

NEW YORK UNIVERSITY  
JOURNAL OF LAW & BUSINESS

---

---

VOLUME 19

SUMMER 2023

NUMBER 3

---

---

12TH ANNUAL SPORTS LAW COLLOQUIUM<sup>1</sup>

PRESENTED BY:  
NYU SPORTS LAW ASSOCIATION  
NYU JOURNAL OF LAW & BUSINESS

Welcome Remarks .....	597
Panel I. The Future of Sports Broadcasting .....	598
Panel II. The Rise & Impact of Legalized Sports Gambling .....	622
Panel III. The Professionalization of College Athletes ..	645
Keynote Conversation .....	666

Friday, March 24, 2023

WELCOME REMARKS

**Nick Sloan:**

Hi everyone. Thank you so much for joining us. My name is Nick Sloan and as co-president, it is my pleasure to welcome you to the NYU Sports Law Association's 12th Annual Sports Law Colloquium. This year's program features three incredible panels and a keynote conversation all touching on some of the most pressing legal issues in sports.

The first panel up will be the Future of Sports Broadcasting, followed by the Rise and Impact of Legalized Sports Gambling, and the last panel will be a conversation on the Professionalization of College Athletes. Finally, we'll conclude with the keynote conversation with Brad Ruskin, co-chair of Proskauer Sports Group, moderated by Professor Cameron Miler of the Tisch Institute for Global Sport.

---

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

We'd 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. 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'll turn things over to our treasurer, Caleb Paasche, to introduce the moderator for the first panel.

## I.

### THE FUTURE OF SPORTS BROADCASTING

**Caleb Paasche:**

Thank you, Nick. My name's Caleb Paasche. I'm the treasurer of the NYU Sports Law Association, and we'll be kicking off our colloquium today with a panel discussing the future of sports broadcasting, which will be moderated by David Aldridge.

Mr. Aldridge is a senior columnist of *The Athletic* and also the editor-in-chief of *The Athletic*, Washington DC. He's worked for nearly 30 years covering a variety of sports, but primarily the NBA. Mr. Aldridge is written for companies such as Turner, ESPN, and the *Washington Post*. In 2016, he received the Curt Gowdy Media Award from The Naismith Memorial Basketball Hall of Fame and the Legacy Award from the National Association of Black Journalists. I'll now turn it over to David to introduce our panelists and begin our conversation today.

**David Aldridge:**

Well, thank you very much. I appreciate that. Thanks to everybody that's taken part. We have kind of a tight schedule, tight window, so we want to get right to the discussion. I think it's going to be very innovating and I'm going to try to not talk very much so I can learn from our great panel. But let's get started. Let's introduce the panel.

We'll start with John Lasker, who's the Vice President of Digital Media Programming at ESPN, where he is the lead programming and acquisition executive responsible for ESPN+. Mr. Lasker also works to maximize ESPN's audience reach, rights and revenue opportunities across various digital platforms, a capacity within which he works closely with Disney+.

ESPN and Disney Marketing and Hulu and more in order to support integrated content acquisition, distribution and monetization. Mr. Lasker has worked at ESPN since 1999 and has led live streaming efforts at the company since 2006, including the launch of ESPN3.com, Watch ESPN and ESPN+. So John, thank you for joining us.

**John Lasker:**

Thank you, David.

**David Aldridge:**

Ivan Parron has more than 25 years of experience as a transactional lawyer and senior executive within the sports, entertainment and media industries. He is the founder of the internationally recognized law firm, Parron Law, which specializes in providing counsel to sports, entertainment, and media companies. As the named partner at the firm, Mr. Parron has played a critical role in negotiating television broadcast and global media rights agreements. He also has experience representing some of the largest television production companies in the world. So Ivan, thank you for joining us from sunny Miami.

**Ivan Parron:**

Thank you for having me.

**David Aldridge:**

Tony Iliakostas, who is also known to some of you as Professor T or Prof T, is the senior manager of ABC News Rights and Clearances, and in his fourth year as an adjunct professor at the New York Law School teaching Entertainment Law and Intellectual Property. In his role at ABC News, Tony handles complex copyright licensing for various ABC news programs and works closely with the News Division's Business Affairs and Legal Departments on various risk assessment matters when licensing photos and videos for the broadcasts, as well as mitigating any legal claims of copyright infringement. Professor T, thank you for joining us.

**Tony Iliakostas:**

Pleasure, David. Thank you.

**David Aldridge:**

It's a great panel. I have been given questions here, but I do want to start with this, and I forwarded this and warned everybody. I want to go really quick about what's going on with Valley Sports/Diamond Sports because we've got the start of the Major League Baseball season is next week and half of the league is on Valley Sports or is on Diamond Sports, almost half of the league I should say. I just wanted to take a quick sampling from everybody. What do you think is going to happen with those games? Are those games going to be aired or are they going to be aired on Valley or is MLB going to have to step in and air all these games and broadcast all these games? I'll just start with John and we'll just go around from there.

**John Lasker:**

Yeah, sure. Thanks, David. I don't think there's any doubt that the games will be broadcasted and made available to fans. I think the question, to your point, David, is where and how. That's the biggest question. I would bet that the games, at least for some period of time, remain available through Valley and hopefully through the remainder of this season. But obviously, there's a lot sort of pressing against this, but also know that the leagues are certainly preparing themselves for alternatives. Today, as I know we'll talk about, it's a lot easier for the leagues to find an alternative and a lot easier for fans to actually navigate to those alternatives than it's ever been, which is maybe the silver lining and good news here.

**David Aldridge:**

Ivan, what do you think?

**Ivan Parron:**

Well, it's interesting as opposed to say 20 years ago when you originally had TNT and ESPN for instance, when they started the movement over from broadcast television over to cable, the effect was really more of a pull effect on the leagues where for economic reasons and so forth, they were able to draw the leagues over toward the cable side.

Whereas in this situation, it's more a push situation where the realities are forcing the leagues to reexamine and study where they're at as far as the rights go. And it's a real tightrope that needs to be walked here because you have competing situ-

ations between antitrust issues that could occur with respect to one company distributing a large amount of the entertainment without competition.

Then there's also the 800 pound gorilla in the room, which is a monopsony. A league would want to avoid having one large player having all of these rights and lose out to where their distribution strategy, where they've been very successful in cutting up the rights in different distributors and maximizing their revenues.

**Tony Iliakostas:**

To piggyback off of what everybody said, I mean, I think this is going to be a very. . . This might really set the landscape for media broadcasting or sports media broadcasting as we know it for sure. For people who aren't aware, Diamond Sports, I believe, is a subsidiary of Sinclair, which is one of the major affiliate companies out there. They're kind of up there with Hearst, Nexstar, Cox Media Group, that kind of thing.

So something like this, which is by the way, chapter 11 bankruptcy, which from what I understand is a reorganization type of bankruptcy. I mean, I think to piggyback off what John said, I have no doubt also the games will be shown. It's just a matter of when and where. I also still think that it's a matter of whether or not Diamond is still going to exist. Are they going to kind of hand over the keys to somebody else that's going to be rebranded into something brand new entirely?

The thing to bear in mind here is that I think this is a small snapshot even into the larger picture with what other media companies are dealing with their streaming platforms. You have platforms like Paramount+, Peacock, Netflix that are doing quite well over the course of the last half a year, so far six months. But then you have companies like Disney+ that have had a marginal growth and even I think Hulu had a marginal growth as well.

How do you retain viewership? How do you avoid losses and subscriptions in a landscape like that for media entities? I think in the same vein, when you're a media company and you're hosting games over basic cable like this, is this an issue? Did this happen because people aren't subscribing to cable? Is this happening because the accessibility to the games is a problem? There is a lot to consider here, but I definitely think this is one for the books for sure.

**David Aldridge:**

Well, let's pivot to direct to consumer because that's obviously where this thing seems to be heading. Right? So I mean, we all understand that the NFL's got Thursday Night on Amazon now, and MLS is going to be on Apple for the foreseeable future. So my experience in these sort of things is that once it starts, it doesn't stop for a good long while.

So where do you guys think this landscape is? What's it going to look like basically in five years, 10 years? Are we going to see the majority of sports on streaming or direct to consumer, or still have some hybrid with cable and other over the network entities? And let's reverse the order this time. We'll start with Tony this time and go back.

**Tony Iliakostas:**

So I'm a communications major, so naturally I'm inclined to talk about older media that existed. My Fordham professors always told me about how yes, we were entering an age where these things, these computers and websites were going to be the way we would read articles. Would that mean the death of the newspaper? The newspaper industry has been hit drastically with the rise and the proliferation of websites and paywalls, but you can still pick up the physical media.

So I'm using that as an example because I don't think we're at an age yet where we're willing to give up set top boxes or over the air cable as a method of broadcasting games.

Now that said, the acquisition of Apple TV for MLS and Thursday Night Football with NFL, you're starting to see almost like a redefinition, if you will, of the big three in sports broadcasting; ABC, CBS and NBC being those juggernauts that broadcasted all the major sports games once upon a time. And I think we're seeing that to this day, and I honestly think it's a smart strategy because the ad models are going to look much different for the networks, for these platforms and for these sports leagues. I think the accessibility will be much better because you may save yourself the stress of having to pay a lot of money to buy a cable package if you know that you're only buying it just for the sports games.

**David Aldridge:**

Yeah.

**Tony Iliakostas:**

And I think that all around, it's going to be a really workable model. Obviously, I think the only thing that I would be a little bit worried of is the whole blackout situation because that's just been an ongoing issue across the board. I feel like it's never been quite remedied, but all in all, I can only see good from here. But to say that we're quick to omit basic cable or other traditional forms of media from sports broadcasting, I think it's a bit of a premature thought, but maybe in 10 years we might be having a different discussion.

**David Aldridge:**

Ivan, what do you think?

**Ivan Parron:**

Well, I think that the professional sports leagues are going to continue with their slicing up their rights and distributing them and experimenting with new experiences for the consumer.

You have situations with the growth of, obviously, for instance, sports betting and sports data has opened up a whole new world and part of these rights these large sports data and betting companies are acquiring, usually sports betting and data rights include a couple of different things: historical sports data, real-time sports data and real-time streaming of the actual live events.

That's going to create new combinations and new players within the industry that there may be experimentation with. There's also new technologies like artificial intelligence and ARVR and so forth that will create new types of platforms that they'll probably be experimentation with. Platforms with Twitch, but there may be experimentation with.

So I think we'll continue to see a distributed menu of these sports on different platforms and new platforms and so forth as we move forward.

**David Aldridge:**

John?

**John Lasker:**

I don't disagree at all with what Tony and Ivan said, and I actually think Ivan talked a little bit about this before with the

regionals, and Tony I think was smart to speak about the history here. It's important to look at the history of sports on television. When the NFL was on NBC or on ABC for Monday Night Football, the reason for that was ABC was trying to get a huge audience to their platform to then drive their primetime television ratings and promote the other shows that are on the rest of the week. That was the reason for it.

Cable comes around and sports navigates to cable because folks like ESPN and Fox and others are trying to drive a dual revenue distribution model. They're getting bigger fees when they have sports on their networks. And now you have, like you mentioned, the Apple TVs and Amazons of the world that are buying sports for very different reasons than ESPN is buying sports and very different reasons than ABC historically was buying sports. And I think the best example of this is the subsequent sort of announcement that Amazon and NFL had where they they're going to do for free, ungated, the Black Friday game. Right?

**David Aldridge:**

Yeah. Right.

**John Lasker:**

They're doing that. That is a huge moment for Amazon. They're getting a lot of people to their platform to buy a bunch of stuff, right?

**David Aldridge:**

Sure.

**John Lasker:**

And they're using the NFL's audience to make that happen. So I think you'll see a lot of these companies testing out how sports can actually help them drive their core businesses, and that's the reason. Amazon's not trying to be ESPN or Fox Sports, neither is Apple. They're doing this stuff for very different reasons.

And I think just in streaming in general, regardless of the model that's supporting the streaming, it's going to be ubiquitous. And I think in two ways: the things that we're used to seeing maybe exclusive to the MVPD, vMVPD universe are go-

ing to be available in various forms across streaming and then there'll be more available.

I think there's an expectation that's continuing to grow where my daughter is playing in a soccer game in name your county, and I should be able to watch that wherever I am in the world. So I think those two forces are going to continue to grow over time.

**David Aldridge:**

I had a brief question about legal framework of these new deals. Are they the same as the traditional TV rights deals in past years?

**Tony Iliakostas:**

For the most part, they are. I mean, I almost think of it kind of like a lending of rights, if you will. These distributors, these streaming platforms are operating like distributors in the traditional sense where they're being asked to broadcast the games, but eventually the content is vested with the league.

So we all know that Major League Baseball, like towards the . . . when it's wrapping up, when they have that announcement that says, "The contents of this game may not be redistributed in any way, shape or form without the expressed written consent of Major League Baseball Advanced Media." So it's the kind of thing where the only reason why the entity, the distributor is involved there is because they're the ones broadcasting the game.

In my time doing tons of licensing at ABC news, I've done quite a few sports shows. One of our most recent one was on Kobe Bryant and a lot of the games that we had to license had to go directly to the NBA, we had to get that license. But for the other stuff, maybe off-court interviews, maybe little maybe pre-workout warmups kind of thing, that was ESPN. So we had to license it from them directly, that kind of thing. So they operate essentially the same. I wouldn't see that part of the legal model changing anytime soon.

**John Lasker:**

Yeah, I agree. David, the only thing I'll mention is what's sort of just progressively changing, and Ivan mentioned this too, just how the rights holders are breaking up their right sets to the most sort of finite slices as they possibly can, is these

deals are very, very finite and the leagues are trying to put as much sort of bars around what the right is that they're actually licensing to Amazon, to ESPN, to Apple in order to protect their ability to do other things like gambling, like metaverse which I think we'll talk about those types of things. Where in the past, at least in my early days at ESPN, there was a lot of all means in media deals that we enjoyed, which are a thing of the past.

**Ivan Parron:**

And another interesting element about the whole process is when these deals are made, it's not just about the rights, there's also all of the production that's involved. And that's a big question. Whereas formally it you'd have the Valley Sports or the Diamond Companies.

Basically they're funding all of the production, hiring all of the talent, doing all of the interviews and the play by play, and then they're funding that obviously through their revenue sources and so forth. So that's an important part of the mix in figuring out where that production, where the financing for that production is going to come from specifically.

**David Aldridge:**

Well, I wanted to kind of pivot to that and talk more about the fragmentation that we've seen. I mean MLB is on, I think, 11 different platforms now.

**John Lasker:**

That's it?

**David Aldridge:**

And I get it, and watching MLB games on Apple is a completely different experience than watching it on Fox. And that's okay. It's fine because you're trying to reach different consumers. But I just wonder like, where do you think this is. . . How fragmented can a sports league be when trying to reach so many different types of people in different consumers where they are? How far can they go in their fragmentation of their sports rights?

**John Lasker:**

I'll start. I think that there's a couple of different ways to think about it. Number one, when you talk about Major

League Baseball and other leagues that have a lot of inventory, NFL aside where their inventory is very finite, they do have to be careful about balancing their distribution with making sure that they're keeping their product special, at least on a national basis and not watering it down.

And I think there's a lot of pressure on these leagues to continue to increase their rights fees revenue, and it's gotten to a point where you can't do that without engaging multiple partners and more partners than maybe you would have in the past.

And then the other piece of this is then slicing the other way of like, here's the game and you have television or cable or broadcast rights, and then somebody else has the gambling distribution rights and somebody else has the metaverse distribution rights and the league retains some rights, et cetera, all to make sure that they're monetizing as much of it as possible. They don't want to give anything to these national broadcasters that those national broadcasters aren't going to monetize themselves and take on themselves.

**Tony Iliakostas:**

One point that John's bringing up here that's really interesting and important to note also, is that all these sports leagues are essentially kind of doing their own quasi IP audit, if you will, where they're assessing the value of their league from an intellectual property point of view. The games, the trademarks, the players' likenesses, all of these are integral to the function of the league. That's why you have sports jerseys being sold exclusively on Fanatics. That's why you have DraftKings as the exclusive sponsor of the New York Mets or whatever, because there are these partnerships that the leagues and teams individually are brokering with these various entities.

And on one hand, there's the primary stream of revenue, which is bringing people to the game, buying tickets. Then the other way you have the streams of revenue is by these other ancillary ways of marketing and monetizing off this other IP. Whether that's by way of doing merchandise licensing in its traditional sense, or television distribution models like acquiring the rights with Apple TV or Amazon, or even the creation of something like NFL+, having then ad space on those types of platforms. It's definitely a game changer for sure.

**Ivan Parron:**

Yeah, and it's an excellent point as far as the fragmentation goes, because as consumers, you have different demographics that are used to a certain presentation. I mean, for years we were used to the broadcast presentation, for instance, of the NFL. When they started making the switch, they basically took a lot of the production and tried to emulate the same production. But now you have new technologies with Amazon. You have the version that they have with the video game playing and so forth.

