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INTRODUCTION

OLIVER GREEN:
Hi, everyone. Thank you so much for joining us. My name is Oliver Green.

TATIANA DUBOSE:
And my name is Tatiana DuBose.

OLIVER GREEN:
And as co-presidents, it is our pleasure to welcome you to the NYU Sports Law Association's 11th annual Sports Law Colloquium. Given that the last year's colloquium was forced to take place entirely virtually, we are especially excited to be able to

1. Editor's Note: The transcript has been edited for clarity.

host some of our members and other students in person for the first time in two years. And, of course, we are glad to welcome those virtually as well. Thank you all for joining us. This year's program features four incredible panels, all touching on some of the most pressing legal issues in sports.

OLIVER GREEN:
First up will be name, image, and likeness policy for college athletes. Next, we have the future of blockchain and cryptocurrency in the sports world. Then we will learn about the rise of legalized sports gambling. And finally, we will wrap up with navigating labor disputes and CBA negotiations. We would like to thank our board members for assisting in putting this together, you all for attending, and of course, the moderators and panelists themselves as this event would not be possible without them. Thank you.

TATIANA DUBOSE:
This event has been approved for up to four New York state continuing legal education credits in the areas of professional practice category with one credit per colloquium panel attended. The colloquium is appropriate for both experienced and newly admitted attorneys. So, for the attorneys out there that are a bit behind on their CLEs, make sure to pay attention, as I will be inserting CLE passwords at the end of each panel. When you hear the password, please write it down, as you will need to include it in your attendance affirmation form for CLE credit later. More information about the CLE credit option will be emailed to all registered attendees within the coming days.

TATIANA DUBOSE:
Finally, thank you to our platinum sponsor, Winston & Strawn, who is well represented here today. And shout out to our gold sponsors as well, Latham & Watkins and Skadden. This event would not have been possible without you. A considerable amount of time and effort has gone into planning this event so we truly hope you all enjoy and learn some new things about the fast changing sports law world. Without further ado, I will turn things over to our Vice President, CONNOR RISER, to introduce the moderator for the first panel. Thank you.

Panel 1: The Future of Name, Image, & Likeness Policy for College Athletes

Sponsored by Winston & Strawn LLP

Connor Riser:
Good morning, everyone. My name is Connor Riser, and I am the Executive Vice President of NYU Sports Law Association. Thank you for joining us here today. Our first panel's on the future of name, image, and likeness, policy for college athletes. It is my extreme pleasure to introduce the moderator of our first panel, Dr. Daniel G. Kelly.

Dr. Kelly is the academic director of graduate programs and a clinical assistant professor at the Preston Robert Tisch Institute for Global Sport at NYU's School of Professional Studies. Among his many professional pursuits and accomplishments, he has recently helped to launch the NFL/NYU executive education program for rising NFL leaders. He has previously served as the academic lead for the Josoor Institute of Qatar's football and sports management diploma program in preparation for the 2022 FIFA World Cup. He also previously served as the faculty director and Professor of Practice at Georgetown University's sports industry management program. Dr. Kelly holds a PhD in sports management from The Ohio State University, a master's in sports studies, and a bachelor's in business management from the Richard T. Farmer School of Business at Miami University. Dr. Kelly, I'll let you take it from here.

Daniel G Kelly:
Thank you, Connor. I really appreciate this opportunity and thank you to the leadership of the NYU Sports Law Association. The opportunity to serve in this capacity as a moderator for this panel is a fantastic opportunity, and I'm really excited for it. Joining me today are our fantastic panelists.

We'll start with David Feher, who is the Co-Chair of Winston & Strawn's Sports Law Practice. He is one of the leading sports lawyers in the country with extensive experience in complex litigation, negotiations and arbitrations, involving contract, intellectual property, antitrust and international issues. He has been outside for the NFL Players Association and the NBA

Players Association for many years. He is one of the prime negotiators in collective bargaining agreements and antitrust settlements in the NFL. Thank you, David, for joining us.

DAVID FEHER:
Thank you.

DANIEL G KELLY:
Next, we have Michael McCann who is a legal analyst and senior sports legal reporter at Sportico. Prior to joining Sportico he was the legal analyst and staff writer for Sports Illustrated from 2007-2020. McCann is also an attorney and Professor of Law at the University of New Hampshire Franklin Pierce School of Law, where he's the Director of the Sports and Entertainment Law Institute. He's the editor of the Oxford University Press Handbook of American Sports Law and Ed O'Bannon and co-author of Court Justice: The Inside Story of My Battle Against the NCAA.

McCann has also authored more than 20 book chapters and law review articles, including placements in the Yale Law Journal and the Boston College Law Review. He holds degrees from Harvard Law School, University of Virginia School of Law, and Georgetown University. Thank you, Michael, for joining us.

MICHAEL MCCANN:
Thank you for having me.

DANIEL G KELLY:
And finally, Daniel Lust. Daniel is an attorney in the New York City office of Geragos & Geragos. After working for the New York Giants in the PR department, Dan went on to Fordham Law School, where he split his focus between trial advocacy and sports law. In the sports law realm, he served as President of Fordham Sports Law Forum, and founded the National Basketball Negotiation Competition. He has also worked for SFX Baseball, one of the premier baseball agencies in the country, and assisted in the arbitration cases with several MLB teams including Cincinnati Reds, Minnesota Twins, and Oakland Athletics. Daniel, thank you for joining us.

DANIEL LUST:
Thank you. My pleasure.

DANIEL G KELLY:
All right. Our first topic to get the ball rolling, let's look at what are your initial thoughts on the NCAA's interim NIL, name, image, and likeness policies and its impact on student athletes? We'll get a round-robin going, but we'll start with David.

DAVID FEHER:
Morning, thanks everyone for being here. This is really great. And I'm actually in New Orleans. It's a hotel room behind me, that's been virtually out. But the reason I mentioned that is because two years ago, it was the last trip I took to New Orleans to a similar panel at Tulane, which was the last trip I took before the pandemic. And so, this is the first trip, I hope, after at least the main phase of the pandemic. And it's good to get back to at least half normal life.

I want to start off by laying down a couple of first principles, which is that for NIL, my main response is: it's about time and it's not nearly enough yet. And I say that for a couple of fundamental reasons. One is that some of the topics we've been discussing here have been about NIL policy.

Policy is normally something that's done by a government, or it's done by an individual economic actor, like a company. The NCAA is a collection of competing business entities. Conferences are also collections of competing business entities, but they don't have individual market power, generally. And so, that's usually okay, and there's a distinction there. But the fundamental point here is that the NCAA isn't some kind of quasi-governmental entity that we should all bow down to and give deference to, with the belief that somehow they're acting on our interests and the interest of consumers generally, and that they're going to necessarily do good.

I hate to say this, but in my 30 plus years of experience in the sports industry, and generally, when you give economic actors, essentially, unfettered authority, they're going to exercise it in their self-interests. I mean, that's true with almost everyone. These are not organizations where you can expect them to say,

"Oh, you have billions of dollars in contracts, and we want you to dispose of those billions of dollars in a way that is consistent with the public good." And expect people who are individual decision makers with their own interest to do anything other than to follow their own interest.

And with the NCAA and the conferences, especially the NCAA, because they've had monopoly market power over the years, every time in a major economic area, where they put rules together, it's been destructive of competition and destructive of consumer welfare. In the 1980s, they essentially wanted to have a rule that would limit national TV broadcasts to just a game or two on weekends, where they would control the monopoly. And it would prevent fans all around the country from seeing games that they were desperate to watch. It went all the way up to the Supreme Court. The Supreme Court completely batted it down as being completely destructive of competition and consumer welfare.

In the coaching area, salaries for head coaches are way out of whack from competitive market forces, because money is being funneled in there when it can't be funneled in more efficient ways. And what did the NCAA do? They passed a rule that limited the salaries of the weakest assistant coaches, who were making hardly anything. And so, they were not only acting in a way that was anti-competitive, but against the weakest people.

And in our case, that just went before the Supreme Court *Alston*, the NCAA was restricting educational opportunities for students. And student athletes is a misnomer, because that's only been done to avoid paying them fair remuneration for their service on behalf of the schools. And so, just as a predicate, you can't do any of this thinking that, "Oh, it's good to have NCAA policies, and they're going to do good things."

In terms of NIL, the main thing I think of is when you look at the results we're getting this year, there's a trail of broken people, in decades and decades before, of people who were denied these opportunities, of people who should have been making compensation for their own name, image, and likeness.

This is not college or conference or NCAA intellectual property. This is their face. This is their name. This is their autograph. This is their time. And the fact that these rules that were passed to economically restrict them from selling their identity, I think it was appalling and in terms of the harm that was left in this wreckage over all these years, it's just. . . With everything going on in the world, I don't want to say that it's something that should be at the top of the world list, but in terms of how we focus on sports and how we care about these things, we need to teach the right lessons. And if we can't teach the lessons to fans that you own your own identity, and you should be free to sell it, then I don't know what we can do. So the main thing I'll say is that it's about time.

DANIEL G KELLY:
Yeah. That's fantastic thoughts. I'm going to take it to Michael next, because I know you have extensive experience, especially with Ed O'Bannon. And so, Michael, your initial thoughts on the interim NIL policies.

MICHAEL MCCANN:
And I would just echo, I mean, David's very eloquent, thoughtful comments. Just to add a couple points to what he said, I would say, one, NIL, at least in the media, is often thought of as a new right. It's not a new right. In fact, all Americans have an inherent right in their ability to commercialize their identity. It's through the right of publicity. And most states have explicitly recognized a right of publicity and others have incorporated it through privacy law. And it's important to stress that because NIL is really about removing a restraint more than anything else.

It's a restraint on college athletes' ability to generate income or other benefits for their name, image, and likeness. And the reason why that's significant, is that it's really about restoring the status of one set of college students with their classmates. If you're an actor, if you're a musician, if you have some other marketable trait, while you're in college, you're able to make money from it, including for your publicity of it.

And NIL is about saying, the NCAA and its member schools can no longer construct a constraint and then impose it in

ways in which are adverse to the students. So, again, it's really about equalizing the playing field more than anything else, and about removing a restraint on a right they already have. And the second point, Oliver, you referenced Ed O'Bannon, Ed and I have had so many conversations over the years about NIL. And one point that always struck with me is that he said, "It's not about college athletes getting rich." Most college athletes, and the data suggests this, are not making a ton of money through NIL. It's really about dignity. It's about the idea. David's comments noted this. It's about saying, "You have this right, and we've taken this right away from you for reasons that are largely fictitious." And it's about ensuring that you now have that right back. And as Ed has noted, many athletes, if you look at the data on athletes who are most adversely affected by constraints on NIL, it's often African American men. And as a result, there's an issue of race that's part of this as well. That, even if it was not intentional, it's important to point out, in terms of the context of the issue. So, I would just raise those two points.

DANIEL G KELLY:
Thank you, Michael. That was great work. I'm going to transition over to Daniel Lust. And the same question about the NIL policies, but on the backend, the impact on the dynamic between student athletes, agents, NCAA.

DANIEL LUST:
I'm happy you asked that. I think Michael and David laid it out really well. I think the portion that I tend to fall in as, we'll say, a diehard college sports fan, I think what's lacking in the NCAA's interim rules is really this impact on competitive balance, and where athletes are going as a result of the world of NIL. So, I think as to at least the initial question, I think the NCAA, we could talk about their interim NIL policies, but we're almost really talking about a lack of a true NCAA policy. We're kind of talking about what the NCAA is going to do to provide some procedural safeguards.

And I think they've been kind of walking around it for, at this point, maybe close to a year, year plus about what the NCAA's actual active role is going to be in managing this, we'll call it landmines coming here and there. And I'm sure we're going

to talk about collectives and whatnot. But, yeah, I think the NCAA, I've been a little, hopefully not controversial, but a little disappointed with the NCAA's active role in managing the chaos. We've called it the wild, wild West. And I think it still is the wild, wild West. And we're basically almost a year into the era.

So I think with respect to agents, and we should mention our colleague, Darren Heitner, couldn't be with us today with the birth of his first child. He's probably who would've got this question, so I'll do my best to answer on his behalf. But the world of agents is kind of upside down as to where we were, basically, a year ago. For, I don't know, the better part of a half century agents were not allowed in the sport.

I'm sure agents found their way in, under the table and sneaky ways to get around it with, we'll say, pseudo promises and bags of, we'll say, the $100 handshakes underneath the table. But now we have an opportunity for this all to be done above the table. So, agents are allowed in the space, the top agencies in our professional sports world are now moving into college. So, I think in the first, maybe, we'll say that initial wild, wild West era, the first 30 days of NIL, nobody really knew what you had to do. They didn't know that you had to register with the particular state.

DANIEL G KELLY:
Exactly.

DANIEL LUST:
They didn't know what you could put in the contracts. You had a lot of predatory people who had never been in the space before thinking that these athletes were going to sign up for these get rich quick schemes. And I know we're going to talk about it a little bit, but I don't think anyone was advising them of the tax ramifications. I don't think anybody necessarily knew for these new people getting into the space.

