

1 A. For the college period, '85-'86.

2 Q. Okay. I'm just going to ask, does it say anywhere on the
3 face of the document that the contract does not become
4 effective until the fall of 1985, does it say that on the
5 document?

6 A. I read here where it says college period '85-'86 and
7 that's what I'm saying, it's not effective until '85-'86.

8 Q. But it doesn't say that. You're saying that's what
9 you're interpreting it to say, is that correct?

10 A. I guess so, yes.

11 MR. WEBB: You can keep it. I have no more
12 questions.

13 THE COURT: Counsel.

14 MR. KENNELLY: None, your Honor.

15 MR. PEARL: None, your Honor.

16 THE COURT: You may be excused, Mr. Mims. Thanks,
17 sir.

18 Call your next witness.

19 THE CLERK: Step this way Mr. Witness.

20 (Witness sworn.)

21 DEVON D. MITCHELL,

22 called as a witness by the Plaintiff, having been first duly
23 sworn, was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. PEARL:

1 Q. Would you please state your full name and spell it.

2 A. Devon D. Mitchell, D-E-V-O-N - D. - M-I-T-C-H-E-L-L.

3 Q. Mr. Mitchell, where do you live?

4 A. Detroit, Michigan.

5 Q. How are you currently employed?

6 A. Detroit Lions football team.

7 Q. That's a national football league team?

8 A. Yeah.

9 Q. What position do you?

10 A. Defensive back.

11 Q. Where did you grow up?

12 A. In Brooklyn, New York.

13 Q. Did you go to high school in Brooklyn?

14 A. Yes.

15 Q. What high school did you attend?

16 A. Samuel J. Till High School.

17 Q. Have you entered into an agreement with the United States
18 Attorneys' office here in connection with this case?

19 A. Yes, I have.

20 Q. You have before you in your documents what's been marked
21 as Government Exhibit Mitchell 10?

22 A. Yes.

23 Q. Could you please identify that document?

24 A. It's an agreement for a Pretrial Diversion.

25 Q. What did you agree to do as part of that?

1 A. To testify truthfully, to do 100 ours of community
2 service and to repay my school.

3 Q. When you were in high school -- and if you do all those
4 things, testify truthfully, pay your school back the money and
5 do the community service, what is -- what does the agreement
6 provide?

7 A. In exchange for that, you agree not to prosecute me.

8 Q. While you were in high school, did you compete on your
9 high school's football team?

10 A. Yes, I did.

11 Q. What year did you graduate from high school?

12 A. '81.

13 Q. Did you go directly from high school to college?

14 A. Yes, I did.

15 Q. Where did you attend college?

16 A. University of Iowa.

17 Q. Is it correct then that you started college in about
18 August of 1981?

19 A. Yes.

20 Q. During what years were you at the University of Iowa?

21 A. '81 through '86.

22 Q. Who paid the cost of your tuition, room and board during
23 your five years at Iowa?

24 A. University of Iowa.

25 Q. And on what basis did they pay it?

1 A. Athletic scholarship.

2 Q. While you were at the University of Iowa, did you play on
3 the varsity football team?

4 A. Yes, I did.

5 Q. How many years did you actually play and compete as a
6 member of the varsity football team?

7 A. Four years.

8 Q. During which of your five years did you not compete as a
9 member of the varsity football team?

10 A. My freshman year.

11 Q. But your athletic scholarship covered all five years; is
12 that right?

13 A. Yes, it did.

14 Q. What position did you play on the university football
15 team?

16 A. Defensive back.

17 Q. When you arrived at Iowa, who was the coach?

18 A. Hayden Frye.

19 Q. Who was the athletic director?

20 A. Coach Elliot.

21 Q. Did they both serve in those jobs during the entire time
22 that you were there?

23 A. Yes.

24 Q. Were you told at any time while you were at the
25 University of Iowa about the rules they had adopted concerning

1 your eligibility to compete on the football team and to
2 receive an athletic scholarship?

3 A. Yes.

4 Q. Was that on more than one occasion?

5 A. Yes, it was every year.

6 Q. When was the first time that the university spoke to you
7 about the rules governing your eligibility to compete and to
8 receive your scholarship?

9 A. August of '81.

10 Q. Before the start of your first year?

11 A. Right.

12 Q. Who spoke to you about those rules?

13 A. Fred Mims, Sue Flood, and I think that was it.

14 Q. Although the jury has just heard his testimony, who was
15 Fred Mims?

16 A. He was our academic -- he was kind of like an academic
17 advisor for the athletic department.

18 Q. He was assistant athletic director?

19 A. Right.

20 Q. And who is Ms. Flood?

21 A. She was just -- she's right under him, she's like his
22 assistant.

23 Q. In what context did he talk to you about the rules?

24 A. Basically, he told us what we can and what we can't do
25 and certain things that bound eligibility.

1 Q. Now, when he spoke to you, he didn't speak to you
2 individually, did he?

3 A. No, he spoke to the whole team.

4 Q. At a team meeting?

5 A. Right.

6 Q. And at that team meeting, did they pass out certain
7 things?

8 A. Yes, they did.

9 Q. What did they pass out?

10 A. They passed out eligibility requirement papers and
11 financial statement papers and a few other papers. I can't
12 remember offhand.

13 Q. Some of them were forms that you had to fill out?

14 A. Yes.

15 Q. And others were sheets containing the rules?

16 A. Right.

17 Q. And during that meeting, did they go over the rules?

18 A. Yes, they did.

19 Q. In addition to the papers they gave you then, you also
20 each were given a play book, right?

21 A. Right.

22 Q. And what was contained in the play book?

23 A. Basically, rules and regulations and play.

24 Q. You have before you what's been marked as Government
25 Exhibit, University of Iowa, 4, is that correct?

1 A. Right.

2 Q. I ask you to turn and the jury would also, if you'd look.
3 Right before Tab B.

4 That document that is in the upper right-hand corner
5 a sticker that has Government Exhibit 4, University of Iowa,
6 is that right?

7 A. Right.

8 Q. And the title NCAA Rules Concerning Agents and
9 Professional Representations?

10 A. Right.

11 Q. Where was the -- this document from?

12 A. From our play book.

13 Q. And let me ask you if you would to direct your attention
14 to the first rule.

15 You had a chance to read that, is that right?

16 A. Right.

17 Q. Is that -- what did you understand that rule to mean?

18 A. That we couldn't agree orally or in writing to be
19 represented by an agent.

20 Q. And what about with respect to agreements that even were
21 in effect even up until the last game?

22 A. You still couldn't even talk to an agent, at any point
23 during that period, not until at the end of your career.

24 Q. And what was -- let me ask you if you would to look at
25 the fourth rule that says that:

1 "NCAA rules forbid an athlete to accept expensive
2 gifts of any kind including meals and transportation
3 from any agent or anyone else who wishes to provide
4 services to the athlete."

5 What did you understand that rule to mean?

6 A. That we couldn't take any money or gifts from anybody
7 outside our family, our immediate family.

8 Q. Each year, when you returned to the University of Iowa,
9 did you have a team meeting?

10 A. Yes.

11 Q. And they went over the rule?

12 A. Right.

13 Q. Basically, the same procedure was followed each year?

14 A. Yes.

15 Q. At the team meeting, prior to the start of the year, did
16 you have to fill out various forms in order to obtain your
17 scholarship for that year?

18 A. Yes.

19 Q. Those forms were filled out at the team meeting?

20 A. Right.

21 Q. And did you have to certify anything on those forms?

22 A. Yes.

23 Q. What did you have to certify?

24 A. That -- that you didn't -- that you aren't represented by
25 an agent or you didn't take any type of money and that

1 basically, you followed all the requirements and you certified
2 that you didn't go through any of these things.

3 Q. That you had complied with the rules?

4 A. Right.

5 Q. As they were explained to you?

6 A. Right.

7 Q. You know an individual by the name of Ronnie Harmon; is
8 that right?

9 A. Right.

10 Q. He was your teammate?

11 A. Right.

12 Q. In about June of 1985, did you have a conversation with
13 Mr. Harmon about sports agents?

14 A. Yes, I did.

15 Q. Do you recall where that conversation took place?

16 A. It was in Ronnie's apartment.

17 Q. Was anyone else there when you spoke to Mr. Harmon?

18 A. No.

19 Q. What did Mr. Harmon tell you?

20 A. He said he knew some guys that wanted to represent me and
21 he asked me if I wanted to talk to him.

22 Q. What did you say?

23 A. I said sure.

24 Q. Were arrangements then made for you to speak to them?

25 A. Yes.

1 Q. After that conversation, did you speak to that person by
2 the name of Lloyd Bloom?

3 A. Yes.

4 Q. Do you recognize Mr. Bloom?

5 MR. WEBB: We stipulate to the identity.

6 THE COURT: So stipulated.

7 BY THE WITNESS:

8 A. Yes.

9 BY MR. PEARL:

10 Q. Was your first contact with Mr. Bloom in person or over
11 the telephone?

12 A. Over the telephone.

13 Q. Where were you when you spoke to Mr. Bloom?

14 A. In Ronnie's apartment.

15 Q. Approximately when was this?

16 A. June of '85.

17 Q. To the best of your recollection, what did Mr. Bloom tell
18 you during that conversation?

19 A. He told me that he wanted to represent me, he was an
20 agent of stars and we can do certain things that other agents
21 can't do, and he gave me advertisements and endorsements of
22 all kinds.

23 Q. Did he talk to you about coming to New York?

24 A. Yes.

25 Q. What did he say and what did you say?

1 A. Well, he asked me could I come and I said, "Well, right
2 now, I don't have the funds to come up." And he said, "Don't
3 worry about that. We will get you a ticket tomorrow, Federal
4 Express."

5 Q. Did you get a ticket then?

6 A. Yes.

7 Q. Through Federal Express?

8 A. Yes.

9 Q. Approximately when was it that you actually went to New
10 York?

11 A. Sometime, I believe, either the 19th or the 20th.

12 Q. Of June?

13 A. Of June.

14 Q. 1985?

15 A. Right.

16 Q. While you were in New York, where did you stay?

17 A. At my parents' house.

18 Q. Where do your parents live?

19 A. Brooklyn, New York.

20 Q. Did you make some arrangements to meet with Mr. Bloom and
21 Mr. Walters?

22 A. Yes, I told them that I would meet them at their office
23 building in New York City.

24 Q. Did you go to the offices of Norby Walters and Associates
25 in New York City?

1 A. Yes.

2 Q. Did you go alone?

3 A. Yes.

4 Q. When you arrived there, with whom did you meet?

5 A. I met with Lloyd first and then he took me in to see
6 Norby.

7 Q. Did he introduce you to Mr. Walters?

8 A. Yes.

9 MR. KENNELLY: We stipulate to the identity.

10 BY THE WITNESS:

11 A. Yes.

12 THE COURT: So stipulated.

13 BY MR. PEARL:

14 Q. Did you have a conversation with Mr. Bloom and Mr.
15 Walters at the office?

16 A. Right.

17 Q. To the best of your recollection, what was said during
18 that conversation?

19 A. Basically, he repeated what Lloyd had said.

20 Q. Let me ask you to pause here for a moment.

21 Who is "he"? You have to identify.

22 A. Norby. Basically, Norby repeated what Lloyd said. He
23 said that he was the agent of stars and he represented various
24 black entertainers and that he was expanding himself into the
25 sports field; and he had a lot of connections in endorsements

1 and advertisements and that he could do other things that
2 agents can't do.

3 Q. When Mr. Walters told you this, was Mr. Bloom present?

4 A. Yes.

5 Q. Was it just the three of you?

6 A. Yes.

7 Q. What if anything did you tell Mr. Walters and Mr. Bloom?

8 A. I said that I'd have to speak to my parents.

9 Q. Were arrangements then made to meet with them again?

10 A. Yes, Norby came down -- Norby and Lloyd came down to my
11 house in Brooklyn about 7:00 to 7:30 that night.

12 Q. Who was present at your parents' house when Mr. Walters
13 and Mr. Bloom arrived?

14 A. My father, my father's friend, James Harris, my brother,
15 Ken, me, Lloyd and Norby.

16 Q. And other than the initial introductions, who spoke
17 first?

18 A. Norby.

19 Q. To the best of your recollection, what did Mr. Walters
20 say that night at your parents' house?

21 A. He told my parents basically the same thing he told me.
22 He said that he could do a lot of things that other agents
23 can't do. He can give me endorsements, he can get me
24 advertisements, shoot contracts and he showed my father
25 various people that he represented.

1 Q. Did Mr. Walters offer you anything if you agreed to be
2 represented by him at that time?

3 A. Yes, he offered \$2,000 if I would sign, cash.

4 Q. And what else did he offer you?

5 A. He offered me \$200 a month until I signed.

6 Q. At the time Mr. Walters offered you \$2,000 cash if you
7 signed the representation agreement, did he display anything?

8 A. Yes, he put the \$2,000 down on the living room table.

9 Q. While the cash and the offer were on the table, did Mr.
10 Harris say anything to Mr. Walters about the proposed deal?

11 A. He asked them, he said, "Isn't this illegal?" And Mr.
12 Walters says, "Yeah, it is but don't worry about it because we
13 will just postdate the contract."

14 Q. Did Mr. Walters say to anybody, to you and to Mr. Harris,
15 what he was going to do with the contract?

16 A. He said he would put it in my safe and my father keep his
17 in the safe and nobody know about it.

18 Q. And he told you about the date of the contract, right?

19 A. Right.

20 Q. That it was going to be dated when?

21 A. The 4th of January.

22 Q. And that was so -- let me ask you, after that
23 conversation, did you then meet alone with your family?

24 A. Yes, we went outside and we talked about it and Mr.
25 Harris said, "Well, as long as they said they are going to

1 have their copy and we're going to have our copy and nobody
2 know about it, then you could do what you want to do." So I
3 decided to sign.

4 MR. PEARL: Your Honor, I don't know what your
5 intentions are with respect to break, but this is a good time
6 in terms of testimony.

7 THE COURT: Let's take approximately 10 minutes then
8 and we will go through our regular time.

9 (Recess.)

10 (Proceedings had outside the presence of the jury.)

11 THE COURT: You wanted to make an offer of proof as
12 to some matter before us this afternoon?

13 MR. WEBB: Yes. Thank you, Judge. In connection
14 with my cross examination of the Witness Mims, the assistant
15 athletic director at the University of Iowa, your Honor,
16 during my cross examination, I was -- started to develop a
17 line of cross examination which the Court sustained objections
18 to and I stopped and I would like to make an offer of proof,
19 and it actually will relate to other university witnesses,
20 generally, beyond just this university witness, but university
21 witnesses in general who get on the witness stand and testify
22 as this witness did that they actually were the victim of a
23 crime in that they would have revoked these scholarships had
24 they known about this information and, therefore, they were
25 defrauded of a scholarship.

1 That really in my judgment is the heart of the case
2 as to whether or not they are telling the truth when they say
3 that they are the victim of a crime, and I believe that I have
4 to try to establish in the mind of the jury that, in fact,
5 when they say that they have been defrauded of the
6 scholarship, that in fact that's simply not true and one of my
7 lines of cross examination to establish that is based upon my
8 view of the evidence that none of these people ever viewed
9 this as a fraud until the Government suggested it to them that
10 it was a fraud, and that because of that, just like the victim
11 of any other crime, the failure to report it, for example, at
12 Iowa, I wanted to examine this witness -- there was a full
13 investigation done. At the conclusion --

14 THE COURT: I thought society in general were the
15 victims of crimes since the criminal law, which still points
16 at which conduct is so offensive to society and that it calls
17 for punishment, but maybe --

18 MR. VALUKAS: Right.

19 THE COURT: Who are the victims here?

20 MR. WEBB: Well, the Government has alleged in the
21 indictment that the universities are the victims of the mail
22 fraud scheme and while we can always argue that society is
23 always victimized in every criminal case, the Government in a
24 fraud case, somebody has to have been deprived of some money
25 or property and they have to be the victim of a crime, whether

1 it's a robbery on the street or in this case, a fraud case.

2 My view is that the universities that are pled on the
3 face of the indictment as the victims of the fraud, they are
4 putting them on the stand to testify that they are the victims
5 of the fraud and that they lost and were deprived of the
6 scholarship.

7 THE COURT: I presume that they are going to put him
8 on the stand to testify to facts which is what all witnesses
9 are supposed to testify to. Am I wrong in that respect?

10 MR. VALUKAS: No, your Honor. They will not be
11 testifying to it.

12 MR. WEBB: I'll just take the witness who just
13 testified, what he testified to concerning that he gave his
14 opinion and not his fact, his opinion was that they would have
15 revoked the scholarship and he told me it was his opinion and
16 I want to cross examine and establish that that's not a
17 truthful statement, and I'll make my offer of proof with Iowa,
18 I want to bring out that they never viewed this as a theft or
19 a fraud and in fact, did a full investigation and at the end
20 of the investigation -- that's why the Government jumped up
21 and objected -- they filed a written report and in that entire
22 report, they never once mentioned or hinted at that they were
23 defrauded out of the scholarship. In fact, they have a
24 paragraph in there that they made recommendations as to what
25 they wanted done and their recommendations not only don't even

1 hint that they believed that Palmer or that Harmon or Mitchell
2 defrauded them, in fact, they have a paragraph in there that
3 they recommend that they go to the legislature --

4 THE COURT: Well, let me ask you this, Mr. Webb,
5 because there are certain things that pop into my mind and if
6 they don't get addressed I might forget about them.

7 MR. WEBB: I'm sorry.

8 THE COURT: This is an indictment that alleges things
9 other than mail fraud, am I not correct? And I presume that
10 testimony is being received on the indictment rather than
11 specific accounts of it, and am I right or am I wrong in that
12 some of the predicate acts that have to do with the
13 racketerring counts are these things that have to do with the
14 university being defrauded, am I not right?

15 MR. WEBB: Judge, actually on this one, these are --

16 THE COURT: That's a question, not a statement.

17 MR. WEBB: I'm sorry. Okay. The Government can
18 correct me, these particular -- Iowa is one of the actual mail
19 fraud counts. They are beyond the racketeering counts. The
20 actual counts that give venue here in Chicago, one of them is
21 based on mailings dealing with Iowa. I don't know if it's
22 Counts III or --

23 THE COURT: I know venue, but presuming we have
24 venue, we have a case that has more than one count to it, am I
25 not correct?

1 MR. WEBB: I was just pointing out, that is not just
2 a predicate act in the racketeering count, this happens to be
3 one of those universities that's actually named under the
4 substantive mail fraud counts.

5 MR. VALUKAS: Both predicate act and racketeering.

6 THE COURT: My point is it's both.

7 MR. VALUKAS: Right.

8 MR. WEBB: I'm just trying to establish, Judge, for
9 example, with this, Iowa, that in fact they really weren't the
10 victim of the crime, and this particular investigative report,
11 which I can mark as an exhibit as an offer of proof, they
12 literally in that report recommend they go to the legislature
13 and criminalize what happened here. They obviously did not
14 view themselves to be a victim of a fraud.

15 I think that I have at least a right to suggest to
16 the jury that the victim of the crime, the university, in fact
17 did not view themselves as victims and in fact, never even
18 attempted to get restitution at all from the students
19 themselves until the Government indicted the students at that
20 time.

21 Now, all I'm trying to show the jury is that the
22 testimony, that they are the victim of fraud and were
23 defrauded of this piece of property is in fact fictitious
24 testimony that has developed.

25 THE COURT: Now, Mr. Webb, in deference to you and

1 me, I know what you want to do. You want to get the words out
2 of the alleged victim of this crime that "I was not
3 victimized." That's what you want to do.

4 MR. WEBB: Oh, Judge, yes --

5 THE COURT: And these other things are kind of
6 peripheral little fringe benefits, but you want the victim to
7 say "I don't know how I was victimized."

8 MR. WEBB: No, I want them to say they weren't
9 cheated or defrauded out of the scholarships of the particular
10 property rights that have been charged here.

11 MR. VALUKAS: What he's asking for was for the
12 witnesses to start, instead of testifying to facts, what we're
13 going to have them testify to is to legal conclusions.

14 THE COURT: Well, I just want to put it to rest
15 because -- and the reason why is that this is not the first
16 time that I have heard this argument from Mr. Webb and it's
17 not the first time that I have had an opportunity to think
18 about it, and I know what you want to do. I mean, you want to
19 get the victim to say, "I don't see myself as a victim." And
20 to me, that is an opinion.

21 Now, you had indicated to me on prior occasion, if I
22 test my memory, about a great number of cases that stands for
23 the proposition that you should be able to ask the victim how
24 you've been victimized and I indicated to you that if there is
25 a bunch of cases, before I pick up the first one, I have a

1 notion that it deals with people who have been shot, raped,
2 robbed or whatever, and have an idea of knowing whether
3 someone stuck a gun in their face or whatever, rather than
4 dealing with crimes of the nature that are before me.

5 We get down to something that is more basic and that
6 is my understanding of what witnesses do in every trial and
7 what the role of different people in these proceedings are.
8 And in order to -- if I were to allow witnesses, except in
9 situations that call for expert testimony and whatever, to
10 give their opinions, what has happened is that they have taken
11 over the function of the jury to determine the ultimate
12 question of fact that is before them.

13 The way that it goes down is people testify to facts
14 with exceptions that I don't need to elaborate -- they have
15 personal knowledge about. They don't give opinions. Then I
16 instruct somebody as to the law and you argue it and the jury
17 goes ahead and comes to a decision; and it is in keeping with
18 my idea of how these things are structured that I do not see
19 these questions as being appropriate, and why I did not allow
20 them to be asked then and I will not allow them to be asked in
21 that context to other people.