It's opening up, and I think that the leagues are really now so data driven that they're studying all of these experimentations and seeing where is the market going, where is the larger market, and how is it that they're going, where is the larger market, and how is it that they're going to consume their product and what is the best way that they consume? At the end of the day, it's all about the consumer and what the growth markets are.

**John Lasker:**

These deals have also become very long term, which also plays for the leagues as they want to make sure that they have as much flexibility to take advantage of the market conditions as they progress over those next . . . If it's a 10-year deal, they want to make sure they didn't sell rights to somebody that they're now not able to monetize or control on their own, which is a big part of this as well.

**Tony Iliakostas:**

Right.

**David Aldridge:**

Tony, you had mentioned intellectual property, and I did want to ask about that and just how the changes in these delivery methods affect the stakeholders intellectual property rights and claims. What's going on in that space?

**Tony Iliakostas:**

I think that there isn't really much to say. IP is IP is IP. I think that even though we're in this space now where NFTs and the metaverse are coming up, a lot of people think that now the rules of intellectual property don't govern. Well, I

hate to be that guy, but I think that that's just not true. I've told my students that the rules of the fiscal universe equally apply in the digital universe. I think that if you're committing criminal copyright infringement by recording baseball games or NBA games, you're selling that on platforms that you shouldn't. That's criminal copyright infringement in the same way as if you went on some streaming website, you decrypted the platform, you record that footage and then you, again, sell that footage in an improper manner. Bottom line is it's actually, if anything, maybe up the ante for leaks and teams individually to continue making proactive efforts to police their brand in a way that would be important for them to do, as it is the case all the time.

Let me put it to you this way. The NFL manages hundreds, I would even venture to say maybe close to thousands of trademarks for their teams, their leagues, or all their entities that are associated with the league itself, even down to the Vince Lombardi trophy, which is registered as trade dress in the U.S. Patent TriMark office. If they're being proactive about trademark enforcement for that kind of thing, I am certain that they're being proactive in protecting the IP and other aspects now with the proliferation of the digital landscape of sports media as we know it. So yeah, I honestly think that the landscape of IP is evolving with the growth of all these new streaming platforms, but then with it comes this responsibility to do a really good job of enforcing it. So to quote the great Ben Parker, "With great power comes great responsibility." So we got to . . . through on that.

**David Aldridge:**

I've heard that word metaverse thrown around and I'm old now, so it's not where I live, but do we anticipate separate metaverse deals, rights deals in the coming future, in the next round of rights deals, negotiations?

**John Lasker:**

I think it's a simple answer, Dave. I think, yes, it's not dissimilar to we're in this now with the wagering distribution rights. A lot of leagues. Were smart to carve those out. It's something that's been happening actually in Europe for a long time that's been now replicated here as that becomes legalized across the country. I think the metaverse is one of those

things, like I was mentioning before, it's an unknown, but everybody sees it as a opportunity. I don't think leagues are, at least at this point, willing to just hand those rights to a media company outright and package it in with regular distribution rights. They would hold it back and try to figure out a way to monetize those rights in the metaverse themselves, whether with that partner or separately and on their own.

**Ivan Parron:**

Yeah, I think with respect to that, the leagues will continue to be with a conservative approach, as we saw with situations sometimes in technologies like with FTX, things can go wrong and you can overcommit to certain technologies and companies, but I think that the sports betting and data area is going to create a lot of innovation. I think it's being driven by the nirvana of sports betting, which is the prop bet. The biggest obstacle that they have is the real-time broadcast of a live sporting event. That's a real issue because between all of these platforms, you could have eight to 30 seconds of time delay

**David Aldridge:**

Yeah, right.

**Ivan Parron:**

I would see that as eventually leagues may find that as a new area of revenue where they might create a segment of the fastest real-time signal versus the delayed signal and try to capitalize on that and generating greater to revenue from maybe the sports betting area.

**Tony Iliakostas:**

One thing also to bear mind too, with the metaverse, and I would even branch this out even into artificial intelligence 'cause it's inevitable, it's probably going to permeate in the sports base for sure, and definitely sports media. We have to bear in mind if there could pose any potential conflicts of interest with the broader business of the company or certainly, the integrity of the sport also. So this is an example, a very loose example, but I'll wrap back to allude to why I'm talking about it. Actually, I just recently talked about this on my podcast, End Scene, with my co-host, Evan, End Scene. We talked just this past episode about how at one point the Writer's

Guild of America was entertaining using artificial intelligence ChatGPT as a way to create screenplays scripts that then they would give to writers to then touch up. Then if they touch it up, oh, they're going to be named first writer.

The actual physical author will be named first writer. But the problem with that is Hollywood studios around the world take great pride in registering the copyright for every last thing associated with the film; screen treatments, scripts, screenplays, storyboards down to the finished product. The U.S. Copyright Office has made it extremely clear that anything that does not have substantial human involvement, it wasn't written from soup to nuts by an actual human being with flesh and blood, that is not going to get copyright protection. So even if you have something that was generated by AI and is mildly touched up by a human, it's just not going to get copyright registration. So bringing it back to here, if sports leagues and even sports media entities are going to be reliant on these new media, which is all wonderful and innovative and fantastic, they have to ask themselves these exact same questions, will it bear some type of conflict of interest?

Will this clash with existing law? Will it clash with some type of business model that we have going? Not to say that it's not going to happen, and I hope it does, and it's integrated in a way that is unique and ingenious, 'cause I see a lot of great promise with the metaverse, with AI, even with NFTs and coalescing together, but there has to be a sound business strategy going into it. So I'm optimistic for it, but pretty much what Ivan said is on the money. You can't have a all buy-in model like what you did with FTX because the ramifications are great. Now you've got athletes being sued individually for they had insider knowledge. How would they have known they just signed the endorsement deal and called it a day? So how is Tom Brady personally liable?

**David Aldridge:**

Right. Is there a lesson to be learned from that? I dabbled in trying to learn about this particular . . . and theoretically it makes sense what they're talking about in terms of selling experiences and individual experiences. But is there a lesson to be learned by everybody and Larry David and the whole world at the Super Bowl jumping on the train that is now derailed

and lying in pieces? Is there something that we can all learn from that?

**Ivan Parron:**

I was just going to say we're an extremely litigious society, and it somehow finds its way into everything. You look at the experimentations with the metaverse as we were just discussing. Over at the Sports Lawyers Association, we had a panel back in November discussing specifically the metaverse and how there's new issues as far as crime within the metaverse and different legal liabilities and so forth within the metaverse. These are all things that general counsels that all the sports league really have to review and advise the leagues before they get involved, "Look, these are all possible ramifications, so let's go slowly, let's study this, but let's do it conservatively."

**John Lasker:**

I think there's just so much money flying around, so much excitement, some FOMO, if you will. To me, the lesson is don't get involved, don't lend your IP. Don't invest in something you don't fully understand.

**David Aldridge:**

Right.

**John Lasker:**

I think a lot of people got caught in that vortex, and the metaverse, I think could be the same thing.

**Tony Iliakostas:**

Yeah, on the money. I think it is a case of FOMO that we saw happening, unfortunately. But I even think that even for individual entities, you have to think if they're working with the celebrities like Larry David or Tom Brady, these people, if I'm working with an agent, one question I would make sure going forward with any brand deal that I do is, what do I do to get out of this? I'm not talking a la morality clause, or even a reverse morality clause, although that actually could work, but which actually we also talked about on my podcast too, but reverse morality clauses would be what if the company did something that was improper that allows me to get out of that contract?

**David Aldridge:**

Yeah. Yeah.

**Tony Iliakostas:**

So actually that would be the way to carve out, so maybe that is going to be the landscape for a lot of agents going forward with their clients going forward.

**David Aldridge:**

Yeah. Yeah. Let's pivot to rights fees because I am always dumbfounded by the notion that it's always more, it never goes down. It always goes up. It was mentioned earlier, the NBA is looking for 75 billion. I'm like, "Who could do that? Why would you do that?" So-

**Tony Iliakostas:**

Keith Cohen.

**David Aldridge:**

Yeah, right. So-

**John Lasker:**

Let's go, Mets.

**Tony Iliakostas:**

Let's go, Mets.

**David Aldridge:**

Well, right. Right. There's always somebody, there's always one owner. But how do your different organizations and everyone think about the value of these rights fees, and how do you go to your boss, unless you're Ivan and you're your boss, how do you go to your boss and say, "Yes, let's keep investing. Let's keep spending more money 'cause this is the value of it?"

**John Lasker:**

I think it depends first, David, what your business priorities are. We talked a little bit about Apple selling devices. Amazon is selling groceries and trying to make the math work, and the value of a game or a league asset might be very different to Amazon. Their math will be a lot different than ESPN's math or Apple's math. What we like to think about is just simply that. So recently, our priority on the ESPN side has been ESPN

Plus in driving our direct consumer service. The valuations that we put on deals are largely with that in mind, and sometimes you put a premium on those because you do need to upstart the surface and you might maybe pay a little bit more than it actually pencils out with the hope that adoption comes and other things happen to make good for it on the back end.

But the other side of this too is it comes the NBA or Major League Baseball is a great example, at least on the ESPN side as we get into our second year of our new deal is, we cut the number of games that we were doing nationally by maybe about half. I can't remember what the actual number is, but we stopped doing weekday games, Wednesday games, and Monday games because it just didn't work anymore. We knew we wanted to be in the baseball business, so we had to focus on the thing that was most important to us that was going to continue to drive the business, which was Sunday night baseball primarily. Then that opens the door for Major League Baseball to engage with more partners to then make good on what they need to make good on their expected license fees.

**Tony Iliakostas:**

So I'm in a unique position because I work under the same company John, we're ABC News, so we're sister companies. But the interesting thing for us as a news organization that we deal with when we're securing rights for a game or some program from let's say, ESPN or another entity that relates to sports is we think to ourselves, and this is the question we always ask ourselves with all our news programs, "What kind of story do we want to tell?" I guess this is the way I've framed it for some people. I'm half-Cuban, my grandfather came over from Cuba in 1960. He was a cardiologist for the state hospital in Havana. He had read a book in the style of *Animal Farm* in the mid-1950s that predicted essentially what happened in Cuba, which was an entire coup of an overthrow of democracy and in comes Communism.

So he knew that he had to get going and told my grandmother, "We have to flee." He had to even sew his medical diploma in the lining of his coat to escape because he feared that if Cuban police officials had access to it, they would tear it up and he wouldn't be able to practice medicine here in the U.S. Thank God he walked in just fine and no issues, no harm, no foul. But I think to myself, imagine if he had a camera cap-

turing that story, or imagine if there was the Operation Peter Pan and people invading the Bay of Pigs having cameras there. We didn't, but that would've been profound to the news storytelling process. I think that where we are now with user-generated content in this day and age, what's happening in Ukraine and what's happening even here locally in the U.S., across the world, we as a news organization are sober lining on any and every bit of content that will help effectively tell the story that we're trying to emit.

Certainly, with sports content, we value not just the game footage, but even the interviews, the heart-to-hearts that athletes may share in their story of what they dealt with. We've done a bevy of different sports shows on this exact matter and missing one bit of video makes a big difference in how good the show's going to be. So on one hand, I totally understand where the NBA's coming from in terms of trying to expect that type of revenue. It's just a matter of whether people or entities like ABC News are willing to buy into being a part of that licensing model and are willing to invest in that type of content going forward, or if there are other entities out there, they're willing to partner with the NBA on a broader landscape to help create some good revenue going. But I guess it's like an it depends answer, but I'm in a unique space in my place at ABC, where we value the content that we license and it's an ever-growing machine constantly. We're constantly licensing every single day.

**Ivan Parron:**

Interesting point by Tony, both my parents are actually Cuban.

**Tony Iliakostas:**

Oh, wow. Nice.

**Ivan Parron:**

But what's interesting, and I think John nailed it earlier, is these competing interests at different types of companies and how they're valuing the content is what's really going to determine where the numbers go. You think of the old concepts in retail with the Big Box retailers Best Buy, where they used to sell CDs under price at a loss called a loss-leader because their priority was to get people into the stores.

**David Aldridge:**  
Right.

**Ivan Parron:**

And the similar, Amazon may be interested in certain rights as loss-leaders to drive prime memberships. So that's a whole different approach with different priorities than a company that's maximizing the revenue by ad revenue and partnerships and so forth. So that's really what's going to determine, and that's the constant competition here as what's getting the prices up.

**John Lasker:**

We talked about that before too, just like in the history sports was used to drive television ratings and primetime viewership and then to drive the cable to revenue stream model and now to get people to buy groceries on Amazon. It hasn't proven to be less valuable than it was the year before yet. So I think companies are still going to find a way to find value in the audience and the passion and the connectivity that sports bring and how they can translate that into whatever their core business is.

**David Aldridge:**

Right. Right. We've got about 10 minutes left, so I just want to make sure we hit on a couple of topics here that are left. One of them obviously is gambling and how this just seismic rise in sports gambling in the last five years, how that impacts the media rights landscape. What are the effects known and unknown maybe that we are seeing and that we anticipate we will see in the years to come?

**Tony Iliakostas:**

I think it's very interesting to reminisce of the days back in 2015 when they were those FanDuel Draft Kings riots outside of the New York Attorney General's office. Is it a game of skills at a game logic? Here we are eight years later and you have basically a variety of different states have legalized sports gambling and basically this type of gameplay. It's truly remarkable how just a minor perspective of what this can mean for the economy, it's pretty magnanimous. I only see it going up from here if I'm being perfectly honest. This is a really, really great

way for people like casual fans like myself of certain leagues that if I'm feeling it, all right, I'll throw in 20 bucks in this game and see what happens.

It's the kind of thing where I'm not going to become addicted to it. It's like I've gamified the game, if you will. I think that that's almost the drastic change that we're starting to see. Also, how can you make the fan be involved in the game aside from actually consuming the contents of the game, watching this player get X points, this player get this number of rebounds? So I think sports gambling it's truly had a very, very interesting meteoric rise. It's been very impressive to see just the massive growth across the space.

**John Lasker:**

I think it's going to do two things primarily, and it already is, I think 'cause fantasy sports, I think, has been the more above board and legalized way to gateway drug.

**David Aldridge:**

It's a gateway drug.

**Tony Iliakostas:**

Yeah. Exactly.

**John Lasker:**

Right. You can talk about it in that way. My oldest daughter is an example of that where I put my family in a fantasy football league and she wound up having, Tyreek Hill was on her fantasy team two years ago. He obviously killed it, crushing it every single week. Now she's a Kansas City fan. Even though now he's in Miami, she's a Kansas City Chiefs fan, which is incredible. So it shows you the gamification, whether it's actually wager as we all think about it or gamification in a fantasy type of world is going to help these leagues expand their audience, actually get these casuals in. Then I think Ivan mentioned the in-game prop bet types of things. The folks that are already watching interested in sports engaged, these types of things are going to help people stay more engaged, spend more time with sports, which ultimately, means more money for everybody that's involved. So I think those two things are just, you're going to see the leagues, the networks, the gam-

bling companies continue to push audiences to engage in this stuff because of those two drivers.

**Ivan Parron:**

Yeah. I think with the sports betting, you have a whole different set of priorities and new reasons why. The thing with sports betting, they have an insatiable appetite for content because they want as many possible bets to be placed. So what I see sports betting doing is actually increasing competition as far as different sporting events, different concept. One of my clients is Dimayor, which is the Colombian Soccer Federation for the country for professional soccer. That was interesting. We ended up negotiating with Genius Sport and so forth, but in that country there was one national network that owned all domestic and international broadcast rights. We negotiated away the international rights and then basically sold it to sports betting company Genius Sports. They're broadcasting the games live in casinos of Macau. So it's an insatiable appetite for more and more content. I think that's going to be interesting to see the different competing sports and different entries into the market to see how it affects everything.

**John Lasker:**

David, one thing I think gets overlooked too when we talk about gambling is just the data. We use it at ESPN, and we actually have an exclusive data partnership with Caesars. So they basically provide all of our lines, which by the way, fuels a ton of storytelling. It's another way, even if you're not interested in placing a bet, it gives you more context. It gives more storytelling opportunities into why a game matters, doesn't matter or what the-

**David Aldridge:**

And beats, right?

**John Lasker:**

Exactly. Exactly.

**David Aldridge:**

Yeah.

**John Lasker:**

Yeah, so totally. So there's a lot of things outside of just getting people to wager involved.

**David Aldridge:**

Right. Let's close on the notion of younger sports consumers because I am both fascinated and terrified, and I'm sure you all are too, with the decreasing connectivity, especially with younger viewers and consumers. You see it in college, I think, with attendance. Kids just don't go to their school's games as much. They don't show up, and even if it's for free and it's almost always free and they give them food, and they don't come. Kids aren't interested in sports increasingly, and they don't watch live sports. I just wonder how do you begin to attack that problem? 'Cause it is a problem and maybe gambling is the entree to the younger viewers, but how do you think about that and game plan it and attack it?