And I know Dave and Michael have all commented on this NCAA world, but there was a period of time, we're still kind of there, where the rules are very fuzzy and very gray as to what you can and can't do. And that's maybe the lack of a federal bill, and the lack of the NCAA really putting out a formal pol-

icy. So, maybe with a broad brushstroke, the rules of agents are going to vary depending on the state that you're in. There is no NCAA certification. One of my students just got NBA certified, so they are now an NBA player agent. There's an NBA certification. At least for the time being, maybe in the next five years, there will be an NCAA certification, but not as of today. So, for all of our 85 participants looking to get into that world of agency, just be very mindful that just like our state laws, it does vary state by state. It is not yet quite done at the NCAA level.

DANIEL G KELLY:
Thank you, Daniel. That was fantastic. I'm going to spin back to Michael for a follow-up on what Daniel pointed out. Is this surprising that the NCAA has implemented an interim policy more, so than trying to be forthwith with policies to tackle NIL? And as Daniel pointed out, the fact that it isn't a federal policy or federal law, and that we're trying to interpret it along the way. And we'll get to David as well on that.

MICHAEL MCCANN:
I mean, it's not surprising, in a sense that NIL as an issue has been around for decades, and the NCAA has opposed it until recently. So, the idea that they sort of ran out of time and that's what happened. I had a chance to testify before the United States Senate on this in June of last year. And I noted that a federal bill would make a lot of sense, but by that point it was too late. States had already adopted NIL statutes that were going to go into effect on July 1.

So, the idea that they rushed to put together an interim policy, isn't surprising, because the alternative would've been to sue, seek conjunctions in every state that had a statute going into effect on July 1. And then running the table, which would've been, I think, by that point 14 states, and trying to lock their statute. So, it became impractical. And I know that there were discussions about use of the commerce clause, that there has been past litigation, the *Miller* case in particular, as potential precedent. But the NCAA didn't go in that direction, they more or less capitulated to state statutes. So, it's not surprising.

And Dan mentioned the role of agents. I think it's something to keep in mind. I question, and I have a law review article on this, how is the NCAA in a position to actually certify agents? It's not a labor entity. It's not a governmental entity that's in the business of licensing. Typically, agency agents are licensed by players' associations, by unions. It's not immediately clear that the NCAA has the legal capacity to operate in that way. Now, maybe they do, and it goes fine. But it presents a whole host of issues. So, I'll stop there. I think David wants to jump in.

DANIEL G KELLY:
I think David's ready.

DAVID FEHER:
I've got a bunch to say. I mean, I'm going to start off by saying the NCAA is not a government, and can't be trusted. They proved that over and over again. Secondly, this notion of a federal bill as being a good thing to restore order to the Wild West. First off the Wild West, and Dan, I know you didn't intend it this way, but competition's a good thing. I mean, apart from various areas, we can all agree on, I hope, like environmental laws, where there are external harms to other people, we should generally try and let competition produce public benefits and produce more efficient solutions.

And so, to the extent people are saying that, "Oh, what's going on now is disorderly." That's the way economic activity is supposed to be. It's not supposed to be a government that tells you what to do, and with a state run economy, at least not in this country. We're supposed to be able to make our own individual decisions. That's why in all of these disputes that we've had over the years with antitrust, it's never been a political issue from the right, far right to the far left. Everyone agreed that they hated the NCAA, and they hated them as like a command economy trying to do things that would benefit themselves and destroy everyone else. And by the way, their disciplinary regulatory behavior has been so destructive in terms of being random in their punishments for people, it gives no confidence that they can do anything. I mean, the list of people who've been aggrieved by the NCAA over the years is so long, it's crazy.

The thing I want to focus on, too, is, on the federal bill, it's largely a Trojan horse to let the NCAA get back to telling us all what to do. And they're doing it in horribly misleading and kind of almost marketing ways that are designed to deceive people. At the end of last year, actually the year before last, before the *Alston* decision, there was a Republican bill that was submitted by then the head of one of the main committees with jurisdiction over it, and the Senator trumpeted the fact that it was going to allow students to get money from NIL.

While buried within the provisions, which nobody focused on, which nobody talked about, was a provision that gave the NCAA carte blanche to basically do anything they wanted, apart from the little bit of crumbs that were granted to the athletes. That would've allowed them to go back to regulating everything in terms of compensation that athletes are receiving, in a way that would've been totally destructive of athletes.

Again, the NCAA can't be trusted. And this notion of a federal bill to bring order to some place to protect the students is crazy. The last thing I want to say is in terms of competitive balance, there has never been competitive balance in the NCAA. It's always been the same schools that have generally prevailed. Sometimes over time, they shift to a degree, but there's never been competitive balance. And beyond that, we went through a massive antitrust trial in the *Alston* case on educational benefits. The NCAA couldn't even make a competitive balance argument with a straight face and they dropped it early on. They know that it has no credibility at all. And so, when you ask, what are the justifications that the NCAA can make in terms of any regulations on this? It needs to be procompetitive, they can't restrict economic activity because they think that the educational psychology of students is somehow going to be harmed. "Oh, my God, because they're too precious!" I mean, this is not a power that the NCAA has. It has to be an economic benefit. And they've yet to come up with any justification that makes any sense.

And by the way, their amateurism defense, which is kind of an oxymoron, because it was never about amateurism, it was about shifting money from the athletes to the administrators and to the schools, has been totally shattered by the NIL devel-

opments too. So, to the extent that anyone was giving them deference in terms of amateurism, that is now as dead as dead can be, and we'll see what the future brings. But why is the NCAA not doing anything? Because they know they're going to be violating the laws.

That's a good thing. Restraining behavior because people were afraid that they're going to be violating the laws. When they economically injure people who have the least leverage, and who are in some of the most economically distressed situations, constraining their behavior is a good thing.

DANIEL LUST:
Daniel, could I jump in really quick, please?

DANIEL G KELLY:
Of course, please.

DANIEL LUST:
By all means, if I came up as an NCAA apologist, I am not, by any means. If anyone follows me on social media, probably quite the opposite. All I wanted to point out, from a fan standpoint, we're experiencing something new. That's all I meant by wild, wild West. It's not meant to say that's good or bad, it's that we are experiencing a time where laws are being passed. Right now, Alabama is now repealing its NIL law, so it's an era where the laws are very much in flux, which could be a good thing. And again, I'm just speaking from a. . . I go on enough shows, people there are college football purists that are nervous, to some extent, that national championships are being somewhat decided by whether or not your state law is going to help you recruit on an NIL basis.

And on a conference level, conferences are made up of different states. So, I'm just pointing out, it's not necessarily that it's good or bad, it's that it's something new. And that it's something that sports fans and college purists have to get used to. And as someone that's championing player empowerment and athletes being able to make money, it's a good thing. And it's putting the NCAA in an uncomfortable position. But if we're going to have a National Champion and all of a sudden we're going to have NIL and the transfer portal decided based off of one state, for example, Alabama, who has just repealed their

NIL law, they now can do certain things that other states. . . Florida has a NIL law, Texas does as well, I mean, I think about half the country does at this point. And Alabama can do certain things that other states can't do.

Again, not that it's good or bad, that it's just a new type of edge that is being fought by politicians, which, at a certain point, I'm not one that loves to blend sports and politics, but it's kind of unavoidable. So, I think that's the "uncomfortability" that some of our sports fans are having. That's my main point there.

DAVID FEHER:
Before Michael jumps in, I'll just say, competition's a beautiful thing. And generally, politicians should get out of the way of competition, yielding benefits for fans all over the country.

DANIEL LUST:
Politicians tend to go to whatever gets them reelected. I feel like the carrot, they keep going towards it.

DANIEL G KELLY:
Of course, Michael, please weigh in.

MICHAEL MCCANN:
No, I know you want to move on to another question. So, I'll defer to you.

DANIEL G KELLY:
Okay, perfect. My next question, and we'll start with Dan, is about, let's see, the ability for student athletes to maintain compliance, but still maximize their NIL opportunities. Do you see a lot of issues coming up in the future for athletes to maintain their compliance?

DANIEL LUST:
I actually think for the athletes, it depends, again, what school you're at. Certain states are going to require you to actually go to your school and tell them what NIL deals you have, some before you sign them, some after you sign them. But by and large, I don't know if that's going to be an athlete concern. I think it's going to be more of a school concern. I guess the scenario that I know that I've grappled with online, and I will

see what chess pieces and dominoes fall, but it's this whole conversation with respect to Nike athletes.

DANIEL G KELLY:
Of course.

DANIEL LUST:
So if you are a Nike athlete and you're at a school that's not a Nike school, be it an Under Armour school, Adidas school, whatever your school is, I think, as an athlete, you're going to say, "I'd like to sign with whatever sponsor I want to sign with." And then you're going to have the school saying, "Well, we are an Adidas school, or Under Armour or Reebok," whatever you name it. So, I think that's going to be tough, because I think as our NIL world expands. . . And Nike and Gatorade have actually just gotten into the NIL space fairly recently. They weren't in the space on July 1st, August 1st.

So I think once these A-level brands and we're starting to see more and more of them enter the space, we're going to start seeing those kinds of conflicts hit one another. But really for the first six months of the NIL era it was fairly small brands. It was mom and pop. It was local shops, local restaurants. Those were a lot of the deals, smaller deals, social media based deals, influencer deals. But we're now starting to see our athletes get these large deals that aren't necessarily coming from boosters, but coming from national brands.

So I think that's going to be more and more of an issue and it's going to start pitting the schools against the athletes. And then there's a question as to what extent the school can tell an athlete what they can't do, because they're not employees. I mean, that's certainly an interesting conversation that we're going to continue to have. But I don't think those lines are so clear about what schools can tell the athletes to do on a compliance level. I don't think that point is, again, David, I'll probably stop using the term, but when I'm saying wild, wild West, there is no black and white answer to that. We don't know. So, until that's tested, until there's precedent on point, it's kind of a guessing game. It's shades of gray.

DANIEL G KELLY:
All right. Thank you, Daniel. Michael thoughts on athletes or universities maintaining compliance or maintaining the balance of compliance?

MICHAEL MCCANN:
Well, I think transparency is key, so that both the school and the athlete and the recruit are aware of the contracts that the other has. That is one way of mitigating some of the concerns of potential conflicts and endorsements and sponsorships is that there's communication. And if a recruit knows that a school is a Nike school or Adidas or New Balance or whatever it may be, that is helpful information to the recruit in making a decision on where they want to play.

So, in some ways, I think the market can sort of self-correct this. And usually just being transparent is the best way of dealing with things. And I know that hasn't always been the case in college sports. I'm well aware of that, but I also think schools that are more direct with. . . And I know athletic directors, some are really candid. They're not trying to scheme. They're really just trying to operate an athletic department. And one way of facilitating that, I think, is to be open and candid. And to the extent that's the case that might, again, mitigate some of the concerns that I think your question alludes to.

DANIEL G KELLY:
Okay. David, thoughts?

DAVID FEHER:
I think those points all make sense. And in terms of transparency and information flow, I think that's very important. And I think part of the difficulty right now, and this goes to what Dan is talking about, is that we're in a state of transition right now. Things can get rough sometimes when you go from a command economy to competition. There's a lot of chaos sometimes, and it can get very, very messy and people can have bad information. And that's not a good thing, if people are kind of defrauded by individual "bad agents" and who are told things that aren't accurate under the law.

And I think that the dissemination of accurate information by schools is very, very important. And I think what Michael said

in terms of people, knowing what the different contracts are, makes sense, too. In terms of Nike schools or Adidas schools or all of that, in professional sports, there have been fairly clear lines of demarcation, which have worked for a lot of years. And it's based on what people own, in terms of their own intellectual property. And so, if you want to use a league NFL shield or a team mark, you need to go to the league or the team in order to do it. It's the same thing now with colleges. You can't use your school mark in any way you want to, I won't say that. . . because we get into arguments on a legal basis, whether you can use school colors in your advertisements. That happened in the NFL when there wasn't a union and there were disputes about that. But there are boundaries of intellectual property, and if everyone knows what they can and can't do, consistent with the law, there's nothing wrong with that. That's actually something you should do.

The difficulty is that before, when the NCAA and the schools were just trying to write all the rules and keep all of the money, they were doing things as a kind of performance art. And beyond performance art also in ways to kind of get around what they viewed as political issues, so that they maybe wanted to pay coaches X dollars, but they didn't want to pay Y, and so then they allowed coaches to do deals, where the coaches would have to have shoe company logos displayed, and the coaches would get income streams off of that, that they were used to.

And so, in the pros, if you want to wear a particular kind of shoe, the way it generally works is the athlete can do the deal to wear the shoe and can do the ads. And by the way, there's a difference between what you're doing on your own time versus what you're doing on the broadcast of the particular game. And you need to know the rules there. And so, I think this will sort it out, but the main thing is that I think the schools need to, going forward, not overreach and not try and live like it's in the world that we used to be. And I'm not asking for much here, really, all that I'm saying is that the NCAA should be acting like they're subject to the laws, just like anyone else.

And in terms of agent regulation, it's the same thing, they're not the player's association. The player's association has the

right to regulate agents as a result of their status as a union. The NCAA can't do that. At the same time, individual states have passed rules that limit what agents can do, and make sure that agents register in various ways. And that's okay too, if the rules are reasonable. If the state wants to do that, God bless them. And so, I don't discourage that at all. But the main thing is to let people have accurate information and make their own economic decisions, as to rights that they own.

