A schools work out their academic schedule to allow for that?

Mr. BRAND. In my oral comments as well as my full comment, I dismissed the argument for just the reasons you named, that academic concerns are the driving force. I believe that the real reason for the arrangement was to keep the tradition and the competition involved in the bowl games. Basketball is different. It's a tournament sport and doesn't have bowl games. Football does have bowl games, and that's a longstanding tradition, almost 100 years with the Rose Bowl, and that's the difference in my point of view, not the academic arguments you raise.

Mr. GOODLATTE. Could not the bowl games be worked into a playoff system? The championship was a certain bowl game, the semi-finals were other bowl games, and—

Mr. BRAND. Perhaps. In some way, it already has. I mean, they've used—the BCS has used the bowl games for one or two playoffs, so to some extent, they've already done that.

Mr. GOODLATTE. Well, let me turn my attention to the issue raised by the gentlewoman from California, Ms. Sánchez, who complained about the devastation that has befallen not just the Hispanic college fund that she cited, but also the Jim Thorpe Association, the John Thompson Foundation, and the Eddie Robinson Foundation. You indicated that there was a—how long is the vote?

Mr. COBLE. [Presiding.] If the gentleman will suspend, the gentleman from Virginia, we have a 5-minute vote. Can you hold that, Bob, until we get back?

Mr. GOODLATTE. I will have to.

Mr. COBLE. Gentlemen, if you all will, just rest easy and we will return imminently.

Mr. GOODLATTE. Since I am going to have to be in the chair, I may not be able to return, Mr. Chairman, so I will submit my question in writing. But I do want to express my concern about the elimination of the support for these charitable organization games in the pre-season. I know you have talked about having a post-season emphasis, but unless you have a playoff type of thing, you're not adding that many games at the end of the schedule anyway and it seems to me it would be entirely appropriate to not move in this direction of eliminating pre-season games.

If you're in favor of schools being allowed to choose what they do for themselves and enter contractually into these opportunities, if they want to lend their support for these organizations, I think the NCAA and the BCS ought to support efforts to do that in both basketball and football.

Mr. COBLE. If the gentleman would suspend, gentlemen, why don't we do this by mail, if that's agreeable. Is that agreeable with you, Bob?

Mr. GOODLATTE. I'm happy to.

Mr. COBLE. We will be back soon, folks.

[Recess.]

Chairman SENSENBRENNER. [Presiding.] The Committee will be in order. There was a question which I didn't hear, but whoever that question was directed at, could he please answer that question and then we will proceed. Oh, you all agreed to do it by mail, so the gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman.

A question on playoffs. I think it was Mr. Delany that suggested that that wasn't practicable, and so I'll ask someone else to answer that question. But you raised—your response—how about Mr. Cowen, Dr. Cowen, please.

Mr. COWEN. I do think one of the approaches that should be considered, among several approaches, is a playoff, perhaps involving there have been 16 or eight teams. Historically, three arguments against the playoff, and I'd like to, just if I may, address each of those arguments.

One is is that it would infringe on student athlete welfare. That is a very, very important principle. Yet, as we all know, student athlete welfare is very important in basketball, in college baseball, and all other sports, and I would say that perhaps at times it is inconsistent to say it's a problem in football but not in those other sports. So student athlete welfare is important and I think we probably could address that issue if we were willing to cut back the length of the regular season by a game or two, and I'll get back to that.

The second argument against the playoff has been it would be too commercialized, and a lot of times we use the code NFL-style as a way of saying it smacks too much of being professional. My sense has been nothing is actually more commercialized entity right now in intercollegiate athletics than the BCS bowls. It is probably the most commercialized that we have ever seen, so it's hard to envision anything could be much worse than what we have. Yet, when we compare that to the playoff in basketball that the NCAA has, is it feels a lot less commercialized. So I'm not sure the argument of commercialization holds a lot of weight.

The last argument that has been argued against a playoff is it would destroy the traditional tie-ins that the conferences had with the bowls, and I think those tie-ins are very important. But I do think that there is a way probably to have those bowls as part of a playoff system.

So I think it is perhaps one solution among many that we could pursue and I think it has some merit, but—

Mr. CONYERS. Have there been any negotiations on this yet?

Mr. COWEN. We are starting to come together this Monday—

Mr. CONYERS. Okay.

Mr. COWEN.—Representative Conyers, and—

Mr. CONYERS. All right. In fairness to Mr. Delany, 15 seconds.