**John Lasker:**

I could start. Yeah, I think you're right, David. Gambling is certainly an opportunity to help get younger audiences to continue to engage in live sports. We talked a bunch about streaming, just that notion of taking game and putting it on a streaming platform does help. The average audience age on ESPN Plus today is 35, versus your high 40s for ESPN, so that certainly helps. Then the engagement on, at least the way we look at it at ESPN is we don't try to think about any of these platforms or reach mechanisms as cannibalistic to another one. So being very active in the Snapchat, TikTok, Instagram, Facebook worlds, maybe Facebook is a little bit older than what we're talking about here. Sorry.

But the point being is just being where those fans are and trying to engage with them. I think that's the thing that we have to all do better at, oh, and one other thing is just trying other ways to do broadcasts. I don't know if any of you all saw, but we did a Washington-New York game last week and did a parallel broadcast using Big City Greens, which is one of the best Disney shows on Disney Channel as an alternate telecast, which is an amazing execution. The average age that we saw watching that game was 14-years-old.

**Tony Iliakostas:**

Wow.

**John Lasker:**

So it tells me that if you build it the right way, you can engage the audience. I just don't think it's, take the game as you've been producing it.

**David Aldridge:**

Yeah, right.

**John Lasker:**

. . . five, 10 years ago and just expect people to show up. You have to work really hard to speak to the audience that you're trying to engage with. But I do think it's possible.

**Tony Iliakostas:**

Yeah, Nickelodeon did that with the NFL with those games. That's another perfect example of how you're immersing or engaging with the younger audience at that point. One thing I will say that all the sports media entities and leagues have to bear in mind is that the average attention span of the person has dropped 25% since 2000. I think we're down to 8.25 seconds, which is lesser than a goldfish. But Yahoo did a study quite recently that Gen Z's attention span is 1.2 seconds, so that's a bigger challenge. So all that to say, I think that short form video user-generated content that you find on TikTok, Instagram, that's the way that you're seeing these people engage. They're constantly moving like this on their phones all the time. So I think you have to compromise or figure out how you're going to marry the traditional sports media, the traditional content you find on these platforms with this newer media, which can be a virtue, maybe a vice, but certainly a virtue and a consequence, in a time like this,

**Ivan Parron:**

Having an eight-year-old and watching what he watches on YouTube, it's just like short-form video after short-form video. The endorphins, how they operate and the attention span must be like whack. I don't even understand it. We look at historically sports with baseball, which had a certain speed, and then we went NFL and then NBA, the speed of sports and the attention has adapted over time. I think what we'll see is

creative ways of doing it with what you guys have been doing with having an audience like having the two brothers watching.

**David Aldridge:**

The Manning cast.

**John Lasker:**

Oh, the Mannings.

**Ivan Parron:**

Correct, the Mannings watching the game and commenting. That's right up the youth's market because they love watching Twitch and watching someone playing a video game and talking about it and so forth. That's a new creative way of breaking into that market. I think we'll probably see more of that – younger influencers who are appealing to younger kids and getting involved in that commentary situation. It's going to be interesting to watch.

**John Lasker:**

David, I don't have the data for this, but I believe where the bigger drop off is going to be is in the tonnage of Live, less with things like the Super Bowl and the NBA Finals. The things that really matter are the most sacred and where you can get fans, young and old, to engage, be interested, and care.

**Ivan Parron:**

The World Baseball Classic was a great example this past week. It did amazing. I haven't even seen the numbers as far as the rating goes, but the Miami Marlin Stadium was packed the entire time.

**David Aldridge:**

It was a great experience. I am fascinated by, to your point, Ivan. My kids would be watching other people play video games on YouTube. I said, "Wouldn't you rather just play the game yourself?" They're like, "No, this is how we learn." It was fascinating to me, like, "Okay," it's interesting to me, but it was really an eyeopener.

But look, I want to thank you all. This was fantastic, a great discussion. They told us we have to wrap up. Thank you

for your insights, for your intelligence, for your experience. It was a terrific discussion. Appreciate all of you.

## II.

### THE RISE & IMPACT OF LEGALIZED SPORTS GAMBLING

**James Whitty:**

Good morning everyone. My name is James Whitty, and I'm the Vice President of NYU Sports Law Association. Our moderator for the Rise and Impact of Legalized Sports Gambling panel is Dr. Daniel Kelly who joined NYU School of Professional Studies in 2019 as the Academic Director of Graduate Programs and the Clinical Assistant Professor for Preston Robert Tisch Institute for Global Sport.

Dr. Kelly has consulted on strategic leadership and global business initiatives with international sports organizations based in Spain, Argentina, Qatar, and elsewhere. He has also organized recruiting events with various professional teams such as the New York Mets, Boston Celtics, among others. Dr. Kelly will now introduce the panel and get things started for us.

**Daniel G. Kelly II:**

Thank you and good morning, everyone. Very excited for today's panel. Looking forward to a very positive conversation and to get to a lot of legal knowledge. Today's panel, the Rise and Impact of Legal Sports Betting, explores the rise and impact of legalized sports gambling in the United States since the Supreme Court struck down a 1992 federal ban on sports betting in *Murphy versus NCAA*. 33 states and District of Columbia have legalized sports gambling. In 2022, New York State approved mobile and online sports betting. In that first year, 18.3 billion was wagered in New York, generating about 762 million in state tax revenue.

**James Whitty:**

This panel will address considerations arising from legalization of sports gambling such as tax rates, regulation issues, and league responses to the new league created industry. Joining me on the panel today is Senator Joseph Addabbo, Chairman of New York State Senate Committee on Racing, Gaming and Wagering. We also have Ben Margulis, Partner at Boies

Schiller Flexner, LLP and Jonathan Fishner who is the Senior Director of Federal Regulatory Compliance for FanDuel.

To get us started, our first question, and this will be open to all of the panelists, what has the unregulated illicit market looked like since the passages of legal sports gambling? And we'll start with Senator Addabbo.

**Senator Joseph Addabbo:**

Thank you, Dr. Kelly. Good morning, everyone. That's the problem. When we have an illegal market, you see for a New Yorker, it was very easy to see the money going to Jersey, Pennsylvania, Connecticut, surrounding states. GeoComply and other technology would show where our wagers were going. They were just going over a wage or so forth.

The illegal market is a little bit more difficult to gate because they're in the shadows, and we know New Yorkers were doing it illegally. They still are. In terms of iGaming, they still are. That was the one part where we really knew it was happening, but it was tough to quantify. Of the information we had, we figured between the other states and the illegal market, New York was losing before we did mobile sports betting or sports betting in general. We were losing about a billion dollars a year.

I think when you regulate it as a state, when you regulate sports betting, when you do mobile sports betting or even iGaming, you not only make it a safer product for your residents, you not only get the revenue, but you also create, again, an addiction program that can now help people who are in the shadows. So, the illegal market is a very tricky one to deal with.

**Daniel G. Kelly II:**

Next, we'll go to Jonathan.

**Jonathan Fishner:**

I would echo very much what the senator is saying. First and foremost, thanks for having me and for being on the panel. With respect to the illegal market versus the legal market and the tools we can offer our customers, I think we'll talk a little bit more about that as the panel goes on. The size of the illegal market is very difficult to say. I think the AGA last

year estimated it could still be three times the size of the legal market in the United States.

People don't love to confess to committing crimes no matter how minor they might be, so I think it is very difficult to get a sense. We know that a lot of our growth comes from people who are already gamblers. So, the illegal market is entrenched. In the area that I work, which is very focused on crime and criminal activity, we still see indictments and we still see arrests of illegal bookmakers including sports bookmakers in New York and in and around New York City.

So it's still out there, but the legal market is a huge push away from that, and I think it's always important to remember that I started my career working as an investigator in the Manhattan District Attorney's Office Rackets Bureau, and bookmaking is a small piece of what is typically a larger criminal operation. It may seem like, "Oh, what's your Neighborhood Booky? Why does it matter? But the truth is, organized crime still exists. And that's not something we want our fellow citizens to have to be exposed to.

Lastly, I would just add that at FanDuel, less in New York than in other states that don't have legal markets, but we are seeing more and more what we think of as illegal operators who are operating as faux fantasy-type platforms, so they're operating illegally while we're operating legally. The industry, as a whole, is paying a billion dollars in taxes. So, that's something to consider as well.

**Daniel G. Kelly II:**

All right. Next, opening statements from Ben.

**Ben Margulis:**

Hi, everybody. Thank you for having me. I'd be remiss if I didn't say everything I'm about to say is, from my perspective, not attributable to the firm, also not legal advice. So, let's just be clear.

I want to echo what my co-panelists have said. Since 2018, when the Supreme Court in *Murphy* struck down PASPA and opened the door to state-by-state sports gambling regulation, before then it was just blanket illegal by federal fiat. The market has changed, right? The fight has changed. If you're looking at it from litigation perspective, it used to be what can you

do to play around in the margins or in states where there was no regulation, what can you squeeze by?

Now, in New York, New Jersey, or one of the other 30 states or so that has some sort of legalization framework, the real legal issues are how do you work within the framework for the illicit market?

Obviously, they're outside. New York has some legalization mechanism, but it's tightly controlled. Not everybody who wants to run a sports book can run a sports book, and there are specific requirements.

If you go into the illicit market, you run into problems of potentially not backed but you're not as protected, obviously. There's nothing there to stop it. Payment structure becomes a problem because credit card payers or payment processors don't necessarily want to work with illegal operations, especially when they have the option of working with an established sports book.

Not to repeat what everybody else has said, but that's essentially one of the main differences between legal and illegal, which is formed after you start having some sort of regime. You have established structures, established ways, or ways that are being established and tested in courts, or just through negotiation and completely unregulated Wild West where you're taking your money into your own hands if you really want to do that. And if you have the option of a legal sports book, you're gambling money without actually having the fun of the gambling aspect of it, if that makes any sense.

**Daniel G. Kelly II:**

Very good point. For my next question, it lends into what you mentioned, but I'm going to get to you in a second. The next question is in what ways the day-to-day overall operations, the regulatory agencies shifted since legalized sports gambling? I would like to start with Jonathan for this first question though.

**Jonathan Fishner:**

I'm going to hold New York and our more recent legal states to the side for a moment. But when I started at FanDuel three years ago, I don't want to say our regulators were unsophisticated because that isn't true, but they were very new to the space, just like we were.

While we are still partnering and we will always partner with our regulators, we were also at that time doing a lot of educating and really finding our way together. I think with our new entrance, in terms of states that have become legal, you can see the sophistication is one level up from where we started. So, the shift from land-based retail regulation, a lot of these folks had just shifted from being retail regulators into the online space, so there was a lot of education there. We're seeing more and more sophistication.

I'll bring New York back into it now. We continue to see, and a great deal of partnership. In the area I'm in, we work as closely together as we can to identify criminal activity and share information. I think we are all improving together. We've heard from the New York regulators that the number of customer complaints we've had is in the low hundreds which, considering something like 16 billion has been wagered, shows that FanDuel and other companies are doing a very good job of servicing the customer, and customers are getting what they need from the regulators. So, I think we're really moving forward together, and we're having a lot of success.

**Daniel G. Kelly II:**

The same question on day-to-day overall operations shifting since legalized sports gambling for Ben.

**Ben Margulis:**

Look, I'm a litigator, right? So, I don't necessarily see the day-to-day, I just see when the day-to-day breaks down. But generally speaking, just looking at it from a 10,000-foot view, what Jonathan said, I echo. When it began, there was a lot of educating that had to be done because the structure was different. It's not a brick-and-mortar casino. You don't walk in, put chips on a table, and then get your winnings or not if you lose, right? There's more to it. There are server farms – how do you relay signals? You have potential questions of where's the information transmitted, information security, all those things.

It's not so much the day-to-day, but it just opens up another set of issues that you need to consider as you're iterating on the established regulations. Either they're too harsh because they're written for a brick-and-mortar business or because they just don't contemplate a certain thing.

And then, there's the secondary issue. Right now, Maine is an example. There are discussions about how do you advertise these things? Who can advertise? How much can you say? How much can you promote it? The grappling is less with should it be legal versus not and more to how do you deal with the secondary questions that then come up once you legalize and regulate?

**Daniel G. Kelly II:**

And then lastly, for senator, with your role on the Committee for Racing, Gaming and Wagering, I'm sure you dealt with large-scale issues, but then the day-to-day operations were also good to be informative. Were you having these conversations on the committee meetings?

**Senator Joseph Addabbo:**

Oh, no question, Dr. Kelly. Jonathan and Ben both got it right. The bottom line is when working on, say for instance, the mobile sports betting legislation in New York, my legal counsel, my legislative director, we had a new frontier. We had a new area for New York and new legislation. We got it started from scratch and looking at other states and their legislation, but figuring out the guardrails and the guidelines that we put into the statutory language, and then working in partnership with the Gaming Commission to make sure that the safety measures and protocols and all the new regulations are being implemented correctly.

But there's partnership, whether it be with the legislation, the Gaming Commission, the governors of administration, or even the partners that we have in the operators that obviously perform in New York at such a great product. The bottom line is when we all work in concert together, it makes for a better product for the safety and for the benefit of our people in the state.

Like I said, this is a new frontier for us. It's only been around for a little over a year, the mobile sports betting aspect for New York, but again, it's new regulations. It's new implementation. And again, we're working really with the legal field to make sure that we're doing everything right.

**Daniel G. Kelly II:**

Thank you, Senator. Next question is for Ben. How has the legalization of sports and gambling impacted other areas of law? I'm guessing that it has trickled into your other work with the firm as well.

**Ben Margulis:**

It has. The start of that experience was obviously with daily fantasy sports, which then later on sports books became the question du jour. But it trickles in because, again, once you create a regulated market for something, you have all the knock-on effects that then flow from it. So, I mentioned advertising, right? The question is how much can you legalize sports betting or sports gaming? And how does that interplay with First Amendment issues or established regulations for casinos?

Then, the next question becomes, well, some states have established casino businesses like on reservation land or something. What happens if those businesses already operate, and they want the sports books, the regulations allow for sports book elsewhere, and then you have a fight over those kinds of issues. IP becomes a big deal. It starts flowing into it because you're having patent disputes, you're having copyright disputes and trademark disputes because now you have a market, which is lucrative. And obviously, you have bad-faith actors coming in trying to take advantage of that.

The spillover just becomes all these ancillary issues that pop up once you create a market for something that's legal. When it's illegal, it's a little easier to get away with misusing names or playing in the gray area. But once it's in the light and once there is a structure, you have to deal with, "Okay, this works. Now, we need to get the bad-faith actors out."

**Daniel G. Kelly II:**

And then, I'll open this question up also to Jonathan and to Senator Addabbo. Regarding Sports gambling impacting other areas of law, is this a conversation that you're seeing in other meetings and in other areas of your work?

**Senator Joseph Addabbo:**

No question. When we do legislation certainly to expand any gaming in New York, first question is constitutionality. So, we incorporate our legal team right away to figure out if it's

constitutional. The previous governor, Governor Cuomo, for years, felt mobile sports betting in New York was not constitutional. Until COVID hit us with a 15-billion-dollar deficit and all of a sudden, it became constitutional. We always knew it was constitutional. Once you put the server on the land of the licensed casino to accept or validate the wager, you know it's constitutional

We have to figure out the constitutional aspect, and then all the other issues. Are minors using the mobile sports betting? Employees or those contracted with the leagues can't bet. It opens up a whole new area for legal issues that we, the legislature, have to deal with. So, as we expand gaming in New York, we're going to have to address new legal issues on the horizon.

**Daniel G. Kelly II:**

And Jonathan?

**Jonathan Fishner:**

I can just add in one of the areas that I work in. I spend most of my time is our anti-money laundering program. Casinos are financial institutions under the Bank Secrecy Act, which is the federal law that governs money laundering and anti-money laundering programs. It was updated in 2020, and they're still working on some of those regulations. But I can tell you that the legislation that was passed in the 1970s, which is still in effect, did not contemplate that a casino might be online and operating in 16 to 20 states with partner licensees and other things.

We are very much at the forefront of anti-money laundering programs from a practical perspective. That's just the area I work in. I could go from colleague to colleague, and they could raise something similar. We're operating a state-regulated business that, because of how the internet functions and media functions in the 21st century, is sort of national. There's just so much there. You could really go on forever.

The last thing I would say that I've seen in the last three years is you see more law firms, more consulting companies, you can really see the infrastructure that's necessary to support an industry like this developing. I think over time, it will be very helpful.

**Daniel G. Kelly II:**

Okay. We'll keep the conversation with Jonathan. You mentioned money laundering to now being taxed. New York has a very high tax rate on mobile sports betting at 51%, which is astronomical. Is this model sustainable? What does the future look like? Will the high tax rate impact consumption patterns?