DANIEL G KELLY:
All right, great. Great analysis. Thank you for that. I'm going to switch gears. And I want to start with Michael on this question about tax implications, because now that we have this new dynamic of student athletes being able to monetize their name, image, and likeness, they have to pay their taxes. And so, whose responsibility is it to monitor, support, or ensure that the student athletes are maintaining their tax eligibility or paying their taxes? Is it on the student athletes themselves? Is it on the university? Is it on the NCAA? Is it on their potential agents? Whose responsibility is to make sure that the athletes remain in tax compliance?

MICHAEL MCCANN:
Well, as taxpayers, we are ultimately responsible to pay our taxes, right?

DANIEL G KELLY:
Yeah.

MICHAEL MCCANN:
That's a duty that we all have as citizens if we make money. So, ultimately, it's on the athlete himself or herself to pay their taxes. And if they're not sure how to do that, to seek help in doing so. Schools can certainly provide guidance and suggestions and reminders, but ultimately, whether you're an athlete or just anyone, if you sign a contract with a company and it's a sponsorship or endorsement contract, and you're making money from it, you have to figure out how to pay taxes. This is on you, and many of these contracts are constructed as independent contractor relationships. So, they're not getting taxes taken out initially. So, that means that the athlete will have to

know that their tax burden later on will be higher, because they're not getting taxes taken out immediately.

It's not the hardest concept. I think it's something that athletes should be able to grasp just like anyone who's earning income. So, I would say it's on the person being paid and that's sort of a responsibility that we have as citizens is to pay our taxes, and make sure that we're adhering to federal and state laws. And, again, there are accountants, there are tax attorneys, there are professionals out there that can be retained. If there's an agent that has taken on the duty of representing the athlete, then he or she likely has a responsibility as well to at least encourage the athlete to pay their taxes.

But, again, it's something that we have as Americans. When somebody's charged with tax evasion and tax fraud, it's the taxpayer. And to the extent that an accountant or tax attorney errored, it would be in the form of malpractice. So, I would say it's really up to the athlete.

DANIEL G KELLY:
All right. Thank you. Thank you. Moving to Daniel, the same question about the impact of student athletes dealing with taxes, but let's add a bit of a caveat to it where this is their first time paying taxes, possibly. This is their first time being in a situation with this type of monetary value coming in and managing that, in addition to being a student athlete and balancing all of the pressures and the obstacles that come along with it.

DANIEL LUST:
So I guess I could speak from firsthand experience. Not that I am in any way, shape, or form close to being a professional athlete or a collegiate athlete. I did play intramural sports at a D3 level, and we did win a D3 soccer intramural championship. But I'm in my early 30s, I have someone to pay my taxes for me. That's what I would do. And these athletes are coming in sometimes 18, 19, 20, so they're not going to know the tax ramifications of accepting a deal, as some of the numbers for NIL purposes.

A lot of these deals are very small deals, like $100, 250, like posting something on Instagram. They're very small, and ath-

letes might not think, and not saying anything good or bad, but they don't know the tax ramifications of accepting that. And maybe they're not filling out a W-9 and sending it to someone. So, it's merchandise deals, Instagram posts, car leases, art, they all have different tax ramifications and they have no idea.

So I guess to the larger point, I've always been in favor of agents being allowed in the sport, at least done over the table, and lawyers being involved in the space. Darren, who's not with us on the panel today, Darren is a lawyer and he's also in this NIL world. He's helping athletes kind of monitor. So, I don't mind if we're going to have this really short window, especially for some of our college basketball players that are one and done guys, they have one year of earning. Like Zion Williamson had one year in college, and then he went to the pros. I don't mind surrounding those people with the best possible financial teams, the best lawyers, the best agents.

So for their first time making money at this level, a guy like Bryce Young at Alabama was accordingly making a million dollars, over seven figures reportedly. And the guy's, I don't think, ever made any money in his life, at least to that extent. So, yeah, he needs to be surrounded by agents, financial people, lawyers. So, yeah, I mean, to Mike's point, you don't want to get in trouble by not paying your taxes, but they kind of have to go part and parcel. So, taxes, you do need financial professionals around you. So, I think the NCAA or the state laws, whoever you want to give credit for it, I think they got that part, allowing those two things to work hand in hand.

DANIEL G KELLY:
Thank you, Daniel. Going to David, let's move the question up to a 30,000 foot view. Let's look at it. We have student athletes like Bryce Young from Alabama, we have Paige Bueckers from UConn that have signed lucrative deals, seven figure deals, and balancing taxes, balancing the pressure of the financial literacy. Just being able to balance being a student athlete, being a millionaire, and also being in compliance with taxes. What are your thoughts?

DAVID FEHER:
First of all, in terms of the schools and the NCAA, I think educational efforts are fine and should be encouraged. And I think it's important for the schools to give accurate educational information to athletes as to what their obligations are. And so, I don't think people make decisions in a vacuum without good information, so I encourage that.

At the same time, I think that's pretty much where it needs to end in relation to contracts that students make with third parties. Because, just for an example, if you work for NYU, and you do a separate job as an expert, in a case for a law firm where you testify as an expert or serve as a consulting expert and they pay you $10,000 for your work. Does NYU have any business telling you what you should or should not do with that money? And what your obligations are or aren't with regard to taxes? No, that's your decision. That's your job. That's a contract you're making with a third party. NYU has no business telling you what to do with your own money.

And the other thing is that in terms of the examples that you gave, this is not new. This is not unusual. There have been actors, musicians, social media people, today, attending colleges, making millions upon millions of dollars. This is telling my age, but Jodie Foster went to Yale while she was making millions of dollars making films in Hollywood. Today, I'm sure there are tons of people in colleges who are making millions or hundreds of thousands or tens of thousands or whatever in their own jobs, while they're attending school.

Being a student and holding down a job is a difficult balance. And you need to make your own decisions. What do you want to focus on? Where do you want to make your money? What choices do you want to make? And so, that's fine, but that's not anything new. That's something that students have been doing for ages. And I think allowing. . . Not allowing, actually allowing is like the worst word in the world that we've been using that word, all of us. What does this mean "allowing?" We're not allowed to do something unless somebody says, "Yes, you can." That's not the way this country works. We don't have to ask for permission slips from mommy and daddy universities before we make our economic decisions, because we can't

do anything. That's just not this country. That's not the country we've been taught about and we've grown up with since the time we were kids.

I mean, we're supposed to be adults making our own economic decisions. What do the laws do? They tell us not to commit crimes. They tell us not to engage in monopolistic behavior. They tell us not to pollute. They tell us not to commit fraud. Those are the sorts of things that laws are supposed to do. The laws are not supposed to be there to appoint universities to act as some kind of state actor, where every time we want to enter into an economic contract, we have to ask for permission-

DANIEL G KELLY:
Permission. Yeah.

DAVID FEHER:
. . . from the administrator who's going to tell us where we're going to live and what we're going to do. This country is not a dictatorship. It is not. It's not a political dictatorship. It's not an economic dictatorship. And it's very easy to kind of think that, oh, we should defer to what people are going to tell us to do. That's not the country I believe in, especially not today.

DANIEL G KELLY:
All right, David. . . Oh, please, Michael.

MICHAEL MCCANN:
Just to add to that, I mean we're all anchored to college as this construct of sports, that there's this entity that during this age, the sequence of age, players go to college and they play a sport and they're students. It's really an American construct. I mean, this is not something that other parts of the world do. And there are pro athletes at very young ages in other parts of the world. I mean, Ed O'Bannon was telling he had a 13-year-old teammate when he was playing over in Poland. And you'd pick him up from his parents' house, and he had a tutor. I mean, it wasn't a weird thing.

And sort of having the opportunity to make money earlier in life, it shouldn't be seen as strange, as David noted, there are child actors and musicians. When John Mayer went to the Ber-

klee School of Music, he could have signed a record deal. It wasn't somehow endangering his eligibility in some way. I think the further we get away from sort of anchoring our viewpoints to that construct, I think is probably healthy.

DANIEL G KELLY:
I want to stay with Michael. You made a point earlier about the NIL laws impacting African Americans in particular, more so than other racial groups. Where you gave the John Mayer example, and I think David gave the Jodie Foster example. Do you think that there are still those concerns about the viability of African Americans being able to benefit through NIL?

MICHAEL MCCANN:
Well, I think if you look at the data, men's basketball players and college football players, and the percentage of African Americans who play in those sports, and to the extent that those sports are generating a lot of the NIL opportunities. I would also add women's basketball as well has done very well with NIL. That it should benefit those that are playing in those sports in a way that might be more lucrative than athletes in other sports. Although I'm hesitant to say it with too broad of a brush, because we've seen athletes in a whole host of sports benefit from NIL, but I do think it goes to equity. And even if preventing NIL, restraining a right somebody already has wasn't motivated by race, if it had a disproportionate impact on race, that courts have identified is a justification to change things.

DANIEL G KELLY:
Correct.

MICHAEL MCCANN:
So, yeah, I think, again, this is not about sort of intentional racism. I remember Ed O'Bannon saying, "It's not about people sitting around a table saying, 'Let's do something racist.' It's about not caring about race." And it's about not being sensitive to the impact of a set of policies that disproportionately affect one race more than others. So, it should have more of an equalizing effect. I think everyone's going to benefit from being able to use it. They already have, that has been constrained. And to the extent that it's sports that are dispropor-

tionately African American, then it should help that group more than others, if the data works out that way.

DANIEL G KELLY:
Okay. Please. Please, David, please respond.

DAVID FEHER:
I'm going to talk just briefly, as kind of like the more elder person on this group, because I'm 63 and I grew up in the 60s. And it's not entirely my place, or even largely my place to talk about this in great depth, because I can't walk in other people's shoes. But the country I grew up in the '60s was, as much as people argue about things today, it was so much more horrific back then. Where violent behavior against people because of their race was incredibly common. And I remember as a young kid, all the assassinations and civil rights workers getting murdered, and it was a different country, and I hope we're getting to a better, far better place, not just better. I know we're better, but a far, far better place.

And sports is a funny thing, because we care so deeply about it. And it's a piece, but one thing I will say is in terms of what competition does, people don't realize this, but there was a lot of social change in this country when a lot of states, I'm not going to. . . I mean, at the time it was one geographic region, but where there were a lot of states with a lot of state universities, where they essentially were getting the hell beat out of them on the football field, because they were limiting their recruitment to white athletes. And the people living in those states were like, "Oh, wait this is a problem. We can't do this." And then they started viewing people who weren't viewed as people more like people and they got to know them better. And I say this from the perspective of someone who wasn't on the receiving end of that, so much. But I mean, I grew up in a part of the country that was kind of tough in those areas. But if we say these things aren't important, they are important.

And in terms of the racial equity issues, the one thing I'll say is that the sports we tend to talk about in this area are football and basketball. How often do we hear people complain about 15-year-old hockey players in Quebec becoming a pro? How often do we hear about high school baseball players signing a

massive bonus baby contract and how we applaud them? "Oh, my God, this is great. This high school kid just signed with the Yankees and just signed a bonus for two million dollars."

DANIEL LUST:
That might be Rob Manfred's fault, Dave, that might not be. . . Maybe a topic for a different battle.

DAVID FEHER:
No, no, I know that, but at least in terms of young kids making money and having those choices, we don't bat an eye. We don't talk about, "How do we protect them? How do we set rules that prevent them from being taken advantage of?" We treat them as human beings, and I just think we need to do that more.

DANIEL G KELLY:
All right. We'll get to our final comment from Dan, and then we'll do rapid fire for our last question.

DANIEL LUST:
I guess, well, I was going to answer a question that was given to us by Cabot Marks from the-

DANIEL G KELLY:
Oh, perfect.

DANIEL LUST:
I think that's what you're referencing.

DANIEL G KELLY:
Yeah, of course. Perfect. Good.

DANIEL LUST:
On this NIL panel, part of what we wanted to do is to flag what the next issues are and really what the current issues are. Professor McCann had identified, I think earlier in this conversation, whether there will be unions in the NCAA or with schools. That's that, maybe two, three years down the line, this employment question. But for right now, I think the biggest question is what these collectives are doing at a school by school basis. And whether that's, we'll say, allowed, permissible, whether we're okay with it.

Texas A&M, Texas, Florida, there's a number of these what we're calling collectives around the country. And these are either some form of, we'll say, supporters of the school that are raising money. And then if you are an athlete at that school, so Texas University has a program called the Pancake Factory, and if you're an offensive lineman at the University of Texas, that fund can be used to compensate you in some way, shape, or form.

The NCAA rules are such that you're not allowed to give an inducement to make a player switch schools. But the question is this weird fine line, if you say, "Hey, you're an offensive lineman at our school, and we'll use this money to pay you if you're at our school," whether that's an inducement. Whether the advertising of such a fund is akin to inducement. And then there's kind of this related question that we saw at a school like Eastern Michigan, Charlie Batch, former Detroit Lions quarterback played at Eastern Michigan, basically, went online, and he, I don't know if you want to call, it made an offer to Caleb Williams who was in the transfer portal, former Oklahoma quarterback ended up going to USC. And basically said, "Hey, Caleb Williams, if you want to come to Eastern Michigan, we'll pay you a million dollars."

That seems to be a pretty obvious inducement. But then again, Charlie Batch doesn't work for Eastern Michigan. He's this kind of outside player. So, can you punish Eastern Michigan for something that basically a fan, an alumni of the school is saying? So, that's the really interesting question. When we cross the line with inducements, and then really to my first point I made, what the NCAA is going to do about it, if anything. And if they're allowed to do something about it, if they're allowed to police the schools in that sense.