22 If you want to ask such questions, as you did to
23 Ronnie Harmon, "Did you agree to plead guilty to a fraud?"
24 that's appropriate. If you want to ask him if he intended to
25 defraud him when he did, I think that's getting a little shaky

1 but that's fine with me, but I am not going to allow you to
2 ask the president of any of these universities or Mr. Mims,
3 "Tell me how it is that you were defrauded." That is not a
4 function that calls for a factual statement by a witness.

5 MR. WEBB: Let me just finish my offer of proof.

6 THE COURT: Is that consistent with what you were
7 going tell me by way of argument?

8 MR. VALUKAS: Thank you. That's why I just leaned
9 forward and kept my mouth shut.

10 THE COURT: That's a good thing. That's rule Number
11 1.

12 MR. VALUKAS: You bet.

13 MR. WEBB: I'll just finish my offer of proof and
14 I'll be quiet. Your Honor indicated that you don't believe
15 that opinion testimony should come in concerning whether they
16 were defrauded, and I actually agree with you. The problem is
17 the Government actually offered the ultimate opinion. They
18 asked these witnesses, "Would you have awarded the
19 scholarship?" Speculating, would you have awarded the
20 scholarship knowing A, B, C and the witness testified. That's
21 the whole fraud here. This witness just testified that had he
22 known, he would not have awarded these scholarships and that's
23 what the witness testified to.

24 THE COURT: I don't see it that way. I mean, it
25 still leaves a conclusion -- whether or not they would have

1 given the scholarship is not the same question of whether you
2 were or were not defrauded and there is a distinction that is
3 a bright light in my mind, and I don't see the merit of your
4 argument.

5 It's a fact, "Would you have done it if you would
6 have known it? Yes or no." It could have because it didn't
7 have to be that he was defrauded or whatever, and I'm going to
8 leave you a lot of latitude to make your arguments on basis of
9 a record but I am not going to keep having this kind of
10 opinion testimony coming from people who in my opinion are not
11 qualified to give that opinion.

12 MR. WEBB: Could I just finish my offer and I will be
13 quiet, Judge?

14 THE COURT: Sure.

15 MR. WEBB: If I were allowed to do this, I would
16 cross examine these witnesses and establish that their
17 statement that they would have revoked the scholarship or
18 would not have awarded it, in fact, is untruthful because they
19 did not treat it as in fact that they were defrauded and I
20 would prove that. Like with the University of Iowa, they
21 actually recommended that a statute be passed to deal with
22 this. They did not report it as a crime. They didn't treat
23 it as a crime and in fact, didn't ask for any restitution, and
24 I think that's probative. I'm not going to ask their opinion,
25 I'm not going to ask, "Were you defraud?" I simply want to

1 ask these factual questions, "Did you report it? Did you in
2 fact ask for restitution? Did you write them a letter?"
3 Those factual questions, which I don't believe are opinions,
4 tend to detract from the opinion offered by Mr. Pearl.

5 THE COURT: Well, that's a different question. What
6 is your --

7 MR. VALUKAS: Your Honor, that suggests that before
8 someone can be the victim of a crime, that they have to file a
9 lawsuit or do something similar to that. That just simply is
10 not -- that is neither -- and, again, it goes into this whole
11 question, raising for the jury an issue which is not -- having
12 the witness testifying as to something which is a jury
13 question.

14 The jury is going to make a determination based on
15 the facts as to whether or not the false statements were made,
16 whether or not when the false statements were made, they were
17 statements which were relied on, and whether or not in
18 reliance they gave them money, and they will make a
19 determination as to the intent, the criminal intent of the
20 defendants, which is the element which is here, not the
21 university.

22 The university's intent or lack of intent is
23 irrelevant. The question is Bloom and Walters' intent here
24 and that's what we're doing here, and I suggest to the Court,
25 that is as -- that testimony is as inadmissible as any other

1 testimony in connection with that because that's what it's
2 seeking.

3 THE COURT: The state of mind of the university is
4 not at issue. The state of mind of Mr. Walters and Mr. Bloom
5 is.

6 MR. WEBB: I understand. I do not intend to ask them
7 their state of mind. All I want to ask them is whether or not
8 these factual events occurred as far as -- Judge, if you tell
9 me that I can't go into it, I'm not going into it, okay, and I
10 attempted with this witness and you sustained the objection.

11 THE COURT: Well, there is a couple of things and I
12 hope you take this in a jocular sense because I intend it, I
13 mean, you keep on telling me, "I'm not going to dispute your
14 rulings or I'll abide by them," and that in a jocular way is
15 not a major concession on your part. I didn't give it as an
16 either/or and the other thing is you said out there that I
17 know you want to rush along, and I don't want to rush you
18 along. I want to make clear, again, I'm not here to set a
19 land speed record, I'm here to be as fair as I know how and
20 the only way I know how to be fair is get this case tried on
21 the issues and keep the extraneous crap out of here, and I
22 just ruled on that and I think that we should proceed on that
23 basis unless you would be like to elaborate for the record.

24 Go ahead.

25 MR. KENNELLY: I need to at some point.

1 MR. WEBB: Let me just finish my offer and I'll --
2 just so I understand, is the Court's ruling that I cannot ask
3 questions, like, "Did they report -- did they report this?"
4 Or, "Did they ask for restitution?" I mean, are these types
5 of factual questions of the victim of the crime, I would like
6 to ask for the purpose of establishing not their state of mind
7 or their intent, but I want to try to ask it to impeach the
8 actual direct opinion testimony they give on direct
9 examination as to what they would have done if they had known
10 certain facts, because if I'm not allowed -- I'm basically
11 going to be put in a position where the Government can offer
12 that opinion on the direct, which is the heart of the fraud,
13 and I can't cross examine on whether that is a truthful
14 statement on their part; and I'm trying to establish that, in
15 fact, when they say that, that, in fact, that's not true, and
16 that they would not have modified or changed the scholarship
17 as evidenced by these factual events that I would like to go
18 into.

19 Beyond that -- let me just, is it the Court's ruling
20 that I should not go into those areas with these university
21 witnesses?

22 THE COURT: That is my ruling.

23 MR. WEBB: Okay. I accept it.

24 MR. KENNELLY: For the record, Defendant Walters
25 joined in Mr. Webb's offer of proof.

1 THE COURT: The record will so indicate.

2 MR. WEBB: The second thing I was attempting to get
3 into, Judge, with this witness was to try to have the witness
4 pinpoint for the record what is the actual property that was
5 lost here.

6 I recognize what the Court has ruled and I accept it
7 as far as the scholarship. However, somewhere, we're going to
8 have to make a record as to what is the actual property right
9 because I believe if I were allowed to cross examine the
10 witnesses, and I'll do so outside the jury's presence, if you
11 want, I will be able to establish that the property right that
12 we're dealing with here is in fact not a property right
13 recognizable under the McNally opinion.

14 I know the Court has ruled that the Government on the
15 face of the indictment has stated an offense but, obviously,
16 we have to see if the evidence is consistent with the
17 indictment.

18 I don't believe that what actually was lost here was
19 either the scholarship money or the right to allocate the
20 scholarship.

21 What I believe was lost here by the university was
22 their right to receive accurate information from these
23 students and under the Gimbel opinion of the Seventh Circuit,
24 that right has been expressly held to be clearly in violation
25 of McNally, the right of someone on an application to receive

1 accurate information is clearly a right not recognized under
2 McNally, and what I was attempting to do when I started to
3 cross examine this particular witness, Mims, was to establish
4 through a line of cross examination concerning the way the
5 scholarships are actually handled, that the property right
6 that he ultimately lost was his right to accurate information;
7 and I make that as an offer of proof now, and, again, if the
8 Court says I cannot go into that, I would just ask that my
9 statements here under the Federal Rules of Evidence be
10 considered as an offer of proof that that's what I would like
11 to establish with the university witnesses.

12 MR. KENNELLY: And we also join in that, your Honor.

13 MR. VALUKAS: Your Honor, our obligation will be to
14 establish the existence of loss of property. We intend to do
15 that in connection with that.

16 THE COURT: Not necessarily through this witness.

17 MR. VALUKAS: Not through this witness. It would be
18 like saying, "Okay, Mr. Harmon, tell me what you think the
19 university lost? And Mr. Harmon says, "Well, I guess I don't
20 know what they could have lost." We're not required -- it's
21 not appropriate cross examination of a witness who is not
22 asked about those things on direct examination for them to go
23 into those on cross for purposes of saying that this witness
24 doesn't know anything about it.

25 THE COURT: When the ball is in play, I'll leave you

1 cross examine him. Let's get the ball in play.

2 MR. WEBB: This is not an offer as to Harmon, this is
3 an offer as to Mims, the university witness.

4 MR. VALUKAS: Who was not asked any questions
5 concerning that area.

6 THE COURT: The thing that you're also losing kind of
7 track of is something that I think should be considered, too,
8 and that is the scope of the cross examination.

9 I mean, cross examination is supposed to be limited
10 in scope to those things that are put in play in the direct
11 examination, not anything that might -- you kind of like to
12 inquire about and in my judgment, that which you want to cross
13 examine about is not in play. When it gets in play, I'll let
14 you cross examine about it.

15 MR. WEBB: The only reason I tried to cross this,
16 when Mr. Valukas asked the opinion as to what they were
17 defrauded of, I thought it was in play but I'll wait.

18 THE COURT: I don't know that he asked that opinion.
19 We are at --

20 MR. WEBB: Judge, one more motion. Just one more
21 motion.

22 THE COURT: Go ahead.

23 MR. WEBB: Your Honor, this is the first time I had
24 an opportunity, I'd like to make a motion for a mistrial at
25 this point in time.

1 During the course of my cross examination of Mr.
2 Mims, I was trying to make the point that these rules were
3 very confusing so that people outside these universities and
4 Big Ten would not necessarily understand them and know that
5 they were being violated, and at that point in time, I believe
6 your Honor indicated that I could ask my client. I think the
7 statement was, "If you get a chance, you can ask Mr. Bloom or
8 Mr. Walters."

9 I don't suggest the Court intended to do anything by
10 that comment, but, Judge, the problem is, I don't know whether
11 my client is going to testify or not.

12 THE COURT: Well, then I will clear the record and
13 indicate to the jury if that is some impression that they
14 have, that it wasn't one that was implied because I think
15 everybody knows that it wasn't either, and your record is
16 clear, but tell me, there is other ways to correct something
17 that the Court may have intentionally or inadvertently done
18 that can be corrected short of a mistrial, and you tell me
19 what it is that you want --

20 MR. VALUKAS: If they are requesting that the jury be
21 instructed at this time, that the defense --

22 THE COURT: I will instruct them.

23 MR. VALUKAS: I suggest the instruction be made --

24 MR. GOLD: Your Honor, may I make a statement on
25 that? I am expressly requesting that you not make the

1 instruction. You weren't in the beginning of the trial and,
2 I'm sorry it came up in the heat of battle in the courtroom
3 today, but I think a cautionary instruction at this point
4 would only exacerbate the problem.

5 THE COURT: I will do what you want me to do.

6 MR. VALUKAS: Let me ask the question, Mr. Webb, do
7 you want a cautionary instruction?

8 MR. WEBB: Yes, I'm making a motion for a mistrial.
9 I don't think a cautionary instruction cures it, but in light
10 of the Court's offer, I take it you're denying my motion for a
11 mistrial?

12 THE COURT: I most certainly am.

13 MR. WEBB: But I would like the instruction given,
14 your Honor.

15 MR. GOLD: Then for the record, your Honor, since my
16 application has been denied, I'm constrained to join in the
17 motion for mistrial and we'll let the chips fall where they
18 may.

19 THE COURT: Well, let me indicate this, that I am
20 very mindful of your divergence of opinion as to what should
21 and should not be and I will give you my opinion as to what I
22 think is appropriate.

23 First of all, I don't think that it is any problem at
24 all and I have a notion that this business that has to do with
25 how complicated or not complicated these rules are has been

1 kind of put to rest when somebody says such things as it's
2 complicated to know that you're not supposed to cheat or lie
3 or do certain things like that, it's not the biggest question
4 in the world, and I don't know whether Mr. Bloom is going to
5 testify or whether Mr. Walters is going to testify, and I
6 don't think that whatever small remarks I made have had any
7 impact about that on the jury, and I think that it will be
8 cured when it gets to the point where I know who did and who
9 didn't, and I will give the instruction at that time if I am
10 requested to that they are not to take into account the fact
11 that one did or one didn't, if that happens to be the case.
12 That is the way I will handle it.

13 MR. WEBB: At least at this time, the Court is not
14 going to give any ---

15 THE COURT: I will not give any instruction because I
16 don't think any necessity exists for it.

17 THE COURT: Please bring the jury in.

18 (Jury in.)

19 THE CLERK: Please be seated and come to order.

20 (Sidebar conference without the reporter.)

21 THE COURT: Mr. Pearl, you can continue.

22 CONTINUED DIRECT EXAMINATION

23 BY MR. PEARL:

24 Q. Mr. Mitchell, when we broke, I believe you were
25 testifying that Mr. Walters -- you met with Mr. Walters and

1 Mr. Bloom and then you stepped out with various individuals
2 you identified; is that right?

3 A. Yes.

4 Q. Now, that was Mr. Harris and your father?

5 A. Yes.

6 Q. And what happened when you -- when you stepped out?

7 A. We discussed what Norby had said and we decided -- well,
8 I decided to sign.

9 Q. Then you came back into the room?

10 A. Yeah.

11 Q. Did Mr. Walters present you with some documents at that
12 time?

13 A. Yes.

14 Q. Ask you if you would to turn to the exhibit before you
15 that's been marked as Government Exhibit 6 Mitchell which is
16 in the jury book, in the middle of tab C.

17 Mr. Mitchell, in the upper right-hand corner that
18 says Government Exhibit 6 Mitchell, is that right?

19 A. Yes.

20 Q. And the title of the document is World Sports &
21 Entertainment, Inc., NFL Contract Advisor Agreement?

22 A. Yes.

23 Q. Is that one of the documents that Mr. Walters presented
24 you?

25 A. Yes.

1 MR. PEARL: Your Honor, the Government moves the
2 admission of Government Exhibit 6 Mitchell.

3 MR. WEBB: No objection.

4 MR. GOLD: No objection.

5 THE COURT: It will be received.

6 (Government Exhibit 6 Mitchell received.)

7 BY MR. PEARL:

8 Q. The first two lines has some handwriting that's filled
9 in; is that right?

10 A. Yes.

11 Q. Whose handwriting is that?

12 A. Norby's.

13 Q. Could you please just read the first two lines there.

14 (Reading.)

15 A. "This agreement is made this 4th day of January, 1986
16 and between Devon Mitchell and hereinafter player
17 and Norby Walters and LLOYD Bloom."

18 Q. And that's the handwritten portion that was filled in by
19 Mr. Walters?

20 A. Yes.

21 Q. January 4th is not the date that the contract was
22 actually signed, was it?

23 A. No.

24 Q. Did Mr. Walters say why the contract was being dated
25 January 4th, 1986?

1 A. So that NFL D.A. would think that I signed on that day to
2 avoid my -- to avoid being ineligible to play football.

3 Q. And let me ask you if you would to turn to Page 6 of that
4 agreement.

5 Whose signature appears on the first line?

6 A. Norby's.

7 Q. Who's on the second line?

8 A. Lloyd's.

9 Q. And who's on the third line?

10 A. Mine.

11 Q. And it says date, you actually put 1/4/86, right?

12 A. I didn't, Norby did.

13 Q. Now, were these filled out in your presence at the time
14 that you just described?

15 A. Yes, but I didn't date that.

16 Q. Let me ask you if you would turn to Government Exhibit
17 Mitchell 5, which is just preceding Mitchell 6 that we looked
18 at.

19 That's also a World Sports & Entertainment football
20 representation agreement; is that right?

21 A. Yes.

22 Q. And is that the one that was filled out that night?

23 A. Yes.

24 MR. PEARL: Your Honor, the Government offers
25 Government Exhibit 5 Mitchell.

1 THE COURT: Counsels.

2 MR. WEBB: No objection.

3 THE COURT: They will be received.

4 (Government Exhibit 5 Mitchell received.)

5 BY MR. PEARL:

6 Q. Who filled out the first three lines, the handwritten
7 portion there?

8 A. Norby.

9 Q. Let me ask you if you would turn, please, to Page 6 of
10 the agreement.

11 Whose signatures are those?

12 A. Norby's, Lloyd and mine.

13 Q. And they were signed that night when they were presented
14 to you?

15 A. Yes.

16 Q. If you turn back to the first page of that agreement, is
17 it correct that the basic difference between this agreement
18 and the one you previously identified is that this relates to
19 the possibility that you would play in the United States
20 football league or the Canadian football league; is that
21 right?

22 A. Right.

23 Q. And the other one related to your playing in the National
24 Football League?

25 A. Yes.

1 Q. Was this dated January 4th, 1986 for the the same reason
2 the other one was?

3 A. Yes, it was.

4 Q. Mr. Mitchell, prior to signing these two contracts, had
5 you ever negotiated or reviewed a contract like that before?

6 A. No.

7 Q. At the time you signed those agreements that night, did
8 you know that signing those agreements and taking this money
9 would render you ineligible to compete on the University of
10 Iowa football team and to receive your athletic scholarship?

11 A. Yes.

12 Q. How did you know that?

13 A. At the previous team meetings that we have every year.

14 Q. And at the time that you signed these agreements, and
15 received money for it, did you know that you would have to go
16 back to the University of Iowa and lie to them about what you
17 had done in order to obtain your athletic scholarship and play
18 football again in your last year?

19 A. Yes.

20 Q. How did you know that?

21 A. From the previous meetings that we had every year.

22 Q. Now, if Mr. Walters and Mr. Bloom hadn't talked to you
23 about concealing this agreement or these agreements, and the
24 payments, would you have signed the agreements that are before
25 you?

1 A. No.

2 Q. Why not?

3 A. Because I would have been ineligible to play football and
4 receive the scholarship.

5 Q. Let me ask you if you would to turn to Government Exhibit
6 Mitchell 7. That's a letter to you from Norby Walters and
7 Lloyd Bloom; is that right?

8 A. Yes.

9 Q. Who filled in the handwritten portions other than the
10 bottom left-hand corner?

11 A. Norby.

12 Q. Did he do it that night?

13 A. Yes.

14 Q. And the bottom left-hand corner, is that your signature?

15 A. Yes.

16 Q. What's the date on that?

17 A. June 20th, '85.

18 Q. And that was the date it was actually signed?

19 A. Yes.

20 MR. PEARL: Your Honor, the Government moves the
21 admission of Mitchell 7.

22 MR. WEBB: No objection.

23 MR. GOLD: No objection.

24 THE COURT: It will be admitted.

25 (Government Exhibit Mitchell 7 received.)

1 BY MR. PEARL:

2 Q. Let me ask you to turn to Government Exhibit Mitchell 8.

3 That's a promissory note for \$2,000; is that right?

4 A. Yes.

5 Q. And that bears the date June 20th, 1985?

6 A. Yes.

7 Q. Was it signed at the same meeting?

8 A. Yes.

9 Q. Whose handwriting is in the handwritten portion of the
10 body of the note?

11 A. Norby's.

12 Q. Did you sign the bottom right-hand corner?

13 A. Yes.

14 Q. After you signed these agreements and the note and the
15 letter, did you receive anything that night from Mr. Walters?

16 A. Yes, \$2,000.

17 Q. The cash that he had put on the table when he was
18 discussing the offer with you?

19 A. Yes.

20 Q. After that evening, did you begin receiving payments from
21 World Sports & Entertainment, Mr. Bloom and Mr. Walters?

22 A. Yes, every month I received \$200.

23 Q. Did you have a bank account at the time?

24 A. Yes.

25 Q. In what state did you have a bank account?

1 A. Iowa.

2 Q. Did the money that you received from Mr. Bloom and Mr.
3 Walters go directly into your bank account in Iowa?

4 A. No.

5 Q. When you were in New York City, during 1985, did you
6 receive, other than the occasion you just described, did you
7 receive any money from Mr. Bloom and Mr. Walters?

8 A. Yes.

9 Q. When you were in New York City, how many times did you
10 receive it?

11 A. Once.

12 Q. And when you were in New York City, in what form did
13 payment -- did you receive that money?

14 A. Check.

15 Q. Let me ask you to look at what's before you as Government
16 Exhibit 9A Mitchell.

17 Those are two checks payable to you, is that correct?

18 A. Yes.

19 Q. From Norby Walters Associates, Inc.; is that right?

20 A. Yes.

21 Q. And in the bottom left-hand corner, it says WSD on the
22 first line?

23 A. Yes.

24 Q. The first one is a \$200 check payable to you dated August
25 2nd, 1985; is that right?

1 A. Yes.

2 Q. And the second one is an August 15th, 1985 check payable
3 to you in the amount of \$500; is that right?

4 A. Yes.

5 Q. What did you do with those checks while you were in New
6 York?

7 A. Cashed them.

8 Q. At which bank?

9 A. Irving Trust.

10 Q. Did you have an account at the Irving Trust Bank?

11 A. No.

12 Q. How were you able to cash the checks at the Irving Trust
13 Bank?

14 A. Teller would call up to Worlds Sports & Entertainment and
15 get the okay.

16 Q. And then you very shortly thereafter went back to the
17 University of Iowa for your last year, is that right?

18 A. Right.

19 Q. Once you went back to Iowa for your last year, did you
20 receive any checks from Mr. Walters or Mr. Bloom that fall?