Mr. DELANY. The Big Ten and the Pac-Ten have a longstanding relationship with the Rose Bowl, almost a half a century. In order

to maintain that relationship, we are willing to create a one-two game within the bowl structure. But for academic reasons, for reasons of length of season, our people would much prefer, regardless of the amount of money involved, to stay with a single season ending series of games.

Mr. CONYERS. Could that get you to the table, Dr. Cowen?

Mr. COWEN. Well, I'm pleased to report we're already to the table on Monday, Representative Conyers, and I think we will be able to find, I'm very hopeful, middle ground—

Mr. CONYERS. You guys are going to be nice to each other and talk like this privately the same way you talk publicly?

Mr. COWEN. I pledge to do that, Representative Conyers.

Mr. CONYERS. All right. I've got your word under oath.

Okay. Now, let me ask the witnesses, Mr. Young, what's happening here to this sports culture of ours? I mean, murder, law-suits, hanky-panky big time and little time. I mean, am I reading the sports page too much or has it always been like this? What's happening, Steve?

Mr. YOUNG. I think that we definitely are much more focused on the individual athlete. I'm sure that in the past, as well as in the future, behavior by athletes has been poor. I do believe in my experience in the NFL and obviously in college, as well, that a vast majority of athletes behave well, have families, are great in the community, and do great things. We just know that there are always a few that behave poorly and that are well known.

I assume by reading the papers myself and in my own experience that that might be getting worse. There's a saying that having money in your pocket only makes you more of what you already are, and maybe the money that's going into the individuals' bank accounts has created an undue pressure. I don't know that we do well in college or in the pros at educating, facilitating how to handle these pressures. It's mostly by experience.

I can tell you from my own experience that I spent 10 years of my career trying to figure out how to handle all of these issues, and about 10 years in, I said, holy cow, I really know what I'm doing. We know that the average career in the NFL is three-and-a-half years. So most everybody that plays, according to my record, does not figure it out.

And so it's just a matter of maybe helping players early, and I think the NFL is doing some things about that. They could respond to that more appropriately. And I know that the NCAA is doing that, as well. The NCAA has a wonderful record of that. So we just need to work more with kids because they are getting a lot of money fast and you can imagine what that's doing to them.

Mr. CONYERS. I think that's similar to the learning curve in Congress. I'm glad you related to us that way.

Chairman SENSENBRENNER. The gentleman's time has now expired, after that comment.

The gentleman from North Carolina, Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman. Gentlemen, good to have you all with us.

Dr. Brand, I think I remember correctly, in response to the Chairman's question, you indicated that you thought there was room for improvement or consideration on the redistribution of rev-

enue. But in your written statement, you indicate that—I'm quoting—"I do not favor a redistribution of revenue that accrues to the BCS universities through their media contracts with football." Now, did quote your oral testimony correctly?

Mr. BRAND. I hope I expressed myself well, sir. I meant there is room for improvement in access to the bowl games or whatever we have for post-season football, and access does carry money with it. I do not believe that the revenue earned through media contracts for the BCS should be redistributed. I said that in both my oral and written testimony. But if it's possible to find a way to raise the tide for all ships through new arrangements with the media, for example, then there will be not only additional funds for BCS schools, but for the non-BCS schools, as well.

Mr. COBLE. Thank you, sir.

Dr. Cowen, you mentioned that the current system is producing a system of haves and have-nots, and folks, pardon my subjectivity, but I'm inclined to lean that way. Have you ever considered, Doctor, Tulane joining a BCS member conference? That may be easier said than done. You're in Conference USA, which includes East Carolina, which is in my State. Mr. Delany, I think you have a Carolina connection. What do you say to that, Doctor?

Mr. COWEN. Sir, I think you answered the question. It's easier said than done. I think my preference, quite honestly, though, would to simply have a different system for post-season play in football that would provide more fair and consistent access for all schools.

I think if that issue were addressed, the pressure for schools to go into difference conferences would go away. Right now, the pressure to be in a BCS conference is to share in that exclusive pie. If that exclusive pie was more accessible to others, it would relieve some of the pressure and perhaps what we saw in the ACC-Big East story would not have occurred.

Mr. COBLE. Mr. Young, let me put a two-prong question to you. Do you believe that BCS schools have an obligation to distribute proceeds from bowl games they attend to non-BCS schools, A, and B, do non-BCS conferences distribute any revenue to BCS schools?