Yeah, I mean, that's the scenario, more collectives are popping up. I'm speaking to schools and fans at these schools pretty regularly. They want to create funds of their own. Darren, who's not here, has been helping with the Florida Gator Collective. And now as weird as it sounds, the Gator Collective is a sponsor of the University of Florida. That's how weird this world has become. You have a fund that's created to help Florida. And now they're sponsoring sporting events at Florida.

Again, I like Dave, how you said this world of transition. I'm going to go with that instead of wild, wild West. I think that's a better term, but it's definitely something new.

DANIEL G KELLY:
No, that's a great way for us to wrap up this panel. I'd like to thank David, Daniel, Michael for great insights, great perspectives, fantastic conversation. And also a big kudos to Tatiana and Oliver with the leadership. And we will throw it back to Oliver for the conclusion, and transition to the next panel. Thank you.

PANEL 2: THE FUTURE OF BLOCKCHAIN & CRYPTOCURRENCY IN THE SPORTS WORLD

Sponsored by Skadden, Arps, Slate, Meagher & Flom LLP

Panelists in Panel 2 kindly requested that their session not be recorded, as such, their remarks are omitted from this transcript.

PANEL 3: THE RISE OF LEGALIZED SPORTS GAMBLING

Sponsored by Latham & Watkins LLP

CALEB PAASCHE:
Hi everyone. We apologize for the delay there. We've had some technical difficulties getting our fourth panelist online. But good morning and thank you all for joining us for our third panel. My name is Caleb Paasche. I'm a 1L Representative on the Board of the NYU Sports Law Association. It's my pleasure to introduce the moderator of our third panel, The Rise of Legalized Sports Gambling, Michelle Coohen.

Michelle Cohen is a Partner at Ifrah Law, where she practices in all areas of the firm's Chambers-ranked gaming practice. She counsels clients across gaming verticals including sports betting, esports, i-gaming, and fantasy sports. Clients include sports betting operators, professional sports teams, payment processors, and media affiliates. Michelle has deep experience in sweepstakes, contests, and other promotions. As a Certified Information Privacy Professional since 2008, Michelle adds her data privacy expertise to gaming matters. Michelle practiced with Paul Hastings for over a decade and was a Hiring Partner

at Thompson Hine. She is a graduate of Emory Law School. Thank you to Michelle for joining us and I will turn it over to you to introduce the rest of our panelists.

MICHELLE COHEN:
Thank you for that warm welcome. Special thanks to the NYU Sports Law Association for putting together this amazing panel. I know it is not easy to coordinate all these speakers across all these cutting-edge topics. So, super amazing job to the association and hats off to Tatiana and Oliver. And also thanks to our sponsor, Latham and Watkins, for this panel. We do have a great panel and I wanted to introduce folks on our panel.

First up is Frank DiGiacomo, who is a partner at Duane Morris, and he is the team lead for the firm's Gaming Industry Group. He practices in areas of gaming, sports betting, i-gaming, entertainment and regulatory law. And he's also the Former Chairman of the Casino Law Section of the New Jersey State Bar Association.

I think we have Marc Edelman on the phone and joining us. He is a sports, gaming and antitrust attorney. He launched Edelman Law, which is a sports and entertainment law boutique firm. And he's also a Professor of Law and a Director of Sports Ethics at the Robert Zicklin Center for Corporate Integrity and an Adjunct at Fordham University. He has worked extensively on gaming and fantasy sports websites.

Moving along to Carolyn Renzin, who is the Chief Risk and Compliance Officer at FanDuel, who I'm sure you're all familiar with. It's a leading operator in the space. Carolyn is an experienced regulatory litigator and compliance expert. Before FanDuel, she spent several years at JPMorgan Chase, including acting as an Assistant General Counsel.

And then last but not least is Dan Wallach, who is the founder of Wallach Legal, a law firm devoted principally to sports wagering and gaming law. Dan counsels professional sports teams, sports betting operators, fantasy sports companies, data providers, racetracks on gambling laws and regulations. And he is also the co-founding director at the University of New

Hampshire School of Law's Sports Wagering and Integrity Program.

So thank you, everybody. There's so many developments and a lot of information to cover, so I want to get right into our program. I mean, it's hard to believe that the *Murphy* decision which essentially launched all these states into having regulated sports betting was just three years ago, and two of those years included lockdown. So, it's fairly amazing to think that in that time, we have total states over 30. [inaudible 00:04:10] as well as mobile and/or online, and just a few ready to go soon, including Ohio and Maryland. So, I want to throw it out to the panel. And Carolyn, I'll start with you. Does that surprise you, the pace that we've been at?

Carolyn Renzin:
Does it surprise me? No, it doesn't surprise me, but handling it is challenging. I think that particularly with some of the economic challenges that the states have faced in the pandemic years, the opportunities for states to make some money out of this opportunity has sped up a lot of this, from our perspective, which is great for us and, frankly, great for the states. We are helping a lot of people through the tax revenue that the industry provides. So, I don't find it surprising, but it is exciting and it is extraordinarily challenging as we try to navigate our way through the sort of hyper growth that it means from an operational perspective on the operator side.

Michelle Cohen:
Frank, do you think we're going to get to all 50 states?

Carolyn Renzin:
I think we're going to get close. I think this is attainable. If you read the pundits and the political pundits, I think there's certainly a momentum. A lot of the hesitancy that I historically saw in gaming expansion, for the reasons Carolyn referred to, seem to have gone by the wayside. A lot of the legal uncertainties, for example, surrounding the Wire Act, seem to have been tamped down. So, I do think that it will continue in . . . There will always be a handful of states where there'll be no form of gambling, but I think it'll get into the 40s.

MICHELLE COHEN:
Dan, what are your thoughts on all 50? And I just also want to ask, who do you think has surprised you in terms of going superfast or a little slower than expected?

DAN WALLACH:
Well, I think eventually, we're going to get close to all 50. It's a very common refrain or narrative that Utah will never have sports betting because it's a conservative state, Mormons, and they outlaw all forms of gambling, but it's certainly not the most conservative state in the country. And we're seeing states like Alabama, Georgia, Wyoming, South Dakota, Tennessee, South Carolina beginning to enter the conversation. So, I would never say never about all 50. And for me, the biggest surprise has been New York State in terms of its slowness to market and with Massachusetts a close second. And the reason I say New York is that of all the states that offer legal sports betting within the United States, New York's law is the oldest one on the books. It dates back to 2013.

There were a handful of states that passed laws in anticipation of PASPA being overturned and conditioned on that, Pennsylvania, Mississippi, New York State among them, but it took New York six additional . . . No, seven or eight additional years to pass a mobile sports betting law and they call the 2013 law, which was the implementing legislation that accompanied the casino gambling, constitutional amendment. I call that a $4 billion mistake because they omitted online sports betting language. Had they included that language in the 2013 law, we would have sped up the process for New York by a number of years. Instead, it took nearly eight additional years, or almost nine, by the time online sports betting launched in New York. So, that to me is the biggest surprise, the spread between retail and online in New York, given that New York was the first state to have a go at it.

MICHELLE COHEN:
Right. Thank you. Marc, thanks for joining us. I know we had some technical difficulties. But I wanted to bring you in. Did you have any thoughts on any surprises as the states rolled out rather quickly, following the *Murphy* case?

MARC EDELMAN:
Well, thank you, Michelle, for including me in the conversation. I think they made a very wise move from blocking having me online. But I guess you're stuck with me now in this other forum. To an extent, I agree with Dan Wallach that the amount of time it took for New York to roll this out was surprising. But what's more surprising still was not the amount of time that New York took, but given how much time New York took to roll it out how, from my opinion, the protocols they put in place were incredibly non-sophisticated. Given the amount of time New York spent on this, I very much expected to see more robust protections against problem gambling than just having a 1-800 number online.

I thought New York would have addressed the bizarre issue of them having allowed gun jumpers into the DFS marketplace in 2015 and still not had a new way for daily fantasy sports operators that waited for legality to enter the market. And I thought there would be a lot more transparency in terms of how they chose which companies will be allowed to operate and why so. The fact that New York delayed so much and really did so little once they came in was what astounded me.

MICHELLE COHEN:
Since we're on the subject of New York, former Governor said that mobile sports betting was against the Constitution. And it couldn't be shoehorned into the casino exception. I was going to ask, I'll start with Dan. Can you explain briefly how the mobile sports betting is consistent with the Constitution?

DAN WALLACH:
Sure. I testified on this topic along with Jeff Ifrah from your firm about three years ago. So, hopefully, I'll have some recall of the topic. New York's Constitution has some of the most robust anti-gambling language in the country. Many state constitutions prohibit some type of gambling like lotteries, New York goes the full distance. It outlaws all forms of gambling, including bookmaking, pool selling and lotteries, but carves out as exceptions certain permissible forms of gambling and one of those is casino gambling at no more than seven facilities. That was a legislatively proposed constitutional amendment that the voters of New York approved in 2013. So, the

language that's operative here that is important is, "What does it mean to be casino gambling at no more than seven facilities?"

Crucially, the Constitution in that exception gives the legislature the languages as authorized and prescribed by the legislature. So, it gives the state legislature the discretion and the authority to outline and determine the contours of constitutionally permissible forms of gambling. And there are comparisons or analogs to that. For example, New Jersey has locational restrictions built into their state constitution as to where casino gambling can take place. It can only take place in Atlantic City under the state constitution, yet New Jersey has their legislature authorized i-gaming in 2013 by determining or dictating that the bet is deemed to be made at the location of where it's processed and received by the servers in Atlantic City. And that mechanism is utilized in a number of different state statutes that have locational restrictions enshrined in the state constitution. And this is consistent with state contract law in that a wagering transaction is tantamount to a contract. You have an offer and you have an acceptance and the acceptance is deemed to be the place where the contract is made. And that's why states are able to use the location of the server for purposes of state law to determine where the bet takes place.

So New Jersey is one of the states, Michigan, Rhode Island. Without that legal analysis or that kind of contract law analysis, all these types of online betting wouldn't be able to take place in those states. A good comparison is horse race betting in New York. I'll leave it on that one. In New York, the 1939 Constitution restricted horse race betting to the oval of the racetrack, and over time, the legislature expanded it to include advanced deposit wagering, simulcast wagering, telephone betting, and ultimately online betting, and they did all that without having to amend the state constitution. So, the mobile piece is consistent with that methodology.

MICHELLE COHEN:
Great. Thank you. I wanted to go back to Frank for a minute. How do you see any other participants getting into the very hot New York market, other stakeholders? Will we see betting at Yankee Stadium and some other opportunities?

CAROLYN RENZIN:
As Dan alluded to, the legislation in New York allows for up to seven casinos, but in 2014 and 2015, the Commission went forward with a location selection board and only selected four casinos at that time. So, it is anticipated that the three remaining constitutionally allowed casino licenses in New York will go through a process probably in the coming year, a request for application process. And you will see three casino properties in what's called the downstate region around New York City. The conventional wisdom is that there are two, I guess, favorites. It would be MGM in Yonkers and Aqueduct since they are already video lottery terminal facilities, which is something similar to a slot machine but not legally a slot machine, but they have that type of gaming. So, the conventional wisdom is that they would be the two frontrunners for two of those three remaining licenses. And the third license, again, it will be a competitive process. Projected tax revenues, projected jobs, a lot of considerations in place with respect to the selection of those three casinos, but I do think you will see that process begin sometime this year.

MICHELLE COHEN:
All right, Carolyn, can you give us some sense of FanDuel's experience in New York? I mean, to give people some sense, I know you hear that New York is a huge market. But I was reading an article that said that over 2.4 billion in wagers has been made in five weeks in New York, which was about 80 million in tax revenue. But it would be interesting to hear from the operator's perspective how things are going and just what happened at rollout.

CAROLYN RENZIN:
Yeah. So, it's been an interesting process. What's exciting about New York is the number of new folks who are coming online that hadn't before. We obviously have some folks who were happily traveling over the bridge to New Jersey to place their wagers that now don't have to make that trip. So, it's not all new folks for us. I think the biggest challenge in New York has been the tax rates. And I'm sure that's been something that folks have read about. New York has a 51% tax rate, which is the highest of any of the states. They also have some structural organization of how they consider promotions to be a

component of the taxable moneys, basically, such that if we say we'll give a customer $100 for a promotion, that $100, while it's coming out of our pocket, is also taxable in New York. As a result of that, there have been some significant challenges placed on the financial opportunity for the operators in New York that far outweigh the challenges in any other state.

So, it's going to be a very interesting next few years as we try to iron out both the expectations of New York and the tax hopes of New York with the ability for the operators to be in any way profitable in New York. So, it'll be interesting. But in the meantime, from an operational perspective, it is exciting to see this many people getting involved in the space. And we have blown all of our projections in terms of numbers out of the water. But again, from a profitability standpoint, we've got some challenges.

MICHELLE COHEN:
Right. Do you think there's other states with, or, certainly, there are other states with better models. Would you point to a couple that you think would be preferable for the industry over the New York model?

CAROLYN RENZIN:
Every other state would be preferable for the industry over the New York model. I think the New York model against New Jersey, which is very, very challenging as well, but made it worse from the operator's perspective, and more challenging. So, I think having the opportunity to work with the regulators on what this means to the viability of the industry in their state, we understand they want to make money, we want them to make money. We're actually very supportive of that element of the industry, meaning we can actually raise a lot of money for a lot of good things in partnership with the state. That being said, if we can't make money at all or it costs us money to operate in that state based on their tax structure, it will make it hard for us to continue to operate in the state.