21 A. No.

22 Q. How did you begin receiving your money once you went back
23 to Iowa?

24 A. Wire, by wire.

25 Q. Where did you pick up the wire transfers?

1 A. At the truck stop and at a bus stop.

2 Q. Did you at one point switch?

3 A. Yeah, I went back and forth.

4 Q. Why did you do that?

5 A. They didn't want anybody asking questions.

6 Q. You have before --

7 MR. PEARL: Well, let me offer into evidence
8 Government Exhibit 9A.

9 MR. WEBB: No objection, your Honor.

10 MR. GOLD: No objection.

11 MR. KENNELLY: I have no objection.

12 THE COURT: It will be received. It's a Group
13 Exhibit, is it not?

14 (Government Exhibit Mitchell 9A received.)

15 MR. PEARL: Yes, your Honor. Thank you.

16 BY MR. PEARL:

17 Let me ask you to turn if you would to Government Exhibit
18 Group 9B, Mitchell.

19 Mr. Mitchell, those are copies of wire transfers you
20 received during 1985 from World Sports & Entertainment; is
21 that right?

22 A. Right.

23 Q. And I emphasize "copies", because actually sometimes they
24 are not too good, is that fair to say?

25 A. Right.

1 Q. Are those the wire transfers that you picked up at the
2 two places that you just identified?

3 A. Yes.

4 Q. Let me draw your attention to a few of those.

5 One of those is -- wire transfers is to an individual
6 by the name of Ian Mitchell; is that right?

7 A. Yes.

8 Q. Who is Ian Mitchell?

9 A. My brother.

10 Q. Who is Tonya Mitchell?

11 A. My wife.

12 Q. And who is Donnet Mitchell?

13 A. My father.

14 Q. And those were wire transfers that were made at your
15 request?

16 A. Yes.

17 Q. During 1985, did World Sports & Entertainment, Mr. Bloom
18 and Mr. Walters, also pay for some airline tickets for you?

19 A. Yes.

20 Q. Approximately how many times?

21 A. Twice. First time going down to meet them and coming
22 back, and the second time, I coming home for summer break and
23 coming back.

24 Q. And once at Thanksgiving?

25 A. Yeah, once at Thanksgiving.

1 Q. In August of 1985, is that when you returned for your
2 final year at the University of Iowa?

3 A. Yes.

4 Q. And that -- prior to actually starting the school year
5 and actually obtaining your athletic scholarship, did you have
6 to fill out various forms?

7 A. Yes.

8 Q. Was that at the team meeting that you described?

9 A. Yes.

10 Q. Now, I'd ask you if you would to turn to Government
11 Exhibit Mitchell 1. That's found just at the beginning of the
12 C tab.

13 What is that form, Mr. Mitchell?

14 A. It's a student athlete statement.

15 Q. Did you fill that out at the team meeting prior to the
16 start of your last year at Iowa?

17 A. Yes.

18 Q. Was that on 8/25/85?

19 A. Yes.

20 Q. Let me ask you if you would to read Statement 5?

21 A. "I am not aware of any violations of NCAA regulations
22 that are involved with me or my institution."

23 Q. Was that statement true?

24 A. No.

25 Q. Why not?

1 A. Because I violated regulation rules, NCAA regulations
2 that I knew.

3 Q. What regulations were those?

4 A. I had a sports an agent and receiving money.

5 Q. Did you know at the time that you submitted this
6 certification that it was false?

7 A. Yes.

8 Q. Why did you submit it?

9 A. Because I wanted to play football and receive my
10 scholarship.

11 Q. Had you filled out one of these every year?

12 A. Yes.

13 Q. Let me ask you to turn to Government Exhibit Mitchell 2.
14 Is that your student athlete affidavit?

15 A. Yes.

16 Q. For financial aid?

17 A. Yes.

18 Q. And if you turn to Page 3, could you tell us is that your
19 signature there?

20 A. Yes.

21 Q. That was signed when?

22 A. 25th of August.

23 Q. At the same team meeting?

24 A. Yes.

25 Q. Actually, this one you had to sign under a notary oath,

1 is that right?

2 A. Right.

3 Q. And Question 5 on Page 2 asks whether at the present
4 time, you were receiving or had arrangements made for you to
5 receive from any source other than someone upon whom you were
6 naturally or legally dependent, any other money, loans,
7 credits, tangible property or benefits of any kind, not
8 covered by prior questions, because of your attendance in
9 college or involving -- or your participation in athletics; is
10 that right?

11 A. Right.

12 Q. Had you received those monies?

13 A. Yes.

14 Q. And you listed some there, is that right?

15 A. Yes.

16 Q. Did you list the monies that you had received from Norby
17 Walters and Lloyd Bloom?

18 A. No.

19 Q. Why not?

20 A. Because I knew if I put that down, I'd be ineligible to
21 play.

22 Q. And you filed one of these affidavits every year; is that
23 right?

24 A. Right.

25 Q. Let me ask you if you would to turn to Government Exhibit

1 3A. That's your Big Ten Conference Statement of Eligibility;
2 is that right?

3 THE COURT: Are you moving the admission of these
4 documents.

5 MR. PEARL: Yes, I will move the admission of
6 Mitchell 1, Mitchell 2, and I think Group 9B I didn't do yet.

7 MR. WEBB: No objection.

8 MR. KENNELLY: No objection.

9 THE COURT: They will be received.

10 (Government Exhibit Mitchell 1, Mitchell 2 and Group
11 9B received.)

12 MR. PEARL: And I will move 3A and 3B.

13 MR. KENNELLY: None.

14 MR. WEBB: No, I have no objection.

15 THE COURT: Likewise will be admitted.

16 (Government Exhibit Mitchell 3A and 3B received.)

17 BY MR. PEARL:

18 Q. Do you not have it before you, Mr. Mitchell?

19 A. I have B, 3B. Yeah, I got it now.

20 Q. Okay. And is that the Big Ten Conference Statement of
21 Eligibility that you filled out at that team meeting in August
22 of 1985?

23 A. Yes.

24 Q. And what's the date that you signed that?

25 A. 25th of August.

1 Q. And for instance, they asked you several questions
2 relating to your eligibility, is that right?

3 A. Yes.

4 Q. And one of them in Question 3, says, "Have you ever used
5 directly or indirectly your skill in your sport for financial
6 gain; is that right?

7 A. Right.

8 Q. Had you at that point?

9 A. Yeah.

10 Q. And you had done that by -- how would you have used it
11 for gain?

12 A. Well, I used it -- I signed with an agent.

13 Q. And took --

14 A. And took money, yeah.

15 Q. And that was in connection with your ability as an
16 athlete, right?

17 A. Right.

18 Q. And at the time that you filled this document out, were
19 you represented by an agent?

20 A. Yes.

21 Q. Who was that?

22 A. Norby Walters. Walters and Associates.

23 Q. So in Question 7, when you said in your response to the
24 question, "Have you ever signed a professional athletic
25 contract in your sport or been represented by an agent," And

1 you answered, "No," was that answered correct?

2 A. No.

3 Q. Let me ask you to turn to 3B. That form basically asks
4 you about sources and amounts of money that you received from
5 various places other than the university; is that right?

6 A. Right.

7 Q. Under loans, you do list two bank loans, right?

8 A. Right.

9 Q. One is a guaranteed student loan?

10 A. Right.

11 Q. And one was a loan from an Iowa state bank?

12 A. Right.

13 Q. Those loans, you signed notes for, right?

14 A. Yeah.

15 Q. And there was interest that was charged on those, right?

16 A. Right.

17 Q. Okay. And there was a payment plan set up for after your
18 graduation?

19 A. Right.

20 Q. Did you list the \$2,500 or the \$2,000 loan that you had
21 received from Mr. Walters and Mr. Bloom back in June of '85?

22 A. No.

23 Q. Did you list under "Other" or anywhere on that form, the
24 other monies, the wire transfers that you a had received from
25 Mr. Bloom or Mr. Walters?

1 A. No.

2 Q. Let me focus your attention please on Paragraph 5.

3 You certified there under penalty of ineligibility
4 for intercollegiate athletics and loss of financial aid that
5 those statements that you submitted were complete and
6 accurate, right?

7 A. Right.

8 Q. They weren't complete and accurate, were they?

9 A. No, they weren't.

10 MR. WEBB: Judge, could I object to the leading of
11 the witness, continual leading of the witness.

12 THE COURT: Fine.

13 BY MR. PEARL:

14 Q. Were those statements complete and accurate?

15 A. No, it wasn't.

16 Q. What did you understand in certifying that the penalty
17 would be if you didn't answer that completely and accurately?

18 A. That I would lose my scholarship and be ineligible to
19 play football.

20 Q. How often prior to this had you filed these forms?

21 A. Previous four years.

22 Q. Just a few more questions, Mr. Mitchell.

23 What was your understanding then of what what the
24 university would have done had it known that you didn't
25 disclose on here the fact that you had received monies from

1 sports agents in connection with the representation agreement?

2 MR. KENNELLY: Objection, your Honor.

3 THE COURT: I will sustain it.

4 MR. PEARL: Okay. I have nothing further, Judge.

5 CROSS EXAMINATION

6 BY MR. KENNELLY:

7 Q. Mr. Mitchell, I'm one of Norby Walters lawyers. I
8 believe you testified on direct that it was Ronnie Harmon who
9 first put you in touch with Mr. Bloom?

10 A. Right.

11 Q. And Mr. Harmon was one of your teammates and also one of
12 your friends, right?

13 A. Right.

14 Q. Okay. And Mr. Harmon told you that he knew Mr. Bloom and
15 Mr. Walters and they wanted to talk to you about representing
16 you, right?

17 A. Right.

18 Q. Okay. And did he tell you at the time, by the way, that
19 he was going to be paid a commission if you agreed to that?

20 A. No, he didn't.

21 Q. Now, Mr. Harmon put in a call to Mr. Bloom and introduced
22 you to Mr. Bloom over the phone; is that right?

23 A. Right.

24 Q. And that was in Mr. Harmon's apartment?

25 A. Right.

1 Q. Okay. Did he live off campus, at that time?

2 A. Yes, he did.

3 Q. Okay. And Mr. Bloom -- Mr. Bloom had never met you
4 before prior to that telephone conversation; is that right?

5 A. Right.

6 Q. And he talked to you on the phone and talked to you about
7 wanting to represent you as an agent?

8 A. Right.

9 Q. And I think your testimony was that he asked you if you
10 could come out to New York City to see him; is that right?

11 A. Right.

12 Q. And you said that you didn't think you could go out
13 right then because you didn't have enough money?

14 A. Right.

15 Q. Okay. So he said that he would send you an airplane
16 ticket to fly out there, correct?

17 A. Correct.

18 Q. And then you got a ticket the next day, I believe, by
19 Federal Express?

20 A. Correct.

21 Q. Where did that Federal Express ticket come to?

22 A. It went to Ronnie Harmon.

23 Q. Now, the conversation that you had with Mr. Bloom over
24 the telephone from Mr. Harmon's apartment, that concerned, I
25 think you said, that he could represent you, that he could get

1 endorsements and things like that; is that right?

2 A. Right.

3 Q. And that was all it concerned, other than him wanting you
4 to come out to New York and talk to him, right?

5 A. Excuse me?

6 Q. And that was all it concerned other than him wanting you
7 to come out to New York and meet with him and Mr. Walters,
8 right?

9 A. Right.

10 Q. Now, you in fact took the airplane ticket and then went
11 out to New York a few days later?

12 A. Yes.

13 Q. And I believe your testimony was that you went first by
14 yourself to Mr. Walters and Mr. Bloom's office down in
15 Manhattan, correct?

16 A. Right.

17 Q. And, again, the conversation, I think you said was pretty
18 much the same thing that Mr. Bloom told you over the phone,
19 except it was Mr. Walters doing the talk at this time, right?

20 A. Right.

21 Q. And that was the first time that you had ever met either
22 one of these two gentlemen?

23 A. Correct.

24 Q. Now, you told Mr. Walters and Mr. Bloom at this meeting
25 that you wanted to talk to your parents before you did

1 anything, correct?

2 A. Correct.

3 Q. And that was fine with them, right?

4 A. Right.

5 Q. In fact, they agreed to come to your parents' house so
6 that they could also talk to your parents, correct?

7 A. Correct.

8 Q. Now, did you say that that was the same day that they
9 came to your parents' house or later than that?

10 A. I believe it was the same day.

11 Q. The same day, okay. And your parents live, I think you
12 said in Brooklyn, rather than Manhattan; is that right?

13 A. Right.

14 Q. Okay. So Mr. Walters and Mr. Bloom both came to your
15 parents' house later on that day, sometime in the evening?

16 A. Yes.

17 Q. Now, when they got there, it wasn't just you who was
18 there at the house, right?

19 A. Right.

20 Q. I think you testified it was your father and your younger
21 brother and another gentleman by the name of Harris?

22 A. Right.

23 Q. It wasn't clear to me, Mr. Mitchell, was Mr. Harris, is
24 he an adult or a young man like yourself.

25 A. No, he's an adult.

1 Q. Okay. He was your father's age, a friend of your
2 father's?

3 A. Right.

4 Q. Had Mr. Walters or Mr. Bloom met any of those people
5 before that particular evening?

6 A. No.

7 Q. And did Mr. Walters or Mr. Bloom ask any of those other
8 people to leave the room at any time?

9 A. No.

10 Q. All right. And I think you said that you had a
11 conversation with Mr. Walters and Mr. Bloom and Mr. Walters
12 did most of the talking, right?

13 A. Correct.

14 Q. And these other people, Mr. Harris and your brother and
15 your father were all there during the conversation?

16 A. Yes.

17 Q. And at some point, it wasn't clear to me, did you excuse
18 yourself or did Mr. Walters and Mr. Bloom excuse themselves so
19 you could talk?

20 A. We excused ourselves.

21 Q. And what did you do when that happened?

22 A. We went outside and talked.

23 Q. When you say "we", was that you and your father and Mr.
24 Harris?

25 A. Yeah, me, my father, Mr. Harris.

1 Q. And also your brother?

2 A. No, my brother didn't come out.

3 Q. Okay. Did he stay in the room?

4 A. I don't know where he went.

5 Q. But in any event, the three of you went outside, outside
6 of Mr. Walters and Mr. Bloom's presence and you discussed what
7 you should do, correct?

8 A. Correct.

9 Q. And it was in the course of that discussion that you
10 decided to come back in and sign the agreement that Mr.
11 Walters had given you, correct?

12 A. Yes.

13 MR. PEARL: I object, your Honor, if he's going to
14 the substance of the conversation, for the same reason they
15 objected to Mr. Harmon's testimony.

16 MR. KENNELLY: I'll rephrase the question, your
17 Honor.

18 THE COURT: Thank you.

19 BY MR. KENNELLY:

20 Q. As a result of the conversation you had outside the room
21 with your father and Mr. Harris, did you, in fact, come back
22 in the room with the intention of signing the agreements?

23 MR. PEARL: Objection, Judge. I don't mind if this
24 is after, but I think as a result of calls for a conclusion.

25 BY MR. KENNELLY:

1 Q. After the conversation.

2 A. Can you say that again, please?

3 Q. After the conversation you had outside the room with Mr.
4 Harris and your father, did you come back in the room with the
5 intention of signing the agreements that Mr. Walters had
6 there?

7 A. As long as it was kept confidential, I was going to sign.

8 Q. Okay. And Mr. Walters had said something about he was
9 going to put it in his safe, right?

10 A. Right.

11 Q. And that's what he said about that, correct?

12 A. Correct.

13 Q. Now, do you still have -- I assume you got the two
14 contracts, I think they're Government Exhibit Mitchell 5 and
15 Mitchell 6.

16 Do you have both of those?

17 A. Yes, I got them.

18 Q. Okay. Mr. Pearl asked you about the dates that are on
19 those contracts and I think you pointed out that they both are
20 dated January the 4th and your Honor, I think the jurors have
21 these in the books, Mitchell 5 and Mitchell six.

22 Both of those agreements are dated at the top of the
23 first page, 4th day of January, 1986, correct?

24 A. Right.

25 Q. Let me focus you first of all on Mitchell 5, Mr.

1 Mitchell, the one that's entitled World Sports & Entertainment
2 Inc., Football Representation Agreement.

3 Do you have that there?

4 A. Yes.

5 Q. If you look about halfway down the first page there is a
6 paragraph that starts with a Number 2. You see that?

7 A. Yes.

8 Q. And that says, in the paragraph, "The term of this
9 agreement shall begin on the date first above written."

10 Do you see that there?

11 A. Yes.

12 Q. And what that meant was that Mr. Walters was going to
13 start representing you on the date that is written in the top
14 of the contract, correct?

15 A. That wasn't my understanding.

16 Q. Well, you weren't going to start negotiating with the NFL
17 or anything like that until you got out of school, isn't that
18 right?

19 A. Right.

20 Q. And this was an agreement to represent you, if you look
21 at the first paragraph, Number 1, "to exclusively represent,
22 advise, counsel and assist the player --" that's you " -- in
23 the negotiation," et cetera, et cetera, of playing contracts,
24 correct?

25 A. Correct.

1 Q. Okay. And that was not going to happen until after you
2 finished the football season at Iowa, correct?

3 A. Correct.

4 Q. All right. Looking at Mithcell 6 for a second, I think
5 it's on page -- well, first of all, this is, I think I had it
6 backwards, that last one we looked at was not the NFL
7 agreement, that was the one for USFL and the Canadian football
8 league, right?

9 A. right.

10 Q. In fact, then there was another football league besides
11 the NFL?

12 A. Right.

13 Q. Okay. Mithcell 6 is the agreement for the NFL, right?

14 A. Yes.

15 Q. Okay. If you look over on the -- well, look at the first
16 page there, paragraph numbered 1, where it says, "Contract
17 negotiation services", about four lines down, it says that
18 player, and, again, that's you, right, you're retaining the
19 contract advisor, and that's World Sports & Entertainment,
20 correct?

21 A. Right.

22 Q. You're retaining them to represent, advise and counsel
23 you in connection with negotiating a playing contract with the
24 NFL, right?

25 A. Right.

1 Q. And you weren't going to start negotiating a playing
2 contract with the NFL until after the season was over?

3 A. Right.

4 Q. The season in that particular year would end at the very
5 latest, on the first of January, 1986?

6 A. Right.

7 Q. Now, looking over Page 4 of that agreement, paragraph
8 numbered 6, which says Term, again, that reads, "That the term
9 of the agreement shall begin on the date hereof, which January
10 the 4th," correct?

11 A. Correct.

12 Q. And that's because that's when Mr. Walters and Mr. Bloom
13 were going to start negotiating and representing you to try to
14 get a contract with the National Football League or one of
15 those leagues, right?

16 A. Yes.

17 Q. Okay. Now, I think you also testified that after --
18 well, let me ask you a question.

19 Both of those contracts there have a blank on the
20 last page for parents, signature of a parent or guardian if
21 you're under 21.

22 You were over 21 at the time, right?

23 A. Yes.

24 Q. Okay. And you signed both of these agreements of your
25 own, of your own free will, correct?

1 A. Right.

2 Q. Okay. Now, Mr. Mitchell, you also testified about these
3 wire transfers that were sent to you out in Iowa.

4 You can put these aside and I'm done with those
5 exhibits, your Honor.

6 You testified about these wire transfers that you got
7 out in Iowa. Do you remember that?

8 A. Yes.

9 Q. And I think you testified that sometimes you would ask
10 Mr. Walters or Mr. Bloom to send money orders or not money
11 orders, but wire transfers to people other than yourself,
12 right?

13 A. Right.

14 Q. And sometimes airplane tickets; is that right?

15 A. Yeah, one, a couple of times.

16 Q. Okay. And there was -- these were things that you asked
17 them to do, correct?

18 A. Right.

19 Q. And they did it, at your request, right?

20 A. Right.

21 Q. You had a fairly good relationship with Mr. Walters and
22 Mr. Bloom, didn't you?

23 A. Yes.

24 Q. And they always treated you fairly?

25 A. Yes.

1 Q. Okay. Now, you talked about, when you were getting these
2 wire transfers in Iowa City, that sometimes you got them at
3 the bus depot and sometimes you got them -- my notes are --

4 A. Truck stop.

5 Q. The truck stop, okay. And I think you said that you
6 switched back and forth a couple of times, correct?

7 A. Right.

8 Q. And that was a decision you made, correct.

9 A. Right.

10 Q. And then you called someone up and you said, "please Send
11 the wire transfer to this different place?".

12 A. No, Western Union just sends it and I just go different
13 places. You pick it up any place.

14 Q. You make the decision where to go, isn't that right?

15 A. Right.

16 Q. Now, Mr. Mitchell, your understanding -- well, they were
17 advancing all of this money to you before they were actually
18 going to start negotiating or representing you for a contract
19 to get a contract with the NFL, right?

20 A. Right.

21 Q. And your understanding was that all of the money that
22 they were advancing you was in a form of an advance or loan
23 that was going to be paid back if and when you got a contract,
24 right?

25 A. Right.

1 Q. And that was in fact what Mr. Walters told you at this
2 meeting that you had at your parents' house, right?

3 A. Right.

4 Q. And you in fact knew that you would have to repay that
5 when you signed a contract with a professional team?

6 A. Right.

7 Q. And in fact, you did repay it when you signed, right?

8 A. Right.

9 Q. Did you originally sign with the Lions?

10 A. Yes.

11 Q. Okay. So you've been with the same team all the way
12 through?

13 A. Yes.

14 MR. KENNELLY: Your Honor, I am at a place where I'm
15 going to move on to another subject.

16 THE COURT: Ladies and Gentlemen, how much of a
17 hardship would it be upon you to wait till the conclusion of
18 this witness to adjourn rather than going home now?