Mr. YOUNG. Not that I'm aware. Again, you're a little outside of my expertise. But my experience does tell me that the sharing that goes on is exclusive. I mean, there is no sharing, actually. It's exclusive to those that play in the games and the conferences that are controlled by the BCS actually pay those out.

My biggest problem, again, is that it's been institutionalized. College football for many, many years, its history was dominated by BCS schools. But what the BCS did was institutionalize that and what that did was eliminate the possibility of some of the non-BCS to participate, and that's where I think the real rub is, not in revenue sharing as much, because that would be great if everybody just shared the pie. But I do think that by institutionalizing, they took—they kind of usurped some of the power of the NCAA and the non-BCS schools now have no chance of participating.

Mr. COBLE. Mr. Delany, your body language tells me you may want to insert your oars into these waters.

Mr. DELANY. Thank you. Thank you, Congressman and fellow Tar Heel, from the great State of North Carolina.

Mr. COBLE. Thank you, sir.

Mr. DELANY. I do think there are a couple points I'd like to make. All of these institutions have sources of revenue, corporate giving, in the case of Tulane, a \$600 million endowment, and they all compete for professors, they compete for students, and the only thing that I hear discussed around this table is the sharing of BCS revenue. I do not hear that tuition should be shared, that corporate contributions should be shared, or that endowments should be shared.

The fact of it is that we were told by the United States Supreme Court that we could not during the regular season do anything other than sell our own media rights. That's the real source of the differential. The Big Ten has over \$100 million in revenue from a variety of sources, but it's a modest part—less than 12 percent of it comes from the BCS. By us sharing that with the non-BCS, that will not change the challenges they face in funding their programs.

The vast majority of the money comes from non-BCS sources, and to sit here and listen that the reason for the disparity, competitive and scheduling and otherwise, is because of the BCS is a difficult thing for me to—

Mr. COBLE. My time has expired, Mr. Delany. I will yield back, and I don't get to have you complete—

Chairman SENSENBRENNER. The gentleman's time is expired.

The gentlewoman from California, Mrs. Waters.

Ms. WATERS. Thank you very much, Mr. Chairman. I'm trying to concentrate on this hearing and trying to figure out whether or not I have a dog in this fight, and it's not—it's not easy to do. I happen to know that there are a lot of African American athletes who help to make schools famous, and I guess schools earn a lot of money. I don't see very many African American coaches at these schools and I'm worried about whether or not these athletes are getting an education.

So I guess I come from a little bit of a different place in all of this, but since I'm here and I have some responsibility to spend some time on this, I guess I'd better at least ask something about money, because that's what this is all about. This is about money.

As I understand it now, the way the system works, the bowls create this money, I guess through television, and this money—the profits go to the schools and to, what, nonprofit organizations or something like that, supposedly kick some money back into the community? How does that work?

Mr. DELANY. I think the history of the bowls is that they are community-based. In Pasadena, California, I think they have 900 volunteers and they generally have charities which they do support. They're interested in stimulating the local economies to encourage people to come visit those communities. And, you know, this bowl system has really gone on since the beginning of the century. It's morphed and evolved, and most recently, there's been an effort to create a one-two game within the structure. The teams that historically have played in them continue to play in them.

And the question really is, has the BCS done something that has so disadvantaged the other five conferences who historically have not played in these games to bring it before the Members of Congress for some modification, and—

Ms. WATERS. Well, okay. Yes, I understand that as the general question before us. But sticking with the system for sharing with local communities, if there's an alternative system, where would that money go?

Mr. DELANY. Well, in our case, the—probably 80 percent of the revenue goes to the members of the Big Ten and Pac-Ten. They distribute it to their schools and we've got in the Big Ten \$75 million worth of scholarships for young men and women. So the vast majority of it goes to the schools and then to student athletes for opportunities to participate and compete and go to universities. The portion that goes to the bowls goes into charities, that go into parades, go into economic development in those communities.

Ms. WATERS. Let me hear from Mr. Cowen.

Mr. COWEN. I would concur with part of the answer that Mr. Delany gave you. If there were more money to be spread around, it would go into our institutions. In our particular case, we would probably realize a lower deficit in athletics and we'd have more money available to give scholarships, for the hiring of faculty, and for the academic mission of the institution itself. So those extra dollars that we would get because we did not have to subsidize athletic programs as heavily as we do right now would greatly benefit the academic core and especially our young men and women, student athletes as well as other students at the institution.

Mr. DELANY. And likewise, if we shifted the revenues to those institutions so they could reduce their deficit, it would increase the amount of money our institutions would have to put into our programs in order to pay the costs of operating. So it's a question of whether or not revenue should be shifted from one group of schools to another to further subsidize their subsidy.