**Jonathan Fishner:**

First and foremost, we're happy to be in New York State. We're a New York-based company. I'm a New Yorker, but 51% is higher than all the other states, and we don't think it's sustainable. Of course, we'd never leave the New York market, but it will impact our investment over time. We think that decreased investment will lead to a decrease in the breadth of the taxable base and eventually may lead to a decrease in revenue. I suppose the short answer is no, but of course we're here, we're happy to be here, and we're proud to be here.

**Daniel G. Kelly II:**

Same here. I'm a proud New Yorker as well. Senator Addabbo, a response to the high tax rate, especially considering in comparison to other states, not asking for an official statement but just your thoughts on the 51%.

**Senator Joseph Addabbo:**

And again, I thank Jon. The FanDuel's been great. In New York, we have nine operators, and they're all top shelf and professional. Again, I thank Jon for FanDuel. The 51%, we can have a panel discussion just on that. It was always 51%. Negotiated with Governor Cuomo's administration, it was always 51%. There was no secret here. The state wanted the money. It was no sunset. It was 51% forever. Everybody negotiated knowing it was 51%.

Now, look at it over a year later, I think roughly 20 billion in handle, which again, I'm hopeful that it's helpful to our operators. It seems to be like the number one product in the country, so we're doing very well. But I've always said that legislatures should never stand on the sidelines and go, "Hey, we're done. We did mobile here in New York. We got a great successful product and we're done."

No, for the sake of New Yorkers, we always look to improve our product, and that's where the partnership comes in with the operators. If someone makes a credible argument that by reducing the 51% or increasing the number of operators, it's going to make the handle or the larger or increased revenue, which equates to educational funds in New York. For those of you who don't know, 95% of which goes to education, that revenue from mobile goes to education.

So, if somebody's going to make the argument that by reducing the 51% and maybe increase the number of operators, but that's going to make a fiscal positive for New York. It's going to make fiscal sense, then we're all ears. Somebody has to make that argument, and this is budget time so it's a great time to make the argument.

**Daniel G. Kelly II:**

And then, next for Ben. Just thoughts on if you think other states may follow New York's lead on the 51%, seeing as how it is falling in line with the Constitution for the state and with a lot of the regulatory practices.

**Ben Margulis:**

Look, I'm a litigator, and I'm not necessarily on the side of negotiating on tax policy but just to take a step back, it's a state-by-state issue because there's no federal mandate one way or the other. As you just saw the conversation between the senator and Jonathan, this is a give-and-take discussion of what is the right number to allow for the state to have the benefit of the business within the state and for, obviously, the businesses themselves for it to make sense for them to operate within the state.

Other than that, could states follow? They very well could. There's nothing necessarily stopping them one way or the other. There's nothing, I mean other than practicality, stopping them from trying to set it higher. It's just a question of whether at some point they're going to start losing businesses within the state. They're just going to drive them out. At the moment, and I say that's just a knee-jerk reaction, it doesn't seem like a litigation issue. It's a negotiation point of where that number is.

**Daniel G. Kelly II:**

Senator Addabbo, you mentioned earlier legalized sports potentially fueling gambling addiction. You've mentioned potential resources and programs to address these issues from the state side. Could you give us more of a backstory on some of the resources?

**Senator Joseph Addabbo:**

Oh, sure. Again, we can never in New York expand gaming without having at the forefront as a priority for the gaming addiction issue. We have the Office of Addiction Services and Supports (OASAS). We monitor, we work with them, we monitor their phone calls to the HOPEline or a helpline, and we see where we can help.

In the mobile sports betting statute, in the actual language of the bill for mobile sports betting, we increased an additional funding of 6 million dollars a year for addiction. And when we drafted the iGaming legislation, that was an additional 11 million dollars. But it's not so much how much money we allocate, it's how it is spent. It's looking at programs that work, making sure they're accessible, and what you want to do, again I thank my problematic gaming advocates who probably never embrace what I do, but they're very thankful, I suppose, that we include them in our statutory language.

But to catch an individual before the addiction, find out a person who's on the path to addiction. So, before they lose the house or before they lose their job or their family or worse, to get them on the road to addiction to stop them. For instance, one of the safeguards in the mobile sports betting language was a \$2500 annual cap. So, when you hit that \$2500 mark, your account is frozen, and you're contacted to make sure everything is okay. And that's aside from the \$2500 cap on credit card usage and that's aside from the self-exclusion and all the other safeguards that we built into roughly a dozen into the mobile sports betting language and replicated into the iGaming language.

So, again, it is about trying to catch a person before they get to the addiction. It will always be a priority for New York as we go forward in expanding gaming in our state.

**Daniel G. Kelly II:**

I'll open this question up to the other panelists as well. Any thoughts on remedies for sports gambling, potentially fueling addiction?

**Jonathan Fishner:**

I would just very much echo the senator. Responsible gaming and supporting our customers are a priority for us. It's a part of everything that we do. We have a dedicated, responsible gaming team led by a VP with a great deal of experience coming out of the alcohol world. We've got a team. We're committed to responsible gaming. We offer tools to the customer directly that include timeouts, deposit limits, time limits. We also monitor customer activity.

There is a dedicated team that looks at customer behavior for red flags, reaches out proactively, and can impose, if necessary, actions like exclusions, timeouts, deposit limits. Their responsibility is to think about the customer. It's not to think about the bottom line, the money for FanDuel. We also fund treatment via nonprofits. We promote state problem gambling research. We offer any customer that wants it a subscription to something called Gamban, which you can use to exclude from all operators so you can avoid these apps. We have a nationwide advertising program around setting limits. That's just some of it. It's something we talk about constantly.

March is Problem Gambling Awareness Month. We do our training this month. Everybody is trained. We had a day in September that we dedicated like an offsite where the entire company participated in related to these issues. So it's really important to us. We want our customers to be long-term customers. We want customers to enjoy our product and to enjoy our product responsibly, and we want to help them do that as much as we can. It's really important for us and for the industry.

**Daniel G. Kelly II:**

And then, Ben, any thoughts on the litigation side of resources for gambling addiction?

**Ben Margulis:**

Well, before I get to that, just taking a step back. The idea of responsible gaming and how to address that has been a

point that's been raised since 2018, because when DFS was still the issue du jour and when Sports Works were first coming up, the big pushback or part of the pushback was, "Well, what about gaming addiction?" I think companies have always been sensitive to making sure that there are some mechanisms there to protect against people who may have a problem with gaming or who have problem gaming habits.

The other thing, just to take it back to a point that we had talked about before, in terms of what does the legalization of sports books sort of mean for other industries? Well, you're seeing the rise to some extent of another ancillary industry, which is services that allow you to control for problem gaming habits. It's the exclusion services or monitoring services, or it's ways for third parties to come in and say, "Okay. This person has met too much, or this person does it too often or too big," or whatever it is.

From the litigation perspective, I guess the sensitivity, and I can't point to anything in particular because it's always case and situation specific, but the sensitivity is, while that is something that needs to be accounted for and addressed, and there's a legitimate reason for it, the thing to watch out for is overreach. The push and pull always is protecting people who may have a problem with gaming versus doing too much and limiting it for customers who don't, and thus, harming the operations of the businesses themselves.

And like I said, I don't have a specific example, but if there were to be some fight over that, that would be the thing. It's that, "Yes, there's a legitimate interest, however this goes too far," that kind of issue.

**Daniel G. Kelly II:**

For the next question, we'll open up to the entire panel. To what extent can stakeholders, such as leagues and teams, participate in New York sports wagering framework? To provide some context for this question, are there any antitrust concerns with league deals providing player data to companies? Are there any overreaches in your relationship with professional sport teams and leagues?

**Jonathan Fishner:**

On the data issue, I think in particular, those data deals are actually meant to be for the benefit of the customer be-

cause you wouldn't want the operator to be able to decide whether Saquon Barkley rushed for 74 or 75 yards and then have a player prop wager decided on that basis. I can understand why having to enter into a deal with the NFL for the official data might make things difficult for a smaller operator or an operator that's just starting out.

But I think it's important that operators not be able to decide or interpret statistics. You see, these things happen all the time. I think a couple weeks back, Giannis was fooling around going for a triple double. He was credited with the rebound and then they took it back the next day. You wouldn't want to have operators deciding that inconsistently or based on what they've got in their book. I think from an antitrust perspective, the fact that it's certainly colorable that it's for the benefit of the customer is counter that argument. But I'm not an antitrust lawyer, so I can't say for sure but that's sort of one aspect of that.

We do have partnerships with teams. We have sports books at the United Center. We have a sports book at the Footprint Center in Phoenix. So we do have some of these deals, and we're sort of continuing to develop them in the states where those were permitted. And those books are very popular.

**Senator Joseph Addabbo:**

Just build on upon a little bit what Jonathan said when drafting the legislation for mobile sports betting. Yes, the league data was critically important. It was a major issue for the statutory language, but we wanted to make sure, to Jonathan's point, that it was consistent throughout, so that all customers were getting the same information. Lead data becomes very important for consistency and for accuracy, which I think is important. You'd want to open up to legal challenge over some fraud or, to the point, different call a day later. So, consistent lead data for its autocracy and, again, consistency I think was critically important for what we did here in New York.

**Daniel G. Kelly II:**

Okay. Ben, any comments on this subject?

**Ben Margulis:**

Apart from echoing what my co-panelists have said, I don't have much to add. I admit now I'm not an antitrust attorney. I'm more of an IP/tech guy. But that said, the fact that all of this stuff is almost always a measure. It's question of degree.

It's that the data is standardized especially if it's coming from sort of a central clearinghouse for league rather than per team. If you have the resources, you can enter into that relationship, and it's not so prohibitive that maybe smaller operators may not necessarily be able to access that. But it's not like they're saying, "Well, and then you're going to give us 90% of all your revenue, regardless of who you are. We're just going to take it all."

At least from an outsider's perspective, it doesn't seem like the system is designed to allow for a league or a team to say, "We're going to work with you, and we're going to stop everybody else." They're going to work with anybody who can come into the door with the resources necessary. Because again, it is for the customer's sake.

**Daniel G. Kelly II:**

To build off of this question, as the senator pointed out, there's been many changes since 2018. The conversations are constantly happening about the regulatory environment. In other states, teams are able, teams and leagues are able to have in-stadium sports betting sites. And owners in certain states can choose which sports books operate at their stadiums. Do you see any pitfalls in the future regarding this kind of flexibility?

**Jonathan Fishner:**

If I could answer from the perspective of us as an operator, New York has a little bit of a different history and geography than other cities. But I was recently in both Phoenix and Toronto. What you'll notice there where they have these sort of downtowns where all the sports facilities are is that each facility has its own. So where the Diamondbacks play, maybe Caesars is there. We are where the Suns play. So, I think it's a model that, where it's permitted, is very popular and you kind of end up with all the big operators each with one corner in a similar neighborhood.

When you see a sports book inside of a sports facility, perhaps your question would be, what's the connection? But we run these operations completely separate. The team does not have any involvement in the day-to-day operations of the sports book. They don't have any knowledge of where the money is, which side the money is on or what have you. And we work very diligently to keep it that way. I think the gambling conversation has already become so much a part of sports conversation. To some degree it has been for a long time, that I think as long as we continue to do our job as we are, the risks are very much manageable.

**Senator Joseph Addabbo:**

Jonathan alluded to it. New York is very unique, not only in terms of size but in terms of its fiscal situation and obviously it's size. And so then you look at the uniqueness of having some of the major leagues having their headquarters in New York. It's a little different than other possibly smaller states. But when dealing with, for instance the mobile sports betting and the partnerships between the leagues and the operators there, we were assured that the legal team on both sides would obviously cross the Ts and dot the Is. They would do the due diligence needed to make sure that any agreement was a legal one. It is different for each state based on the size of the state and its potential with gaming. But a bigger state like Jersey, Pennsylvania, possibly New York, it becomes possibly more complex.

**Jonathan Fishner:**

We work very closely with the leagues from an integrity perspective. We collaborate. We share information when we can. Protecting the integrity of the events and of people's wagers is of utmost importance to all involved. So, it's very important to us.

**Ben Margulis:**

To the question of pitfalls, and what I'm about to say, I'm not saying anybody's doing it. But being a cynic and pessimist by profession, you could see the concern like, "Why did they choose this business, versus why did this team choose this business?" For the most part, as far as I'm concerned, everything has been at arm's length and everything is on the up and up.

But you can see that being a potential pitfall of something down the road, if it's a smaller or somewhat unscrupulous actor.

But again, then you get into a different issue of well you have the sports book in the stadium. How does the infrastructure comport with the regulatory requirements within the state? Where are the servers? Where's the communication coming from? How do you process payments? Do you advertise the sports book within the stadium, outside the stadium when you advertise the team, when you put out ads in the newspaper? It's just the pitfalls aren't necessarily unique. They're just magnified, because now you're linked with a particular team. You kind of have to consider it from the perspective of them doing business. And how much does their business affect or touch the sports books?

**Daniel G. Kelly II:**

I want to stay on that pitfall comment. I think we have a common thread there. Senator, seeing how the pitfalls are so diverse, how do you really regulate it? It seems like it can be such minutiae of where the servers are located, the in-stadium advertisements, the overall transaction, where it took place. Were those conversations happening in your committee meetings?

**Senator Joseph Addabbo:**

Without a doubt. When we did mobile sports betting, and we had to convince then governor's administration, Cuomo, who was just not interested in expanding gaming really at all. He had this aversion to it. And we kept saying for years, ever since the Supreme Court said we could about mobile sports betting. What bothered me the most was the fact that we were losing money to other states and the illegal market. I was there in 2013 when the state legislature actually created the idea to do sports betting, at least in gaming in New York. And we went back to the 2013 constitutional language, and we said, "Hey, there it is. It's constitutional." And then you look at the intent. The intent was to make it constitutional. And by just him throwing out the word, unconstitutional, it was frustrating. Because we knew we had the language and the intent on our side, and we knew we were right.

When he does it back in 2019, again, we all knew it was the right thing to do. But it's a constant conversation that we do have with our legal team and the administration whenever we want to do anything gaming wise, especially expansion of gaming to make sure it's constitutional and it's done right. The legal parameters are in there. And then sometimes you don't leave it up to the administration. You put it into the statutory language to make sure that it is definitively stated what the guardrails, what the requirements, how to implement to make sure that there are certain procedures in place to make sure it is a legal product legislatively and administratively in the state of New York.

**Jonathan Fishner:**

I would just sort of add to that. The regulations are voluminous, as they need to be. All of this is covered. We employ well over a hundred compliance and legal professionals to help ensure that we are satisfying all the regulations in New York and in other places, plus the technology folks, plus the law firms, plus all other, many other groups that sort of support those things too. We take those things very seriously. And we don't leave anything to chance. But I think it's clear if anybody spends time with the regs, the New York regs, the New Jersey regs and others. You can see how carefully things were thought out. And hey, we have bumps in the road, things we some sometimes need to revisit. We've done that with states. We've talked about how to interpret certain things so that they work for both the regulator and for the operators, and it's been very positive.

**Ben Margulis:**

And forgetting the word choice, when I say pitfalls, it's really just considerations. It's the same considerations, for the most part, that any sports provider would have if partnering with a brick and mortar casino. Because again it's, where are your servers? What's the advertising going to look like? What's happening inside the building, outside the building, mobile apps, et cetera. It's just that here there's an additional layer to it, because you now have a sports team that advertises in a different way than a casino does. And there's just a different relationship with the consumer once they get into the building.

**Daniel G. Kelly II:**

And then back to Jonathan, you mentioned there's this investment of hundreds of compliance officers for this initiative. How was that process? Was it full all hands on deck from the beginning? Was it an evolution that increased to now we have 100-plus regulators? How was that process to get to this point?

**Jonathan Fishner:**

When I started three years ago, our compliance team was about six to eight people. We weren't all under one umbrella at that time, but legal was, I think, similarly sized. We're now one team reporting into my boss, who's the Chief Legal and Compliance Officer Carolyn Renzin. So we've grown 30 to 40 people each year. We've also gone into a handful of states each year. And we are now really focusing on efficiency, technology, how we can work a little better. No company can afford to just throw bodies at things. And the regulations are complex enough that it just won't work.

But we have grown exponentially. We continue to grow. I think our legal and compliance function is something we're very proud of. We have great partnerships elsewhere in the company. We are a technology company, so a lot of our engineers and product employees, while they're not in compliance, they definitely have a compliance mindset. I think one of the things that we've achieved very successfully here, even as we've doubled in size since I joined three years ago, is that tone at the top. Winning with integrity is one of our corporate values, and we take that very seriously. You can't be winning with integrity if you're out of compliance with marketing regulations and other things. So it's very important to us.

**Daniel G. Kelly II:**

Let's stay on this same train of thought, but my next question will be directed towards Senator Addabbo. What are your thoughts, seeing that an organization, a company like FanDuel has made this type of compliance and legal investment to make sure that they fall into regulatory compliance?