So, there's going to be a balance, and we're going to need to partner with our regulators as we go forward. I think there's a perception that the operators are just rolling in money, and therefore, the taxes should be so high because of headlines

like what you've mentioned, right? But the reality is the cost of operation is high and the tax implications are extreme. So, we are not deep pockets in the construct. So, we're going to have to see how it plays out.

MICHELLE COHEN:
Right. Frank, do you see other new states following a New York or following a different model, the other models?

CAROLYN RENZIN:
I think New York is unique in that just given the population and the propensity of that population to engage in sports betting. It's certainly an outlier. If that model were put forth in other states, I think it would fail miserably. I really do. I think, as Carolyn indicated, even with the volume that the operators are doing now in New York with that 51% tax rate, throw in the $25 million license fee at the front, I mean, they are formidable financial obstacles for a successful operation, and I just don't think that it would work in other states.

MICHELLE COHEN:
Right. Dan, did you have some information you wanted to share about some [inaudible 00:19:57]?

DAN WALLACH:
Yeah, sorry to jump in ahead of you on that one. Carolyn, I do have some good news for you. I don't know if you've heard and this is pertinent to anyone following the New York sports betting landscape. Assemblyman Gary Pretlow, who introduced and sponsored the model that eventually became law, introduced a new bill yesterday. And New York Senator Joseph Addabbo will introduce a companion version of that bill, which would overhaul the existing online sports betting structure. It would require a minimum of 14 operators by January 1, 2023, at least 16 by January 1, 2024. And it would reduce the tax rate dramatically based on a sliding scale tied to the number of operators. For example, if there are 15 or more operators, the tax rate goes down to 25%. If there are 13, 14 operators, it's 35%. So, I guess you have to ask yourself, what environment would you rather be in. Do you want to be one of nine operators paying a 51% tax rate or one of 16 paying a 25% tax rate?

So there are four months left or three and a half months left in the existing legislative session. I'm hearing this one has a really good chance of passing, because nobody's happy with this law. Nobody. This was foisted upon the legislature by outgoing Governor Andrew Cuomo, who at the time wasn't outgoing yet, but this was his model, his version. The legislature preferred a straightforward, like a taxation model, where online sports betting would be taxed, I think, at 13 or 14 and a quarter percent, and that's the version that Pretlow and Addabbo championed for so many years. So, it's not surprising that the Assemblyman and the New York State Senator are now going to try to tinker with the existing system to make it more palatable for operators and more important or equally important, create a much more opening licensing process to give opportunities to some other companies, maybe some startups. So, this might be good news all around, depending on whether it gets enacted.

MICHELLE COHEN:
Thank you.

CAROLYN RENZIN:
Dan, it was tied into the New York budget process, as you alluded to, in June. And I agree with you that that is the model that was previously championed by the legislature. It just got consumed by Governor Cuomo's model, which is the existing model. And if they can make those changes and fit it into the budget, that always gets shoehorned the revenue from that perspective, I do think that certainly the industry, not only the operators now but the existing casino industry, would fully support that. I do think it's doable.

DAN WALLACH:
Yeah, I mean he copied that from New Hampshire. New Hampshire has a 51% tax rate. But what he overlooked was that that was based upon exclusivity for DraftKings. Rhode Island has a 51% tax rate. There's one operator. To have 51% for nine operators, that's unprecedented anywhere within the country. It's only within those lottery states where there's like one operator chosen through competitive bidding. And then there's one more wrinkle to the bill. There was another amendment proposed several weeks ago, which would extend

mobile sports betting to include mobile kiosks at professional sports stadiums around New York State, Madison Square Garden, Yankee Stadium, UBS Arena, and OTB locations as well as horse race tracks. So, if placing a wager on your mobile device connected to the casino server is a legal mobile sports bet, then why wouldn't the mobile kiosk connected the same way also qualify under the state constitution? So, we would rope in the sports arenas and create these mega sports books, in-arena sports books throughout the state.

MICHELLE COHEN:
I did want to hop over, because I know time is going to go so fast, to a couple of important topics that were touched on earlier, but moving over to responsible gaming and problem gambling. And I did want to bring in Marc on that topic. Many states have had gambling, some type of gambling for some time, but do sports gambling add to these concerns? And your thoughts about what regulators and industry can do to address it?

MARC EDELMAN:
Well, at present, as much as we'd like to put the responsibility on industry to address these issues, with no disrespect to industry, every one of these company's primary goal is to maximize their own revenue for shareholders. So, I put a lot of the burden not on the industry to exceed expectations, I put a lot of the burden on the regulators to put the obligations on industry. And there are two very quick points I'd like to make. One is many of these states, including New York, are doing a little bit to bring attention to the issue of problem gambling. For example, in New York, in all advertisements by a gambling company, they have to make available the 1-800 hotline for problem gamblers. Now, I think that's a step in the right direction. One of the shortcomings of these current requirements is many of these gambling companies hire outsource companies to recommend their games.

So, for example, The Action Network has all types of Tweets on the web encouraging people to use one of the online sports books. I think it's an unfortunate loophole at present that the advertisers or third party partners, such as The Action Network, do not need to have the 1-800 hotline. Or, for example,

Darren Rovell has an incredible Twitter following. He has over 2 million followers and he's with The Action Network. And he'll regularly tout out different bets that people are making. But under the New York rule, he's not required to have that gambling hotline and others who do something similar. So, I think that's one area which we really could clean up. The other is in the precursor to the mass legalization of sports gambling, we had the states that began to regulate daily fantasy sports. And two of the other states to do early daily fantasy sports regulation were Massachusetts as well as Maryland.

And I remember sitting on a panel with Dan Wallach and Michael McCann and several other folks over at the University of New Hampshire, right when Massachusetts put in their DFS, their daily fantasy sports regulation. And one of the things that Massachusetts did was it had an initial requirement for any DFS company, that they could only accept $1,000 per month of entry fees from any participant. And if a participant wanted to enter more money than $1,000, it would be on the burden of the company to investigate the individual to make sure that it wouldn't cause them financial harm to pay for more. And we saw that $1,000 cap adopted by Massachusetts and adopted by Maryland, and then Tennessee has its $4,500 cap. And then that fell out all together from DFS regs because the DFS companies didn't like it. And apparently, nobody's implemented anything like that in terms of sports gambling regs.

I think we need to bring that back. Not a hard cap, but I think there needs to be a soft cap. And I think an obligation should be placed on the licensed sports gambling operators, that if they want to accept more than a certain amount of fees from any entrant or any participant in any month, there should be a heightened duty to investigate the financial means to make sure that it would not cause harm to these individuals, and to check the past betting behavior to make sure it does not align with algorithms out there, which should be addictive gambling type behavior, and I think that would be beneficial to everybody.

CAROLYN RENZIN:
Michelle, can I please be involved in this conversation?

MICHELLE COHEN:
I was actually going to pivot to you, Carolyn. And I did just sort of thinking out loud, Marc, when we touched on sort of determining someone's financial means, I mean, that to me seems like a big ask and problematic from just sort of the consent and credit reporting and all of those issues. But I think that raises a lot of issues. But over to Carolyn, because she's on the front lines on the operator side.

CAROLYN RENZIN:
Yeah. So, thanks so much. And look, Marc, I appreciate very much your suggestions there. And I am actually responsible for FanDuel's responsible gaming. And I have recently hired someone actually out of the beer industry, who was handling responsible drinking at one of the major beer manufacturers. And at FanDuel, when you talk about the goal of a company to be the commercial impact, I would actually let you know that that is not FanDuel's goal. FanDuel's goal is a long-term sustainable customer experience that is entertainment. So, we are very firmly in favor of $1 a bet for the next 20 years rather than $120,000 bet tomorrow that causes somebody to cause harm to their family.

So, I would first want to say that and when I say that, I'm not just saying it because those are the party lines, but all of our internal processes actually align with those principles. And we have an internal Responsible Gaming Steering Committee that our CEO Amy Howe is on, our head of product is on, I am on, our head of legal is on, and our chief financial officer. So, when we make responsible gaming decisions as a company, we're looking at it holistically in the best interest of the customer and we also think about the customer's family a lot in that.

The biggest challenges in our ability to effectively basically create an environment that's entertainment-friendly and not, in any way, harming those people who may be susceptible to harm is we need to have some clarity around what it means to be at risk. Because at FanDuel, what we do is we're looking at every single customer, not just those who are spending particular amounts of money, because the challenges with responsible gaming issues doesn't necessarily correlate to how much

money you're spending. So, we're looking at the low-level spend as well as the high-level spend and looking for deltas between what used to be the spend and what's the spend now or whether people are chasing, et cetera, et cetera.

But we have to define for ourselves what does it mean to be at risk. And once we identify a play that looks at risk, we're identifying for ourselves and setting our own standards for what happens next. Does someone get a limit placed on them? Do we ask them for a source of funds to understand more about affordability? Do we call them? Do we kick them off the platform? And if we kick them off the platform, do we kick them just off of the sports betting platform or do we kick them off of all of our platforms, including horse racing? And is there a difference between retail risk versus online risk?

So there's a very complex set of questions around what does that risk look like, and then what is the responsibility accountability of the operators for what to do when someone's at risk. And I'm going to add another layer of complexity here. There are no standards in the industry for any of these questions. So, what that means is FanDuel has an extremely high standard around responsible gaming. For the most part, if we see risk of responsible gaming issues, they're off our platform and they're off all of our products. If I do that and DraftKings or any other operator has a lower standard, this then becomes an opportunity for them to take customers and make money off of our standards, high standards for responsible gaming. That is not fabulous from a commercial standpoint for us. We do it anyway because we think it's the right thing to do. That being said, one of our biggest goals is to find a way to create some standards, so it doesn't become a race to the bottom, which is how it is if you don't have standards.

I'm much more comfortable with it being we all have standards and then the black market/gray market operators are the ones who get the responsible gaming issue people, because then it's up to the states to regulate those out of business and to actually go after them, which they're not now. But at this point in time, without these standards, what we have is FanDuel operating in the way we choose to with these extremely high standards for integrity and anti-responsible gam-

ing issues, making sure that people really are using this as an entertainment platform. But I don't know what my counterpart operators are doing around this space. And my strong guess is very few of them are operating at our standards, and that puts us at a commercial detriment, which is not the way this should be.

So that's where we're working. And I love Marc's ideas. There's many others where there's so many different opportunities that we're exploring all the time with how do you identify people who are at risk, what does it mean to be at risk? What can you do consistently across the board for people? How do you give more money to research? There's so much work that we're really excited to do. But at the moment, without standards, we're doing that in a vacuum to our own commercial detriment to put ourselves in detriment against our competitors, and that's a problem.

MICHELLE COHEN:
Right. Thank you.

CAROLYN RENZIN:
So, I had to get on my exciting soapbox there.

MICHELLE COHEN:
We've talked a lot about the legislators and the operators, and certainly, responsible gaming issues can lead to consumer protection issues, but there's a host of other consumer protection issues in terms of content that's not being run as advertised or probably tech problems when you're trying to make a bet. So, I wanted to ask Frank, do we think that we'll see more in the way of consumer protection issues before the courts or before the regulators?

CAROLYN RENZIN:
I think just in this past month, New York State Attorney General Letitia James actually issued a bulletin with respect to some of the promotional offerings about sports books in New York, the free bet offerings, which are certainly in a new market, as Carolyn knows. That becomes quite an aggressive push by all the regulators to get market share and to get it rolling. And they've seen that in other states. So, those types of promotional offerings are going to continue to garner scrutiny from

the likes of Attorney General Letitia James and in other states as well. And regulators, they generally approve those or require those types of promotions to at least come across their desk in advance. So, there is some level of review of that promotion, but it is a competitive market, as Carolyn referred to, so there is that balance.

You see, online gaming in Europe, particularly in the UK, has been in existence for a number of years, certainly predating that in the United States. And I think their consumer protection requirements have gone way overboard. Bet limitations, like social engineering in Europe, and I haven't seen any inclination of the US market, or certainly, of regulators in the US of going to that extreme. But I think, as Carolyn refers to, the industry has standards in place. And it's just good business on their part, on the operator's part, to be an honest product, because if the public doesn't think it is or they're not getting a fair shake, they're not going to participate.

MICHELLE COHEN:
Absolutely. Dan, what are your quick thoughts on whether the litigators in the group and on the phone are going to see further litigation around this industry?

DAN WALLACH:
Well, I think it's already happening. The *Murphy v. NCAA* case wasn't exactly the last lawsuit around sports betting in the last couple of years. I mean, Florida has been a hotbed of litigation around the enactment of the Seminole Tribe's compact with the State of Florida that's now on appeal before the DC Circuit Court and the federal court system. In California, there are competing ballot initiatives for sports betting, and there have already been lawsuits filed to try to invalidate those ballot initiatives. The great Ted Olson, who brought legal sports betting into existence, is challenging a tribal monopoly in Washington State. He filed a federal lawsuit in DC to challenge the ability of a state to grant the monopoly to a tribe under IGRA. So, he's basically challenging the constitutionality of IGRA itself.