19 Pose you a problem? It would be my preference, and
20 then let's go on that way then.

21 MR. KENNELLY:

22 Q. Now, Mr. Mitchell, I'd like to talk a little bit about
23 your time at the University of Iowa.

24 You were there on a scholarship for all five years,
25 right?

1 A. Yes.

2 Q. And there was some testimony about you -- you didn't play
3 football one of those five years, is that right?

4 A. Correct.

5 Q. That was the first year you were there?

6 A. I didn't play on the varsity. I was on the varsity. I
7 didn't play per se on a team. I practiced with the team.

8 Q. Okay. Is that what's called red shirting?

9 A. Yes.

10 Q. Can you just describe what it is that red shirting is?

11 A. Basically, red shirting is what happens to a freshman,
12 who usually wears a red shirt as a freshman when they first
13 come in because they are young, they have talent, that you
14 know they have talent and you know if they play for you and in
15 the future in which you're trying to do -- you're trying to
16 save them that year that they would lose if they would need a
17 red shirting.

18 Q. Okay. So it's sort of like a way of seasoning --

19 A. Right. Like dropping you back, it's like pulling you
20 back.

21 Q. By the time you're eligible to play, you would just be
22 that much more better or that much more qualified in skill?

23 A. Not really. You will be able to use your ability instead
24 of wasting it. I'm saying, they could have a senior, like if
25 you're a freshman, you have a senior at your position, both at

1 the same position, instead of wasting your talent, your
2 talents and losing your year and playing that senior, they
3 just red shirt you, delay the senior, and then they have you
4 for four years.

5 Q. Okay. So in other words, it's a situation where if you
6 are actually playing on the team, you would probably spend
7 most of the time on the side lines?

8 A. Correct.

9 Q. So they hold you back a year, so that whoever is in that
10 position will be gone and then you will be able to start or to
11 participate more?

12 A. Yes.

13 Q. Okay. And that's what was done the first year that you
14 were at Iowa, correct?

15 A. Yes.

16 Q. But you were still on a scholarship for that year, right?

17 A. Yes.

18 Q. Now, did you practice and work out and watch the films
19 and all that with the football team the first year you were
20 there?

21 A. You do everything that everybody else does, the only
22 thing you don't do, is you don't travel, you don't play and
23 you don't dress.

24 Q. And you don't --

25 A. You don't dress.

1 Q. You don't suit up for the games?

2 A. They suit, like you might suit up once or twice, but
3 that's about it.

4 Q. Okay. Now, Mr. Mitchell, when you were at the
5 university, you had to do a lot of hard work to earn that
6 scholarship, didn't you?

7 A. Explain what you mean by --

8 Q. Well, you had to practice and work with the football
9 team, correct?

10 A. Yes.

11 Q. And that's not just during the football season, right?

12 A. Right.

13 Q. You have conditioning during the off season and spring
14 practice and things like that, correct?

15 A. Right.

16 Q. And besides having to work out with the football team and
17 do all of those things, you had to go to school, correct?

18 A. Right.

19 Q. And in fact, it was a requirement of your scholarship
20 that you remain academically eligible and continue going to
21 class, right?

22 A. Right.

23 Q. And you had besides a load of classes, you also had
24 this -- the work and conditioning and all that that you had to
25 do for football, right?

1 A. Right.

2 Q. And you did all of that, right, you both -- you went to
3 class and you worked out with the football team?

4 A. To the best of my ability.

5 Q. Okay. And in fact -- well, if you had one year at the
6 end of the year, decided that you weren't going to play
7 football anymore, would you have been entitled to a
8 scholarship for the next year?

9 A. Yes, they wouldn't take my scholarship away.

10 Q. So even if you -- after the first year you were there,
11 you decided, "I'm not going to play football anymore," not for
12 any injury or anything like that, you just decided you didn't
13 like to, you're saying that they would continue to give your
14 scholarship?

15 A. Yes.

16 Q. You were there on an athletic scholarship, right?

17 A. Right.

18 Q. Are you aware or am I incorrect that those scholarships
19 are given on a year-by-year basis?

20 A. Yes.

21 Q. Okay. And the university has a certain number of
22 scholarships that it can give out in a given year, right?

23 A. Yes.

24 Q. So your testimony is that even if you weren't going to be
25 on the football team or one of the football players, the

1 athletic department or the coaches would give you one of the
2 athletic scholarships, even if you didn't want to play?

3 A. Well, what they would do is they would like, a friend of
4 mine, they would just switch it, they would not be giving you
5 a medical scholarship, or what they would do, to their best
6 ability, they would try to help you out, they would either pay
7 for your room and board, or pay for your books or try to do
8 both if they can.

9 Q. You said -- did you say medical scholarship?

10 A. Yes.

11 Q. I don't understand what you mean?

12 A. Medical scholarship is something where you're not
13 medically fit to play anymore but you're still on a
14 scholarship.

15 Q. I wasn't talking about a situation where you broke your
16 leg, like Mr. Harmon did when he was a junior, I'm talking
17 about a situation where you decide, "I don't like the game
18 anymore. I don't like the game of football, and I'm not going
19 to play anymore." You're saying they could give you a medical
20 scholarship in that kind of situation?

21 A. It depends on the situation. If you hurt your knee or
22 something like that, and you don't want to play anymore, they
23 just give you a medical.

24 Q. I'm sorry, I guess I'm not phrasing my question clearly.

25 The question is, Mr. Harmon, if you were to decide,

1 you're in perfect health whatsoever, let's say, perfect health,
2 everything is working just fine, and you decide at the end of
3 a football season, one year, "I don't like going out there and
4 getting banged up on Saturdays anymore, and I'm not going to
5 play anymore," is it your testimony that you would continue to
6 get a football scholarship for the remainder of your time in
7 college.

8 MR. PEARL: Objection. Relevance.

9 THE COURT: Sustained. Move on.

10 BY MR. KENNELLY:

11 Q. Well, in any event, Mr. Harmon you had managed to --

12 A. Mitchell.

13 Q. I'm sorry. I'm not tracking.

14 Mr. Mitchell, I apologize. You did all the school
15 work and the football work for your scholarship, right?

16 A. Yes.

17 Q. And you think that you earned your scholarship, don't
18 you?

19 A. Yes.

20 Q. You did your best for the football team?

21 A. Yes.

22 Q. And you did your best in your classes, right?

23 A. Not really.

24 Q. Okay. You did the best -- you tried, you did the best
25 you could?

1 A. No.

2 Q. Okay. Well, at least as far as the football part of it
3 is concerned, you did the best you could, outside on the
4 practice field and on the football field?

5 A. Right.

6 Q. And that was true even after you had signed this
7 agreement with Mr. Walters and Mr. Bloom, right?

8 A. Right.

9 Q. Okay. Now, Mr. Harmon, -- I did it again -- Mr.
10 Mitchell, do you still have -- well, you don't have to look at
11 them unless you want to, the three forms, or the four forms
12 Mr. Pearl showed you, the forms that you filled out at the
13 team meeting.

14 Let's talk.

15 Those four forms, Mitchell 1, 2, 3A and 3B, did I
16 hear you correctly, those were all filled out at a team
17 meeting sometime in August?

18 A. Yes.

19 Q. And they were all filled out at this same meeting?

20 A. Right.

21 Q. And I think one of them, you were asked a question, I
22 think it's Mitchell 2, you had to sign in front of a notary
23 public, was that person at the meeting?

24 A. I cannot recall.

25 Q. But you signed all these forms at this same team meeting,

1 right?

2 A. Yes.

3 Q. And they were all given to you right there and you filled
4 them out and signed them, right?

5 A. No.

6 Q. Pardon me?

7 A. No. They explained each one of them and then, after
8 everything was understood, we signed them.

9 Q. After they explained them, you filled them out and signed
10 them?

11 A. Yes.

12 Q. Okay. You didn't go outside the room and put in a call
13 to Mr. Walters or Mr. Bloom or anything like that?

14 A. No.

15 Q. In fact, these forms, you never gave these forms or
16 discussed them with either of those people, right, Mr. Walters
17 or Mr. Bloom?

18 A. No.

19 Q. That's correct, that you didn't discuss it?

20 A. No, I didn't discuss it with, no.

21 Q. Now, there was some testimony about this Pretrial
22 Diversion Agreement that you signed, you remember that?

23 A. Yes.

24 Q. Okay. And you signed that sometime last summer, right?

25 I think it was in June, I may be wrong.

1 A. Yeah, I believe I signed it in June.

2 Q. If you got it up there, it's Mitchell 12. The date is
3 not important.

4 Mr. Mitchell, you don't think you cheated the
5 University of Iowa out of a scholarship, do you?

6 A. What do you mean by "cheating"?

7 Q. Well, you did your best for the football team, right?

8 A. Yes.

9 Q. And you kept going to classes and you signed up for
10 classes and you did your school work, maybe not quite as well
11 as you could, but --

12 THE COURT: Haven't these questions been asked and
13 answered?

14 MR. WEBB: They have, your Honor.

15 THE COURT: Then in deference to the time, let's not
16 repeat them, please.

17 BY MR. KENNELLY:

18 Q. Well, do you think you defrauded the University of Iowa
19 out of anything?

20 MR. PEARL: Objection, Judge, we have been through
21 this.

22 THE COURT: I don't know how many times we discussed
23 that at sidebar, and if I have to, I'll explain it, what all
24 of that was to the Ladies and Gentlemen of the Jury. I
25 presume you prefer that I don't.

1 MR. KENNELLY: Very well, your Honor.

2 THE COURT: Then avoid it.

3 MR. KENNELLY: I will move on.

4 MR. KENNELLY:

5 Q. Mr. Mitchell, their came a time in sometime in June OF
6 1985, didn't their, when you got a letter saying that you
7 would not be eligible to play for the fall?

8 A. June of '85.

9 Q. June -- I think that's correct?

10 A. Yeah, yeah, okay, I remember.

11 Q. You remember that?

12 A. Yes.

13 Q. And that was a letter from Mr. Mims, who was one of the
14 assistant athletic directors?

15 A. Yes. Mr. Mims is also the sort of advisor to the
16 football team, right?

17 A. Yes.

18 Q. And he sent you a letter saying that you were not going
19 to be eligible for the fall season, correct?

20 A. Correct.

21 Q. And what was the reason for that ineligibility?

22 A. I can't remember. Either was my hours or grade point,
23 one of the two.

24 Q. Had something to do with academic work?

25 A. Yeah.

1 Q. Okay. And Mr. Mims asked you to come in and see him
2 about that, right?

3 A. Right.

4 Q. Okay. And you didn't want to be ineligible for the fall,
5 did you?

6 A. No.

7 Q. In fact, you wanted to be able to play football because
8 that was your last year?

9 A. Right.

10 Q. And since you had already been there four years and you
11 were coming up on your fifth year, if you didn't play that
12 year, you won't be able to play at the university anymore,
13 right?

14 A. Right.

15 Q. Okay. And when you went -- you did go in to see Mr.
16 Mims?

17 A. Yes.

18 Q. And he didn't want you to be ineligible for the fall
19 either, did he?

20 A. No.

21 Q. Okay. And you and he discussed what you might do in
22 order to make yourself eligible for the fall, right?

23 A. Yeah, he told me my options.

24 Q. What did he tell your options were?

25 A. Well, he just said, "Devon, take a class and get what

1 you're required to get or you just don't play."

2 Q. Did you have some sort of an academic advisor that you
3 worked with in helping you to pick classes out?

4 A. I didn't, I didn't go to them.

5 Q. Okay. Did the team of people who were assigned to it
6 that would help do that?

7 A. Yes.

8 Q. Now, when you -- when you got this letter about your
9 ineligibility for the fall, did you try to pick out some sort
10 of a course to take during the summer?

11 A. Yes. Yeah, I picked out a course.

12 Q. Did you work with the academic advisor at all in there?

13 A. No.

14 Q. Did anybody give you any suggestions of any kind as to
15 what course to take?

16 A. No.

17 Q. All right. And you did take a course during the summer,
18 right?

19 A. Yes.

20 Q. Was it a physical education course of some kind?

21 A. Was it?

22 Q. I can show you the transcript if you want. It's -- do
23 you remember what it was?

24 MR. PEARL: Judge, I object to the relevance, what it
25 was.

1 THE COURT: I don't know, but I know it's ground that
2 has been covered through a different witness.

3 MR. KENNELLY:

4 Q. Oh, Mr. Mitchell, there came a time -- well, after you
5 signed this Pretrial Diversion Agreement, one of the things in
6 the agreement, you agreed to pay back -- the scholarship for
7 the two semesters of your last year, right?

8 A. Correct.

9 Q. After the football season was over, you basically
10 withdrew from your classes, right?

11 A. Right.

12 Q. Didn't attend school anymore?

13 A. Right.

14 Q. Okay. And despite that, part of your agreement in the
15 Pretrial Diversion Agreement is that you're going to pay them
16 back the scholarship for the second semester?

17 MR. PEARL: I object to this. That's a
18 mischaracterization. If he wants to focus his attention to on
19 a paragraph in the agreement, I have no problem with that.

20 MR. KENNELLY: Do you have the agreement there?

21 MR. PEARL: I have a copy, your Honor.

22 BY KENNELLY:

23 Q. Do you have Mitchell -- I think it's 12, it's not
24 numbered.

25 THE COURT: 10.

2 MR. KENNELLY: Do you have Mitchell 10 up there, Mr.
3 Mitchell.

4 BY THE WITNESS:

5 A. Yes.

6 Q. Okay. That's the Pretrial Diversion Agreement that you
7 signed?

8 A. Yes.

9 Q. If you look over on Page 2, the paragraph numbered 5, it
10 says:

11 "Devon Mitchell agrees to make restitution to the
12 university of all monies he received from the
13 university, which money he was not entitled to
14 receive; as a result of his having signed a
15 representation agreement with and received money
16 from a sports agent."

17 Do you have that paragraph there?

18 A. Yes.

19 Q. Do you have an understanding as to what you're supposed
20 to pay back under that agreement?

21 MR. PEARL: Judge, I object. Again, they objected to
22 his understanding before.

23 THE COURT: Why don't you ask him what he did pay
24 back.

25 MR. KENNELLY:

Q. Have you paid back any of it?

1 A. No.

2 Q. Do you know what you're supposed to pay back, has anybody
3 told you?

4 A. No, we haven't gone through it yet.

5 Q. So you don't know whether you're supposed to pay back the
6 first semester or the first and second or what it is?

7 A. I don't know.

8 Q. Okay. Has the University of Iowa contacted you about
9 that at all?

10 MR. PEARL: Objection, Judge. We have been through
11 that.

12 THE COURT: I think we have. Sustained.

13 MR. KENNELLY: If I may have just a moment, your
14 Honor

15 That's all I have.

16 THE COURT: Mr. Webb, how long do you anticipate,
17 sir?

18 MR. WEBB: I'm afraid, I have a bit. I would
19 estimate 45 minutes roughly.

20 THE COURT: That a problem to you?

21 Yes is a satisfactory answer. I'll excuse you. We
22 will be back in the morning. 10:00 o'clock.

23 (Adjournment at 4:45 o'clock p.m. until 10:00 a.m. on
24 March 9, 1989.)

25

DOCKETED

AUG 9 - 1989

FILED-ED5

542

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

88 AUG -7 PM 4:54

**CLERK
U.S. DISTRICT COURT**

1 UNITED STATES OF AMERICA,)

2 Plaintiff,)

3 -vs-)

4 NORBY WALTERS and LLOYD BLOOM,)

5 Defendants.)

No. 88 CR 709

Chicago, Illinois

March 9, 1989

10:00 a.m.

RECEIVED
DEC 10 1990
H. STUART CUNNINGHAM
CLERK, U. S. DISTRICT COURT

9 REPORT OF PROCEEDINGS
10 BEFORE THE HONORABLE GEORGE M. MAROVICH

11 For the Plaintiff:

MR. ANTON R. VALUKAS

12 MR. HOWARD M. PEARL

13 MS. HELEN B. GREENWALD

14 For the Defendants:

MR. ROBERT GOLD

15 MR. ETHAN LEVIN-EPSTEIN

16 MR. MATTHEW KENNELLY

17 MR. DAN K. WEBB

18 MR. STEVEN F. MOLO

19 MR. GEORGE LOMBARDI

U.S.C.A. - 7th Circuit
FILED
AUG 9 1989
THOMAS F. STRUBBE
CLERK

23 Official Court Reporter:

Geraldine D. Monahan
219 South Dearborn Street
Room 1728
Chicago, Illinois 60604
(312) 435-6890

270

1 THE CLERK: Court is back in session.

2 MR. VALUKAS: Good morning, your Honor.

3 THE COURT: Good morning. Please be seated.

4 Before we have the ladies and gentlemen of the jury
5 out here, I thought maybe we could dispose of a couple of other
6 items.

7 First of all, there was a motion that the parties
8 were awaiting ruling on as to subpoenas to issue to law firms
9 other than Shea & Gould. Is that correct?

10 MR. KENNELLY: Yes, your Honor. And we intend to
11 file this afternoon about a one-page reply to the Government's
12 motion.

13 THE COURT: I'm going to give you about a half page
14 answer without you killing any more trees. I know everything I
15 need to know about it, and we will dispose of it right now.

16 MR. KENNELLY: Okay.

17 THE COURT: The issue here essentially is that the
18 Government is aware that Mr. Walters and Mr. Bloom and/or their
19 corporation was dealing with firms other than Shea & Gould. Is
20 that correct?

21 MR. VALUKAS: That's correct

22 THE COURT: And the Court has ordered subpoenas to go
23 forth as to Shea & Gould. And it is the contention of Mr.
24 Walters that while he has waived his privilege as to -- his
25 attorney-client privilege as to Shea & Gould, he has not waived

1 them as to those other attorneys. Is that a succinct statement
2 of the issue?

3 MR. GOLD: It is indeed, your Honor.

4 THE COURT: There were briefs submitted by both
5 sides, and the defendant cited two cases for the proposition
6 that the waiver should be limited only to the one attorney that
7 your advice is relied on rather than anybody you might have
8 discussed that question with. Is that not true?

9 MR. GOLD: I would phrase it slightly differently.

10 THE COURT: Well, you phrase it for me and I'll
11 accept it.

12 MR. GOLD: Our position was that the waiver was not
13 confined to the one attorney but one firm of attorneys, and
14 that firm being the Shea, Gould firm that I referred to in my
15 opening.

16 THE COURT: In any event, two cases were cited as
17 authority for the proposition. Both of them are District Court
18 cases. Neither are the District Court here in the Northern
19 District of Illinois. The first one is the Main case, which to
20 say that they discussed the subject rather perfunctorily, and
21 in the context of the Main rules, I think is an accurate
22 statement. The second case kind of doesn't discuss it at all.
23 It just says: Well, we know about the Main case and nobody has
24 told me anything else so we will go with the flow, and ruled
25 accordingly.

1 Neither case dealt with it in the context that we
2 have it here, namely, with the advice of counsel. These
3 privileges, be they attorney-client, be they doctor-patient,
4 priest-penitent, are here for a reason. And they are to
5 preserve the confidentiality of those relationships. And if
6 the normal truth-seeking processes that supposedly go on in
7 courts of law must yield for the greater good to those
8 privileges, so be it. They are obviously capable of being
9 waived.

10 Mr. Walters, in any event, has chosen to go forth
11 with the advice-of-counsel defense, saying, essentially, I did
12 not have this state of mind that is sufficient to prove fraud
13 because I was acting upon the advice of counsel.

14 That, in my judgment, is putting his good faith at
15 issue and waiving the confidentiality of the advice that he is
16 relying upon. But it seems to me that he cannot selectively
17 disclose advice. If he is putting his good faith here at
18 issue, it seems to be appropriate inquiry to see whether he is
19 going, for example, from lawyer to lawyer until he finds one
20 who is telling him what he wants to hear.

21 Fairness dictates to me that he has waived his
22 privilege as to all advice he received on the topic. And if
23 this is new law here in our district, so be it. But those
24 subpoenas will go forward as requested.

25 MR. WEBB: Your Honor, just for the record, your

1 Honor knows that, as far as the Shea & Gould law firm, that I
2 had filed a motion for severance on the grounds that my client
3 was also represented by that law firm. And I filed an
4 affidavit as an offer of proof and I filed a motion for
5 severance, and your Honor denied it.

6 I would just simply like on the record to state that
7 -- can I ask that that affidavit stand as an offer of proof as
8 to Weil, Gotshal, because the same identical relationship
9 existed where Mr. Bloom was a client of Weil, Gotshal and
10 therefore, I won't repeat everything we talked about for days,
11 but I renew my motion for severance on the grounds that my
12 client is being compelled to waive the privilege.

13 THE COURT: I have ruled that the privilege was that
14 of the corporation and not the people individually. That's
15 still my judgment.

16 As far as the severance, essentially, severance is
17 required, in general terms, when one defendant has an
18 antagonistic defense to his co-defendant which has the
19 potential of requiring a finding of guilty to the second
20 defendant if you are going to acquit the first. That is
21 clearly not the case here. And if the jury is of the opinion
22 that this advice-of-counsel defense exists, it certainly exists
23 both for Mr. Bloom and Mr. Walters, and my rulings would be the
24 same.

25 Now there is another thing --

1 MR. WEBB: My motion --

2 THE COURT: Is denied.

3 MR. WEBB: Thank you.

4 THE COURT: Another thing, just because I'm not sure
5 that last night when we were doing some clarification that we
6 had our conclusions of the record, I will take just a minute
7 before the jury comes in to do that.