**Senator Joseph Addabbo:**

We're totally appreciative of the effort. I mean, in the end, my constituents, my residents throughout the state, bene-

fit from that. And that was the concern when we had not had mobile or even sports betting in New York, because we knew New Yorkers were doing it. We knew they were going to Jersey, Pennsylvania, and Connecticut. But it's that illegal market that we started this conversation over, that concerns me most of all. Because that again, you really can't monitor much at all. And I've had constituents lose some money to an illegal market. The bottom line is this. We appreciate all operators who have at their focus and priority not only their business but that of their customers and in turn, again, the residents of New York to protect them from the pitfalls and technical difficulties. And the idea is, we appreciate that. When we were starting mobile sports betting, I was very proud of the nine operators that the state selected, because these are top shelf. We knew we were in the right arena to be in a very competitive arena of mobile sports betting going into it, when other states around us had been in there for two years more or so.

It was kind of a little scary to go into this kind of competitive arena. But when you have the nine operations we do, and FanDuel is of course included, the bottom line is: I felt very confident. We were not only going to do well, but we're going to have a safe product for the people in New York. So, I'm very appreciative of their efforts.

**Daniel G. Kelly II:**

And then my last question on this topic, back to Jonathan, of course, because this is your world with the compliance and regulatory measures, were you surprised that the tone at the top, as you mentioned, was so proactive to invest? I mean 30 new headcount per year, that that's a lot of investment. And were you surprised that they were so forthcoming with the resources?

**Jonathan Fishner:**

I wouldn't say surprised, no. I think our CEO, Amy Howe, really understands what we're doing, really understands the importance of all this as a person. Of course, tremendous integrity herself. But I also think that one thing we understand is that, as a whole here at the company, that this is a business that is coming out of the illegal or gray world. And when you're doing that, it is of even more importance. I mean it's always important to follow the rules. I come from a banking

compliance background. We always did our best to follow the rules. And banking as well, banking is a core part of people's lives. You don't have to take any shortcuts.

But I think when you're moving from the illegal world into the legal world, it's that much more important, because many people will be skeptical. Many people are skeptical, and we want to show them that gambling wagering on sports and other things can be a normal part of life and culture as it is in other countries. And we are the number-one operator, and we want to lead by example. And so I think because we all understand that here, I'm not surprised. I mean it's always . . . I've spent a lot of time in legal and compliance. Resources can always be an issue. You have to show the need, you have to evidence it, document it, answer as to why. But I think given how seriously we take all this, no, I'm not surprised.

**Daniel G. Kelly II:**

Yeah, no, no. The reason why I'm harping on it is because there's this for the students. If I see that there's opportunities there, I think. . .

**Jonathan Fishner:**

Yeah, and I think there are. I think this is a great industry to work in. It's fascinating. It's a sports company. We're a technology company, and it's growing. I spent time working at a legacy banking company. These are sort of shrinking industries in some ways, fintech and all of that. Law firms, I started my career at a law firm, which is a great place to work. But this is such a dynamic environment. There's so many issues. We've talked about a lot of them today. There's really no end to what you can do and where you can find yourself.

**Daniel G. Kelly II:**

Right, thank you. Moving forward with the questions, this one is open to any of the panelists. Do you think the courts will ever be willing to entertain claims from betters who lost money on games with foul play or cheating, imposing a duty of care, where courts have been reluctant to find one in *Olson v. Major League Baseball* in 2020? Jonathan mentioned this quasi with the Giannis, with the triple-double being taken away. Any other thoughts on the courts being willing to entertain claims from betters who lost money on games?

**Ben Margulis:**

I suppose I might as well start. As a knee jerk reaction, judges do whatever they want. So maybe there will be the odd case. But it's on any negligence claim or anything like that, there needs to be a duty on the person you're suing to do a thing to protect you from the harm. So the claims will need to necessarily depend on what exactly happened. If it's a fault on the part of the sports book or of the operator of the sports book, maybe that'll be entertained in some way. But if it's just there's a triple-double, then it's taken away, well what does the sports book have to do with that?

They just trend. They just have the data, and they deal with the data as it comes in. If the call is then changed in the game, you can try. But courts are going to be pretty, I feel like pretty reluctant to say that there's any duty on the sports book to . . . What are they going to do, go down there and argue with the ref? That's not them. Claims like if there's cheating, if there's data manipulation, if there's some sort of data breach, or if there's a third party sitting in the middle between whatever, the league or the team and whatever's happening in the sports book tech, maybe. Because then there could be possible faults that you could point to. But just hey, I lost, because something beyond anyone's notice within the tech itself was going on and affected the game. Seems like a bit of a stretch, absent something else.

**Daniel G. Kelly II:**

Very good point, very good point. Any thoughts from the senator or Jonathan?

**Senator Joseph Addabbo:**

I would just say, given the fact that it's probably more losers than winners, if every loser had an illegal argument, our courts would be clogged and congested and ridiculous. But it does, every time a state goes into, again, the arena of either sports betting, mobile sports betting or gaming, you are certainly with sports betting. You're going to have this opportunity. And it's something that again, from the legislative, from the initial legislative point to the administrative point to a judicial branch or the judicial branch of the state, they got to be prepared for these kind of new arguments as, again, that state enters into the arena of sports betting.

**Daniel G. Kelly II:**

All right, great. We're coming up on our last question for today's panel. In what ways has and will legalized sports gambling affect consumer experience and consumption of sporting events? And then we'll get into our final thoughts.

**Senator Joseph Addabbo:**

I'll just state that I have constituents. And one of the reasons why I was so adamant about starting sports betting in New York, mobile sports betting, again, tired of seeing New Yorkers go to another state. But going to the local coffee shop and getting the complaints from my constituents, "Why do I get in my car and go to Jersey?" And you realize that obviously we have an issue here. But I've also heard from these same constituents who now have experienced sports betting in New York, they're a more interested fan base. They are more into the sport. They're more into a particular player. And that was part of the residual effect that I was hoping would happen in New York, that basically when you got a great fan base but to help the leagues, to help the sport.

I'm a baseball guy. I love to play, but I love sports. And I don't have an account for mobile sports betting. Sorry to say, Jonathan. I don't do that. But the bottom line is I think the sports and the leagues benefit. I do. I think we have a much better, energized fan base in New York since we have done sports betting.

**Jonathan Fishner:**

Yeah, I would agree. I think it's sort of our view that people are more engaged, that when people are betting responsibly, they're more focused on every snap or every pitch and that it's good for TV ratings, good for sports ratings, good for the leagues. I think the leagues recognize that as well. And so our slogan, one of our slogans has been on television, if you've seen it, is make every moment more. And I think responsible wagering can certainly do that.

**Ben Margulis:**

Yeah, I would echo everything that the senator and Jonathan said. And that's been the case since daily fantasy sports. You don't even have to go as late as sports books. Fantasy sports in and of itself, you're either a fanatic, or you're just

doing it for fun, because you want to follow the games. You want to know what's going on with your teams, and you want to have some fun with your friends. And then the daily, the DFS just heightened that. It just creates, as they've said, a more invested fan base, a more passionate fan base. People are going to be much more invested in what's going on, because it's just the daily change. They want to know, they want to see, they follow the games. It's good for the industry, good for the teams, the networks, honestly everybody involved.

**Daniel G. Kelly II:**

All right. Thank you, everyone. Thank you, Senator Joseph Addabbo. Thank you, Jonathan Fishner, and thank you, Ben Margulis. This has been a fantastic panel, and I will send it back to Nick Sloan and the rest of the team at the NYU Sports Law Association. Thank you for a great day.

**Jonathan Fishner:**

Thank you.

**Ben Margulis:**

Thank you for having us.

**Senator Joseph Addabbo:**

Thanks, guys.

### III.

#### THE PROFESSIONALIZATION OF COLLEGE ATHLETES

**Caleb Paasche:**

Thank you, everyone, for joining. My name is Caleb Paasche, outreach chair for the Sports Law Association. And I'll just go ahead and introduce our moderator, and then I'll get out of everybody's way. The moderator for our next panel for the professionalization of College sports is Professor Jason Chung, who teaches at the Tisch Institute for Global Sport and Headsy Institute's eSport and Gaming Initiative. He is also an attorney leading the development of eSports business programs at major U.S. universities. As part of his legal practice, he also heads the eSports gaming and media practice at Zuber Lawler and currently co-hosts the Metaverse video cast, What the Meta, for Virtual Times. He previously served as the founding executive director of eSports at the University of New Ha-

ven, where he developed and led innovative undergraduate and graduate programs at Popaic College of the Business of the Business Center and as a visiting clinical assistant professor at the sport management at New York University, where he created and launched the first courses studying eSports businesses.

**Jason Chung:**

All right, well thank you very much for that introduction. It's always nice to be introduced, but I think it would be great to hear directly from my distinguished panelists who they are and how they engage with the space. With that, I'd love to turn over the days to Andrew Brandt from Villanova University. Andrew, thank you for joining us on the panel. If you could share a few words about who you are and what you do, that'd be great.

**Andrew Brandt:**

Thanks, Jason. Glad to be here, glad to be. And I said to Jason before, I'm a little underdressed, but I wanted to wear my NYU sweatshirt. I am a proud father of a graduate who's trying to make it in the music world after graduating from Clive Davis School of Music at Tisch a few years ago. And he was in New York, and now he moved to LA where the world is so more focused on the music out there. So yes, good to be with everyone. My background is kind of three chapters in my career. After graduating Georgetown Law, I was an agent for many years with a group called Pro Serve Out of Washington DC representing NFL and NBA players. I switched from the labor side to the management side. And as you see behind me, I was with the Green Bay Packers for 10 years, negotiating against all those agents that I was once one of and managing salary cap, dealing with all our player issues, being the liaison with the NFL Management Council for all our player issues.

And then the third chapter of my career, the past 10 years or so, more in media and academia kind of breaking down what really goes on behind the scenes in sports business, sports law from my perspective as an agent and a team executive. And I've been doing that on the media side for ESPN, for Sports Illustrated, for my podcast, for my newsletter. And then on the academic side, I've been teaching first at Wharton at University of Pennsylvania. And now I run a program at Villa-

nova Law School, where we teach and talk about sports law, sports business, sports thoughts, sports policy and have our own concentration program and everything else. So that's my three chapters of my career, good to be here.

**Jason Chung:**

Thank you very much. Tim?

**Tim Slavin:**

Yes, this is a Georgetown Law panel. I'm a Georgetown Law graduate too. And I too have three phases of my career. I started off as an M&A lawyer, left practice after about eight years. I was most recently with Simpson Thatcher in New York. Left there and took a job with the Major League Baseball Players Association. I worked with the union for the better part of 12 years, doing legal and business work for them. I left there as the president of MLB Players, Inc. Three years ago, we founded a company called One Team. I am its general counsel. And of relevant note to this panel, we've expanded our business beyond the pro space and now represent the better part of 10,000 athletes in the college space in group licensing programming. I'm delighted to be here. Thank you for having me.

**Jason Chung:**

Thank you. And finally, David.

**David Feher:**

Hi. I'm David Feher. I'm co-chair of the sports practice along with David Greenspan now. It used to be Jeff Kessler, but Jeffrey is co-chairman of the firm, and so it's one less title. Does not mean much for Jeffrey at this point. And at Winston and Strawn, and I've been in the sports space for 30 plus years now, ever since the 1992 Freeman McNeil trial where I worked with Jeffrey at another law firm where we and Jim Quinn and a whole bunch of other lawyers won free agency for the NFL players for the first time ever in the Reggie White settlement that followed that.

My career started at a kind of white shoe Wall Street firm, not having anything to do with sports. As a matter of fact, I had no interest in sports at the start of my legal career. I just wanted to be the best lawyer I could, and one day Jeffrey said

to me, "I'm sorry, there's a personality conflict between one of our experts and one of the senior associates in the McNeil case. I know I promised you that you would never work on sports, but as a favor, could you do it because I know you're good with numbers and economics and understand this stuff?" And so I said, "Oh, okay." After that, it ended up 30 years in the career.

Apart from our work for the NFL Players' Association, which has been on a continuing basis, written every single collective bargaining agreement since then, dealt with every major legal dispute in the NFL since then, except for concussions, which are third party council, and the NFLPA isn't really directly involved in that per se. Also represented the NBA Players Association for 30 years, in collective bargaining agreement negotiations right now. Actually, speaking from the union's offices where a bunch of people are meeting with the NBA virtually on other things. We're trying to push to try and get an agreement by month end.

We represented the Women's National Team in the historic equal pay resolution, where there's a lot of litigation and an unfortunate district court decision, but we were appealing, and I think we were about to get a good outcome in the appeal. But more importantly, I think there was sufficient turnover in the Federation where they realized that their prior position, which got them worldwide scorn was unsustainable. Importantly for today's panel, along with our California co-counsel, we represented the class of college football players and basketball players in the Jenkins and Alston case, which yielded a trial before Judge Wilken in California, was upheld by the Ninth Circuit Court of Appeals focusing on educational benefits, but most importantly a nine-nothing Supreme Court decision that kind of rip the curtain back because the NCAA and the various schools have been relying for 40 years on a mid-1980s Board of Regions case where they took some dicta that they claimed, gave them deference to basically do whatever they wanted in the "amateurism" space, and lower court judges kind of heated what they thought was direction from the Supreme Court in a backhanded way.

Then over the course of 40 years, as more and more facts came out and the industry changed, we'll talk about that more, we got a nine-nothing Supreme Court decision where essentially the court said, "No, it wasn't even dicta, and it was

so long ago,” and essentially issued a decision that was along the lines of, “You’ve got to be kidding,” along with the concurrence by Justice Kavanaugh, who said that the NCAA should be treated no differently than any other business. We’ll get into the guts of that, but the whole notion that there is an antitrust exemption in order to justify zero pay so that you can make more money with the sham amateurism argument that nobody has believed for decades really hasn’t held water. It led to NIL change along with all sorts of related pressures. Just like we’ve fundamentally changed things in the NFL and have helped to keep things fundamentally at least decent in various ways in other industries, we brought that change to the NCAA. A host of other sports litigations and work over the years. The list is too long, but that’s the gist for the stuff that’s important for today.

**Jason Chung:**

Thank you very much. And as everyone can see, this is the right panel to discuss this, and we will get into *Alston* very, very soon. But just to kick us off, Andrew, what are some of the cultural and let’s say legal forces which caused the NCAA to reverse its decades old policy? Obviously, the Supreme Court had a lot to do with it, but what are some of the other factors where they felt that they needed to make some changes before the change came?

**Andrew Brandt:**

Yeah, thanks, Jason. What’s interesting to me is that we have this new world, and I know we’re going to use this phrase a lot in the last year and a half, the Wild West of NIL without enforcement, without regulation. And of course they’re going to go to Congress to try to change that. But I think what’s important to look back, what really changes things and especially important to this audience in anything, as all these guys know, is lawyers and legislation and litigation, three Ls. So, we’ve had a case law history *O’Bannon*, maybe before that in 2009 leading up to *Alston*. We’ve had legislation from California, from Florida, from other states, kind of putting pressure on the NCAA. But I can tell you that in the two years up to July 2021, there was a ton of work being done by the NCAA to sort of establish these guardrails around the NIL, put it in place, do something

they'd never done, make college athletes just like any other students.

And disclosure, I was working with the Big East conference and Val Ackerman, who was in charge of putting this study together with other ADs and other conference commissioners, and here's what happened. On June 22, 2021, the *Alston decision comes down nine days before July 1 when the state laws were going to go into effect. The bottom line in all of this is the NCAA threw up their hands. They abdicated responsibility, they punted, whatever metaphor you want to use. So July 1, 2021 comes, and we have this name image likeness revolution starting at midnight that day, and the NCAA is completely hands off. Completely hands off. They are scared. I think it's no secret of lawyers and antitrust litigation after Alston, so Alston spooked them, and they have no enforcement. So everything we're going to talk about is kind of like, yeah, I guess the states enforce it. Maybe the schools do, maybe the conferences, who the hell knows? But we do know the NCAA is not enforcing it because of this history they've had in losing in lawyers, litigation, and legislation.*

**Jason Chung:**

David, in terms of, you mentioned obviously the work in *Alston* and everything like that. Could you summarize for the audience what the goals were, what you had hoped to accomplish there, and what you think has taken place after it? Is it really the Wild West after the decision, or how would you characterize the environment now?

**David Feher:**

I think the goals are to have the NCAA and the major conferences subject to the same laws like anybody else. I don't think it's the Wild West. I think that's known as competition. I think guardrails are, and with all due respect to Andrew, because we've been on these panels before and we have slightly different perspectives, but the difficulty is, and I'll be very blunt about this. The NCAA for decades and decades and decades has been engaged in a pattern of suppressing any and all competition on grounds that had nothing to do with the antitrust laws on the basis of claimed kind of social policy grounds that have no recognition under the antitrust laws, and that make no sense. If law firms wanted to get together and suppress young lawyer salaries on the grounds that it would make

them better lawyers, and so it would be better for society because young lawyers are a national treasure, then people would laugh you out of court.