And on and on it goes in New York, we've got fantasy sports litigation. In Arizona, a tribe tried to unravel the sports betting framework by claiming that it required a ballot question and

that gaming expansion was prohibited. So, in the last two years alone, we've seen so many satellite lawsuits spin out in the area of legalized sports wagering. So, I think the litigators and the appellate lawyers are being kept quite busy. Usually, they're being weaponized by competitors, looking to gain an edge or to level the playing field somewhat. But that is a major area of practice in the post-PASPA era. So, if you're a litigator, there's a lot going on nationally in the realm of sports betting.

MICHELLE COHEN:
Right. Speaking of areas of practice, sports betting industry does lead to several different areas of law, whether it's constitutional law, lobbying, government relations, regulatory compliance, privacy, IP law, and I know we likely do have a lot of law students and newer lawyers on our webinar because it's associated with the Sports Law Association at NYU. So, what are your thoughts, panel, and I think that we can do a Robin round and throw it out quickly to everybody. What are your thoughts on opportunities for newer and experienced entrants as well? Marc, can we start with you?

MARC EDELMAN:
Michelle, I think you hit a lot of areas and privacy is definitely growing. But one thing I really hear on this call speaking to just about everybody that concerns me is everybody's talking about industry standards. And as somebody who's putting on a law professor hat here, when I hear about industry standards, I think a lot about what we saw in the housing market right around 2008, or what we saw in terms of accounting practices before Sarbanes-Oxley. I think the states are going to need to step in and create hard regulations instead of soft standards. And I think there's going to be a lot of opportunity to work with gaming commissions as outside or as a people who are not in the space to think about industry regulation, not from the interest of the companies themselves, but from the interest in society. And I think we're going to start to see some of those jobs emerging, as well as a growing amount of compliance jobs and privacy jobs, and even intellectual property jobs from the gaming operators themselves.

MICHELLE COHEN:
Right. Frank, your thoughts being in a private firm?

CAROLYN RENZIN:
I think areas of data protection, certainly IP licensing, as you see, for example, sports media companies playing varying roles, trying to play varying roles in this industry, right? Whether that's Fox or NBC with PointsBet, ESPN, others trying to fit their brands into a regulated industry without having to go through the regulatory burden of an operator. I think IP and licensing issues, those types of things are really going to be interesting moving forward.

MICHELLE COHEN:
Carolyn, what's your thoughts on opportunities for some of our newer lawyers and compliance professionals, and even some experienced people?

CAROLYN RENZIN:
I think we have, across the board, needs for lawyers. So, I'm responsible for regulatory compliance and risk. I have lawyers that practice in all of those different spaces, as well as sort of product compliance, which they're all lawyers. In the regulatory response area, I've got former law clerks and white collar criminal defense litigators, because they're engaging with the regulators when the regulators are concerned. We also have sort of straight civil litigators who are handling the class action work in that space. And obviously, there's privacy, there's basic contract law, there's employment law, sort of in the general, general counsel space.

But I think there's huge opportunities for smart generalists, because one of the benefits of this industry and space is that there's a lot of making it up as we go along. And what that means is, those all-around smart athletes have a fantastic opportunity, because I can't go out in the market and find someone who's been a product compliance, regulatory compliance lawyer for the last five years. They don't exist. So, I'm going to find a smart lawyer who has no experience but who's eager and wants to learn, maybe has some technical interest.

So, a great thing for some folks coming right out of school who want to try something and get in early and become one of the first people who knows anything about this space from a legal perspective. Because right now, we have to make it up as

we go along. And if you're eager and you're hungry, and you've got a lot of interest in continuing to learn, it's a fantastic opportunity. So, in case anybody asks, we don't typically hire people right out of law school. I get those asks all the time, including for summer internships and what have you. We're typically looking at people with three to five years of experience at the lowest end from a legal perspective, because we need you to come in with some legal experience to do most of this. That being said, for those of you who want a compliance career and are not necessarily interested in practicing law, but want to get more into the operational or compliance end of things, I do have openings, which would be appropriate for right-out-of-law-school folks. So, I put that out there to all of you. My husband's an NYU Law School alum. And I love you guys. So, come and find me if you're interested.

DAN WALLACH:
Okay. Carolyn just gave some-

MICHELLE COHEN:
Great. Dan, hand it over to you.

DAN WALLACH:
Sorry. Carolyn just gave some phenomenal advice. My years of experience in a law practice were irreplaceable. I wouldn't have been able to do what I'm doing today without sharpening the tools and the toolbox as a lawyer. And it didn't take me two, three years to get there. It took me years of litigating cases and really gaining some top-shelf analytical skills, which I probably wouldn't have gotten had I left law practice earlier on in my career. But there are different paths. That is probably the number one path I would recommend.

I tell a lot of my students at University of New Hampshire School of Law that state regulatory agencies are hotbeds for hiring because they're ramping up hiring these new agencies that are adding sports wagering divisions, and they have to add employees, licensing managers, and a lot of attorneys, typically right out of law school, interview for positions like that. It's a great feeder to go from law school to a state regulatory agency and some licensing or regulatory aspect of what the state agency does. And then, you work there for a little while and

then that could be your pathway into getting into one of those jobs at FanDuel that maybe Carolyn would prefer some experience at.

But if you've had two, three years of experience at the New Jersey Division of Gaming Enforcement, I think she's going to interview you. If you've worked for Charlie McIntyre at the New Hampshire Lottery, doing a lot of the sports betting regulatory and compliance side work, she's going to interview you, so will Frank. And the experience requirement at the state agencies may not be as steep as it would be in a major law firm or in a public company where thousands of people might be applying for a dozen jobs. So, I've seen a couple of my students get positions like this at state regulatory agencies across the country. So, that would be my number one recommendation for hitting the ground running and getting into the industry right away.

MICHELLE COHEN:
Right. I think they're all really good points. I think if you are doing work in a regulated industry, and it doesn't have to be gaming, there's very similar concepts about licensing and compliance and understanding the rules and the regulations and learning how to interact with the regulators. I think, no matter what the industry is, that is easily transferable. And several of you have touched on a topic near and dear to my heart, privacy, which is super hot. And I think, especially for students, newer entrants, or even experienced people, there's a huge need for privacy professionals. There is an organization, IAPP, that certifies and tests and you get a certification. And as with any industry, the operators and other participants are required to collect so much more information than in many other industries because of their compliance obligations, AML and KYC, and all that. So, there's more information coming in and increasingly state laws that protect that information. So, I think they go along very well and there's lots of opportunities.

Well, it's been great to have everybody. We're near just about the end of [the panel]. I got cut off there for a minute. I was going to say super thank you to our panelists, and I hope you all enjoyed this panel. We touched on a lot of emerging issues,

hot issues, and some good advice at the end. So, thank you to everybody for-

CAROLYN RENZIN:
Thank you, Michelle.

DAN WALLACH:
Thank you, Michelle. Great job.

MARC EDELMAN:
Thank you.

DAN WALLACH:
Thank you, everybody.

PANEL 4: NAVIGATING LABOR DISPUTES & CBA NEGOTIATIONS

Sponsored by Winston & Strawn LLP

TATIANA DUBOSE:
Thank you. Welcome back to the 11th Annual New York Sports Law Colloquium. For our final panel, we will be discussing navigating labor disputes in collective bargaining agreement (CBA) negotiations. This panel will begin with an introduction of the moderator by NYU Sports Law Association's 2L representative Calvin Chappell.

CALVIN CHAPPELL:
I would like to introduce you all to our moderator for this panel Stan Van Gundy. Stan is a current TNT analyst. He actually called the Boston game last night if anyone was watching. In addition, he was a head coach in the NBA for quite a number of years where he coached the Miami Heat, the Orlando Magic, and the Detroit Pistons, where he also served as the president of basketball operations. Most recently, he coached the Pelicans. With that, I'll let the panel get started and I'll pass it over to Stan.

STAN VAN GUNDY:
Thank you, Calvin. This is certainly a timely panel with what's going on with Major League Baseball and I'll start by introducing our panelists. I don't see Mr. Berger here right now, but Kirk Berger is an Associate Counsel at the National Basketball Players Association. He's been with the NBPA since 2015 and

helped play an integral role in the union's negotiations with the NBA for a new collective bargaining agreement in 2016. Mr. Berger's expertise includes evaluating player contracts, salary cap considerations and interfacing with players' agents to craft NBPA's approach to negotiating. Prior to joining the NBPA, Mr. Berger worked in various roles in sports as an intern with the New Jersey, now Brooklyn Nets, a salary cap expert for Excel Sports Management, a front office intern with the NBA. Mr. Berger is a graduate of the Cardozo School of Law.

Our second panelist is Charles Grantham. He is the Director of Center for Sport Management at Seton Hall University's Stillman School of Business. Mr. Grantham has deep expertise in sports, and he formerly represented or advised NBA players including Charles Oakley, Amar'e Stoudemire, and Tobias Harris. Mr. Grantham began his career with the NBPA as an executive for almost two decades, then served as the Union's Vice President before being named its first Executive Director. Mr. Grantham was a consultant to the plaintiffs in the *O*'Bannon v. NCAA lawsuit. He earned his M.B.A. from the Wharton School at the University of Pennsylvania.

Jeffrey Kessler is the Co-Executive Chairman of Winston & Strawn LLP. Mr. Kessler has served as lead counsel in some of the most complex sports disputes in the country. His impressive litigation background includes representing college athletes in *NCAA v. Alston* (a case decided by the Supreme Court just last year), NFL quarterback Tom Brady in his litigation against the NFL during the "Deflategate" controversy, the players' unions for MLB, NFL, NHL, and MLS in collective bargaining with their associated leagues, including the Major League Baseball Players Association's ongoing negotiation with MLB to resolve the lockout and much more. Mr. Kessler is a graduate of Columbia Law School.

Ms. Pamela Wheeler is a former consultant to the National Football League for diversity, inclusion, as well as executive leadership development. Ms. Wheeler previously served as Director of the WNBPA for more than 15 years. She regularly lectures at Columbia University on labor and employment law

topics, as well as leadership and personnel management. She is a graduate of Boston University School of Law.

Mr. Don Zavelo is the General Counsel for the National Hockey League Players' Association. He has been with the NHLPA since 2011, after serving over 30 years with the National Labor Relations Board. While with the NLRB, Mr. Zavelo was in charge of unfair labor practice investigations and worked on numerous high-profile sports cases during his time at the NLRB. Mr. Zavelo is a graduate of University of Kansas School of Law.

We'll start with some process stuff. I'm going to go to Ms. Wheeler first and then after she answers, Mr. Zavelo, if you can add to that. Most of us start paying attention to these labor disputes when deadlines approach and lockouts are imposed – sort of what happened with Major League Baseball this week. Can you give us an idea of how teams and unions approach preliminary negotiations for a new CBA – months, even years before we get to these deadlines?

PAMELA WHEELER:
Thank you Stan, thank you to the other panelists and thank you for the students who continue to invite me back. I appreciate the invitation and I look forward to this every year. It's interesting because CBA negotiations don't start the day you start walking in and talking about the second one. They begin way before. Your preparation for what your goals and objectives are going to be for not just the next CBA, but for the second and third one start in the back office. I can fairly speak for the leagues that they're doing the same thing. You're setting your goals and objectives with your constituencies way before you even walk into the room with the other side.

Even when we were negotiating the first agreement, we were already thinking about the second and third collective bargaining agreements and what our goals and objectives were going to be. For our case at the WNBPA, I currently am the Chief Diversity and Inclusion Officer for NFP. I've been creating spaces for diversity, equity inclusion and belonging my entire career.

So, for us, it was not just about what we were attempting to negotiate for WNBA players, but also the recognition that what we were doing exceeded beyond just the WNBA players. That there was a social value to what we were doing, and that there was an element of women's empowerment and equity that we were dealing with. And so, from that perspective, we were consistently thinking about the next step. I think I can speak fairly confidently that that's the case with all the unions and all the leagues. It's not that we wake up one morning and say, hey, we need to negotiate this next deal, but we're constantly in contact with each other, trying to establish goals and objectives for where we want to go in the future.

STAN VAN GUNDY:
And Mr. Zavelo, when does the current NHL CBA expire?

DON ZAVELO:
We negotiated a four-year CBA extension agreement during the pandemic when it became necessary to address a lot of profound issues with regard to the effect of the pandemic on the salary cap system. We used that as an opportunity to go ahead and extend the entire agreement through the 25–26 season. We had been engaged in extension talks with the league in 2019, and they sort of stalled in September 2019 when the players decided not to reopen the agreement. There was a reopener that was available at that time. We picked it up during the pandemic and over the course of about a month of virtual bargaining – it was all done over the phone and on Zoom. We incorporated all of the changes that we had discussed during the previous year and focused on the burning issues of the day, which was how do we continue on under this system, given the sudden drop in revenue.

STAN VAN GUNDY:
As Ms. Wheeler just talked about, are you already sort of behind the scenes starting to work on the next collective bargaining agreement?

DON ZAVELO:
I think Pam nailed it. The key to the whole process is being in constant communication with players. It's all about player communication and player education, and you have to go into

bargaining with a really clear understanding of what the membership wants. And it's also an opportunity to educate the membership about ideas or changes that the union thinks it's important to address. We're always thinking ahead. We just literally signed off on this deal several months ago. But we're thinking about the next agreement for sure.