Ms. WATERS. Like I said, I don't have a dog in this fight, really. But again, since you're here, talk to me about black coaches, anybody, everybody.

Mr. BRAND. May I?

Ms. WATERS. Yes.

Mr. BRAND. In basketball, black coaches have done extremely well, in proportion to the population, much better. But in football, there is a serious problem, a very serious problem. There are only, I believe, three or four black football coaches amongst the 117 schools in Division I-A. I have been working with the Black Coaches' Association to help find solutions.

As you know, it's the schools that hire and fire coaches, not the NCAA or the foundational membership organization. But I have been talking, loudly, I hope, about the need to change the search process for identifying capable black coaches for these schools, and in fact, I just attended the second summit from the BCA, the Black Coaches' Association, and working with them on this and a report card on results, we believe that the accountability will begin to develop. This is a serious problem.

Ms. WATERS. I guess I have some information here that shows that of the 117 schools in Division I-A football, only four employ black coaches.

Mr. BRAND. Yes. Yes, that's correct.

Ms. WATERS. And there are no rules requiring that schools at least interview minority candidates before they make new hires?

Mr. BRAND. I am hoping that something like that will be adopted by the Association members. Schools hire and fire all their personnel. The NCAA does not. But I believe it would be a good idea to change the search process, including the interview process that allows the talent to rise to the top.

Ms. WATERS. How long have you been hoping that the NCAA would adopt a rule similar to—

Mr. BRAND. Hoping and working.

Ms. WATERS. How long?

Mr. BRAND. I've only been on the job 6 months.

Ms. WATERS. Oh, you're brand new. I forgive you.

Mr. COBLE. [Presiding.] The gentlelady's time has expired.

Ms. WATERS. All right. Thank you.

Mr. COBLE. The gentleman from Arizona, Mr. Flake, is recognized for 5 minutes.

Mr. FLAKE. I thank the Chairman and I want to apologize to the panelists about all the breaks. We have an officiating crew from the ACC running the floor this week and it's not gone very well, so— [Laughter.]

But I appreciate the testimony. I come from Arizona. I represent the East Valley and until recently represented Tempe, the home of ASU, and obviously ASU, the Fiesta Bowl is very pleased with the arrangement, as is the University of Arizona, as well they might be. But I also am an alum of BYU. In fact, I was there at the game last week when Mr. Young's jersey was retired, so I certainly have loyalties there.

I would like to hear from Mr. Young. Assuming the BCS is going to be around for a while, what is your preferred remedy, not in terms of revenue sharing per se but in terms of ensuring that teams outside of the BCS have a better shot.

Mr. YOUNG. You know, just speaking from the anecdote this morning about the fellow that was going to choose Arkansas over BYU because he had a shot at a national championship, I think that's real and I think that there's got to be an element of access, maybe limited in some ways, but again, institutionalizing non-access for non-BCS schools to have a chance to go recruit, to promote, to—you know, the ability to—you know, BYU won the national championship in 1984 under some unique circumstances. It was a Cinderella story, very controversial and a lot of fun, and it was very rare.

As Mr. Delany will say, you know, the history of college football is dominated by the BCS schools. I think there's just got to be an ability for—under recruiting that a school like BYU or a school like Tulane could actually recruit with the belief that if you come here, it's a long shot, but you have a shot at winning a national championship and making a run at some glory. By saying, really, if you go to a non-BCS school, you really have no chance, it effectively kind of closes out your recruiting ability, not completely, of course.

I don't want to overstate it. But I just think that by institutionalizing—and that was the unintended effect, I think, of the BCS. I think Mr. Delany has done a great job of letting us know that the BCS only did what was already happening in college football, and because the NCAA could not do it themselves anymore, they banded together to do it. So I just think this is an unintended effect that

needs to be remedied or we're going to see the two ships, the BCS ship and the non-BCS ship, float further and further apart.

Mr. FLAKE. Thank you. Mr. Brand, 2 years ago, in 2001, Miami played Nebraska for the national championship. Nebraska, their inclusion was a bit of a controversy, and many feel at the expense of the University of Oregon, where you were formerly President. What are your thoughts there?

Mr. BRAND. In terms of the future opportunities. Incidentally—

Mr. FLAKE. No, about the past. [Laughter.]

We want the grudges to come out here.

Mr. BRAND. Oh— [Laughter.]

Mr. FLAKE. I mean, do you feel—yes, about the future.