The Supreme Court dealt with that in the *Society of National Professional Engineers*. You cannot suppress competition on the basis of uneconomic arguments, where unless Congress gives you an antitrust exemption, which Congress, apart from a few strange political deals in the sports field, like the Sports Broadcast Act where the NFL has an antitrust exemption, but they agreed not to compete against college football on Saturdays and high school football, which most people have no idea happened, and other smaller kind of strange individual bargains like the New Orleans Saints and extensions and whatnot. Apart from those political deals, this country has, on the whole, prospered by saying that the antitrust laws are the charter of economic liberty, and the market on the whole is better placed to make decisions as to economic outcomes other than bureaucrats who are deciding in a command economy that people shouldn't get paid at all, which is essentially what the NCAA and the major conferences did here.

And what I want to say in terms of what changed . . . And by the way, that doesn't mean that I'm against . . . Politically, I'm from a New Deal Democrat family and a union family, and those views have persisted with me, but my views in terms of competition are fine with regulated markets wherever they're needed. But here, it's essentially a dictatorial command economy where the pay is essentially zero. You could argue with some folks that education is being provided, but for so many of these athletes, education isn't being provided because they're being told not to go to classes, or "You can't become a doctor because I need you to practice." I'm going to differ a little bit with Andrew on this and that I think the change wouldn't have happened without the lawyers, because we needed to make a decision whether to invest as a firm an ungodly amount of money in a fight that lasted years and years and years and had not a certainty of success, but was something that we believed in and we devoted our resources to, as did the other firms. But, it was a change in the world.

It was a change in people having information they didn't have, and in a sense, kind of the whole facade of fiction's just kind of being ripped away from people's eyes. I think if you asked me what changed the most, it was the NCAA and major

conference overreach in insane ways, like saying cream cheese on a bagel was a meal and you could get your program disciplined as a result of that, but if the bagel didn't have cream cheese, you wouldn't get it. Which yielded things like press conferences where the winning point guard in an NCAA championship basketball team told the press when he was asked about how good he felt, he said, "Well, it's hard because days I go hungry because I'm asked to practice so much. The cafeterias aren't open." And people said, "What? Are you kidding?"

Or watching, God bless him, a player on Louisville break his leg in a horrific fashion on national television, and everyone realizing that the coach of that team was going to make probably then \$5, now it's \$10 million a year or something like that, and that young athlete would get nothing as a result of devoting his broken body to the efforts. And so I'll close by, when we filed the *Alston* case, I looked at the comments and the reaction, and it was kind of split 50-50 when we filed *Jenkins*. Then a lot of people said, "Oh, these kids are privileged. They really don't deserve anything. They should thank their lucky stars they get anything." Now I'll tell you, there was a piece in *The Times* which just offended me, by the president and someone else affiliated with Notre Dame where the headline . . . Maybe they didn't write the headline, but it said that "Student athletes aren't employees, they're a national treasure." Then, the article went on to argue about how schools shouldn't have to pay athletes and kind of said NIL was okay, but third parties are paying them.

Then I looked to the comments, and at least within a few hours after the article was published, most of the comments were like, "You've got to be kidding." And I got to tell you, coming from Notre Dame, which has its own individual broadcast contract with NBC, which I think brings in ungodly amounts of money. And I say this as someone who was educated by Jesuits at Georgetown, and so I understand that schools have missions, but the problem is that the schools, the NCAA, the major conferences became enterprises that were focused on making billions of dollars with many millions of dollars that were going in disproportionate ways to administrators, to assistant coaches, to coaches, where if it was a freer market, more of those benefits would be going to the players. And the players were getting, to use a legal term, bupkis. And

the NCAA and the officials kind of . . . I'm not saying they enjoyed it, but they persisted in being obscenely, overly strict and not sharing really anything.

It became so corrupt and so unjust that you had Justice Kavanaugh writing an opinion that boiled down to, like I said, "You've got to be kidding." So, I think a lot of this is behavior. The whole notion of pay for play is a sick joke. This isn't play. Play is when kids go to a playground and don't generate billions of dollars. Here, athletes break their bodies on behalf of multi-billion-dollar businesses, and they're not getting anywhere close to their fair share. And so, the world has changed, and I think that assuming Congress doesn't have the wool pulled over their eyes one more time and give the NCAA some kind of backdoor protection, which they seek to do. I saw, just to wrap it up quickly in terms of beware, I saw an article about the head of the then Senate Commerce Committee trumpeting a reform for the players, and then I looked at the actual text of the bill, and it gave the players a few nickels on NIL, and then it gave the NCAA a big fat antitrust exemption on everything.

Read the fine print. The NCAA and the major conferences are not to be trusted. There are some educators involved in the process, but they are consistently rolled by the administrators and the coaches who are making ungodly amounts of money. So I know that that view may seem a little nuanced, but given all of the destructive effects I've seen over the years, my main kind of shame . . . It's not a shame, but my main kind of pity is that the generations of players who came before didn't have the same opportunity. So many people with broken lives I've talked to over the years where they weren't able to make it in the pros, because hardly any make it there, and so many other people profited. That is just, apart from legal, it's a sin.

**Jason Chung:**

Excellent. And Tim, obviously we've heard a couple of different perspectives on it. I want to talk about a little bit more about the student athlete, collegiate student athlete perspective. How have they been monetizing in this current landscape? How has life changed for them in the past few years?

**Tim Slavin:**

Look, I think it's a terrific development. We, at OneTeam, we are exclusively in the space of group licensing. We don't do individual endorsement NIL deals for athletes. We stay within our scope of experience doing the same thing for college athletes that we do with pro-athletes. But in response to your question, look, I think it's opened up a wealth of opportunity for all athletes, not just those in high-visibility sports. In terms of OneTeam's role, we are the business that's behind the grant of rights to the brands that use these athletes in their products. For example, you see the jerseys on the names and numbers on the back of jerseys that are sold in the bookstores. That's us. We grant the rights, we license the use of those rights to Fanatics and others and ProSphere and some of the local distributors to be able to allow them or to enable them to sell those products.

It's been really interesting to hear some of the comments from the athletes themselves. Comments from the athletes who are less known are the most interesting to me. It's, "I can't believe I can now walk into the bookstore with my mom and dad and go and buy my jersey." I like that because our interests remain central to the athlete, not only economically, but sort of holistically. Each athlete matters to us.'

Regulation, I think, is needed at some level. Policy is needed at some level because I do think there is some abuse. It's not that I would want to take away the opportunity for players to make money. I certainly would do nothing of the sort. But I think that the abuse by the collectives that are occurring around sports, the fact that the influence of those collectives on student athlete decisions is significant. Those have to be addressed on a go-forward basis, or many athletes could be hurt.

I'm not surprised that we don't have any policies or regulations yet. I think we have to see how things are working and identify what we can do to address problems. Moving too quickly could introduce more problems in the long term.

**Jason Chung:**

This is a follow up for all of you, and Andrew, maybe we can start with you. Who should be doing the regulating, right? I mean, if this space is ripe for abuse and you've got student athletes perhaps being exploited by more economic actors,

let's say in your view, who do you think should be responsible for this? Who should be wielding the hammer here and dictating the rules?

**Andrew Brandt:**

That's a good question. The NCAA seems unprepared and unwilling and to do it, so they're looking to Congress to take that role and be the regulator and have an antitrust exemption for them as part of that. One thing I think about is what restrictions should they have? If we talk about these guardrails that were initially in the plan, such as not using the school logos, such as not being able to use the school facilities if you're doing an appearance or an autograph signing, and those seem to be kind of like passé now, and schools are selling jerseys, as Tim said, with logos, without logos. People are doing . . . .

I think the one thing that, if we want to get a handle on, is this idea of fair market value. The NCAA was putting out RFPs for someone to come in and say, "Is this a real deal?" And when collectives are paying a player to go to a birthday party for \$50,000, that's something that you have to say, "Well, okay. Is that fair market value?" No one's doing that. So, I think one thing that we should have, some kind of blue ribbon panel that's figuring out what is right for these athletes. And I know people can say, "Well, whatever they pay," but it's clearly not market value in order to get a player to do something for a school, basically come and play there. The collectives have been mentioned.

The whole goal of NIL before it became involved was it's not going to be about recruiting. That was the whole goal. The one guardrail that was put up there at the top was not about recruiting, and now it's become all about recruiting. Collectives are all about recruiting. What's the package? Players are going players, agents, players, parents. What's your package? What's the package up for me? Transfer or high school? What's the package? And the package is a number. They want to know a number. What do I get if I come there? But there's always supposed to be a quid pro quo, so what do you do for the number? And as I said, it seems like they're showing up to charitable events, birthday parties, meet and greets, which is fine, but they're making money that's not fair market value for doing that, so who's going to police that?

So I guess my answer is I don't know who's the right person to police it, but I think we should have a standard where we have some control over what's the number for doing X, Y, Z versus, just like I keep saying, Wild West.

**Jason Chung:**

David, I can see you itching to respond to that.

**David Feher:**

Yeah. What I want to say is that the premise of a lot of this discussion is that it's okay for conferences and the NCAA, who enjoy market power, to collectively agree that they will pay the athletes zero and that they'll be fine with letting third parties pay. It's just that they don't want to pay. And when you look at the way the current rules are drafted, the reason why the quote doesn't make sense to some people is because it's the same situation that has persisted for years, which is that when you have rules that don't make economic sense, which are fairly blatant violations of the antitrust laws and which are trying to be justified on irrational grounds, people try and find a workaround. So the goal of NIL is to provide fair market value under the current system for the value of name, image, and likeness. But seriously, are we going to have a regulator decide how much anyone is worth? That's about the worst outcome I can possibly imagine, because everyone has gotten it wrong over the years.

When we did the NFL free agency trial, the NFL lawyers argued that quarterbacks and running backs would get paid the most and that everyone else and the linemen especially would get nothing. Well, it turned out when the market was allowed to operate, the running backs didn't get paid as much because, just in terms of how supply and demand worked, and unfortunately the shortness of careers and the market risk, they're not getting as much, and who is getting a tremendous amount of money but offensive linemen who protect quarterbacks who are the most valuable assets in the current NFL system. Nobody predicted that. You can't have people putting a pen to paper and deciding what you're worth. And honestly, the NCAA and the conferences should do a serious look at their overall rules, which currently make no sense, but the problem is that they enjoy their current monopolistic profits as a result of paying zero on these collective rules.

And the thing I'll say is it's hurting real people with real families, and when you look at NIL decisions that are being made, and I'll just say without revealing anything confidential, but we've been in discovery for years on the NIL case in house, which is for damages in the past. And so we've been doing deep dives on NIL conduct and kind of what's happened, what may happen. Just from my own personal perspective, the notion that athletes are going to make decisions based purely on just who waves the largest number of hundred-dollar bills isn't really true. When you look at the vast majority of athletes who are at the best in skill level, still predominantly they're looking to go to schools that give them the best training and preparation for pro careers, because that's where they think they're going to monetize, and a lot of the best players don't want to be bothered with NIL because it'll distract them from developing their skills to be good pros.

There are other athletes, however, who maybe they're 5' 8" instead of 6' 2", and they're a great college player, but they're never going to be a great pro, and their economic incentive may be to monetize as much as they can get right now, because they're never going to make it. They know that, and they're doing their best, and for someone like that who's going to have a different decision, God bless them. And so if you ask me what shouldn't be done, no regulator anywhere should decide what somebody is worth, and the NCAA and the conferences should do, finally after all of these years, a hard look in the mirror, maybe make a decision that their foremost goals should not be their own personal budgets and their personal salaries, but focusing on the educational mission and focusing on the athletes and not thinking up terms like student athletes just to avoid paying players, workers' compensation benefits when their bodies get busted, and the schools don't want to give them anything.

These people are generating billions of dollars for these schools, and people are forgetting that it's not something that should be determined by other people. People should be in charge of their own lives, and if someone stepped in and told us that our lives are going to be different because of something that they've decided as to what's right or wrong, that's reserved for hardly any categories. Largely when we're going to war and we're drafted, or we're told not to violate criminal laws. Economic activities should be left in the market or when

we're polluting the environment or other things that have third party effects. But when we're just entertaining people on television or in stadiums, there's no reason to restrict economic behavior.

**Andrew Brandt:**

I guess my question to you, David, is that the long-winded answer to the question that Jason asked me in terms of who should regulate your answer is no one? Is that basically what you said?

**David Feher:**

In terms of anyone with market power who has an economic incentive to profit themselves absolutely should not be the regulator. If you ask me whether or not . . . And by the way, when you look at other industries, there's not a regulator who determines the price, but there are joint ventures, by the way, who get together and have recommended standards because they have market efficiencies so that they promote economic welfare for everyone. So, if the NCAA got together, and this is a little off the cuff, but if they figured out what they thought was a standard form for NIL that didn't affect compensation but had disclosure rules and is consistent with what people generally do in market economies where it's like best practices, where you have organizations informing people. . . .

When I'm suggesting that you shouldn't have regulations, I'm talking about command economies telling people how much they should or shouldn't receive in money. That's a little bit different from whether or not people should get best practices together and encourage people to share information and call out people who are frauds. Okay? Our economy has tons of problems with fraudulent folks. They get prosecuted all the time. They get sued all the time. People who engage in that kind of behavior should be subject to the full weight of the law. But that's different from saying, "I think you should get paid less because I'm a school, and I have some kind of other objective that I want served." Like I said, what I want to have happen is the conferences and the NCAA be subject to the same laws as everyone else. It's not a big ask.

**Jason Chung:**

Tim, if you were looking for . . . You mentioned the regulator and you brought it up. In your mind, is there a structure that would work? Is there sort of an idea that you've been noodling on? In your ideal world, would it operate the way it is currently, or would you think that there's an opportunity for another entity to step in as a safeguard?

**David Feher:**

I wouldn't have another entity step in terms of setting market prices. I think that the NCAA and the conferences should stop thinking like monopolists and should start thinking like joint venture partners and trying to figure out what behavior the joint venture partners do in regular economic activity that helps the marketplace and is pro-competitive, because they come up with justifications to that don't make sense. In prior antitrust cases, for decades they were saying that you couldn't have any restrictions on . . . You had to restrain third party contributions to athletes because if anyone paid athletes NIL more than a few dollars, then consumer interest in sports would wane and nobody would watch because they'd view them as semi-pro leagues.

The ratings for The Final Four this year and for football this past year were through the roof. That argument made no economic sense at the start. It's been proven to be a falsity. So if you ask me what should be done, they should chuck these arguments that are used to support monopolistic behavior and instead focus on legal behavior and legal levels of cooperation that entities without market power do all the time to try and have markets operate efficiently. That's done all the time. Why do you think we're watching Zoom on Apple or PC with common standards that have plugs that work with each other? It's because they're allowed to do that, okay? There are antitrust lawyers that they could hire who would tell them what they can do and not do. It would be really beneficial in terms of doing things in the NIL space, in terms of encouraging behavior that would be beneficial to everyone without trying to be a command economy dictator, just so that administrators and coaches can get way of super competitive salaries, because they're substitutes, because they can't compete directly for players. That made a lot of people nauseous, to tell you the truth. In every experience, I've had in the legal system, in

terms of what broke the back, these witnesses were no longer educators. They were people with salaries, that were beyond the pale. It'd be fine, if in a market economy, that's what they were getting, but they were, in effect, diverting money, that would be competing for the players, into their own pockets, and people got sick of it.

**Tim Slavin:**

As mentioned, I come from a baseball background. I was with the union, in baseball, for 12 years, and I remember my former boss, Michael Weiner, saying that under no circumstances, was he going to take the pen out of an owner's hand, when he was prepared to write a check, to an athlete. That's generally how I feel about NIL, but I think circumstances are a little bit different. I said earlier that I think there's some level of regulation that needs to be in place because I do think there is a measure of abuse here. And the scope of it is currently unknown. We need to understand the totality of it before we can propose meaningful change.

In terms of the people who could solve it, I think you need representation from different viewpoints, on the issues. Interests of the university, there are interests of the athlete, there's interest of the fans. I don't think it would be advisable, to have the NCAA make the determinations on its own. A committee of relevant interested parties, would seem, to me, to be the most appropriate way to find solutions for the problems we face.

I think these are questions that are going to be answered, over time. The court's decision in *Johnson* is going to be a big factor here. It certainly will influence the speed with which we need to address these issues.

**Jason Chung:**

With the 10 minutes that we got left, that's a beautiful transition. I want to talk a little bit about the idea of pay to play, right, and what's going on in *Johnson*, and David, if you could summarize, really briefly, what *Johnson* is, and what's at stake, I'd love to discuss it.