STAN VAN GUNDY:
Mr. Grantham, how does the negotiation strategy change over the course of the bargaining period? It's starting like, as Ms. Wheeler said, years in advance and then you're leading up to when the next one has to be signed. How does that negotiation strategy change especially as the deadlines approach and lockouts are imposed?

CHARLES GRANTHAM:
There are a couple things. One, there's differentiating between labor relations and labor negotiations. If I go back and think about the last deal I negotiated in '94, we started with a video countdown to '94 in 1990. The concept of labor relations throughout that time period had a major impact also on your strategic plan as you got closer to '94. So, the main point, as Don pointed out here, is not what we want for the players – it's what they want for themselves.

There's the constant educational process to get them to know what's best because we may have a long-term vision, but many of them with two- and three-year contracts and a short lifespan, as an athlete, may be looking for benefits in a quicker or a shorter time period. So, it's against that kind of tension throughout that time. It's how you manipulate change because it's an institutional issue as well. You're constantly moving and thinking about your strategic plan. You don't want to be throwing fastballs all the time.

STAN VAN GUNDY:
Absolutely. Mr. Kessler, you've been involved in countless labor disputes as outside counsel. I've got two questions for you. The first one is how would you describe your role in what you do as an outside counsel, as opposed to somebody who is working directly for the players' association?

JEFFREY KESSLER:
My role has varied in many different situations with different unions and even has varied for the same union over time. To use the NBA Players Association, as an example, at different times, I have been the co-lead negotiator with the executive director, which took place, for example, in some of the negotiations in the mid-2000s and in 1999 as well. I've also been a member of the negotiating team as an advisor that took place, for example, the most recent collective bargaining negotiations that took place in 2016–17 for the NBA Players Association.

I've also had ones where I've been primarily the litigation counsel, trying to get leverage in the negotiations, usually through the prosecution of an antitrust litigation against the league over their various restraints. And at times, I've had combinations of those roles, being both the litigator or the advisor or the negotiator. I've done that many times in the NBA Players Association, many times for the NFL Players Association, and occasionally for baseball and hockey at times. I have had that role as well as for some of the smaller unions I have been involved in. At one point, I did that for the MLS Players Association. I've done that for the Women's National Team Players Association at various times, including in their most recent equal pay litigation. I've had a lot of different hats in that role.

STAN VAN GUNDY:
I'm going to stay with you to start, but then I want everyone to chime in on this. What do you think is the most challenging aspect of negotiating with leagues and owners?

JEFFREY KESSLER:
The most challenging aspect is that the owners often have diverse interests from each other, and don't agree with themselves as to what their negotiating objectives actually are. This causes a situation where they negotiate among themselves to reach some compromise as to what they're willing to offer. And then they first start negotiating with the union who has a whole different set of interests, and the owners become in fact paralyzed in their objectives because they can't move because they work so hard to compromise among themselves when in

fact, the ones they need to compromise with is labor. That has historically been the greatest obstacle to getting deals done. Whenever you see complete breakdowns and contentious negotiations, it is almost always because the owners have set an unrealistic set of objectives based on their own internal political divisions.

STAN VAN GUNDY:
Ms. Wheeler, what are your biggest challenges in dealing with owners?

PAMELA WHEELER:
I mean, just by sheer numbers. You're dealing with like 30 owners as opposed to 400 players. In particular in the WNBA, and I don't think it is inconsistent, you have a certain number of players and you have a smaller number of owners who are also then guided or led by a commissioner or a president. So, there's like one person and they have a little bit more control over what the owners say publicly. What we have is 200 to 400 players who could, at any given day, say something publicly that could be counter to what our objectives are.

And then in particular with the WNBA, you have the players playing overseas as well. You have that sort of mass exodus at the end of the season where you're trying to coordinate and communicate with 200 some odd players, who are spread throughout the world. It's a little bit more difficult on this side to manage that than on the ownership side, especially where they have the commissioner who has a little bit more control and contact with the 16 to 32 owners. I think that's one of the major obstacles for us.

STAN VAN GUNDY:
I want to come back to that in a minute regarding the players, but Mr. Grantham, what are your challenges with the leagues and owners?

CHARLES GRANTHAM:
To follow up on some of the points that have already been made, a lot of that also has to do with the leadership of the commissioner. So, if the commissioner has a strong leadership ability, then he will certainly get those guys together on certain platforms. Also, particularly during the time when I was there

with David Stern, we had a very interesting timeframe when the NBA was not so fantastic, and the TV ratings were poor. We had tape delays, drug abuse, drug scandal. So, we had some common interests here to try to make the business work.

If there was ever a time period that I saw that we sort of collaborated, it was that time period to get us into the business of generating more revenue. So, that contrast to the time when greed seeps in after the NBA was so successful and became fantastic. Then all of a sudden, the owners got a little more greedy and then all of a sudden wanted to set the players back by redefining how much of the revenue would go to the players.

A lot of it has to do with the leadership of those owners. But make no mistake about it. They have an easier time of getting 30 or 32 owners together who are astute business people than we do in terms of getting 200 or 300 players on the same page, in addition to dealing with their agents. That's another factor that becomes part of that. That's why I always characterize it as labor relations versus labor negotiations. So, a lot of it is built into that time period.

STAN VAN GUNDY:
Mr. Zavelo, continuing on that and from your time at the NLRB, what are the unique challenges with sports owners compared to when you do other labor relations type of problems? What are the things in sports that make it different?

DON ZAVELO:
One of the things that makes it different is that these leagues in this industry don't really have much competition. They're able to act sort of like cartels and that leads them to invoke the well-thumbed dog year lockout playbook, and it's based upon their understanding and everybody's understanding that they're not going to really lose market share. It's not like if you're Ford and you decide to lockout, and that gives the consumer the ability to go over and buy a car from General Motors.

There's no real fear of losing market share here. So, they lock out players because they know that players have very short playing careers. Lawyers and teachers, and most other profes-

sions allow the people who apply that trade to work 20, 30, 40, 50 years. For players in our league, their average career is four to five years.

It's a kind of an elusive statistic because it depends on the factors you incorporate and how you define that. But four to five years. So, there's a really good chance that players may never make up the money they lose by missing a season in which they're locked out. This sort of reflexive lockout at the beginning of the negotiations is not the way that it was contemplated when the NLRA was written and the way it was practiced when I was at the board. Lockouts were like strikes were a weapon of last resort, not first. It creates a very difficult negotiating environment and a very difficult atmosphere and puts a lot of strain on the relationships from the get go when the owners pull the lockout lever.

STAN VAN GUNDY:
Ms. Wheeler and Mr. Grantham, you both sort of touched on this, so I'll start with you. The challenges of negotiating a CBA with a large group of players who have varied situations – people at the top of the pay scales issues are different than the people in the middle and at the bottom. You have to keep them unified to get an agreement. How do you meet that challenge, Ms. Wheeler?

PAMELA WHEELER:
What you do is just provide as much information and education as you possibly can, making sure that the players understand the business. I think that is one of the most important things is once they understand the business of the sport, of basketball, of whatever sport that they're negotiating, they're then able to negotiate from a much better position for themselves and for the collective. In the case of the WNBA players, at least those initial players, knew that they weren't ultimately going to get rich negotiating those deals.

So their goal initially was to create a system by which when the WNBA becomes wildly successful, that the players would then be able to reap the rewards from that system. That was because they had a very good understanding of history. They had a very good understanding of their place in history, and they had a

very good understanding of where they wanted the sport to go, knowing that they might not be the immediate recipients of those rewards.

But that was because they understood the business, they understood incrementally where the sport was going and how they could play a part in that. Each collective bargaining agreement built upon the next and the next and the next. I think all of that came from having a real clear understanding of where they were. Again, that's incumbent upon the union officials to make sure that they are constantly involved in the business of the league. Part of that comes with participating on different player advisory councils, where constantly not just the union officials, but the players are actually involved, whether it's the player representatives or specific council where they're involved in meetings with the league, where we're talking about marketing objectives, talking about salaries, talking about revenues, talking about it from the television perspective. From that vantage point, it's a lot easier when you're providing as much information to the players as you possibly can.

STAN VAN GUNDY:
Mr. Kessler, the kind of challenges of making a CBA work for all of the players and thinking specifically of the NBA, the NBA has a salary cap for teams and then a luxury tax. But one of the things the NBA has, I'm not as sure in other leagues, is an individual maximum salary that players can make. That has benefited the vast majority of players. In other words, if I have a salary cap of $120 million, but I can only pay LeBron James $30 million, well, that leaves me $90 million for the rest of the players.

If I add a $120 million cap in and no limit on what I could pay LeBron James or Kevin Durant or those players, somebody would be willing to pay those people two thirds of their cap, and that would leave much less money. We'd have a lot more "minimum wage" players at the bottom. It seems to me that the CBAs have benefited the people at the middle and the bottom, maybe to the detriment of the stars of the game. Can you talk about the challenges of trying to be fair to everyone in your constituency?

JEFFREY KESSLER:
The NBA players union has always had a view that it had to advance the interest of every category of player in a negotiation. So, what does that mean? It means that you want to benefit the star players because they frankly drive the revenues in the game. They also are a rising tide of water that pulls up all the boats. All the players have an interest in letting the stars make a very significant amount of money because they deserve it. And by the way, in the NBA, they do. The NBA contracts for the star players are the highest of any sport in terms of that.

There are reasons for that, but they've been able to achieve that where you now get contracts with guaranteed money for the star players that are over $200 million in terms of that. The stars are taken care of. But the union also wants to make sure that it has benefited what they call the "middle class" players, who would be players that are maybe the sixth man on the roster, or a six, seven, eight man on the roster, or even sometimes the fifth and other type of team that you have.

What they did there is they created a whole variety of salary cap exceptions that could be used for those players. There's something called the average salary cap exception, which now I think it's close to $9 million a year that you could pay now or you could split it between two players, but that's designed for that. There's also the annual exception, which used to be called the million dollar exception. It used to be $1 million, but now it's like $3 million and that's designed for another category of players to go above the salary cap.

They also focus on increasing the minimums. One of the big achievements of the 2017 deal was a very, very large increase in the minimum salary structure and the minimums go up over years so a temp to player in the NBA gets a veteran recognition that is higher. By the way, there's always a salary cap exception to pay the minimum salary. So, all those different constituencies have been advancing over the years in different parts of the agreement benefit for them.

The final category are the rookies. There are lots of issues about getting great rookie players in their first contracts to get a greater ability. And in the last deal, the stars were given the

ability to negotiate bigger, what we called super max exceptions. If they achieve certain levels to go above the salary caps, we worry about those players. And then there's the legacy, which is that NBA players have always worried about those who came before them. In the last CBA, lifetime health insurance was extended to former NBA players. This has been an important objective in the NBA.

There are lots of different groups within the union constituency who the union worries about. I think they've done a great job of balancing all those interests in the NBA union just as the other unions have done terrific jobs in trying to think about their different groups.

STAN VAN GUNDY:
Mr. Zavelo, it sort of all starts with what's the revenue we're talking about splitting up? What is the hockey related revenue that we're talking about? How is that calculated and how much trust is there between the players association and owners in terms of the figures they're getting? And then arguing over the split of that revenue, can you take us through that process and the trust or lack of it between the two sides?

DON ZAVELO:
Sure, Stan. So, in terms of the trust, one of the areas that our cap section focuses on in the CBA is the ability for us to go in and audit all the club books and the league books and records. And we have forensic accountants who specialize in this, that is in going in and looking at the books in arena based sports and looking for all the money that may or may not be included in the definition of hockey related revenue. In our CBA, the section that describes what HRR is runs like 30 pages. And it gets down into the details, everything from gate receipts to parking to TV and radio revenue and Internet and the whole thing.

And so, we rely upon the auditing process throughout the league year. Our auditors go in, club by club, and sit down and set up camp for two or three days and go through the books. So, I think there's a confidence that the numbers that we get and the reports that we get are accurate. The fighting ground though, is over what should be shoehorned into the definition of HRR and what lies outside of it. For example, as we've seen

over the past decade, arenas are now becoming reimagined as entertainment districts, or as residential communities. And they're all sorts of millions and billions of dollars being made on what could arguably be called Hockey Related Revenue, even though it doesn't involve sitting in an arena and watching a game. So, that's one of the real fighting grounds and I think it will be the next round of negotiations as well, particularly the arena district issue. I could go into the escrow system and so forth, but that's basically the HRR picture right now.

STAN VAN GUNDY:
Go ahead and go into the escrow situation a little bit.

DON ZAVELO:
Just for background, I'm sure most people are aware of at least some of this, but HRR isn't really totaled up and reconciled until way after the league year is over. So, the escrow system is essentially an accounting mechanism that provides the source of funds that are available to the owners. And to the extent that the end of the day after the reconciliation, it turns out players have received more than 50% in our case of the HRR, so if that turns out to be the case, the owners get part of that money back, and if the players have been underpaid, then that money goes to the players.

So, if there's a 10% escrow rate, for example, a player with a million dollar face value contract ends up getting paid $900,000 during the season, and then the remaining money is divided up after reconciliation. So, that in fact was the real issue we had to negotiate through in light of the pandemic, in the aftermath of those early years of the pandemic when revenues disappeared. I know our friends in basketball had to do the same thing. So, the pandemic really, it wreaked havoc on the system, and we had to come up with creative ways to sort of rejigger things so that we could work through it.

STAN VAN GUNDY:
And Mr. Grantham, we know that the money is the major issue in all these negotiations, but you hit on it earlier talking about some of the other issues. So, what are some of the non wage issues that come up in collective bargaining agreements?