Mr. BRAND. Yes.

Mr. FLAKE. I mean, is this something that can work? Do you agree with Mr. Young that there ought to be opportunities for the smaller schools that don't exist now?

Mr. BRAND. I used to be at the University of Arizona and spent many fine years there, so just in passing.

I do believe that a solution could be found with both groups working in good faith to find it. There's no unique solution, but there is a group of opportunities that could be developed that would provide for schools over time, as they build their programs and build winning records and increase the level of competition they play, to be participatory and eligible for national championships. I think there are those kinds of opportunities and we can do that in good faith.

It's not radical surgery. I don't believe any radical changes have to be made, in my own personal view. But I think by refining the method and assuring greater access, there are ways to do that. So I'm a pathological optimist, but I think that there are real opportunities to solve this within the context in which we're working now.

Mr. COBLE. The gentleman's time has expired.

We have one more questioner, or interrogator. We have a 15-minute vote. Mr. Feeney, the gentleman from Florida.

I believe that Mr. Young has to depart at 12:30, am I right, Mr. Young? By the way, Mr. Young, your alma mater was not a very generous host to an ACC school last week as best I remember, but I'll hold you harmless for that.

Mr. YOUNG. I think that was the whole point. [Laughter.]

Mr. COBLE. Mr. Feeney?

Mr. FEENEY. Thank you, Mr. Chairman.

Mr. COBLE. Mr. Feeney, if you would, if you have questions for Mr. Young, in view of the imminent time—

Mr. FEENEY. I do not, and if I'm the last questioner, I'm actually going to direct mine to Mr. Delany from the Big Ten.

As I understand the issues, there are three that have been identified. There's the issue of money and revenue sharing. There's the issue of access for a wide range of universities to the bowl system and the championship. And finally, there's the issue of how to best select the champion.

I think most of us on the panel would agree with respect to the championship issue that that ought to be done on the field and it ought not to be done in some circuitous way. There is a very imperfect system when you have a football, you know, situation as op-

posed to, say, basketball, because you can only play a certain number of games because of the wear and tear and the conditioning and so forth.

I can tell you that Division I-A, or Division I-AA does a pretty good job, I think, with respect to their playoffs. They do not seem to have huge sacrifices in terms of student performance. And personally, I have a big preference for the playoff system.

But I will tell you that I am hugely reluctant to get the Feds involved in this. If we're going to talk about money issues, we can talk about Federal mandates and Title IX and some other things that we have imposed on the university system.

The other recollection I have, I'm an alum of the 11th school in the Big Ten, Penn State, and I remember Federal imposition in the national championship picture in 1969. You remember when President Nixon declared that Texas, who had an undefeated season, as did Penn State, declared they were national champion, and I'm not sure that Penn State has quite fully recovered from that yet. I know that the Pennsylvania Republicans haven't fully recovered from the President's pronouncement.

Mr. DELANY. Nineteen-ninety-four didn't help, either.

Mr. FEENEY. No, that's right. [Laughter.]

But the Federal issues have to deal with antitrust and monopolization. As I understand it—and I'll just pose a couple quick questions and then let you answer—any Division I-A team that finishes first or second is going to be guaranteed to be part of the championship picture as we currently have the BCS structure. And secondly, any Division I-A team that is either ranked third or fourth will be given serious consideration, if not guaranteed a slot, in the BCS picture. So if you can address the championship.

And then finally, with respect to access, I am a big believer that there ought to be some more access and that the system is closed. Again, I hope that you will self-correct it. I don't think the Feds have any business here. I will note with all fairness, however, that every year on opening day, the Chicago Cubs are tied for first place and they rarely get access these days.

So thank you, Mr. Delany, for being here. If you'll address the championship issue and the access issue.

Mr. DELANY. Yes, thank you. It is true that any member of Division I football who would end up ranked one or two would be automatically included in the championship game, and in 1984, I think BYU was the AP as well as coaches'—writers' and coaches' unanimous choice for number one. Assuming they were number one, they wouldn't have played a six-and-five Michigan team. They would have played the number two team in the country. So that is access that exists now that didn't exist before.

It's true that any other Division I-A team from a BCS conference that's ranked sixth or better would also automatically be included, and so those are guarantees. Additionally, any team with nine wins and a top 12 ranking could be selected by the Bowls themselves. So there are really three ways that institutions in these five conferences could get access under contractual terms of the agreement.

Mr. FEENEY. Thank you. I yield back, Mr. Chairman.