**David Feher:**

Well, just briefly, it's pending, right now, before the Third Circuit, and the question is whether or not, and this is an area

I'm not expert in, but whether or not the NCAA, and the schools, and the conferences, supervise the activities of the athletes, to such a level, and a money-making enterprise, and their services for it, such that they should be considered employees, for purposes of, at least, I think, the Fair Labor Standards Act and minimum wage rules. And I think, in some ways, it's a question, of what's the question. Okay. And before you get to the answer, because if you're an employee versus a "student athlete," a student athlete is not a category that's recognized under the law. That's PR that the NCAA made up to avoid workers' compensation payments. And so, if you're an employee, it could have all sorts of consequences, under the law, in terms of safety standards, in terms of minimum wage laws.

Would it mean, absolutely, complete free rein in everything? That's a broader question. The antitrust laws would still apply, whether you're an employee, or an independent contractor. That wouldn't really fundamentally matter, but there are all sorts of regulations that would apply. I don't like the phrase "pay to play," as you may have had a sense of, because I think it's a mischaracterization, but it's typical of what's been done in the propaganda battle. The one thing I do want to address, just briefly, going back to what Tim said, there are ways to address this, and it's interesting, if you're an employee, can you form a union?

Do you want to form a union? In some states, there are rules against state employees forming unions. It gets really complicated.

I think, in professional sports, you have clear collective bargaining units, which also enables the regulation of agents, which because they're representatives, of the collective bargaining representative. Here it's a little bit different, and we have an association, that's not a union, that's trying to protect the interests of the college athletes, to the extent that a legal regime could somehow be constructed to have some kind of analogue. Where there is better information, and maybe, certification of people, so that it's like a UL label that you get on electrical appliances, so that you know they're not going to electrocute you, hopefully.

Where, if somebody's dealing with you, they've jumped through certain hoops, in terms of education, in terms of training, in terms of prior contract experience, and they're

not somebody's brother's tailor, who's just giving you \$500, that you really need today. That kind of thing is something that I think should seriously be explored, as to exactly how it would be structured. That's another question, but I think that even under the current antitrust law, collecting information that's useful to making efficient market decisions, is something that's generally encouraged. So I think there are pathways here, to eliminate, or obviate some of the stuff, that's happening at the margin, without affecting the core, that really has been destroying people's lives over the years.

**Andrew Brandt:**

I just want to jump in on the issue of agents because this is something I've seen firsthand. As people know, I think a lot of the audience, has maybe an interest in being an agent, but agents of professional athletes, are certified by the unions of those sports, MLB PA, NBA PA, NFL PA, and there's a process, and you go through, and you take a test, etcetera. There's no such thing for NIL agents. So they've come out of the woodwork, and this is a new category, where if you're a young person, I want to be an agent, and you don't have the bandwidth to go to the pro players, here's a way to get in. And we've seen that, and I've seen firsthand, these contracts, and this is something not discussed enough.

You have some abuse out there: either an agent didn't look at it or there's no agent involved. Where I've had players come to me, or parents come to me, and say, "Look at this," and they're getting \$5,000, or free merchandise, or whatever it is, for shout-outs on Instagram, and this company has their rights, in perpetuity, or they have their rights, into their pro career, or they have their rights, the entire college career. Which they may go somewhere else, they may transfer, they may. . . It's just amazing to me, that there isn't regulation, or there isn't any kind of standards, that help these athletes, in this maze. And I know there are these platforms like Opendorse, and things like that, but I'm seeing these athletes have no contract, of course, or have a contract that's written on a napkin, and give away their rights, in perpetuity, so that's a sad thing out of this.

**David Feher:**

And by the way, some of that stuff you're describing, is not consistent with the current legal structure, otherwise, or some of it may just be fraud, and to the extent that there's more information, but some sort of sensible, rational certification regime, for people who are trying to represent. However, it's figured out, structurally, it's not something I'm discouraging. I think that it's important that people have greater protection, in terms of knowing who's who.

**Jason Chung:**

Yeah, so if anyone at NYU Law is listening, it sounds like there's an opportunity here. Before we wrap, I wanted to ask you a little bit more about current events, right? So we're talking about the employment status, as you mentioned, David, of student athletes. Rick Pitino, recently left Iona College, and he said he's going to let go a lot of St. John's players, at his new school, because they probably won't be back next season, because they're not a good fit. Andrew, you work at a university, you deal with student athletes. Does that feel like employment to you? If a coach can come in, and basically say, "Hey, you don't have a spot on the team next year," or would you characterize it differently?

**Andrew Brandt:**

No.

**Jason Chung:**

How would you characterize the ability of a coach to come in, and make wholesale changes, and get his guys in there?

**Andrew Brandt:**

I think that's what David would call market power. These coaches have immense, especially, a big name coming in like that, have an immense power to change their teams. I have a son, who is student manager at a school, and it happens, where these players get the feeling that they're no longer wanted, and they're pushed to the transfer portal, so they can bring in their own players, or new players. It's, again, the professionalization of college sports. We hear about that kind of thing all the time, in pro sports. We hear about new coaches wanting their own players, releasing, or trading players, that

are there, and bringing in their own. Yeah, it happens in college sports.

What happened at Villanova last year, is we lost one of the icons, in the coaching industry, when Jay Wright retired. We had recruited a top 15 player to Villanova. What happened in the moments, days, hours, after Jay decided to retire, was complete chaos, because now, this player was getting offers, calls, from all the coaches around the country, trying to see blood in the water, and snatch him away from Villanova. And it took a full court press, and an NIL package, to keep this player, at Villanova. Yeah, I saw it firsthand. The moment Jay Wright said he is out, oh my God, the bloodhounds came, for this player, and the guy who kept him here most, was Jay. But this is the incredible competition out there, for the top players, and we see these packages all over.

**David Feher:**

Can I react very quickly? A lot of what you're saying reflects, that at a lot of the schools, it's just pure business. Some of the schools, college sports is truly educational, and they're D3, or they're somewhere a little higher, but not much, and it depends on the fit for the player. I think a lot of players, and a lot of teams, are a lot better now, with the movement, because they find better fits. And so really good players who would be sitting on benches, instead are finding the coach, that's a better fit, somewhere else, and their careers can end up taking off. It's a question as to how do you manage it, in a way, and I'm not talking about a regulator, but I think, in some ways, by this athlete figuring out what kind of school does he want to go to, in the first instance, is a lot of the sorting that goes on. And I think having greater choice, in general, is better for everyone.

But it is a problem when coaches move, because players will want to follow them, because like I said earlier, a lot of the value is from the training, and relationships, they get from that coach, and you can't really blame the player. If someone, who is key to their value, has moved on somewhere else, with complete freedom of action, and then, to tell them, "Oh, you're not allowed to follow them." It's real tough. And so, the market needs to sort itself out, a little bit better, that's for sure. But that should be something the market can and should do. But I think people have benefited in all sorts of ways, too.

**Jason Chung:**

Tim, final word, how do you feel about the situation?

**Tim Slavin:**

In as much as a college coach can make determinations about the players, on his or her team, players should be able to make a similar determination about whether they want to play. Respecting players' ability to make decisions, after receiving material information, is also, I think, fair. And the fact that there was competition for a player is a good thing.

**Jason Chung:**

Well, thank you very much. That's the time that we have today. Thank you to the panel, Tim Slavin, Dave Fair, Andrew Brant, wonderful insights. I wish we had more time to delve into this NIL stuff, and all the employment situation, and I'd like to thank the SLA for inviting us to be part of this great day, as well. So thank you. If you've any questions. . . Does anybody here have a Twitter or LinkedIn, they'd like to plug?

**David Feher:**

I don't deal with Twitter.

**Tim Slavin:**

Neither do I.

**Andrew Brandt:**

I'm very active, on Twitter, as people know but-

**David Feher:**

Especially now.

**Andrew Brandt:**

. . . I'm sure they can find me. Yeah.

**Jason Chung:**

Perfect. So thank you very much.

**David Feher:**

Thank you so much.

**Jason Chung:**

Thank you guys.

## KEYNOTE CONVERSATION

**Caleb Paasche:**

Thank you guys, for that lively discussion. Up next, we have our keynote conversation, with Brad Ruskin, the co-chair of Proskauer's Sports Law Group.

Professor Cameron Myler will be moderating our keynote conversation, with Brad Ruskin. Professor Cameron Myler is a professor at NYU's Tisch Institute for Global Sport, where her teaching, and research, is focused on legal, and governance issues, in Olympic, and international sport. Professor Myler previously practiced law, for a decade, in New York, where she represented Olympic athletes, sports organizations, and executives, in regulatory, eligibility, anti-doping, and ethics matters. She's also an arbitrator, and has heard cases, both before the American Arbitration Association, as well as the Court of Arbitration, for sport. Professor Myler was a member of the US National Luge team for 14 years, winning the national championships seven times, was named US Female Luge Athlete of the year, nine times, and represented the United States, at four Olympic Games. And in 1994, Professor Myler was elected by her teammates, to carry the American flag, at the opening ceremonies. Thank you both for joining us. I'll turn it over to you.

**Cameron Myler:**

Thanks so much. Great to be here, and I think everyone should join me, in welcoming Brad Ruskin. We have such an accomplished attorney, and person, with us today, and I'm really excited for the conversation. So I'll do a quick intro, and then, we will hear from Brad, directly. So Brad Ruskin is a senior partner at Proskauer Rose, and co-chairs its Sports Law Group, which has been recognized as the country's top sports law group, by Chambers USA. His practice has spanned a variety of high stakes commercial cases, representing clients such as Major League Soccer, the National Football League, the National Basketball Association, ATP Tour, WTA Tour, NHL, Major League Baseball, Big East, PAC-12, and Madonna. I had to get that in there.

Brad has also represented ownership groups, and clubs, in all of the major US professional sports, including the Washington Nationals, Florida Marlins, New York Jets, although I'm a Giants fan, the Philadelphia Eagles, and the New Jersey Devils. Brad handles a variety of work, in addition to his sports

work, and I think we'll hear some more about that in our conversation. But I did want to mention that throughout his legal career, Brad has been a passionate advocate of public service. He's a Director, and the Audit Committee Chair, for the Student Leadership Network, and a recent recipient of it's The Man We Love Award. He's a member of the ADL Sports Leadership Council, on the board of Sports for Youth, and a membership of the Jewish Theological Society's Advisory Board, and a recipient of its Simon Rifkind Award. So join me in welcoming Brad to this keynote conversation. Brad, great to be here with you.

**Bradley Ruskin:**

Cameron, thank you. That was a little bit too much, but thank you, and very sweet. And as nice as it was, I guess, I'm happy to have done all of that, carrying the flag at the Olympics, that's another level. So I'm thrilled to be with you today.

**Cameron Myler:**

It's always great to have a conversation with you. So Brad, let's start with something kind of on everyone's mind, I think. We're just three years now, out from the beginning of the pandemic, and it's had an impact on everyone, in all aspects of society, but certainly, in the context of sports. So love to hear a little bit of your thoughts, about how COVID-19 has impacted sports, and what changes we might see, going forward.

**Bradley Ruskin:**

Cameron, look, I think for everyone on the call today, obviously, we've all lived through COVID, and had our personal experiences, but everyone has also seen it through the lens of sports, and sports in our lives. And I think, as you asked the question, it's one more area, where sports is such a lens for our society, on how we view developments, in a variety of areas. And I think, in terms of the public return to life, and a whole host of issues, sports was at the forefront, for many of us, as we thought about that.

For me, I remember, I think, probably for most everybody here, that March 11th, 2020, was an inflection date. Before that we had heard about COVID, we knew a little bit about it. People knew, in varying degrees, started to know people who may have contracted it. I remember I was at the NBA All-Star

Game, in February of 2020, and on the radio, on the way to the office, heard that the second case in the United States had just been diagnosed, and it was in Chicago.

Fast-forward, a short fast-forward to March 11, the NBA announces its shutting down. And frankly, if there was a single inflection point that was a before, and an after, I really think it was the NBA's announcement. You may remember one of its players, a player on the Jazz, Rudy Goebert, tested positive and then Donovan Mitchell, the next day. And literally, within 48 hours, a number of sports, that shut down and a number of college conferences shut down their tournaments. The NCAA announced it wasn't going to have March Madness and, I think, for people, their lives changed. I know for me, it was March 14th, three days later, we decided to leave the city, for a few days, to see what would happen. I think people's lives all sort of immediately got affected, and sports was a bit of a trigger there.

In the same way, it was sports that was part of the first pieces of a return to public life. And so, the NBA announced that they were going to have a bubble, down in Florida, and they were going to continue the league, and play a few final regular season games, and the playoffs, and then, Major League Soccer, really the first league to start in full, with its own bubble, down in South Florida. Those leagues, and the return of live sports, was a significant moment.

Of course, we also had the legal issues that tied to all of that. From the Firm, we actually sent three associates down to the NBA bubble, who were there, and lived in the bubble full time. And obviously, it was a little bit of drinking out of a fire hose, but it was just every kind of issue, and some of which were more business, some of which were practical, some of which were the need for immediate legal advice, on whether A or B could be done. But again, a fascinating part of all this.

**Cameron Myler:**

And I think on the Olympic side of things, certainly the big impact with Tokyo 2020, delaying a year, postponing the Olympics a year. And I think it was really remarkable that the games actually happened, during the pandemic. But I imagine, Brad, a lot of your clients' force majeure provisions were put to the test, during the pandemic.

**Bradley Ruskin:**

Yeah, so I think there were a number of legal issues, that came to the floor immediately. As you would expect, in our firm, I think, probably, it was both the employment lawyers, and people who dealt with contract issues, that had the most immediate issues. I think for workplaces, again, for all of us who were in the workplace, whether it was sports, or not, but particularly, in the sports field, there were a host of issues, about where people could be, when you could have people in an arena, how all of that would work.

There were insurance issues, and a number of insurance cases, about the scope of insurance coverage, and whether or not it covered COVID-19, and, of course, that's contractual, typically, and dependent on the particular arrangements. And as you just said Cameron, you have force majeure, sort of the classic lawyers who try to anticipate everything and, of course, never quite fully do so. And, I think, for all the things one can anticipate, no one, or few, anticipated this quite exactly, but parties had contracts, parties had provisions. And then, another whole area, not really a legal issue, but, I guess partially a legal issue, and I think even ongoing as sports returned, was the whole area of vaccinations, and how that plays into the issues. And again, with all of this, the overlay of societal politics, and how people think about that, has been yet another layer.

As well, as for many of our clients there were the international aspects in all of this. And I think one particular example is tennis, which had to deal with these issues in the way that every other sport did, but with the overlay of its events being international. So when the ATP Tour and WTA Tour, thought about returning and having matches, one of the first questions was, "How would players get to that country? Could they come to that country? Would that country allow live events or not? And if so, under what conditions?" Probably, the most notable example, and there were a lot that were happening before that, was when Novak Djokovic tried to go to Australia, and was told that he couldn't, or had to leave the country. And then there at least, appeared to be some level of ambiguity, in different ways, and ultimately, he didn't play.

Past forward, now to 2023, and US law is such that if you're not vaccinated, you can't come in from a foreign country. And that's being applied equally to him, as it is to others,

and it's interesting. What a debate, right? It's one of these areas where sports engendered a high level of debate and post a lot of tweets on it. People are very well divided on it. Some say the policy is outdated. Others say this is a special individual, let him play. Others say, it has to be applied equally to all. And yes, maybe when the policy changes, and it's about to, then fine, but you don't make special exceptions, just because he's a talented tennis player.

**Cameron Myler:**

On the issue of vaccines, there were even some problems going into the Olympics, in Beijing 2022, with Russian athletes, who had been vaccinated, but the Russian vaccine was not recognized as being, I guess, effective enough, so athletes were not able to compete in the games, as a result. But Brad, circling back around to your point, about sport being really one of the few things, that brings people around the world together, any additional observations on experiences, you've had over your career, as to how that rings true?

**Bradley Ruskin:**

Look, Cameron, it's one of the fascinating things about being in this industry, and we can talk a little bit about it later in connection with my life as a litigator and as a counselor in this area, about how sports is a little different in so many ways. But I think one of the joys of being in the industry, one of the reasons the industry is as successful as it is, is how important it is in people's lives. And I think that it's really hard to think of many other things that across our country where you can think of as many people having a common interest. And perhaps right now, at a time of incredible divisiveness, one of the few things, where people can, at least, have commonality in certain areas by virtue of their fandom, or otherwise. And I think significantly, and happily, sports has played, because of that, an outsized role, and an outsized positive role, on societal and important social issues. And I can think of a lot of the examples.

I mean one can point historically to the significance of Jackie Robinson breaking the color barrier, and how that modified civil rights. And in the United States it was, at least, a start towards a movement thinking about racial issues differently. Maybe even more, in my life, I thought one of the most dra-

matic examples, was when Magic Johnson, and David Stern, appeared at a press conference, and Magic announced that he was HIV positive. And at that moment, as a long time New Yorker, we all knew people who had died of AIDS. But Magic Johnson being HIV positive changed the conversation and how the world responded to this horrendous disease.