8 Now, certain questions have been discussed here at
9 sidebar, and the Court, at least in my opinion, has given clear
10 guidance to counsel as to what is relevant and proper areas of
11 inquiry here.

12 Suffice it to say I will instruct the jury as to the
13 law, and based on those instructions and the evidence presented
14 here in open Court, the jury will decide whether Mr. Walters
15 and/or Mr. Bloom are guilty of fraud and other things as
16 charged in this indictment. I am not going to allow any
17 witness to give any opinion as to whether or not a fraud
18 occurred. Witnesses are supposed to testify to facts. And
19 they are not, with exception, to give opinions. They are not,
20 without any exception, allowed to instruct the jury as to the
21 law.

22 Now, all witnesses can testify to facts if they are
23 relevant. Information may be interesting or it may be
24 exciting, but it's not going to be heard here unless it has a
25 bearing or is probative as to some issue that is before the

1 Court in this case.

2 Since the defendants and the players named in the
3 indictment are confronted with allegations of fraud, their
4 respective states of mind are in issue. Their intent is a
5 issue. And, therefore, factual questions having a bearing on
6 that issue are relevant.

7 The states of mind of the alleged victims are the
8 fraud -- of the fraud are not an issue here, however. And,
9 accordingly, any questions about their state of mind are
10 irrelevant and will not be allowed.

11 By way of further clarification as to what is
12 relevant, counsel will be limited by the charges in the
13 indictment and the pretrial rulings which the Court has made.
14 I remind you that specific defendants have been charged with
15 specific offenses against specific institutions in connection
16 with their dealings with specific intercollegiate football
17 players at those institutions. What other people at other
18 institutions do or did is not relevant to these proceedings.
19 We are not going to examine every sin allegedly committed by or
20 against intercollegiate athletics, or the wisdom or propriety
21 of the rules governing intercollegiate sports except as they
22 have a bearing on some issue that is before this Court.

23 The things that are relevant, however, certainly fall
24 within this broad generalization. As I said, specific players
25 together with -- well, we are talking about specific people at

1 specific places. And certainly if there are things that
2 happened at those universities or if there were other matters
3 that may have rendered these athletes ineligible, they
4 certainly have a bearing on whether or not these defendants
5 defrauded these institutions. So things that have happened
6 internally in general terms have a relevance, and it is -- the
7 best example are the inquiry into the grades.

8 Whether or not football players take easy courses or
9 hard courses I don't think is relevant. Whether or not they
10 are academically ineligible because of the courses they have
11 taken, that is relevant, and it is for that reason that I have
12 allowed it to be pursued.

13 There are certain things that are in a gray area and,
14 if I have learned anything in the short time we are on trial,
15 the lawyers here are good enough to push it to the edge. I
16 just want to avoid as many sidebars and we can, and I would
17 hope that this generalization of what is relevant and not
18 relevant in my judgment would be helpful in eliminating some of
19 them.

20 Is there anything I am not clear about, people?

21 MR. WEBB: One thing, Judge. And I understand
22 everything you said except on one point. I understand exactly
23 what we can do with the players.

24 With the universities that are the victims
25 themselves, I want to make sure I don't go into the gray area,

1 and I want to make a very brief offer of proof, Judge, and then
2 you can tell me if I can't go into it.

3 I mentioned yesterday, I don't know if we were on the
4 record, we may just have been in chambers.

5 THE COURT: That's why I'm taking it up now. I don't
6 think we were on the record.

7 MR. WEBB: Judge, with the University of Iowa witness
8 Mims, I wanted to go into a line of cross examination that I
9 believed would establish that in fact through the conduct, not
10 through opinion but through the conduct of the University of
11 Iowa, that its conduct was inconsistent with having been
12 defrauded or cheated out of the property at issue here, the
13 scholarship. And I wanted to inquire into the specific conduct
14 they engaged in, including a thorough investigative report that
15 they prepared in which they never alluded or in any way
16 suggested they were cheated out of the scholarship, and, in
17 fact to the contrary.

18 I wanted to inquire into specific conduct that the
19 University of Iowa engaged in, such as not requesting
20 restitution, the type of conduct that would indicate that in
21 fact this theft of the scholarship was an after-acquired
22 thought when the Government investigation started.

23 The reason that's important to me, Judge, is that it
24 is my defense that a crime did not occur here. And I agree I
25 cannot ask them their opinion, and I do not intend to do that.

1 But I did want to go into conduct that they engaged in which I
2 believe to be inconsistent with the theft of the scholarship.
3 And that is essentially the second line of cross that I wanted
4 to go into, and I think we talked about it in chambers so I'll
5 put it on the record, is that because of the Court's ruling
6 under McNally, I accept everything the Court said about the
7 scholarship and your view of McNally.

8 However, for the record, I believe that we have to be
9 able to cross examine the witnesses to pinpoint in the record
10 what is the actual property that the university at least says
11 it was cheated out of. I need to find out about the nature of
12 the scholarship. I need to know at least whether -- at least
13 for the record, Judge, whether they're contending they lost
14 money or whether they lost the right to allocate scholarships.
15 Or a third possibility is they actually lost the right to
16 receive accurate information, which I think I indicated in
17 chambers I believe the 7th Circuit has held is not actually
18 recognizable under McNally.

19 THE COURT: And -- are you through?

20 MR. WEBB: Well, and, therefore, that line of cross
21 examination I also tried to pursue with Mr. Mims, and I believe
22 the Court sustained the objection.

23 So those are two lines of cross examination if you
24 tell me I can't go into with any of the university witnesses I
25 will abide by, and I will do it witness by witness. I'll do

1 whatever you want.

2 THE COURT: You can't do it.

3 MR. GOLD: Your Honor, would the record indicate that
4 I join in that offer and will abide by the ruling.

5 THE COURT: That is something that we discussed
6 yesterday. And while you chacterized it as conduct, I
7 chacterize it as opinion as to what is or what is not fraud.
8 The jury is going to get all they need to know about that from
9 me rather than some other witness. And, therefore, I hope that
10 gives you the clarification you need.

11 MR. WEBB: It does that. Could I just complete my
12 offer on this one point, Judge?

13 THE COURT: Sure.

14 MR. WEBB: As far as opinion, to the extent that this
15 would be viewed by yourself, by the Court, as opinion testimony
16 from the victim, the dilemma I'm in is that the Government on
17 direct examination is offering into evidence -- for example,
18 with Mr. Mims, they offered into evidence the opinion of my Mr.
19 Mims as to what he would have done on -- as far as receiving
20 these certificates of eligibility, that he would not have
21 awarded or he would have revoked an existing scholarship.

22 When a witness gives an opinion like that, which is
23 really the property that we are dealing with her, I feel I
24 should be able to cross examine him about that opinion, which
25 may require to go into other opinions.

1 That's my record.

2 THE COURT: I, as I indicated to you last night, do
3 not see that as an opinion. It is a statement of what he did
4 or did not do. He's not not getting up here and saying this is
5 fraud because so and so. He's is just telling you something.
6 I would not have issued that scholarship if I would have known
7 that. It can be for another very relevant point. It is called
8 "reliance."

9 And without being wishy-washy, Mr. Webb, you can't do
10 it.

11 THE COURT: Now are we ready for the jury?

12 MR. VALUKAS: We are.

13 THE COURT: Let's have them.

14 Do we have Mr. Mitchell? Is he here and ready to
15 take the stand?

16 MR. VALUKAS: He is. We'll bring him right in.

17 MR. WEBB: Judge, let me ask one question. I just
18 don't want to ask a question -- with the players -- let's do it
19 at sidebar.

20 THE COURT: Yes.

21 (Sidebar conference.)

22 THE COURT: You want to know if you can inquire into
23 things that are contained in the pretrial diversion order,
24 namely, restitution, and whether they were requested to?

25 MR. WEBB: Yes.

1 THE COURT: I will let you ask the question whether
2 they did, but I won't let you ask the question whether they
3 were asked to.

4 MR. WEBB: I can't ask them if the University
5 requested them to make restitution?

6 THE COURT: That's right.

7 MR. VALUKAS: Excuse me, Your Honor, Mr. Webb, Mr.
8 Gold, we have a short --

9 THE COURT: I think we have a follow-up question.

10 MR. VALUKAS: Just so the Court knows, --

11 THE COURT: Are you down there, Geraldine?

12 MR. VALUKAS: Judge, we will be objecting in
13 connection with if we are outside the scope of the direct in
14 connection with these things. If questions are not asked of a
15 particular witness and we are going far afield with that
16 witness, we will begin to object if there's is a question he
17 can't answer. We just want to move this along.

18 MR. WEBB: Under the Federal Rules of scope of
19 direct, the rules say anything that relates to, modifies or has
20 any connection with the direct is admissible. The scope of
21 direct in the Federal Rules is very broad.

22 THE COURT: Save your breath. I'm going to let you
23 do it for another reason. It has to do with logistics. If you
24 are not going to get it on cross, you have a right to call him
25 as your witness anyway, and I would just as soon get him in and

1 out of here and get it done.

2 MR. VALUKAS: The question is going to be this. For
3 instance, with Devon Mitchell, if Mr. Webb is going to attempt
4 to ask Devon Mitchell to make a determination, which is the
5 school's determination, as to whether he's eligible, we will
6 object, because that's what he attempted to do with Harmon. He
7 had Mims on that question.

8 Devon Mitchell has nothing to do with the
9 determination of eligibility, and that's to be done by the
10 school. And that's what that question is. If it's done and he
11 just simply reads off the course and asks was this a course you
12 took and did you think, that's not a determination the student
13 makes. That is made by the school.

14 THE COURT: I don't how this is going to play for
15 sure here. I can't anticipate everything that you may or may
16 not do. Ask him when you took these courses if some faculty
17 advisor talked to you about it, and this and that.

18 MR. PEARL: Your Honor made clear, I thought, that
19 when it comes to cumulative evidence that we're going to start
20 --

21 THE COURT: Then I'll make a deal with you right now,
22 Howard. Don't you call any more athletes and I won't let him.

23 MR. VALUKAS: You also made the point that if the
24 purpose of what's been done is the purpose of reading off the
25 courses so you can suggest what they are doing is taking soft

1 courses, that's irrelevant. Mims testified yesterday that he
2 was in fact academically eligible in connection with that.
3 Unless he's going to have Devon Mitchell testify as to his
4 interpretation, which he can't because academic eligibility is
5 established by the school, not by Devon Mitchell. So what he
6 did here is a subterfuge for the purpose of going through the
7 courses and saying this was a soft course and this was a soft
8 course.

9 THE COURT: You know, I don't want these guys to be
10 held up to ridicule or poked fun at.

11 MR. WEBB: I am not going to do that.

12 THE COURT: But I'm not going to take away every bit
13 of -- way you have of doing this thing. Let's just play it
14 down the middle if we can.

15 (End of sidebar conference.)

16 (JURY IN.)

17 THE COURT: Please be seated.

18 Mr. Mitchell, I remind you, sir, that you are still
19 under oath.

20 I believe we are ready for you, Mr. Webb.

21 DEVON MITCHELL, GOVERNMENT'S WITNESS, PREVIOUSLY SWORN.

22 CROSS EXAMINATION

23 BY MR. WEBB:

24 Q. Good morning, Mr. Mitchell. My name is Dan Webb. I don't
25 think we've ever had the pleasure of meeting.

1 Mr. Lombardi, who is working with me, I believe you
2 were kind enough to talk to him a couple or three weeks ago.

3 A. Yes.

4 Q. I represent Mr. Bloom.

5 A. Yes.

6 Q. By the way, if I ask questions -- sometimes lawyers talk
7 too fast. If I ask a question that you don't understand, just
8 stop me and I'll repeat it.

9 Actually, am I correct, Mr. Mitchell, that after you
10 signed your contract to be represented by Mr. Walters and Mr.
11 Bloom, that thereafter you actually had a very cordial and nice
12 relationship with my client, Mr. Bloom; is that correct?

13 A. Yes. I didn't have any problems with him.

14 Q. And you -- when you signed the contract with them at that
15 time, your original contract was signed with them on June 20,
16 1985, but it was post-dated up until January 2, 1986. Am I
17 correct?

18 A. No. January 4th.

19 Q. January 4th. I'm sorry. It was after the first of
20 January.

21 A. Yes.

22 Q. And at that time, the first \$2,000 that you received from
23 Mr. Walters, you signed a promissory note that you would pay
24 that money back after you got your earnings from your
25 professional football career; is that correct?

1 A. Yes.

2 Q. You understood that it was a loan to you; is that correct?

3 A. Yes.

4 Q. Now, over the next twelve months or so from June of 1985 up
5 until you signed your contract with the Detroit Lions in June
6 of 1986, during that twelve-month period, Mr. Bloom was someone
7 that you talked to on a frequent basis; is that correct?

8 A. Yes.

9 Q. He was somebody who you would call and sometimes talk to
10 about your plans for your professional career; is that correct?

11 A. Yes.

12 Q. And during that time period, there were times when you
13 personally needed some financial help, and you would ask Mr.
14 Bloom for cash or sometimes you'd ask for airline tickets; am I
15 correct?

16 A. Yes.

17 Q. And I believe, am I correct, that actually over that
18 twelve-month period, you received approximately \$14,000 in
19 loans, if you will; is that correct?

20 A. Yes.

21 Q. That included cash when you needed it, when you asked for
22 it?

23 A. (Witness nodding.)

24 Q. I thought some airline tickets, if I'm right?

25 A. (Witness nodding.)

1 Q. For both you are your wife on occasion; is that correct?

2 A. Yes.

3 Q. And also eventually they leased a car for you when you
4 needed a car; is that correct?

5 A. Yes.

6 Q. Now, during that time period, you actually found that
7 having this financial help while you were still in school but
8 kind of borrowing against your future earnings, you actually
9 found that to be quite helpful to you financially, didn't you?

10 A. Very much so.

11 Q. At that time, you were married and you had a family. You
12 had one child; am I correct?

13 A. Yes.

14 Q. And did your wife and child live in New York or were they
15 with you at Iowa?

16 A. They lived in New York.

17 Q. And the only compensation you were getting for playing
18 football at Iowa was your scholarship; am I correct? That's
19 the only form of compensation?

20 A. Right.

21 Q. And it was pretty hard to support a family. You didn't
22 have -- you were having some financial problems; is that fair
23 to say?

24 MR. PEARL: Objection. Relevance as to --

25 THE COURT: I don't see what the relevance is, but go

1 ahead. And I will sustain.

2 BY MR. WEBB:

3 Q. In any event, when you asked Mr. Bloom for money on those
4 occasions, he gave it to you; is that correct?

5 A. Yes.

6 Q. Now, as far as these loans were concerned that you received
7 from Mr. Walters and Mr. Bloom, the only real document you
8 signed was that first time you got the \$2,000, you signed a
9 promissory note to pay back \$2,000 out of your professional
10 earnings?

11 A. Yes.

12 Q. The rest of the money given you was kind of just on a
13 gentlemen's agreement. You understood that they expected it
14 back and you understood that that's why they were giving it to
15 you; is that correct?

16 A. Yes.

17 Q. There was no real written document, but it was a
18 gentlemen's agreement that you intended to live up to?

19 A. Yes.

20 Q. And you did; didn't you?

21 A. Yes.

22 Q. And the -- during that time period, at some point in time
23 you were drafted -- strike that the question.

24 You were drafted by the Detroit Lions in
25 approximately -- it would be around April? Is what when the

1 draft on occurs, of '86?

2 A. Was it May? I thought it was May.

3 Q. Could be May. I may be wrong. And --

4 A. April 29. April 29, April 30. Around there.

5 Q. Okay. Now, you knew at that time that Mr. Walters and Mr.
6 Bloom were loaning you this money because they wanted to have
7 the opportunity to negotiate your professional contract. That
8 was the deal; wasn't it?

9 A. Right.

10 Q. They were going to earn a commission. If they were able to
11 negotiate a contract with you for the professional football
12 team, the way they would make a profit is that you would pay
13 the -- pay the money back you had borrowed and then they would
14 earn a commission set forth in the contract for negotiating
15 your contract. Is that essentially the deal?

16 A. Right.

17 Q. Okay. And you were aware that that's how they make a
18 profit is to negotiate your contract?

19 A. Yes.

20 Q. And, in fact, when it came time to negotiate your
21 professional contract with the Detroit Lions, my client, Lloyd
22 Bloom, is the one who handled that with the Detroit Lions; am I
23 correct?

24 A. Yes.

25 Q. You and he consulted during that time period about how much

1 money you wanted and how much -- there were discussions; is
2 that correct?

3 A. Yes.

4 Q. Now, at that time, you -- Lloyd finally negotiated a
5 contract you were satisfied with and -- I believe in June of
6 1986 you signed the contract; is that correct?

7 A. June 20.

8 Q. And at that time you paid back to Norby Walters the money
9 you had borrowed, the fourteen thousand, and you paid them a
10 commission as set forth in the contract?

11 A. Yes.

12 Q. And the rest of the money went to you?

13 A. Yes.

14 Q. You lived up to your end of the deal and they lived up to
15 theirs; is that correct?

16 A. Yes.

17 Q. And you were very -- actually, you were never dissatisfied
18 with Lloyd Bloom and the way he represented you; were you?

19 A. No. We got along okay.

20 Q. Okay. Now, was there any time during the relationship that
21 you ever tried to walk away from that contract or walk away
22 from -- after you borrowed the money?

23 A. No.

24 Q. At the time that Lloyd Bloom and Norby Walters -- at the
25 time you told the jury yesterday that you made the decision to

1 sign the contract with them and to receive the financial money
2 that they gave you, at that time you were -- you would be going
3 into your last year of football, which would be your fifth
4 year; is that correct?

5 A. Yes.

6 Q. And you actually -- you did play football at Iowa that last
7 year, your fifth year; is that correct?

8 A. Yes.

9 Q. And both you and the team itself had a very, very good
10 season that year; is that correct?

11 A. Yes.

12 Q. And the team went to the Super Bowl?

13 A. Rose Bowl.

14 Q. Excuse me. The Rose Bowl. I apologize. The team went the
15 Rose Bowl. Unfortunately, lost the Rose Bowl, I guess.

16 A. Yeah.

17 Q. But in any event, here's my question to you. The fact that
18 you had signed this contract with -- with Mr. Walters and Mr.
19 Bloom, it didn't affect the way you played football that year
20 at Iowa; did it?

21 A. No. Basically, even if I didn't sign, I probably would
22 have played about the same, because in your senior year you
23 tend to try to stay away from injuries.

24 Q. Okay. And actually -- let me ask you this. The fact that
25 you had some of these financial worries off your mind and your

1 family was -- that actually made it easier to play football
2 that year?

3 MR. PEARL: Objection.

4 THE COURT: What is the basis?

5 MR. PEARL: What's the relevance?

6 MR. WEBB: Judge, it's relevant.

7 THE COURT: I think that to the extent it has some
8 relevance, you have fully explored it, Mr. Webb.

9 MR. WEBB: Let me ask one last question.

10 BY MR. WEBB:

11 Q. What is it -- what is it that the University lost because
12 of what happened here?

13 MR. PEARL: Objection, Judge. I think we've been
14 through this.

15 THE COURT: I think we have. Sustained.

16 MR. WEBB: The only reason I asked, Judge, because
17 Mr. Harmon --

18 THE COURT: I really don't want any more argument or
19 -- just sustained.

20 MR. WEBB: Okay.

21 BY MR. WEBB:

22 Q. Mr. Mitchell, I believe yesterday you testified, if I'm
23 correct, that the coaches at the University of Iowa while you
24 were playing at Iowa had told you that if you signed some type
25 of contract with an agent while your eligibility was still in

1 existence that you could lose your scholarship; is that
2 correct?

3 A. Yes.

4 Q. Who was the coach that told you that; do you remember?

5 A. Well, basically, the head coach tells you that, Coach Fry.

6 Q. Can you remember when it was that he told you if you signed
7 with an agent that you would lose your scholarship?

8 Approximately when?

9 A. In August. We have team meetings. We have a lot team
10 meetings at night and we go over certain things. And during
11 those team meetings, he usually tells us what we can and what
12 we can't do, and stay away from agents while we're playing and
13 so forth and so on.

14 Q. Okay. Did the coaches tell you why they wanted you to stay
15 away from agents?

16 A. Said that all agents would do is cloud your mind.

17 Q. Was -- some of the coaches thought you might listen to an
18 agent and not to the coach; is that correct?

19 MR. PEARL: Objection, Judge, as to what the coaches
20 thought.

21 THE COURT: Sustained.

22 BY MR. WEBB:

23 Q. As far as your scholarship is concerned, your scholarship
24 is awarded to you to play football at the school each year.

25 It's renewed each year; is that correct?

1 A. Yes.

2 Q. And when you get a football scholarship, it's your
3 obligation to play football, and if you do well, when the next
4 year comes around, they normally renew the scholarship; is that
5 correct?

6 A. It's my obligation to play football and go to classes to
7 stay eligible.

8 Q. To stay eligible. And then they'll award you the --
9 they'll award it to you. They'll renew the award; is that
10 correct?

11 A. Yes.

12 Q. Okay. In this particular case, before you ever met Norby
13 Walters and Lloyd Bloom in 1985, you actually were already
14 awarded your scholarship by the University. Do you remember if
15 that's correct?

16 A. Yes. I think I signed the tender in June.

17 Q. Of 1985?

18 A. Yes.

19 MR. WEBB: Do you have that tender there?

20 BY MR. WEBB:

21 Q. I'm going to show you a document marked yesterday as Bloom
22 Exhibit 6, which is the tender of financial aid, I believe.
23 Have you seen that document recently, Mr. Mitchell?