Mr. COBLE. I thank the gentleman.

I am going to yield the chair to the distinguished gentleman from Utah and go vote, but I want to thank the four panelists for being with us. I think this has been a very productive hearing and I am now pleased to recognize the gentleman from Utah to close it out, Mr. Cannon.

Mr. CANNON. [Presiding.] Thank you. I thank the gentleman and would like to just follow up on his comments by pointing out that this has been a productive hearing, been informative and helpful.

Steve, or Mr. Young, before you go, would you mind just taking a couple minutes and talking about what could happen to work, to make this work in America. We were talking about a schedule that might work earlier. Would you just let us know if you think there's a possibility of something that actually could work out if money were not driving the train?

Mr. YOUNG. Well, you know, it's hard because, as Mr. Delany made a very important point, the historical factors in the Big Ten especially and other dominant conferences in the past, there's tradition there that was—they wanted very much to hold on to.

I think that a fair result is to figure out a way, and Mr. Delany also said that we do have access to a national championship if we can get the votes. Anecdotally, I have talked to writers and so forth who won't vote for non-BCS teams for Top 25 because they don't feel like there's any chance. So is that proven? Is that scientific? No. But I get a sense that the more time that the BCS is institutionalized, it becomes Division I football. Those conferences are Division I and the rest are some other division.

So I think that at some point, the effect of the BCS needs to find its way to an inclusion. I think that's going to be difficult, but as Dr. Cowen has said, there are ways to do it. The best way to do it, though the arguments are great against a playoff of some kind, is to allow for that to take place. But some inclusion that is institutionalized rather than allowing for voters to make the effect, I think would be really helpful.

I actually cede my time to Dr. Cowen to talk about it a moment. Maybe you have a better idea, because I honestly am worried about anything ever really changing. I'm afraid these two ships have parted the harbor, the BCS and non-BCS, and I'm afraid that in five, six, seven, eight, 10 years, we'll see the effects of a lack of funding from a lot of these schools and their athletic departments will really suffer. And I do agree that it's a non-intended effect of the BCS. I don't think that was why it was formed, was to put a real clamp-down on the non-BCS schools.

Mr. CANNON. Thank you. Let me just—one of the statements that was made here today was stunning and was from your testimony, Mr. Brand. Let me just restate that and then sort of wrap in my view of where this needs to go and what will happen.

You said it is also important to point out that no school, including the BCS institutions, should be disadvantaged by any new approach. In that regard, I do not favor any redistribution of revenue that accrues to the BCS universities through their media contracts in football. Although there currently is some revenue sharing that takes place, the large majority goes to those who make the greatest commitment and whom the market rewards. In other words, the current revenue structure is the result of their free market work.

Any changes to the current approach must add value for all participants. The goal, if it is achievable, is to find the tide that will raise all ships.

From my district's perspective, I mean, I have three great schools that are on the cusp. You have BYU, the University of Utah has been not quite as consistently good as BYU but has a great program right now, and Utah State University has had an amazing program given the resources that they have. And I may have a little bit of a distorted view, but I suspect that there are a lot of other places that certainly you have to—they include Tulane and those kinds of on-the-cusp universities and there are a couple of approaches.

My universities want to see things happen that will work so that they get included in the process because, I mean, clearly, they play on a level, on a standard with the schools that are now benefitting from this BCS system. But let me just suggest to you, it is not acceptable in American society to have such a disparity, to have—to create a second class because of a monopolistic relationship.

Now, that said, I think that's the big issue. You have a possible lawsuit over antitrust issues that may be difficult. This Committee, I suspect, will look at this problem again if it does not resolve itself, and the reason for that is of your own creation. Nobody in this room, I don't think, very few people in America don't have a very strong feeling for college athletics, and that feeling is framed around the concepts of the National Collegiate Athletic Association. I mean, I don't know that many people even know what the acronym stands for, but it stands for American sports.

I just don't think that you can maintain the disparity, that the universities who are in the side can maintain that context without a great deal of disruption in the rest of society. I don't think that disruption is worth it. I think it is better for everybody if you figure out a way to get where you're going.

While—Mr. Flake and I were talking while we were waiting for—sometimes we do silly things in this institution. Institutions are given to silliness sometimes. But as we were talking over there, we were talking about what could be done and his response was, "I don't think Government really should take the lead."