CHARLES GRANTHAM:
The easier things are negotiated first. And as you point out, trust is the most important facet of any negotiation, but dispute resolution, fines and suspensions of players, behavior, all those other issues, I think are ones that are relatively important, but at the same time are ones that you can negotiate earlier on in the process. But make no mistake about it, revenue is the main theme here because revenue over time, over these years, has steadily increased. And probably over the last 20 years, I would think all of the players unions have really tried to maintain what they have because the real argument that you have is every dollar that's generated in the NBA, the NFL, Major League Baseball, et cetera, they may want to define it as non-basketball related or not hockey related, but it's related. And so, that distinction and that argument will always continue as long as there are CBAs.

And it's that institutional - once you institutionalized something like the escrow system, that's probably something that would never be reversed. I mean, we spoke of an escrow system way back in the 80s and 90s, because when we started this whole process and 53% share going to the players of a defined revenue, the actual payment by leagues were somewhere around 60, 62, 64%. So, there was a way that even then that Stern was looking to figure out how do we make sure that we only spend what we commit?

So any way, shape, or form you come back to what is called "basketball related income." We always took the position that every dime made really is basketball or hockey or football are set to related income. It's the fight over that that I think you see the tension. And then of course, the basis of all this is trusting whether or not we can figure out ways to resolve those disputes.

STAN VAN GUNDY:
And Ms. Wheeler, some of these non-wage issues have been very prominent recently with the WNBA. The most recent one obviously everybody saw in the news this week is the New York Liberty being fined $500,000 because, the way I framed it, is essentially they treated their players very well and put them on charter flights. And so, they pay a big fine, from the league's

perspective, it's a competitive balance issue, but from the player's standpoint, it's a treatment issue. The money may not be going into their pockets, but they're being treated better. How are some of these issues resolved and particularly in the WNBA, the evolution of it as the league has made more money and been more popular, how are some of these things focuses of collective bargaining agreements?

PAMELA WHEELER:
So that definitely, it is counterproductive or counterintuitive when you think a team was fined $500,000, you could have paid three players instead of doing that. But those are what we would generally call your quality of law life issues, right? So, as Charlie mentioned, you have your revenue side of the slate, which is the money and the hard cash dollars and how are the players sharing in that. And then particularly you have your quality of life issues.

And I can tell you that one of the first questions in rookie orientation that the players used to ask me all the time was, "How come we don't fly charter?" Because they're coming from college programs where they're flying charter planes. And so, they're now going to the WNBA saying, why don't we fly charters? And that's one of the issues that had been on the table and all five collective bargaining agreements that the WNBA has, I negotiated the first four.

And so, that's an issue that generally, when you start, when you're dealing with a smaller pool, and unfortunately the pools aren't the same as they are in the NBA and the NFL. And so, you begin to chip away at that and as relates to the charters, that's one that just sort of falls by the wayside. And what you then try to do is, as Jeffrey mentioned earlier, how do you then instead of having charters, enhance the traveling experience?

So, we went from every player riding in coach to then some selected players can possibly ride in first class. And then the evolution of that will, at some point, get to what I hope will be again, a system whereby every player is not just riding in first class, but a system where the teams are paying for charters, but that's, again, one of those quality of life issues that falls by the

wayside when it comes, as it relates to others, when the players are then moving into these different cities, again, remember that there's this diaspora going on in the WNBA.

So, players are playing here in the United States, then they're going overseas, they have families. So, is it more important to then say, "Let's have housing for them in the local markets where they can bring their families, because they're only going to be here for five or six months. Let's make that much more comfortable. Let's enhance that experience. Let's provide them with cars. Let's provide them with different ways in which the security is better there. Let's put them in different housing locations. Let's enhance the housing allowance in case the team housing isn't what we want it to be."

And so, again, it's looking at those quality of life issues. And again, it's all dictated by the players. If the players are then saying that, "Okay, I'll live with the non-charter for right now, but I need my own room." At the beginning of this negotiation, or beginning of the WNBA, players were actually sharing rooms. And there were two players in a room, imagine that.

So, we had to go from players not sharing rooms to players now having their own individual rooms on the road. And so, there was this evolution of the quality of life, and then what the players dictate as what's most important to them. And again, it goes back to creating that system. When the WNBA players decided to unionize, they decided to unionize because there were no minimum salaries in the WNBA, there were no contract guarantees, there was no revenue sharing, there was no free agency, WNBA players were assigned to a team because the WNBA operated as a single entity.

And so, going from. . . they had no retirement plan, no year round medical benefits, no share in group license revenues. And certainly there was no revenue sharing at that time because the league was in a time buy situation. And so, what we were trying to do is create a system again, what I was talking about before, create that system, so that when the WNBA becomes successful, the players will be able to reap the benefits from it.

One of the things I think about all the time is I think about Ballmer purchasing the Clippers for $2 billion. Think about had there not been any revenue sharing program in place, BRI, the league certainly would not consider negotiating for that now after someone pays 2 billion for a team. So, the fact that we were able to, even though it is not the most robust revenue sharing program, but the fact that we were able to negotiate some form of a revenue sharing program, even before we contemplated revenue sharing in its robust fashion, means that we can now at least start from a good place and then be able to negotiate from there.

But, again, those quality of life issues are just, again, those things that you just sort of build upon from CBA to CBA. And like Mr. Grantham said, there's life in between CBAs as well. We don't just negotiate the CBA and then that's it. There are certain. . . we would love to think that we all contemplate. We're all highly intelligent people on both sides. And we'd love to think that we contemplate every scenario, but that's simply not the case. What we do is we negotiate a baseline in the CBA, and then we live out the CBA every day.

And so, there's sometimes when we have to go back to each other, we have to do negotiations, midterms, we have to do side letters where we'll correct what we didn't contemplate, or we correct something that we negotiated and realize that that's just not going to work and we need a better situation. So, there's a constant ebb and flow to it where it's not just every day you just live out the parameters of the CBA, sometimes we just have to negotiate off of that. And I'd love to see someone negotiating midterm that they can have charters in the WNBA.

STAN VAN GUNDY:
Very good. Mr. Kessler, I want to get to the baseball situation because it's in the news. And specifically, how do you hold a player's union together as games are being canceled and checks are not coming in? I mean, I know they have some money that they've put away that is coming in, but it's nothing close to their salaries. And despite what a lot of people think, these guys aren't all making millions of dollars. How do you hold it together when the owners seem to have quite a bit more leverage?

JEFFREY KESSLER:
So I'm going to talk about this issue, not just with respect to baseball, because I don't want to get into specifically what's going on there since that's a live controversy, but I can talk, because this challenge applies to all the sports unions. Whenever there's a work stoppage, how do you deal with that? And the first answer is something, one of our panelists said earlier, I think it was Pam, which is education. You spend years educating your membership about the history of the union and about how each generation stands up for the generations that come after and what is owed by the sacrifices and those who came before you so that the players, when they get to a time where there's a work stoppage, really understand the importance of sticking together and making financial sacrifices so that, in the long run, players can benefit future generations. That's number one.

Number two, out of that education becomes, "Be ready for this, have savings, put aside money, be ready to understand you may go through a period of time when you're not getting your normal salaries and have the ability to do that." The unions also will put together their own funding. All the unions these days generate substantial licensing money for their players, group licensing money, where the players donate their IP rights for video games and for jersey deals and other types of ventures, trading cards. And then that money would ordinarily be distributed for the players. When a work stoppage may be coming a few years later, when you're getting near the end of the CBA, typically the unions save that money. Don't distribute it to the players and then they have it available as a fund to help out any players to try to get by financially if they need assistance.

Usually, there'll be individual payments to players. And sometimes, there'll be hardship players if someone really got into trouble. Because remember not every player in the NBA or in the NFL or Major League Baseball is making a huge amount of money. Some of them are rookies who are at the bottom of the scale who have been in the league a year or two and they really haven't made that much or at least they may make more still than the average person, but they really haven't developed a lot of savings or planning skills.

And so, you worry about those players and helping them out. So, it's a combination of getting the players to understand the importance of their commitment and their sacrifice, how to prepare for that sacrifice and then how the communication becomes critical, because throughout a work stopper situation, there is lots of fake news. There is stuff, there's frankly stuff the owners put out there, that is fake news. There is stuff that other people just get wrong.

One of the goals here is the ownership side would like to divide the players and get groups who say, "Gee, we need to get a deal, make a compromise, give up things. We just want to get back to work." And so, you constantly have to communicate to your players about what's actually happening, hold them together, keep them involved. And then you'll get strong unions who are able to hold their players together. And eventually, it's the owner's side that feels the pressure that those fishes come out. And they're the ones who end up saying, "Gee, we better compromise and let's make a deal that's going to benefit everyone to get back to work."

STAN VAN GUNDY:
And Mr. Zavelo, to sort of continue on that, while you are in there negotiating the nuts and bolts of the deal, how important is the PR part of it and the message you get out publicly regarding what's going on in those negotiations? Because us as fans, we don't know what's going on behind closed doors that you guys are doing. We just know what we read in the newspapers and what we see on TV.

JEFFREY KESSLER:
Just before we get to that, I'm sorry. I see I've got an urgent client emergency. And since I think I probably have had my last speaking time given it, I'm going to wish everyone a great time and I'm going to have to pick this up. So, I apologize, unfortunately, this is my day job. So, I'm going to have to run to this right now, but it's been a great panel and I apologize for getting off 10 minutes early, but I'm going to jump off. Thank you.

STAN VAN GUNDY:
Thank you.

DON ZAVELO:
So, Stan, answer your question. I think media is super important, not just because it communicates the state of affairs to the fans, but also to the players as well. And so, you want to cover all the bases. I know that when we were locked out in 2015, after every meeting, we went back to the office and it was like a phone bank. Everybody was on the phone to players all over North America, catching them up on what just happened and what's the next step and so forth. And at the same time, we were out in the media, our media guys were in constant contact with all the relevant reporters and going through and laying out our position and our take on things. And it's a real battle because they're getting it from, as you said, from the ownership side as well. And you want to make sure the record is complete. So, quite a bit of effort is put into that endeavor.

STAN VAN GUNDY:
And Mr. Grantham, how do you see the, just throughout sports, but particularly in your time in the NBA, you were one of the pioneers of what they now call player empowerment, how have you seen it change, the relations between the players and the league in terms of power dynamics and everything else?

CHARLES GRANTHAM:
One of the things that I tried to do during the time I was there was make our unions more multifaceted to not only deal with the economics and the bargaining, but at the same time to help players on their second careers, for example, to look at savings and investments, etc. But as I see it now, there's become more restraints, not fewer restraints, because when I go back and think about this salary cap and its structure, I think Don put it really clearly. They are cartels. They benefit by being cartels. The intersection of labor and antitrust law favors labor law. And it favors labor law because the feeling is both have an economic weapon to use. Let's take that weapon, the lockout and the strike. I've always maintained that both of those weapons are not favorable to the players because of this monopolistic cartel behavior.

They can't go anywhere else. The players lose on a strike and a lockout, because if they go out on strike, not only they lose

money, but they lose some of their players' ability, their asset, their biggest asset is the unique skill that they have, it depreciates. So, when they say, "Well, they have this thing called the strike," not likely, because today the way the revenue is being generated and look at the value of the franchises and the kind of money these "owners" have recouped. Because remember, that increased value of franchise, the players get none of that shared and nothing is in lieu of not sharing that.

So, when you take that into consideration, you recognize that the players had to maintain what they have and over time, just because of the value franchise, they've been getting less of that pie that we talk about. So, when you encourage and you look at something like the baseball situation, we push, we say, "Hey guys, trust is a big factor here. Do you have the right president? The right officers, etc., pushing the players?"

Bottom line, however, is that it's affecting their lives differently. And if I have a three year contract, two years of guarantee, I'm thinking about now. I recognize the generation before me made sacrifices and I'm going to make some, but at a certain point here, I'm the big loser, because I can never recoup that salary, not as a basketball or football or a baseball or hockey player.

So, I see this thing evolving. By the way, I think it's time that the respective unions form a federation of sports unions. And I think that federation will give them the perception of the kind of unity that the ownership has. Proskauer Rose, that represents baseball, they represent football, hockey, basketball as well. So, we've moved into a different timeframe here. We haven't even talked about college athletes. In fact, our union should be helping them.

STAN VAN GUNDY:
Unfortunately we need to wrap it up there. I think I'm probably speaking for everybody in the audience. I thank all of you for the insights you've been able to give us today and I'll hand it back over to Oliver.

Closing Remarks

Oliver Green:
Thank you so much for joining us. That was excellent. I'm going to let Tatiana give the CLE and then we will do closing remarks.

Tatiana DuBose:
Hello. Thank you so much for that incredibly fascinating panel. We really appreciate all of you being with us, both moderators, panelists and attendees. For those attendees who would like CLE credit for attending the previous panel, the passcode will be N-Y-U Labor. Again, that's N-Y-U Labor. You will need to produce that password in an attendance affirmation form that will be sent to you in the coming days via email. Thank you for attending.

Oliver Green:
Wonderful. Thank you all. This would not be possible without our sponsors, Latham, Skadden and Winston. Thank you all for attending in person and for joining us for this incredible day of panels with these distinguished panelists. We'd love to have you all back next year and we hope to do it in person. So, thank you.