24 A. Yes.

25 Q. Now, looking at that document, this document is a contract

1 between you and the University in which the University is
2 offering you a football scholarship. And down at the bottom it
3 says that you accept it under certain terms and conditions; is
4 that correct?

5 MR. PEARL: Objection, Judge. His opinion as to
6 whether this is a contract that's binding between him and the
7 University I don't think is one that's appropriate or relevant.

8 MR. WEBB: It certainly is relevant, Judge.

9 THE COURT: I think that it is relevant, as well. I
10 mean, if we're talking about the issue of fraud here, I suppose
11 we are entitled to know what it was the agreement was.

12 MR. WEBB: That's why I went into it.

13 MR. PEARL: May we have a sidebar?

14 THE COURT: Gentlemen, I really wish that we could
15 avoid some of these things, and I'm not going to have one on
16 the subject. Just overruled and go ahead.

17 THE WITNESS: Could you repeat that?

18 MR. WEBB: I'll repeat the question.

19 BY MR. WEBB:

20 Q. You can see there that the University is offering you a
21 football scholarship, and you accept it and sign it based on
22 certain conditions that are set forth therein; is that correct?

23 A. Yes.

24 Q. And that contract -- this agreement -- by the way, it's
25 also signed by people from the University, Mr. C. W. Elliott, I

1 think known as Bump Elliott, and Mr. John Moore, financial aids
2 director. They signed that document; is that correct?

3 A. Yes.

4 Q. And you also signed the document dated June 3, 1985; is
5 that correct?

6 A. Yes.

7 Q. Okay. Now, at this point in time when you are being
8 awarded this scholarship, you have not met Bloom and Walters
9 yet?

10 A. No.

11 Q. Now, when the University awarded the scholarship to you,
12 they put forth right here on the face of the agreement the
13 circumstances under which they could take it away from you and
14 cancel it, do they not?

15 MR. PEARL: Objection, Judge. I don't think he's
16 knows -- that he's qualified to state that.

17 THE COURT: This has been the subject of inquiry
18 already through Mims; hasn't it?

19 MR. PEARL: Yes, your Honor.

20 MR. WEBB: But if I don't do it with each one --
21 Judge -- I'm just trying to --

22 THE COURT: Go ahead.

23 BY MR. WEBB:

24 Q. Sir, my question to you, do you see -- is there a paragraph
25 in that agreement that sets forth the circumstances under which

1 they can take away your scholarship?

2 MR. PEARL: Judge, I have no objection to his
3 focusing his attention on the paragrah that says these are the
4 circumstances under which his scholarship may be revoked. He
5 may read the document to him. But his interpretation as to
6 whether these are the circumstance is not one that I believe he
7 has laid a foundation that the witness is qualified to give.

8 THE COURT: I'll allow to you proceed in the manner
9 Mr. Pearl suggests. Go by the paragraphs and see factually
10 where we are rather than getting his opinion about it.

11 BY MR. WEBB:

12 Q. Does Paragraph D set forth the circumstances under which
13 they can cancel or take away your scholarship?

14 A. Want to repeat that?

15 Q. Does that Paragraph D, which says, "The aid provided in
16 this tender will be cancelled if I sign a professional sports
17 contract or accept money for playing in an athletic contest,"
18 is that a paragraph that relates to when they can cancel your
19 scholarship?

20 MR. PEARL: Objection, Judge, to his interpretation
21 of the document. Again, if he wants to focus his attention on
22 a paragraph that says these are the places or the reasons that
23 it can be cancelled, I have no objection to that.

24 THE COURT: Overruled. Let's go.

25 THE WITNESS: I don't understand what you're trying

1 to say.

2 BY MR. WEBB:

3 Q. Does that paragraph set forth under what circumstances they
4 can terminate or cancel your scholarship?

5 A. You mean does it say any instances where they would revoke
6 my scholarship?

7 Q. Yes.

8 A. Is that what you're trying to say?

9 Q. Yes.

10 A. My understanding is that if I sign a contract, I lose my
11 eligibility.

12 Q. It talks here about signing a professional sports contract;
13 is that correct?

14 A. Yes.

15 Q. Had you ever signed a professional sports --

16 A. No.

17 Q. Had you ever received money for playing in a football game
18 from anyone?

19 A. No.

20 Q. Now, at the time that the coaches told you that you could
21 lose your scholarship because you signed with an agent while
22 you still had eligibility, did you ever go back and read over
23 the form back at the time when the coaches were telling you
24 this?

25 A. No.

1 Q. Mr. Mitchell, I believe you testified yesterday that in
2 June of last year, I believe on June 17, 1988, that you signed
3 an agreement with the Government called a "Pretrial Diversion
4 Agreement" where the Government told you that they would not
5 prosecute you in connection with the events involving Mr.
6 Walters and Mr. Bloom; is that correct?

7 A. Yes.

8 Q. However, the Government actually had contacted you a year
9 earlier than that when they had -- a couple of FBI agents
10 interviewed you in Troy, Michigan?

11 A. (Witness nodding.)

12 Q. I believe the date is May 17, 1987. Does that seem about
13 right to you?

14 A. Yes.

15 Q. Okay. Two FBI agents interviewed you that day?

16 A. Yes.

17 Q. And at that time, you told the FBI essentially the same
18 things you told this jury here?

19 A. Yes.

20 Q. You didn't try to conceal anything or hide anything from
21 them; did you?

22 A. No.

23 Q. And at that time with the FBI agents, was there any
24 conversation with the FBI agents about you being charged with
25 any crime in connection with what happened here at the

1 University of Iowa?

2 A. No. All they asked me to do was just tell them how I met
3 Lloyd and Norby. They never said anything about school.

4 Q. Okay, but did they tell you at that time -- was anything
5 discussed about that they -- about whether you would be charged
6 with a crime?

7 MR. PEARL: Judge, I object as to the relevance.
8 He's talked about the agreement.

9 MR. WEBB: Judge, I can explore bias as far as he
10 signed an agreement, he was going to be prosecuted.

11 THE COURT: Sustained -- overruled. Excuse me. You
12 may inquire.

13 BY MR. WEBB:

14 Q. At that time, in May of 1987, did the FBI agents say
15 anything to you about whether you would be charged with a crime
16 for the things that had happened?

17 A. No.

18 Q. Okay. Now, but over the next year or so up until the time
19 that you actually signed this agreement in June of 1988,
20 between the first time they contacted you and the time you
21 signed the agreement, there were discussions about the United
22 States Attorney's office prosecuting you for a crime; is that
23 correct?

24 A. Yes.

25 Q. And they told you -- they told you during that time period

1 that they actually were -- they were threatening to charge you
2 with a felony crime; were they not?

3 A. If I didn't cooperate.

4 Q. If you did not cooperate, okay. But you actually had
5 already cooperated, hadn't you? I mean, when you met with the
6 FBI in May, you told them everything; didn't you?

7 A. Yes.

8 Q. At one point in time, didn't they want you to plead guilty
9 to certain crimes?

10 A. Certain crimes like what?

11 Q. Well, were there discussions that occurred in which you
12 were asked to plead guilty to certain criminal misconduct
13 because of your relationship with Bloom and Walters?

14 A. What type of criminal conduct? I mean, explain.

15 Q. Well, was there ever any discussions that you would be
16 charged with fraud, with cheating the University out of your
17 scholarship?

18 A. Yeah. They said that I -- they could do that.

19 Q. But eventually they told you that if you signed this
20 agreement that they would not prosecute you; is that correct?

21 A. Correct.

22 Q. Now, at the time that they were talking to you about
23 pleading guilty to certain crimes, you did not want to do that,
24 did you?

25 A. Plead guilty?

1 Q. Yes. You didn't want to do that; did you?

2 A. In my opinion, I didn't think I was guilty.

3 Q. And when you -- the reason -- when you -- Mr. Mitchell,
4 when you entered into this relationship with Mr. Walters and
5 Mr. Bloom in 1985, at that time, you were not planning to cheat
6 the University out of your scholarship; were you?

7 MR. PEARL: Objection, Judge. I think it was his
8 intent that we agreed --

9 THE COURT: Well, we have two things that I think are
10 going on here. "Intent" is something that is relevant. And
11 these things that Mr. Webb has been inquiring about has to do
12 with an issue in every case, and it is credibility. And I
13 think that you can examine as to those issues.

14 MR. WEBB: Thank you.

15 BY MR. WEBB:

16 Q. My question is -- do you understand my question?

17 A. Would you repeat?

18 Q. Yes, I will.

19 At the time you first entered into your agreement
20 with Mr. Bloom and Mr. Walters, at that time when you signed
21 your contract, at that time, you were not planning on cheating
22 the University out of your scholarship; were you?

23 A. Like I said, I didn't feel like I was cheating.

24 Q. And when the Government -- when the Government -- by the
25 way, as far as -- you actually -- you felt that you had earned

1 that scholarship, hadn't you? You had played football pretty
2 hard at Iowa?

3 MR. PEARL: Objection, Judge.

4 THE COURT: Sustained.

5 BY MR. WEBB:

6 Q. Well, at the time that the Government had you sign this
7 agreement, the agreement where it said you wouldn't be
8 prosecuted, they drafted the agreement for you. They prepared
9 the agreement; am I correct?

10 A. Yes.

11 Q. And when they drafted that agreement and you signed it,
12 they made you admit in the agreement that you had cheated the
13 University out of the scholarship; is that correct?

14 MR. PEARL: Objection, Judge. Made him?

15 THE COURT: Sustained.

16 MR. WEBB: I'll strike the question.

17 BY MR. WEBB:

18 Q. In the agreement that the Government prepared for you and
19 that you signed, the first paragraph states that you did cheat
20 the University out of the scholarship; doesn't it?

21 MR. PEARL: Objection, Judge. I don't mind him
22 having him read the first paragraph, but let's focus on the
23 facts.

24 THE COURT: You people know what it says better than
25 I.

1 MR. WEBB: I will. Do you have the exhibits?

2 BY MR. WEBB:

3 Q. Would you turn to what I think is Government Exhibit 10.

4 A. I don't have it.

5 Q. Let me show you what the Government marked yesterday as --

6 THE COURT: It's the last exhibit in Tab C.

7 BY MR. WEBB:

8 Q. That's in evidence. If you want to -- it's just as easy.

9 Just read it if you like. Just read it out loud.

10 A. "Devon Mitchell acknowledges that --"

11 MR. PEARL: Excuse me. May the witness start at the
12 top?

13 BY THE WITNESS:

14 A. "United States of America, by Anton R. Valukas, United
15 States Attorney for the Northern District of Illinois, and
16 Devon Mitchell and his attorney, Howard Curry, have agreed upon
17 the following: Devon Mitchell acknowledges that beginning in
18 or about June 1985 and continuing through the spring of 1986,
19 Devon Mitchell participated in a scheme designed by Norby
20 Walters and and Lloyd Bloom to defraud the University of Iowa
21 of property in the form of tuition, room, board and fees by
22 fraudulently concealing from the University the fact that Devon
23 Mitchell had signed a representation contract and received
24 money from a sports agent and was therefore ineligible to
25 participate in intercollegiate athletics and receive an

1 athletic scholarship."

2 BY MR. WEBB:

3 Q. And my question to you is: As you just told us, you don't
4 believe that you actually did participate in a plan to cheat
5 the University out of your scholarship; do you?

6 A. In my opinion, I think I was just -- I was just borrowing
7 against my future. I just, you know, felt that at the time,
8 things would have been a lot easier because -- the way I look
9 at it, it was my money anyhow that I was going to receive.

10 Q. You eventually paid it all back; didn't you?

11 A. Yes.

12 Q. And you put it to pretty good use when you got it for your
13 family?

14 A. Yes.

15 Q. That agreement that the Government had you enter into, you
16 were aware that by signing that agreement you would not have to
17 face going to jail or paying any type of criminal fine. You
18 were not going to be prosecuted; is that right?

19 A. Yes.

20 Q. But the Government told you there were certain things they
21 wanted you to have to agree to do in order to be able to get
22 this agreement; is that correct?

23 A. Yes.

24 Q. One of them was you were supposed to make restitution back
25 to the University for the amount of the scholarship that it

1 supposedly had been cheated out of; is that correct?

2 A. That year, yeah.

3 Q. Have you made that restitution yet?

4 A. No.

5 Q. Do you know how much the restitution is supposed to be?

6 A. No.

7 Q. No one has told you that?

8 A. No.

9 Q. That agreement was signed about nine months ago in June of
10 1988; is that correct?

11 A. Yes.

12 Q. Okay. I take it if someone -- if some day someone tells
13 you how much it is, you'll pay the money back; is that correct?

14 A. Yes.

15 Q. The next condition that they -- the next condition that
16 they put in that agreement is they said that you would have to
17 perform a hundred hours of community service; am I correct?

18 A. Yes.

19 Q. Have you done that yet?

20 A. No.

21 Q. They also said in there that you would have to report to
22 your probation officer on some basis. Have you been reporting
23 to a probation officer?

24 A. Not until -- I think the first time I reported was last
25 month sometime.

1 Q. So during the first eight months of the agreement -- strike
2 that.

3 The agreement is supposed to run for one year; is
4 that correct?

5 A. Yes.

6 Q. So during the first eight months or so, you didn't report
7 to any probation officer?

8 A. No one got in contact with me.

9 Q. You probably didn't -- strike the question.

10 Now, let me turn to other another subject matter, Mr.
11 Mitchell. Yesterday, I believe you responded in response to
12 Mr. Kennelly's -- one of his questions that -- if I'm stating
13 this wrong, tell me, that you did try real hard to play
14 football but that you didn't try that hard as far as your
15 educational courses.

16 A. Right. No.

17 Q. In fact, I think when Mr. Lombardi, my associate working
18 with me on this case, talked to you in Detroit a couple of
19 weeks ago, you told him that if you wanted an education, you
20 probably would have gone to a school closer to home where your
21 family was; is that correct?

22 A. My priority was playing football.

23 Q. And that's -- I mean, very candidly, the reason you went to
24 Iowa was so that you could have an opportunity to play
25 football; is that correct?

1 A. Yes. But in order to play football, I had to go to class
2 and remain eligible.

3 Q. I understand. I understand. But your primary purpose was
4 to play football; is that correct?

5 A. Ever since I was a little boy, I wanted to play football.
6 I knew that's what I wanted to do.

7 Q. And if you want to be a football player, you actually have
8 to go to college because you can't go into the pros out of high
9 school because --

10 MR. PEARL: Objection, Judge.

11 THE COURT: What is the basis?

12 MR. PEARL: What possible relevance is this?

13 MR. WEBB: Judge, it ties in --

14 MR. PEARL: Whether you can go to the pros right out
15 of high school?

16 THE COURT: Sustained.

17 BY MR. WEBB:

18 Q. You actually attended the University of Iowa for five
19 years; is that correct?

20 A. Yes.

21 Q. And the reason for that is because you are actually quite a
22 success story. You were what's called a walk-on. You went to
23 Iowa as a walk-on without a scholarship and then were what's
24 called red-shirted for the first year where you practiced with
25 the team but can't play in games?

1 MR. PEARL: Judge, this is cumulative. We've been
2 through this.

3 THE COURT: I don't know what its relevancy is, to
4 tell you the truth.

5 MR. WEBB: I'm trying to explain why he spent five
6 years in school, Judge.

7 THE COURT: Mr. Webb, I don't care why he spent five
8 years in school, unless you can show that it is illegal for him
9 to do that.

10 MR. WEBB: I'm not trying to show that, Judge.

11 THE COURT: Then move on to something else.

12 MR. WEBB: I'm not trying to show that at all.

13 BY MR. WEBB:

14 Q. During the five years that you spent at Iowa, sir, you did
15 not earn your degree; is that correct?

16 A. Correct.

17 Q. And, actually, in your fifth year, as soon as the football
18 season ended in January, after you played the Rose Bowl, your
19 transcript reflects that you dropped all your courses for your
20 last semester; is that correct?

21 A. Correct.

22 Q. Did you actually leave the campus and go back home to your
23 family in New York?

24 A. No. I had to stay on campus.

25 Q. Okay. You just dropped your courses?

1 A. Right.

2 Q. Because at that point, because the football season was over
3 with, you no longer were under the eligibility rules; is that
4 correct?

5 A. Correct.

6 Q. Now, when you actually left the University after five years
7 there without your degree, you had -- you were on academic
8 probation when you actually left in June 1986; is that correct?

9 A. Correct.

10 Q. And that's the last -- you left there and eventually, a few
11 months later, went into professional football; is that correct?

12 A. Correct.

13 Q. And you're aware that when you left Iowa at the end of five
14 years that you were way short of getting a degree because you
15 needed a significant number of some upper level courses that
16 you had never taken; is that correct?

17 A. I wasn't really short.

18 Q. Well, let me -- did you eventually --

19 A. I could have taken -- I could have just spent one semester
20 and graduated if I wanted to.

21 Q. You actually wrote the University in January of 1988 asking
22 them what you would have to do to complete your degree; is that
23 correct?

24 A. Right.

25 Q. And they wrote you a letter back. Your academic advisor

1 wrote you a letter back telling you that you needed 18 hours of
2 upper level courses?

3 A. Twelve hours of hundred level courses in which I would have
4 to have a B, and 6 hours of upper level courses in which I
5 would have to have an A.

6 Q. Was it twelve hours of --

7 A. Twelve hours of B and 6 hours of A.

8 Q. Twelve hours of B and 6 hours of A. What are these upper
9 level courses?

10 MR. PEARL: Judge, again, I object. What's the
11 relevance of what he needs now to get his degree?

12 MR. WEBB: Judge, I -- Judge, it goes to whether he
13 was satisfactorily making progress towards his degree to be
14 eligible to play.

15 THE COURT: I think we have already explored that
16 area, Mr. Webb.

17 BY MR. WEBB:

18 Q. While you were at the University of Iowa, what was your
19 major? What degree were you working towards?

20 A. I didn't have a major.

21 Q. Okay. Are you required to have a major to graduate?

22 A. Yes. My major -- I eventually put my major as liberal
23 arts.

24 Q. Eventually you had a liberal arts major?

25 A. Yes.

1 Q. However, during that time period, in order to graduate in
2 liberal arts, there are certain specific requirements that you
3 must take certain courses in certain fields like natural
4 science, social science, historical, literature and mathmatics;
5 am I correct?

6 A. Correct.

7 Q. Mr. Mitchell, I have your transcript here and I'll show it
8 you to.

9 Let me show you what was marked yesterday as Bloom
10 Exhibit 5 for identification.

11 I think I could shortcut -- I've gone through -- I'm
12 going to ask you whether or not the fact is you took a
13 significant number of courses that were not related to
14 advancing you towards this degree in liberal arts; is that
15 correct?

16 MR. PEARL: Objection, Judge. If he wants to qualify
17 him first as to his ability to understand, read and interpret
18 the transcript --

19 THE COURT: First of all, as the cornerstone to this
20 question of relevance, and I really don't know specifically
21 where you are going, Mr. Webb, I just want to avoid objections,
22 whether or not he is or was in fact eligible to play football
23 is a determination to be made by others than him.

24 MR. WEBB: He's the one that --

25 THE COURT: And, therefore, his opinion --

1 MR. WEBB: I want to ask him -- I'll strike the
2 question.

3 BY MR. WEBB:

4 Q. Sir, let me ask you -- I'm going to read off these courses
5 and I'm going to ask you specifically if these were courses
6 that related to your major field of study in liberal arts.

7 MR. PEARL: Again, Judge, he's asking his opinion.
8 Objection. Whether it relates to this, that's an opinion.

9 MR. WEBB: Judge, he knows what he was majoring in.

10 THE COURT: I don't know where the question is going,
11 but go ahead and ask it.

12 I am indicating again that eligibility is to be
13 determined by somebody other than him on the basis of the
14 evidence adduced here in court. Am I not correct?

15 MR. VALUKAS: You're right, your Honor.

16 THE COURT: With that in mind, go ahead and ask your
17 question.

18 BY MR. WEBB:

19 Q. Sir, these courses which I'm reading down your transcript,
20 going from the first semester through the fifth semester:
21 Football; Ancient Athletics; Coaching Basketball; Karate;
22 Billiards; Bowling; Football, again; Tennis; Jogging;
23 Fundamentals of Military Organization; Football, again;
24 Racketball; Judo; Football Conditioning; Teaching of Gym;
25 Advanced Slow-Pitch Softball; Tai Kwa 1; another football

1 course; Recreational Leisure; Coaching Football; Advanced
2 Bowling. You withdrew from another Advanced Bowling course.
3 History of United States Sports; Basketball; another football
4 course; Soccer; Fitness; Coaching Baseball; Speed Reading;
5 Weight Training; Physical Education 3; Coaching Track;
6 Introduction to the Military; Administration of Physical
7 Education; another football course.

8 Sir, were those courses courses that you took so that
9 you could remain academically eligible to play football at your
10 school?

11 MR. PEARL: Objection. That's exactly the purpose I
12 believe you told Mr. Webb he could not ask that question.

13 MR. WEBB: Judge, he's the one that knows whether he
14 was working towards a degree or not.

15 THE COURT: I will allow the question to be asked.

16 BY THE WITNESS:

17 A. One of the courses that -- do you know what required
18 courses are for liberal arts?

19 BY MR. WEBB:

20 Q. My question is, sir: Were you taking those courses -- were
21 you taking those courses that I just read off so that you could
22 remain academically eligible to play football?

23 A. I took those courses because I wanted to.

24 Q. Did you want to remain academically eligible to play
25 football?

1 A. If I wasn't eligible, I wouldn't be able to play.

2 Q. You actually finally in your fourth year, at the end of the
3 year got a letter from Mr. Simms telling you that you were
4 actually ineligible to play football the following fall; is
5 that correct?