And frankly, I don't think that we ought to be legislating what you guys do, but I just think that what you should hear from this Committee today is there is a very broad base. You have people that are here who are concerned who have schools that are already on the inside. I just don't think you can stand with the position that we're going to keep \$104 million for one set and \$5 million for the other set without doing really severe and substantial damage to the system as it stands, and Mr. Young spoke eloquently about the Title IX issue. That is, what are we going to do with equality for women's sports? You will disrupt that if you don't resolve the problem internally. So I would encourage you to do that.

I've gone over my time. I thank you for your patience. It has been a great hearing. I appreciate your participation, and with that, the Committee will recess.

[Whereupon, at 12:30 p.m., the Committee was adjourned.]

LETTERS, STATEMENTS, ETC.

SUBMITTED FOR THE HEARING RECORD



September 10, 2003

The Honorable James Sensenbrenner, Jr., Chair
United States House of Representatives
Committee on the Judiciary Regarding:
Competition in College Athletic Conferences and Antitrust
Aspects of the Bowl Championship Series*
2449 Rayburn HOB
Washington, DC 20515-4905

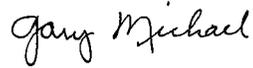
Dear Chairman Sensenbrenner:

Thank you for holding the recent hearing regarding NCAA athletics and, in particular, the Bowl Championship Series football issue. Needless to say, the issues are complex.

With help from you and others members of Congress, we need to ensure that we continue to have balance and fairness on the issue of post-season play and that all institutions are committed to having student-athletes on our campus.

We appreciate your support. Thank you for tackling this difficult issue.

Sincerely,



Gary G. Michael
Interim President



Cutler Hall
Athens OH 45701-2979

September 10, 2003

Chairman James Sensenbrenner, Jr.
Chair, Committee on the Judiciary
United States House of Representatives

Re: Competition in College Athletic Conferences and Antitrust Aspects of the Bowl
Championship Series"

Dear Chairman Sensenbrenner:

Many of us in positions of responsibility for college and university athletics programs are grateful to you and your committee for your attention to the "BCS vs. non-BCS" issue in college football. As a member of a non-BCS conference, the Mid-American Conference, I am supportive of the position of President Scott Cowen and others regarding the virtual monopoly that the BCS football schools have developed in intercollegiate athletics. As has been pointed out, not only does their monopoly dominate football revenues, but the same conference commissioners tend to dominate selections for the NCAA basketball tournament, which results in an even greater revenue imbalance overall.

I am not sure what the best answer to this situation is, but I feel quite certain that intercollegiate athletics should be governed by the NCAA, not be a self-selected group of institutions with major football programs. Thank you again for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert Glidden', written in a cursive style.

Robert Glidden
President

RICE UNIVERSITY

MALCOLM GILLIS
PRESIDENT

September 10, 2003

Chairman James Sensenbrenner, Jr.
Chair
United States House of Representatives
Committee on the Judiciary
Washington, DC

Dear Representative Sensenbrenner:

I am writing in strong support of the position outlined by President Scott Cowen of Tulane regarding the debate over the Bowl Championship Series and other closely related matters.

Formally, the matter is best described as "Competition in College Athletic Conferences and Antitrust Aspects of the Bowl Championship Series." This is a serious matter that will require rectification, preferably along lines outlined by President Cowen in his testimony.

Sincerely,



MG/pmw

c: Scott Cowen



Bowling Green State University

Office of the President
220 McFall Center
Bowling Green, Ohio 43403-0010

September 10, 2003

Chairman James Sensenbrenner, Jr.
United States House of Representatives
Committee on the Judiciary Regarding "Competition in College Athletic Conferences and
Antitrust Aspects of the Bowl Championship Series"

Dear Representative Sensenbrenner:

As the president of Bowling Green State University, I am writing to express my support of the non-BCS position in the debate over Competition in College Athletic Conferences.

Bowling Green State University is a non-BCS school. As a Division 1A Athletic Department, BGSU Student-Athletes deserve the same opportunities to compete in BCS bowl games as other Division 1A student-athletes. Just because some schools have larger enrollment, are located in more populated areas, and have great television coverage should not have any bearing on whether they have the privilege to compete for the top title in Collegiate Football over other student-athletes.

I urge you to support the non-BCS position, to level the playing field for all student-athletes, regardless of the marketing potential of their respective universities. In higher education we strive to teach our students that the United States provides opportunities for all Americans, not just ones in major TV markets.

Sincerely,

A handwritten signature in cursive script that reads "Sidney A. Ribeau".