6 A. For that year.

7 Q. Okay. And it said to come in and see him; is that correct?

8 A. Correct.

9 Q. And you went in to see him; did you?

10 A. Yes.

11 Q. And he told you that he could help you get into a physical
12 education course?

13 A. Excuse me?

14 Q. What was the result of the meeting that you had with Mr.
15 Simms, the athletic director?

16 A. To take a class.

17 Q. So that you could be eligible to play football?

18 MR. PEARL: Objection, Judge.

19 THE COURT: What is the basis?

20 MR. PEARL: Again, he keeps asking -- I think he's
21 trying to ask this witness what it took to stay eligible
22 academically to play football.

23 MR. WEBB: He stated he had a letter that told him he
24 was in ineligible, Judge.

25 THE COURT: Mr. Webb, I indicated to you once and I

1 will tell you again that whether or not he is eligible is a
2 determination to be made by someone other than him. And if we
3 are going to get involved in these grades and whatever, I want
4 to make something abundantly clear. They had better have some
5 relevance for something other than they get a laugh.

6 MR. WEBB: Judge, I'm going in -- trying to show that

7 --

8 THE COURT: We are talking about whether or not
9 because of what he is taking there is some violation of the
10 NCAA rules that would make him ineligible. And that is the
11 purpose I'm going to allow this line of questioning, not
12 because somebody thinks this curriculum is a joke.

13 MR. WEBB: I agree with you a hundred percent, Judge.
14 That why I went into it in the first place.

15 THE COURT: With that in mind, proceed.

16 MR. WEBB: I agree with you.

17 BY MR. WEBB:

18 Q. Sir, my question was that when you finally got -- you
19 finally got the letter from Mr. Simms that you were
20 academically ineligible to play football and you met with him,
21 did he arrange for a course for you to take that summer to get
22 your grades up?

23 MR. PEARL: Objection. Asked and answered.

24 THE COURT: I don't remember in our dialogue and all
25 of these objections whether it has or not. But in the event it

1 hasn't, answer the question.

2 BY THE WITNESS:

3 A. I don't remember if he said -- if he said he was going to
4 arrange. I remember discussing my options.

5 BY MR. WEBB:

6 Q. Did somebody arrange the course for you to take?

7 MR. PEARL: Objection. There is no evidence that it
8 was arranged.

9 MR. WEBB: I'm asking him.

10 THE COURT: That's the question, Mr. Pearl. Yes or
11 no.

12 BY THE WITNESS:

13 A. I don't remember if it was arranged.

14 THE COURT: Ask the next question.

15 BY MR. WEBB:

16 Q. Okay. The course you took that summer was a physical
17 education course in which you were able to get a B for 4 hours
18 and you then were eligible to play in your next football
19 season; is that correct?

20 A. Yes. I got a B.

21 Q. And you played football the next year at Iowa, your last
22 year; is that correct?

23 A. Right.

24 Q. Now, while you were at the University of Iowa, you
25 occasionally would borrow a car from an alumni booster who

1 became a friend of yours; is that correct?

2 A. Occasionally borrow a car, yes.

3 Q. And what was the name of the alumni booster who loaned you
4 the car?

5 A. Excuse me?

6 Q. What was his name, the name of the man, the alumni booster,
7 the friend of yours that loaned you the car?

8 A. His name was Mark.

9 Q. Do you know his last name?

10 A. Adelston.

11 Q. Now, at that time, you had been introduced to this --
12 strike that the question.

13 These types of boosters were known as friends. A lot
14 of players individually had a friend that was a booster; is
15 that correct?

16 A. Right. But I didn't have a booster.

17 Q. Well, the man who loaned you the car --

18 A. Was a friend.

19 Q. Okay. Who had been a -- he was a booster and a former
20 alumni of the University; is that correct?

21 A. I don't know.

22 Q. Well, do you remember when you were interviewed by Mr.
23 Lombardi and Mr. Timothy O'Connor three weeks ago that you told
24 them that he was a booster who were called friend? Do you
25 remember telling him that?

1 A. Yes. But I don't know if he went to Iowa.

2 Q. And at that time when you accepted the loan of that car,
3 that occurred in your sophomore and junior year; am I correct?

4 A. What do you mean by loan?

5 Q. When he would let you borrow the car?

6 A. Like if I wanted to go to the store or something like that,
7 if I asked him to use his car, are you trying to say there was
8 a problem with that?

9 Q. No. I'm asking you. I'm saying on the occasion that it
10 happened, was that your sophomore and junior year?

11 A. I don't remember what year it was.

12 Q. Well, when you were inter -- when Mr. Lombardi interviewed
13 you a couple of weeks ago with Mr. O'Connor, did you tell him
14 you thought it was in your sophomore and junior year that that
15 occurred in?

16 A. Is that what he has down?

17 Q. Well, I can't -- yes. But it's -- I mean, all I can ask
18 you is what you remember telling him.

19 A. That was a while ago. I don't remember what I told him.
20 But if that's what he has down.

21 Q. Okay. Well, here's my -- first of all, did you tell him
22 that you remembered that in your last year you did not have the
23 use of the car and that's why you knew it was at some earlier
24 point in time?

25 A. No. I didn't tell him that.

1 Q. Well, when do you remember now having the use of the car
2 car when you wanted to borrow it from your --

3 A. I think I told him that I didn't need a car because I
4 brought my car from New York.

5 Q. So you knew it was before then?

6 A. Must have been.

7 Q. Okay. Because of the way these rules are written, the NCAA
8 rules, you were aware that just by borrowing that car from this
9 alumni friend that you were actually ineligible -- that you were
10 ineligible to play football under the NCAA rules; is that
11 correct?

12 MR. PEARL: Objection.

13 THE COURT: What's the basis?

14 MR. PEARL: What's the basis for him? He's asking
15 him his opinion as to the body of the NCAA rules.

16 MR. WEBB: Judge, the coaches instructed them on the
17 rules.

18 MR. PEARL: He can ask what the coaches instructed.

19 THE COURT: Gentlemen, let me put this to rest by a
20 couple of things. I mean, there was a statement that has been
21 made here that when he signed this agreement, he knew the rules
22 and was violating them. It seems to me to be perfectly
23 appropriate to ask what led to that conclusion.

24 We have another situation that I hope that I make
25 abundantly clear and that the defense should be permitted to

1 see and inquire into whether or not other activities involving
2 this particular athlete would have resulted in his
3 ineligibility separate and apart from any connection that he
4 had with Mr. Walters and Mr. Bloom. And how he came to that
5 conclusion seems to me to be relevant, as well. And on those
6 guidelines again, proceed with your questioning, Mr. Webb.

7 MR. WEBB: Thank you, your Honor.

8 BY MR. WEBB:

9 Q. Because of the way these NCAA rules are -- because of the
10 NCAA rules, you were aware that just borrowing that car was in
11 violation of the rules and made you ineligible to play football
12 at Iowa; is that correct?

13 A. I thought the NCAA rules say if I accept gifts.

14 Q. Okay. Did the coaches --

15 Let me ask you this. You told us yesterday that the
16 coaches explained to you in some detail about these NCAA rules;
17 is that correct?

18 A. Right.

19 Q. And did they explain to you that you're not supposed to be
20 able to get any type of financial aid or any type of benefit at
21 all from any other source and that the rules specifically
22 prohibit you from receiving a loan of a car? Did they tell you
23 that?

24 A. I thought the rules said that I'm not supposed to receive
25 any moneys or take any gifts from anybody outside my family. I

1 didn't take a gift. I borrowed a car.

2 Q. Did they ever tell you that on the face of the NCAA rule
3 there's a specific provision that says specifically, as far as
4 cars, if you borrow a car that that violates the NCAA rules?

5 A. No. They didn't say that.

6 Q. Okay. You said they gave you certain summary sheets that
7 explained the NCAA rules to you?

8 A. Yeah.

9 Q. Let me -- I'm going to show you the NCAA rules and ask you
10 if you remember the coaches --

11 MR. PEARL: May I see it?

12 MR. WEBB: I'm sorry.

13 The Government asked me to wait for one second, your
14 Honor.

15 MR. VALUKAS: Excuse me, your Honor. Before we
16 pursue this line of inquire, we need to have a sidebar.

17 THE COURT: Well, why don't we take advantage of
18 taking a morning break then at this time and do two things at
19 one time.

20 (JURY OUT.)

21 (The following proceedings were had in chambers:)

22 THE COURT: Now, where are we at?

23 MR. VALUKAS: It's our objection to the question Mr.
24 Webb has pending.

25 THE COURT: Which is?

1 MR. VALUKAS: As I under the question, first of all,
2 the question -- maybe you can put the question.

3 MR. WEBB: My question -- I asked him the foundation
4 as to whether or not -- I said the coaches -- he testified that
5 the coaches handed out -- he testified yesterday the coaches
6 handed out a detailed explanation of these rules. And I'm
7 going to show him the specific rule that provides that the use
8 of an automobile is specifically prohibited from this booster
9 and ask him if he was told about it.

10 Because there's no question, Judge, that he was
11 ineligible under these rules as of his sophomore year, based on
12 his testimony.

13 MR. VALUKAS: Well, there's two aspects of that.
14 First of all, that's Mr. Webb's conclusion that there is no
15 question. And, secondly, the question is what Mr. Webb is
16 attempting to do is read the rule and make that an assertion of
17 his ineligibility.

18 Now, if he asks the question of the witness in terms
19 of whether or not he was told of these things and the witness
20 says no, that's the answer and that's end of that. Mr. Webb
21 then, because he cannot assert the rule and say: "Were you told
22 this?" Because if he said he has not been told that, if he
23 hasn't been told, then Mr. Webb is going to have to come in and
24 prove up that that's in fact -- what he has so far said, that
25 that in fact constitutes a violation, and, secondly, that the

1 University knew about it in connection with that if it's going
2 to be relevant to what's going on here.

3 And I suggest that the form in which he is putting
4 the question is totally inappropriate.

5 THE COURT: Well, in my opinion, much of the
6 arguments that you have been having on these matters involve
7 more form than substance. And I will address it in another
8 context. And if we have to come down here Saturday and Sunday
9 and meet for 24 hours around the clock so we don't have to keep
10 doing this all the time, then that's what we are going to do,
11 as every little thing has a twist on it because somebody has a
12 preference of doing something one way as opposed to the other
13 that I think can be done in any event.

14 Now let us just separate the wheat from the chaff
15 here and try to ascertain what it is that this is all about.
16 There is no doubt, based upon my prior ruling, that if this
17 jury concludes, not Mr. Webb concludes, Mr. Valukas concludes,
18 but if this jury concludes that this university was not capable
19 of being defrauded because this party had already lost that
20 which they were defrauded of separate and apart from anything
21 that these defendants have done, that is relevant and they
22 ought to have their shot at it.

23 Now, there are certain things that you have
24 preferences to. Mr. Gold, for example, would have preferred to
25 have his credibility rather than Norby Walters' credibility

1 respond to this claim of other activities before the grand
2 jury. That may be his preference, but he has had choices as to
3 how you want to do it.

4 And I know what your preference is. And your
5 preference is that maybe somebody other than me gives the law
6 to the jury. And that is just not going to happen under any
7 circumstances, or over my dead body, if that's a better way of
8 expressing it. And I am not budging from that proposition.

9 You can go ahead and ask Mr. Mitchell to your heart's
10 content what it is that he has read -- or excuse me, what he
11 has done. You can trace all of his activity over there at the
12 University of Wisconsin -- of Iowa on a factual basis that has
13 a bearing on whether or not it -- he is eligible. But you are
14 not going to be able to put that question in such a way that
15 you are telling him that this is gospel as far as this rule is
16 concerned.

17 If you want to have somebody come up and interpret
18 it, and I don't know who it is that you are going to be -- or
19 cross examine somebody that -- you know, you put the ball in
20 play, and Mr. Valukas and Mr. Pearl, I suppose, better hit the
21 damned thing back to you or they have a problem. And you can
22 address it on a factual basis as to what the rule says and what
23 it doesn't say.

24 MR. WEBB: The question pending, by the way, just so
25 the Court -- the question pending at the time Mr. Valukas

1 objected was he told me that the coaches had explained the
2 rules and they handed out a detailed sheet. I asked --

3 THE COURT: I agree with that.

4 MR. WEBB: And I -- the next question that the
5 question came to was I said I was going to show him that rule
6 and I was going to ask him whether this was one of the rules
7 that they set forth.

8 THE COURT: And I don't have any problem with that,
9 Mr. Webb, and I'll tell you why. Because fair is fair. And
10 that's what we're all supposed to be about. Fair is fair. And
11 --

12 MR. VALUKAS: Let me --

13 THE COURT: Wait a minute, Tony. Just so you have my
14 idea of what I think fair is fair is all about.

15 You have asked certain questions because they were
16 important, namely, the detail that goes into telling people
17 what it is and what it is not or what are and what are not the
18 rules of the Big Ten or the NCAA or the member institution and
19 whatever. You have asked the question: "At the time that you
20 signed with Norby Walters and/or Lloyd Bloom, did you know that
21 you were violating these rules?" And the answer was, "Yes, I
22 was."

23 Whether that's an interpretation of rules, whether
24 it's a state of mind, I don't care what you want to put as a
25 name on it. But it seems to me that it is perfectly legitimate

1 as an inquiry to find out what it is that you base that
2 assumption or that conclusion upon. It doesn't have to be how
3 you read these rules or what your interpretation of it is or
4 does it mean, but I mean the fact that the coaches did or did
5 not read them, did they read them all and whatever seems to be
6 an appropriate area of inquiry.

7 But these questions are not going to be stated in
8 such a way or phrased in such a way that out of your mouth it
9 is coming out that it is gospel that that is what the rule
10 says. I am not going to let the question be phrased in that
11 way.

12 MR. WEBB: I think I asked him whether the coaches
13 told him. The rules are in evidence.

14 MR. PEARL: No, they are not.

15 THE COURT: I don't know whether they are or not, to
16 tell you the truth.

17 MR. PEARL: Absolutely not.

18 MR. WEBB: Oh.

19 THE COURT: And it's the same way with these grades
20 I mean, I know about reading, water colors and volley ball and
21 ping-pong and whatever gets a big laugh out of the group. But
22 I am adamant in holding you to what you are telling me that you
23 are going to do, that these -- taking these courses and getting
24 the grades that he got in them is a violation of the NCAA rules
25 that would make him ineligible. And if you cannot show that or

1 if that's not your intent, other things set aside, you
2 disappoint me.

3 MR. WEBB: Judge, I stated my record before, that --

4 THE COURT: And I took it on that.

5 MR. WEBB: And I think -- in fact, I've already
6 established, as far as I can tell from the record yesterday
7 with Mr. Mims that he was academically --

8 THE COURT: I don't have any problem. We're talking
9 about future attractions.

10 MR. WEBB: We understand the ground rules, that we
11 have to have a good faith belief that we can show they were
12 academically ineligible or else we can't proceed with that line
13 of inquiry.

14 THE COURT: And I take you on your faith.

15 MR. WEBB: In fact, I'm prepared to take the
16 transcript of the witnesses and to go over it with you ahead of
17 time and --

18 THE COURT: I don't want to be the fact-finder,
19 either. I don't want to be the Andy Frain usher or the
20 lawyer. I want to be the judge. But most of all, I want to be
21 understood as to the ground rules are. And I expect you will
22 follow them without having to be bouncing up and down here to
23 try to get to the ragged edge on everything damned thing that
24 you're doing here. I would prefer that we have some
25 understanding about what we are doing rather than finding out,

1 let us go to the next tier now and see how much we can squeeze
2 out of it.

3 Does that answer all the questions for the time
4 being?

5 MR. WEBB: Thank you, Judge.

6 THE COURT: We'll have more, I'm sure, the next time
7 somebody asks the next question, but let's go.

8 (The following proceedings were had in open court:)

9 THE COURT: If the jurors are ready, we are ready for
10 them, Mr. Marshal.

11 (JURY IN.)

12 THE COURT: Please be seated.

13 And Mr. Webb, you may continue, sir.

14 MR. WEBB: Thank you.

15 BY MR. WEBB:

16 Q. Mr. Mitchell, at the recess I was asking you questions
17 about the car. Do you recall where I was?

18 A. Yeah.

19 Q. I was about to show you the NCAA rule book. We marked it
20 as an exhibit yesterday.

21 Do you have an exhibit number?

22 I'll fill the exhibit number in in a moment, Judge.

23 It's 8? We marked it yesterday. I'll find the
24 number.

25 BY MR. WEBB:

1 Q. I'm going to show you the NCAA rule book.

2 Maybe I should ask you before I show you this. One
3 of the forms that Mr. Pearl showed you yesterday was marked as
4 Mitchell Government Exhibit No. 1 which he asked you about that
5 form. That's the form that is filed with the NCAA; is that
6 correct?

7 A. Yes.

8 Q. Now, that form states on its face that you -- it says you
9 have actually reviewed the NCAA rules and regulations
10 information sheet, which I understand is a summary of the NCAA
11 Constitution, and then it lists a number of rules there; is
12 that correct?

13 A. Yes.

14 Q. Was that a truthful statement, that you had reviewed in
15 detail the rules as set forth on the information sheet?

16 A. I can't remember reviewing anything like that.

17 Q. Just so I understand, I recognize it says this and you
18 signed it. But I take it -- are these forms passed out to you
19 rather quickly in the locker room one day? Is that how these
20 get signed?

21 A. No. Not really. Basically, we go through them, but they
22 don't -- I don't remember reviewing each and every one like 3.1
23 3.3, 3.4. I don't remember reviewing those.

24 Q. The one I'm going to show you is 3.1, the first one being
25 mentioned there. Under Constitution 3-1, one of the

1 subsections I'm going to call your attention specifically to
2 where it talks about some prohibited conduct here. And it says
3 --

4 MR. PEARL: Objection, Judge. It's not in evidence,
5 so I object to him reading out loud. But if the witness has
6 seen it --

7 MR. WEBB: The Government has been using the rules.

8 THE COURT: I don't know whether it has been admitted
9 into evidence or not.

10 MR. WEBB: I'll offer the rule book into evidence.

11 MR. PEARL: Objection. The rule book in its
12 entirety?

13 MR. WEBB: Well, Judge, certainly the relevant rules
14 I offer into evidence.

15 THE COURT: You expect me to read it, the whole
16 damned thing, and do it on a section-by-section basis?

17 MR. PEARL: Judge, there are a lot --

18 THE COURT: I'm not going to do that.

19 The rules and regulations of the Big Ten shall be
20 admitted into evidence and you shall refer to relevant parts
21 from time to time, the whole being in evidence.

22 Anybody have any problem with that?

23 MR. WEBB: It's the NCAA --

24 MR. VALUKAS: I do, your Honor.

25 THE COURT: Pardon me?

1 MR. VALUKAS: Excuse me. I do have an objection to
2 admitting those rules in our case in connection with this
3 matter. And there is a question both to the relevance and
4 admitting it in the Government's case. And I do have an
5 objection to that, your Honor. And I would like to be heard
6 before that's done.

7 THE COURT: Well, then, I guess we'll have to take
8 the opportunity to hear you, Mr. Valukas.

9 MR. VALUKAS: Thank you, your Honor.

10 THE COURT: Again.

11 (Sidebar conference.)

12 THE COURT: Mr. Webb, what are you doing with this
13 particular thing that is worth all of the effort that we are
14 putting into it?

15 MR. WEBB: I'm just going to read the rule, Judge.
16 The rules, Judge, are in the indictment. The Government has
17 had these witnesses testify that these rules have been violated
18 by signing with an agent. They've been using the rules all
19 along.

20 The information sheet, apparently that the witness
21 said, we didn't get with our subpoena, so I don't have the NCAA
22 information sheet. But I've got the rules and the rules -- I
23 really don't think the rules have to be admitted into
24 evidence. The rules are pled in the face of the indictment.
25 If they want to use one rule to show there was a crime, I have

1 a right to show another another rule that in fact shows that
2 the crime didn't occur because he was already ineligible.

3 MR. VALUKAS: First of all, that's a false premise
4 insofar as the crime because he was already ineligible. The
5 question is whether or not -- and this only goes to the
6 question in connection with the University, of whether they
7 were aware of something and ignored it. And that exactly is
8 the question which this Court indicated might be relevant to
9 the question of whether or not he reported it. It does not
10 have to do with whether or not Norby Walters and Lloyd Bloom
11 engaged in a scheme to defraud the University. Those are two
12 separate things and they are not merged into one. So that has
13 to do with relevance.

14 Secondly, they are not in a position to offer these
15 rules in their case.

16 Thirdly, the rules are irrelevant. Certain rules are
17 pled as having been, in the context of the indictment,
18 violated. That is to say, they took certain acts which were
19 fraudulent acts against the University. That's what's
20 alleged. Not the violation of the NCAA rules as such, but the
21 acts themselves, the false statements made to the universities
22 to induce them to give scholarships. That's what this is
23 about, not about these rules.

24 And the offer of these rules -- and I apologize, your
25 Honor, when I stood, I didn't mean to be abrupt.

1 But that's why putting these in is just an attempt to
2 obfuscate the issues that are involved here.

3 And in connection with these rules, any of those
4 rules --

5 THE COURT: But this thing has a basic premise that I
6 think is worthy of further exploration. You are indicating to
7 me as part of your objection that unless the universities knew
8 of these other activities that would lead to ineligibility,
9 that they are irrelevant as far as this case is concerned.