Sidney A. Ribeau
President
Bowling Green State University

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

**FULL JUDICIARY COMMITTEE
OVERSIGHT HEARING ON COMPETITION IN
COLLEGE ATHLETIC CONFERENCES AND
ANTITRUST ASPECTS OF THE BCS
SEPTEMBER 3, 2003**

**QUESTIONS PRESENTED BY
CONGRESSMAN BOB GOODLATTE
TO MR. MYLES BRAND
PRESIDENT, NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION (NCAA)**

- (1) Why has the NCAA eliminated NCAA-certified pre-season football games, which has nearly devastated organizations such as the Hispanic College Fund, the Jim Thorpe Association, John Thompson Foundation, and the Eddie Robinson Foundation?
- (2) As you know, the revenue generated by pre-season basketball tournaments, such as the Hispanic College Fund Classic, the Jim Thorpe Association Classic, and the John Thompson Foundation Classic fund a great many scholarship programs for students. What is the rationale for the NCAA instituting the rule that prohibits nationally ranked teams from participating in these types of pre-season basketball tournaments more than twice within four years?

October 2, 2003



P.O. Box 6222
 Indianapolis, Indiana 46206
 Telephone: 317/917-8222

Shipping/Overnight Address:
 1802 Alonzo Watford Sr. Drive
 Indianapolis, Indiana 46202

www.ncaa.org

The Honorable Bob Goodlatte
 United States House of Representatives
 2240 Rayburn House Office Building
 Washington, D.C. 20515

Dear Congressman Goodlatte:

On behalf of the National Collegiate Athletic Association (NCAA), thank you for your interest in intercollegiate athletics and the welfare of student-athletes. At the recent hearings before the House Committee on the Judiciary, you posed two questions regarding exempted preseason contests in both football and men's basketball. Below are responses to your questions.

In January 1999, the Division I-A members of the NCAA passed legislation to eliminate the exempted preseason football opportunities for Division I institutions. This action was taken to address concerns that institutions selected to play in preseason exempted games received significant financial, competitive and recruiting advantages over institutions that were not selected for such games. Despite these changes, current NCAA rules do not preclude institutions from scheduling football competitions during the regular season, whereby a portion of the funds are donated to outside organizations or foundations to assist in charitable causes.

The NCAA membership also adopted a bylaw that limits participation in preseason basketball tournaments. The bylaw often referred to as the "2-in-4 rule" is intended to address concerns that institutions selected to compete in these events received a competitive edge on the court and in the recruiting process. By reducing the occurrences in which nationally ranked teams could participate in these preseason tournaments to no more than twice within a four-year period, more Division I institutions are given an opportunity to play in certified preseason events and benefit from the inherent competitive and recruiting advantages. Additionally, more student-athletes are able to benefit from a new cultural experience, as many of these tournaments are held outside of the continental United States.

As an organization tied directly to the higher education community, the NCAA works tirelessly to protect the best interests of student-athletes with fairness and integrity. The decisions to eliminate NCAA certified preseason football games, and to limit access to preseason basketball tournaments, are just two examples of efforts by the NCAA membership to provide equity in intercollegiate athletics. If you have any additional questions or concerns, please do not hesitate to contact me.

Sincerely,

Myles Brand
 President

MB:mes

National Collegiate Athletic Association

An association of more than 1,200 member schools throughout the United States
 Equal Opportunity/Affirmative Action Employer

**FULL JUDICIARY COMMITTEE
OVERSIGHT HEARING ON COMPETITION IN
COLLEGE ATHLETIC CONFERENCES AND
ANTITRUST ASPECTS OF THE BCS
SEPTEMBER 3, 2003**

**QUESTIONS PRESENTED BY
CONGRESSMAN BOB GOODLATTE
TO MR. JAMES DELANY
COMMISSIONER, BIG TEN**

- (1) Does the BCS support the elimination of NCAA-certified pre-season football games, which has nearly devastated organizations such as the Hispanic College Fund, the Jim Thorpe Association, John Thompson Foundation, and the Eddie Robinson Foundation?

- (2) As you know, the revenue generated by pre-season basketball tournaments, such as the Hispanic College Fund Classic, the Jim Thorpe Association Classic, and the John Thompson Foundation Classic fund a great many scholarship programs for students. Does the BCS support the NCAA rule that prohibits nationally ranked teams from participating in these types of pre-season basketball tournaments more than twice within four years? Why or why not? What is the rationale for that rule?

The post-hearing questions presented to Mr. James Delaney by Congressman Bob Goodlatte were not received by the Committee at the time the hearing transcript was printed.