10 MR. VALUKAS: That's correct.

11 MR. WEBB: Judge, they didn't know about this thing.
12 I mean, the thing right now that we're on trial on now these
13 universities didn't know about until newspaper articles
14 appeared. If these players are already ineligible -- to quote
15 you, if they're already pregnant -- clearly they were
16 ineligible and could not be playing before Norby Walters ever
17 showed up on the scene. And, clearly, the scholarship was
18 already taken and defrauded away from them and clearly could be
19 defrauded a year later when Norby Walters comes on the scene.

20 That's been the whole basis for the premise of the
21 examination concerning the grades and everything else, which
22 is, if eligibility had already been violated by these players,
23 then clearly the University could not have defrauded out of
24 property that had already been taken away from them earlier in
25 connection with conduct not connected --

1 THE COURT: Leave me throw this out before I hear
2 from Mr. Valukas and Mr. Pearl.

3 That would seem to indicate the possibility that a
4 corporation, a party, is susceptible only to being defrauded
5 once, and just because somebody else has done it, that excuses
6 the second act. Is that the theory?

7 MR. WEBB: Judge, this is an intangible property
8 we're talking about. Supposedly the money that this kid
9 received or the right to allocate it was already taken away
10 from the University when this booster loaned him the car. And
11 the booster took it away and the kid did two years earlier.

12 So the same property right now that is being taken
13 away the second time, the same property right is being stolen
14 the second time? Judge, with all due respect to the
15 Government's position, that's been the whole basis, the fact
16 that these kids were ineligible before they met Walters and
17 Bloom. That is clearly relevant to whether or not the
18 University was actually deprived of a property right.

19 THE COURT: Sometimes it's pretty hard. Did you have
20 your hand up?

21 MR. PEARL: Judge, the language of the indictment
22 specifically says that they were deprived of the right to
23 allocate the scholarship to people that they considered
24 eligible. Now, if there's something going on that they don't
25 know about out there, that doesn't touch on what they consider

1 to be eligible. How do they don't know? This hasn't been tied
2 to the University at all.

3 MR. VALUKAS: The second part of that is, Mr. Webb
4 shifted the ground very disingenuously. What -- the Court's
5 admissibility of the issue concerning the eligibility was that
6 the University would have known about it. That is to say, with
7 regard to the grades. It wasn't that the students had
8 participated and the University didn't know about it.

9 The Court's specific ruling, and this was based on
10 Mr. Webb's specific representation, is that would have been
11 admissible if the University had known about it and was
12 tolerating it. That was relevant to the question as to whether
13 or not -- it goes to the weight of whether or not in this
14 particular instance when they had learned about the fact that
15 -- or did they really -- was it really material as to whether
16 or not these lies were being made in connection with it. That
17 was the basis of the Court's ruling. Now what Mr. Webb is
18 telling us is entirely different.

19 The fact that they may have otherwise -- that this
20 student may have violated some rule that the University did not
21 know about is totally irrelevant to the question of any issue
22 that's involved in this case as to whether or not Walters and
23 Bloom engaged in a scheme to defraud the University. And that
24 is the point. And there is no basis for relevance here, and
25 the only basis for relevance would be -- the only argument that

1 can be made here is that somehow if this student participated
2 in something which may have been a violation of the NCAA and
3 which may have resulted in his ineligibility, then Walters and
4 Bloom were entitled to engage in anything they wanted to
5 insofar as depriving the University. And that is simply not
6 the law.

7 MR. WEBB: The Government -- I'll shut up.

8 THE COURT: That again is a very crucial part of this
9 case.

10 MR. WEBB: If the Government didn't know -- if the
11 Government is saying that as long as the University didn't know
12 about it there could have been no fraud, then I'm innocent
13 because the University did not know about my fraud, either.

14 MR. VALUKAS: No.

15 MR. WEBB: And the University didn't know about the
16 booster fraud, apparently. But if the booster fraud predated
17 my fraud, then clearly that's a defense to this case.

18 THE COURT: Well, leave me just -- I will state
19 this.

20 And if you have asterisks in your machine, point them
21 out, because we have come to a very important juncture in this
22 trial.

23 At the heart of my ruling was that Mr. Walters and
24 Mr. Bloom have deprived them of information they need to make a
25 decision about the allocation of their scholarships.

1 That's your theory of the case, as well, is it not?

2 MR. VALUKAS: Well, that they -- no, that they
3 actually participated in lying to the University for purposes
4 of defrauding them.

5 THE COURT: Of the property right.

6 MR. VALUKAS: The actual property, the monies.

7 THE COURT: The property is that they have a right to
8 know what they are supposed to know before they allocate
9 scholarships. Is that right?

10 MR. VALUKAS: Well, the property is actually the
11 scholarship itself, the value of the scholarship and their
12 right to allocate it.

13 THE COURT: We're dealing with a bundle of things.
14 It includes the scholarship money and property, which is the
15 tangible thing, and that intangible right to allocate it to
16 people who are --

17 MR. VALUKAS: That's right.

18 THE COURT: -- eligible to receive it.

19 MR. PEARL: Who they consider to be eligible to
20 receive it.

21 THE COURT: Right. And the gravamen of the defense
22 is that Walters and Bloom, together with these athletes,
23 really, engaged in a scheme to deprive them of that
24 information. If that's the heart of it, then I would agree
25 with Mr. Valukas that whether they were involved with boosters

1 and other things is not relevant unless you can show that the
2 University either did know and maybe that they should have
3 known or should have known about those things.

4 And I suppose I'm not going to preclude you from
5 having an argument that says if somebody is driving a Mercedes
6 Benz around there that maybe the University should have
7 inquired as to how they got it.

8 MR. WEBB: Judge, under this rule, the booster is
9 considered part of the institution. It's on the face of the
10 rule.

11 Judge, if we are precluded from showing that these
12 witnesses, which were -- I think you just said what's fair is
13 fair. If I can't prove, Judge, that these witnesses on the
14 stand were already ineligible before they met Norby Walters and
15 Lloyd Bloom, then I'm being deprived of my right to prove that
16 in fact the crime did not occur here.

17 I recognize with most of these witnesses this is not
18 the case, but with this particular witness it is the case,
19 Judge. And clearly I have established that on the face of this
20 rule, on the face of the rule, this witness has already
21 admitted that on the face of the rule it says "a representative
22 of the institution."

23 This rule -- I'm going to call someone from the
24 NCAA. This rule actually was designed to deal with this very
25 situation of having boosters loan cars to these kids, because

1 it makes them ineligible. And, Judge, I respectfully ask that
2 that area --

3 THE COURT: I suppose that that -- if that's what you
4 can prove, I mean it doesn't fly in the face of what I just
5 said. If you are prepared to prove that the University knew
6 about this, I didn't take away your defense. I don't know what
7 it is that you're proving.

8 My simple statement to you for the record is that
9 these other allegations must be supported by a further showing
10 that the University either did or should have known about those
11 activities.

12 MR. VALUKAS: Do you have a basis for establishing
13 that the University knew about it?

14 MR. WEBB: Yes, I do.

15 THE COURT: Go ahead.

16 MR. WEBB: He already testified to it. He said this
17 was an alumni booster that gave him --

18 MS. GREENWALD: He didn't say that.

19 MR. WEBB: He just said it. He told Mr. Lombardi
20 that. I've got two interviews here, Judge.

21 THE COURT: I don't remember what he said, except I'm
22 testing my memory.

23 MR. WEBB: I'll ask him again.

24 THE COURT: And you guys are paid a lot more money
25 than I am to keep track of these things. I thought he says,

1 "He was my friend."

2 MR. PEARL: Right.

3 MR. WEBB: I then asked him, "Didn't you tell Mr. --"
4 Let's go back and ask him again.

5 THE COURT: Well, this is my ruling, that you have to
6 -- as far as these other violations. Clearly you don't have
7 any trouble with the grades. The University has control of
8 that.

9 MR. WEBB: Right.

10 THE COURT: But with these boosters and whatever, you
11 are going to have to make a showing that either they knew or
12 should have known about it. And if you can do what you said
13 you are going to do, then I'll let you go ahead with it. If
14 you can't, I won't. And we'll proceed on that basis.

15 MR. VALUKAS: Thank you, your Honor.

16 MR. WEBB: Judge, I just want to say one thing. I
17 intend to prove up that -- the NCAA, by the way, consistently
18 puts the universities on probation when boosters do these
19 things in spite of the fact the university didn't know about
20 it.

21 THE COURT: You know, Mr. Webb, leave me make one
22 thing abundantly clear. Either I am right or I may have just
23 done you a terrific favor by giving you a great, great, great
24 argument on appeal if we ever have to go that route.

25 MR. WEBB: I don't want to go to appeal.

1 THE COURT: I know you don't, but I'm just telling
2 you in simple terms, this is the way I see it, because I think
3 that that is the right way. If I'm right, we're going to
4 proceed. If I'm not, somebody is going to determine that on a
5 day other than today. But we are going to have a trial today
6 and the next day, and we are going to continue it right now.

7 MR. PEARL: Just to clarify, if he can't establish a
8 connection between this guy and the University knowing, that
9 will end the inquiry?

10 THE COURT: If that is -- you know, he knows better
11 than I what he can prove.

12 MR. WEBB: I'm going to prove it was an alumni
13 booster, which, on the face of the rule --

14 MR. VALUKAS: No. That's not the point.

15 MR. WEBB: It certainly is.

16 MR. VALUKAS: It's whether or not the University knew
17 about it. And if you can't prove that the University --

18 MR. WEBB: They are the University. That's what the
19 rule says.

20 THE COURT: I don't know.

21 MR. WEBB: It says "an institutional representative"
22 is what it says.

23 MR. VALUKAS: The point is this. If the University
24 didn't know about it, then in fact the University can't be held
25 responsible for it. And just simply saying it was an alumni

1 booster is not a solution, your Honor.

2 MR. WEBB: The problem right now, because the rule
3 says -- Judge, the NCAA puts the universities on probation when
4 -- the whole purpose of the rules is that alumni boosters are
5 considered representatives. This rule is drafted intentionally
6 to cover the alumni booster.

7 I intend to show that this was an alumni booster that
8 did this for him and that it's covered directly by the rule
9 and, therefore the NCAA --

10 THE COURT: What I'm going to let you do, Dan, pure
11 and simple, is read that rule into the record.

12 MR. WEBB: I'll do that.

13 MR. VALUKAS: Excuse me, your Honor. Excuse me.

14 THE COURT: Go ahead.

15 MR. VALUKAS: Again --

16 MR. WEBB: I'm ready to do that and leave it to
17 argument, Judge.

18 MR. VALUKAS: No, no. That's the point. That's
19 exactly the point that I want don't want to have, because
20 irrelevant evidence ought not to go before the jury so it can
21 be argued and confused.

22 The Court's ruling, as I just understood it and as
23 the Court reaffirmed, is that if the University knew about it
24 or should have known about it under the circumstances, for
25 instance the Mercedes situation, that may raise a different

1 question here. That goes only to the question which is whether
2 or not Walters' and Bloom's fraud was something that they would
3 have ignored. That's the only thing -- those are the only
4 people --

5 MR. WEBB: I'll read the rule.

6 MR. VALUKAS: Excuse me. May I finish? Excuse me.

7 Reading the rule into the record which is not
8 relevant because he hasn't laid the predicate that the
9 University knew about it, because if the University didn't know
10 about it, then it isn't relevant to this case and the jury
11 ought not to be in a position --

12 THE COURT: Then I think we are in a situation to do
13 this. You can ask him now about the car and who it is that he
14 got it from, and I will allow you to tie it up if you can
15 without reading the rule or whatever right now.

16 MR. VALUKAS: Thank you, your Honor.

17 MR. WEBB: The rule -- can I just -- Judge, these
18 rules are the Government's rules. I can't tie it up without
19 reading the rule. Judge, I just want to -- on the certificate
20 as I point just pointed out, the Government introduced the
21 certificate --

22 THE COURT: Why can't you tie it up when it gets to
23 be your turn to do whatever it is you want to do?

24 MR. WEBB: All I can do is offer the rule at that
25 point.

1 THE COURT: Maybe together with whatever other
2 showing you are going to make. I don't know what you are going
3 to do with other people other than the guy that is on the
4 stand. I mean, maybe you are going to call the booster. Maybe
5 you are going to call somebody that says what the relationship
6 of this person to the University is. I don't know what you're
7 going to do.

8 MR. WEBB: I can't do that, Judge, because, Judge,
9 the rule itself, this witness and the Government's exhibit --

10 THE COURT: If you can't do it you can't do it.

11 MR. WEBB: I just did it with this witness. He was
12 an alumni booster.

13 THE COURT: I have stated my ruling on the record.
14 We will proceed on that basis.

15 MR. VALUKAS: Thank you, your Honor.

16 (End of sidebar conference.)

17 THE COURT: You may proceed with the question.

18 BY MR. WEBB:

19 Q. Mr. Mitchell, I was asking you a question when I left that
20 one of the Government exhibits that the Government showed you
21 yesterday, which is Government Exhibit 1, actually sets forth
22 that you read over this information sheet including this NCAA
23 Constitution 3.1; isn't that correct? That's what it says
24 there, anyway?

25 A. Yes. That's what it says.

1 Q. And my question to you is: Did the coaches -- did the
2 coaches actually explain to you all of the prohibited conduct
3 that is set forth under Constitution Rule 3.1?

4 A. I don't remember them explaining all of them like the loan
5 of a car in fact.

6 Q. Do you recall any discussion about the loan of a car from
7 an alumni booster? Do you recall any discussions about that
8 with the coaches?

9 A. I just remember them saying I can't take any money from
10 them or any -- we can't accept any cars. They didn't say
11 anything about borrowing.

12 Q. Okay. So the coaches did tell you that -- they told you
13 that under the rules that you can't accept money from boosters;
14 is that correct?

15 A. Right.

16 Q. And they told you you can't accept cars from boosters?

17 A. As a form of a gift.

18 Q. Okay. But you don't remember whether they talked to you
19 all about whether you could borrow a car from a booster. Is
20 that your testimony?

21 A. Right.

22 Q. You don't remember whether they told you that it was in the
23 rules or it was not in the rules?

24 A. Right. I don't remember.

25 Q. Okay. Did you sometimes find that these coaches did not

1 explain all of these rules in great detail sometimes?

2 A. I would find it difficult to go through every one of the,
3 you know, regulations.

4 Q. Because actually you at least are aware they are somewhat
5 complicated and lengthy; aren't they?

6 A. Right.

7 Q. Sometimes it's hard to decide whether you're in compliance
8 with the rules or not; isn't it?

9 MR. PEARL: Objection, Judge.

10 THE COURT: Sustained.

11 BY MR. WEBB:

12 Q. In any event, we do know that when you borrowed this car
13 from the alumni booster --

14 MR. PEARL: Objection. There's no evidence of that.
15 He specifically said he doesn't know where the man went to
16 school.

17 THE COURT: That is the testimony as I recall it.
18 Maybe you should ask the question again, Mr. Webb.

19 MR. WEBB: Judge, I will.

20 BY MR. WEBB:

21 Q. You recall having two different interviews, one with Mr.
22 Lombardi and Mr. O'Connor in Detroit at the Silver Dome?

23 A. Yeah, I remember.

24 Q. Then Mr. Lombardi with a young parallel, a woman named--

25 A. It was a guy.

1 Q. The guy was at the stadium; right?

2 A. Yes.

3 Q. Was there another phone call that occurred a few days
4 earlier with Mr. Lombardi?

5 A. Yes.

6 Q. And they asked you some more questions?

7 A. Yes.

8 Q. Was there a woman on the phone at that time?

9 A. I don't know.

10 Q. Okay. At that time, on both of those occasions, on both
11 occasions, did you tell Mr. Lombardi and the people that were
12 with him that you borrowed this car from an alumni booster who
13 you referred to as a friend? Did you tell him that?

14 A. I told him I borrowed a car from a booster. I didn't say
15 alumni. I didn't know where he went to school.

16 Q. Okay. It was a booster -- at that time the person was a
17 booster of the University of Iowa at that time?

18 A. I believe so.

19 Q. Okay. And you -- Mr. Harmon also had a booster, is that
20 correct, whose name was Mr. Stevens?

21 MR. PEARL: Objection. Some basis for the --

22 THE COURT: I don't know what the relevancy is, but I
23 presume you will tie it up.

24 MR. PEARL: May we have the basis then if it's
25 relevant?

1 MR. WEBB: That's what he told us in the interview.

2 I mean, I have --

3 THE COURT: Who told him?

4 MR. WEBB: What he told us, that he -- that he knew
5 that Mr. Harmon --

6 MR. PEARL: Judge, I object to Mr. Webb testifying to
7 that question. If he can lay a foundation for his knowledge,
8 it makes it appropriate and admissible.

9 BY MR. WEBB:

10 Q. Sir, did you know of a gentlemen by the name of Mr. Stevens

11 --

12 A. Yeah. I knew Mr. Stevens.

13 Q. -- that was a booster who was a friend of Mr. Harmon's?

14 MR. PEARL: Again, I object. What's the basis of
15 his knowledge? Can we establish that first?

16 THE COURT: Can you do that?

17 BY MR. WEBB:

18 Q. Tell us how you knew Mr. Stevens and what his relationship
19 was to Mr. Harmon.

20 A. I knew Mr. Stevens through Ronnie.

21 Q. Through Ronnie Harmon?

22 A. Yes.

23 Q. And you were aware that Mr. Stevens loaned Mr. Harmon --

24 MR. PEARL: Again objection. "You were aware?"

25 THE COURT: Gentlemen, is it really worth all of

1 this? Do you want me to put the question?

2 How did you meet Mr. Stevens?

3 THE WITNESS: Ronnie introduced me to him.

4 THE COURT: What did he tell you about him?

5 MR. PEARL: Objection, hearsay, Judge.

6 THE WITNESS: He said he was his firend.

7 THE COURT: Well, let's get it on. Go head, Mr.

8 Webb.

9 BY MR. WEBB:

10 Q. Mr. Harmon told you that Mr. Stevens on occasion loaned him
11 a car on occasion; is that correct?

12 MR. PEARL: Objection. Hearsay.

13 BY THE WITNESS:

14 A. Ronnie never told me.

15 THE COURT: Ronnie never told him. Go on to the next
16 question.

17 BY MR. WEBB:

18 Q. Did you find that out from some other source?

19 MR. PEARL: Objection.

20 THE COURT: These are hearsay. I am going to allow
21 this foundationally that he was introduced by Mr. Harmon to Mr.
22 Stevens. Now get involved in his relationship and his dealing
23 with Mr. Stevens, what he told him or what he did.

24 MR. WEBB: I will.

25 BY MR. WEBB:

1 Q. Based on your own personal knowledge, do you have any
2 personal knowledge based on anything that you saw or in talking
3 to Mr. Stevens that he, Mr. Stevens, loaned the car to Mr.
4 Harmon on occasion?

5 A. No. I didn't talk to Mr. Stevens about that. That's
6 Ronnie's business.

7 Q. Okay. Did your booster friend also help you get a job at
8 one point in time?

9 A. No. The football -- the coaches at the football office
10 help us get a job.

11 Q. I'm sorry. I didn't get the right -- what was the name of
12 your booster friend? What was his name?

13 A. Mark Adelston.

14 Q. Adelstein?

15 A. Adelston.

16 Q. Where did he live?

17 A. Just outside of Iowa City.

18 Q. Who had first introduced you to this booster?

19 A. Nobody. I met him in a bar.

20 Q. Had you had at that time -- do you recall approximately how
21 many occasions he loaned you the car?

22 A. No. I can't recall how many times I borrowed the car.

23 Q. But you had borrowed the car on several occasions before
24 you ever met Mr. Bloom and Mr. Walters; is that correct?

25 MR. PEARL: Objection, Judge. He just said he

1 doesn't remember how many occasions.

2 MR. WEBB: He said before --

3 THE COURT: I don't think it's the same question.

4 BY MR. WEBB:

5 Q. You had borrowed the car on several occasions before you
6 ever met Mr. Bloom and Mr. Walters; is that correct?

7 A. Yes.

8 Q. Thank you. Now --

9 MR. WEBB: That's all the questions I have, Judge.

10 THE COURT: Thank you.

11 THE COURT: I believe redirect is in order.

12 REDIRECT EXAMINATION

13 BY MR. PEARL:

14 Q. Mr. Mitchell, you met this gentleman that Mr. Webb asked
15 you about in a bar; is that right?

16 A. Yes.

17 Q. You became friends?

18 A. Yes.

19 Q. Sometimes you borrowed his car to go to the store, you
20 said?

21 A. Yes.

22 Q. How much was the commission that you paid Mr. Walters and
23 Mr. Bloom for negotiating your contract?

24 A. All together or just separate? You talking about the --
25 with the loan?

1 Q. No.

2 A. Without the loan?

3 Q. Right.

4 A. Twenty-two thousand.

5 Q. What was the length of the contract you signed with the
6 Detroit Lions?

7 A. Four years.

8 Q. And is it correct that under your agreement with these
9 gentlemen, they were supposed to be your agents for four years;
10 is that right?

11 A. Right.

12 Q. And you testified -- let me ask you this. Did you keep Mr.
13 Bloom and Mr. Walters as your agents?

14 A. Yeah.

15 Q. So they are your agents as you sit there today?

16 A. No. At that time they were my agent until all this
17 started.

18 Q. How long did they serve as your agent?

19 A. Until all this started. I don't know when -- when
20 everything started.

21 MR. PEARL: Nothing further, your Honor.

22 MR. WEBB: I have no further questions.

23 MR. KENNELLY: Nor do I.

24 THE COURT: Mr. Mitchell, a good trip back to
25 Detroit.