By the way, the one thing you didn't mention in the bio, as nice as it was, but an important thing, is that I'm an NYU Law grad, so that should be added here. Proud NYU Law grad. But anyone who lived in New York City, as I did, graduating law school in '81, quickly knew people who died from AIDS. And the extent, to which it went from a few people, to a scourge in the city, was dramatic, and horrible, on a national level. It was one of those issues where, regrettably, you had a great number of people, treating it as a disease for others, and in particular, for gay individuals, in New York. And the moment when Magic came out, it was a dramatic change, at least, across America, in accepting that this was something that had to be dealt with, in a different way. And which we can talk about whether society should have gotten in there quicker: it certainly should have. But that moment, and the power of a sports that sports figure, and the power that sports can have was clear. If people haven't seen that press conference, I think it's on YouTube. It was just a fundamental change. And again, we can think of so many areas where, I think, sports is able to do that. Billy Jean King, from her match against Bobby Riggs, on giving a different lens to gender equality, and the start of a shift, that is significant, and puts us in a very different place, thankfully, in 2023, than where we were 30 years ago, or so. You can think about it with Colin Kaepernick, and putting a different light on police brutality by the actions he's taken. And I think, most recently, are issues of mental health in sports.

I think this was an issue that three years ago, four years ago, the notion that pro athletes, who didn't want to show weakness, would speak about mental health, would seem rare. But we have Naomi Osaka coming forward, and talking about her battles and her issues, doing that. I think, frankly, and again, not easy for any of these athletes, and not without criticism. There's some out there who if someone puts themselves out there, criticisms follow. But I think that's been a significant step, and I think that such athletes coming forward hopefully

will cast a different light. Related to that, I don't know if you saw Mardy Fish, another tennis player. There's a documentary on his battles with mental health. I think it's called *Untold: Breaking Point*. And it's just a remarkable story where literally, he had a panic attack on a way to, I think it was this quarter-final match at the US Open. And it was a late round match and he just couldn't play. It's a fascinating story, and I think it helps people better understand issues that we should all understand better.

**Cameron Myler:**

Given that athletes have a public platform, and even more so these days, with all sorts of options to be on different kinds of social media and being in the public, do you think athletes have an obligation to speak out on social issues?

**Bradley Ruskin:**

Yeah, I guess I'd answer that no. I don't think anyone has that obligation. I think there are people who are comfortable with it. I think either side of the extreme there, I disagree with. As I said, I don't think players have an obligation. But as to those who say, "Just go play," I would disagree with them on most every occasion. I think when people have a public forum and have important things to say, they have right to say it. I think athletes and others, including or example owners, have a duty to make sure they're informed when they speak, because the special light they get by being in the sports industry does give them extra voice. So doing their best to be knowledgeable about issues is important, but then, whatever their voice is, I think they should use it and use it powerfully. And for the reasons I described, I think it often allows things to be much more front and center in public dialogue in a way that is quite valuable.

**Cameron Myler:**

So Brad, your remarkable career as a lawyer has intersected with sport in so many different ways, and I'm sure the students in the room particularly would be interested in hearing how did that happen? How did you come to have a sports-related law practice?

**Bradley Ruskin:**

Like most things, probably, a little bit of direction and a lot of bit of luck. And by the way, I'll give one caveat here. I was lucky enough three weeks ago or so to speak in Professor Balsam's class to the sports law class. And so to the extent there are people on the call today who were there, I'll try not to be too repetitive. But if I repeat a story or fact or two, you'll forgive me. And hopefully, if I end up telling stories inconsistently, you can call me on it. That's fine. But I started, I summered, at Proskauer. When I came to Proskauer, I didn't know that it had a sports practice.

By the way, there was barely any sports practices at any firm or anything that was a serious sports business industry at that point in time. But the firm had started representing the NBA back in the late '60s, early '70s. And there was a significant amount of litigation in the mid-70s, both on player issues and then on issues relating to the ABA and the like. And when I was a summer associate, I went to a deposition of Dave DeBusschere, but I didn't come to Proskauer for that reason.

But there were two lawyers in particular who helped me follow this direction. One was George Gallantz. George was the person who brought the NBA to Proskauer and a remarkable mentor. He died at a hundred years and one day, which I think tells you something about the kind of fortitude he had. But he was a remarkable man. And he's really the person, frankly, that David Stern and Gary Bettman and other commissioners, and within our firm at least four litigation chairs and three labor chairs would tell you he was their mentor. He really had quite a legacy. And then Michael Cardozo, who was one of those legacies, but in his own right became a great mentor. And Michael was actually the office mate of David Stern, and ultimately was Corporation Counsel for 12 years under Mayor Bloomberg. But I happened to work with Michael as a first-year associate on a case involving the importation of galvanized steel from Korea.

It actually was a pretty interesting and fun case. But I told him if a sports case came up, I'd love the opportunity to get involved. And as it happens, on May 15th, 1984 at midnight, Donald Sterling moved the Clippers without asking permission of the league from San Diego to Los Angeles. And I told the story to the class a few weeks ago, but I just think it's a fascinating piece of sports lore. So David Stern became commissioner

of the NBA on February 1st, 1984. And when Sterling took that act without asking permission of the league, it was really David's first major legal challenge with a member of the league violating the rules flagrantly. Sterling's position was that in light of the Ninth Circuit's recent decision finding that the NFL had unlawfully conspired to stop Al Davis from moving the Raiders to Los Angeles, that the NBA couldn't stop Sterling.

And so he didn't have to ask permission. Our view was, "We'll apply the appropriate standards, but you've got to follow the rules. If we do it wrong, then you can say we violated the antitrust laws, but we're going to do it right." But as I say all that, when Adam Silver became commissioner, as probably many on the call know, his first major challenge was dealing with the racist comments of Donald Sterling, and making a decision about how to deal with when an owner had engaged in that kind of conduct. And I think Adam stepped up quickly and stepped up strong to say that there was no room for that in the league, and ultimately removed him as an owner. But the fact is that over that course of years for both David Stern and Adam Silver, their first major legal challenge or legal issue was dealing with the same person, Donald Sterling.

So anyway, I digressed a little there, Cameron. But I got a call from Michael telling me about the case and asking, "could I work on it?" Truth is I had literally pulled my first, I was, I guess, at the end of my third year going into my fourth year. I had pulled two all-nighters in the prior week, which I hadn't done before, and I had been very busy. But when he said, "Did you have time to do it?" My answer was, "Of course." And happily, one of those cases settled within the next three days and I got involved in the Clippers case. That case went on six years. And among other things, I was the point person to deal with all the inside lawyers for every team and all their outside lawyers. And so I literally got to know people at every single club across the country, both inside and outside lawyers. And as you can imagine, those people, some stayed but others that went to other leagues, other sports and the like.

In all this, I think a really interesting fact is in 1980, when I was a summer associate, the Dallas Mavericks purchased by Donald Carter for \$12 million. We just were involved in selling the Denver Broncos for \$4.6 billion. And that evolution obviously way outpaces almost, not probably number one, but it's

the very top of outpacing most all businesses in its growth. And so I've had this great good fortune to have got involved, then got involved as the business was just becoming an industry, on an incredible ride up. And with that, size of the issues, the dollars involved, and the complexity and breadth of the legal issues just continued to grow. And so it was in all the best ways, a perfect storm. And we were there early, and made the decision to be all in with a sports practice, and served. I think because we were there, many people came to us, and hopefully we did a great job and built upon itself.

**Cameron Myler:**

Great. So I just want to interject for the audience, if you have any questions for Brad, please put those in the chat, or I think there's also a Q&A option on the webinar controls. So please, any questions, send those to us. So Brad, we've been talking about different aspects of sports law, but how would you actually define that? What do you think sports law is?

**Bradley Ruskin:**

Yes, that question gets asked all the time. The first thing I guess I would say, and we talked about this a little bit in the class too, but in part coming from the litigation side of all this, because everyone feels they know something about sports or overtly doesn't, it so colors the business, certainly the litigation side of the business. And it's fascinating. As I've told people before, people on the call who have read decisions have seen how federal judges, who are highly educated men and women, and who are sophisticated lawyers, suddenly fall prey to needing to use sports metaphors, and talk about how the NFL couldn't score a first down with that argument. Or more often, hopefully if we're representing them, scored a touchdown with that argument. And Cameron, it's even to the point that as I think about it, literally in every case and usually at the very beginning of the case, a judge will expressly make a comment about whether it's yes or no about whether or not they're a fan of sports, and whether or not they're a fan of that sport.

And so more often it's that they are, right, but if they're not a fan, they feel that part of the dialogue is, "Well, I'm not really an X fan." And whatever that X may be. And again, most industries and other industries in which I litigate, people don't say, "I'm not a wireless communication fan." But even if it's a

product, they don't really talk about the industry. And again, with apologies for people in the class, but I told the story of the Chicago Bulls case. We represented the NBA against the Bulls and WGN in a case that was litigated over many years in Chicago courts. And it was one of the seminal cases establishing the right of the league to control the national distribution of its television product. But the judge in that case, Judge Wilf, and I'll tell a truncated version of this, but Judge Wilf was a very famous judge had handled lots of major cases, including antitrust cases that had gone ultimately to the Supreme Court.

But on the very first day of the case, when we had a conference and he was trying to learn a little bit about it and asking us about why the league felt it was important to adopt certain rules that affected the licensing of games by an individual club, we talked about the concern with overexposure of the product, of saturation of the product and the like. And that was important from a league perspective to be able to control its distribution avenues. I know there's a lot of discussion about that issue today on broadcasting and how leagues think about that as technology evolves. So we said saturation was a concern. And Judge Wilf's immediate, without really missing a beat, maybe he thought for about three seconds and then he said, "Ah, saturation. My grandson will watch as many games as there are out there. You can't tell me there's any such thing as saturation."

And that wasn't a flip comment. It really was a core view of how he thought about it. That case went up to the Seventh Circuit twice, and we had three hearings from us before him. And he really never deviated from that core view in terms of how he thought about it. So that's a partial answer, I guess, in terms of sports. The other part is people used to say there was no such thing as sports law. But I think in fact what sports law is all of the legal issues that tie to the business of this industry. And the industry is pretty wide-ranging in a whole host of ways. But it starts when you think about with questions "what is it that sports is?" At its core, it's an entertainment product. It's a product that gets sold, it's a product that people attend, it's a product that people consume through various forms of media.

Beyond all of that, it's a product where talent is an essential element of what people want. And it's a product where there's a series of rules and the like. And that creates the legal issues of eligibility, of discipline, of a whole host of other

things. It's a governance structure, and the governance structures of each of the leagues are significant in the decision-making of those leagues, from a corporate point of view, from an M&A point of view, from a financing point of view, and also from an antitrust point of view. So I've spent a great deal of my time litigating sports antitrust cases. And again, when you think about it, it's comes from the structure of leagues and how people look at leagues, and the participants to some extent, as competitors, and not as a single corporate entity.

But they are a highly interdependent venture. And so what they can do and what they can't do can be subject to antitrust challenge. And I think because it's so public, as I say, this isn't an agreement that someone reaches as some secret agreement between two competitors. Leagues have to operate as wholly integrated ventures. But their agreements, if you will, the rules they adopt, are completely open, and their rule books are published. And almost with every rule, there'll be somebody who's upset, who feels the rule is adverse to them. And in the antitrust area, that list is extensive. But issues about territories, about relocation, about ownership, about telecast rights, about expansion, about contraction, about license product, about online product, player issues, eligibility issues, international issues, amateurism, some discussion about that earlier today. Agents, ticketing, certifications and the like, of what level you're at. All of those decisions can be subject to antitrust challenge. And more often than not, at least we're able to show that the rules are reasonable and appropriate. But they are subject to challenge.

Beyond that, again, the list, Cameron, it just goes on. It's really every area you can think about including, as we said, the whole body of player discipline issues, on court or field, or off-field issues. It's all those series of labor issues, collective bargaining issues and all of their applications, particularly in league sports. It's the corporate and JV, joint venture issues that I mentioned before. It's licensing, it's media rights, it's distribution of product, it's gambling laws. As we also heard earlier today, it's bankruptcy issues. I think there was a mention of Diamond Sports earlier today and its recent bankruptcy involving regional sports networks. So there you combine the array of bankruptcy law, media and the like. So it's all of the above. And it's criminal law when athletes or others get involved in that and the particular aspects. So in our firm, it's

important. It really is such a cross-disciplinary practice. So there's no day that goes by that I'm not talking with my corporate colleagues, my finance colleagues, my tax colleagues, my labor and employment colleagues, because all of these issues intersect.

**Cameron Myler:**

Absolutely agree. And I think another issue, and you mentioned a little earlier, technology, which has rapidly evolving certainly in the context of sports. So with the evolution of tech and rise of AI, what legal issues do you see arising in the sports space in the coming days?

**Bradley Ruskin:**

Yes, so it is interesting, because combining that question with one of the things we've talked about, Cameron, I think the other thing that sports has done historically is it's been a first adapter for so many technologies, in so far as where people and consumers start to utilize technology in a variety of ways. And so if you think about just using your phone to watch sports content, initially clips and now people are comfortable watching whole games on their phone. That felt unheard of not that long ago. And then suddenly that becomes commonplace. Every form of technology often gets applied, and as I say, utilized through sports. As we come to this point in time, I think there are a number of areas, but AI certainly is top of mind, and I expect for others, a common experience. I think on December one, I had not had a conversation about ChatGPT.

This is a group of NYU Law students. So they probably were ahead of me, but I hadn't had a conversation. And then suddenly over the course of December, there were a couple of conversations that I had, and then a conversation with my daughters about it. And suddenly in the month of January, I don't think I went three days without it coming up, including it then being a topic at a conference, and focus on it and demonstrations of it, and demonstrations of it in a sports context. Or just "Write me a demand letter," "Write me a brief" or the like. And so the speed with which it's moving, and I think we're so obviously in early days, but it's a technology that we have seen on the horizon suddenly now moving to a different

point. And it's going to certainly be important, already is important in sports in a whole host of ways.

And so whether or not it's the ability to create user-generated content, whether or not it's the analytics that it will provide to clubs and others who want to know more about their consumer base, and be able to get more information quicker in more sophisticated ways. Suddenly it's continued geometric growth. And with that come the array of legal issues. Who owns rights? So there are property interests, contractual rights, obviously privacy issues, and general data issues, that tie to all of that. I think all of those will be part and parcel of any evolution of the technology. And so certainly, that is a focal point right now, but its among many others.

**Cameron Myler:**

Great, thank you. Well, we're getting to the end of our time, so we have one question from the audience. So let's get that in, and then we'll see what else we have time to chat about. So question for you, how has your professional proximity to sports affected your personal relationship with sports and your fandom?

**Bradley Ruskin:**

So it's a great question. One of the things I say maybe relates to it is, as you can imagine, as people in this room are interested in sports, an ungodly number of people who come to interview or otherwise, when the first thing they say is, "Oh, I just love sports. I'm really big fan." You've just put yourself into a group of 225 million. In truth for me, and as much as I've loved sports and fandom, I've also loved the business of sports. I mean, for all the reasons that we've been talking about today, because it is such a leader in our society. And so the pulse, I found the legal issues and the business issues to be exhilarating and the like. But with all that, I'm a huge fan. For me when I was younger, I played tennis pretty seriously. I played three hours a day and played juniors.

And so if you had told me when I was 15 that I would get to be in a meeting at Wimbledon with the board of directors of the ATP and WTA Tours helping make decisions, I'm certain I would've said, "Sign me up today. You don't have to pay me a penny. This is it." So I do feel crazy fortunate. I will say I love all of our children equally. So every league and every team.

But still be pretty passionate. And, the only one quick anecdote I'll tell is some number of years ago, maybe many of you might remember, in the middle of the playoffs, the Knicks were playing the Heat and there was a bench-clearing brawl. And the NBA had a rule at that time. Very important rule that no one can come off the bench and go onto the court to participate in a brawl that is on court.

And of course, these are people who are between six foot and seven foot tall; powerful men. The idea you want to do everything you can to deescalate a fight, a very important rule. A lot of Knicks came onto the court that night. As to sport fandom, I would say that I was lucky enough to note in this week where Willis Reed passed away that I was at game seven in the high blue seats in Madison Square Garden for one of the greatest sport events of all time. So I've been a Knick fan for that long. Sure enough, we had to take the NBA's side and the NBA suspended six players over the next two games. It was three a game, the way it worked. And neither of my daughters was particularly happy with me that day. And so it's more at home where it might matter or when I was representing the Marlins, when I've been a diehard Yankee fan. And when the Marlins were playing the Yankees in the World Series, I was in the middle of representing the Marlins and friendly with the owner and the executives. And so occasionally, there's that, but with all that it is pretty easy to combine the two.

**Cameron Myler:**

All right. Great. Well, I think this is a great segue into maybe our last question, but what advice would you give to students or others who are interested in having a career at the intersection of law and sports?

**Bradley Ruskin:**

So look, the first thing I would say is that if you looked at 50 people out there whose careers you might think are appealing, they probably did it 52 different ways. And there really isn't a single path that leads to success, particularly as a lawyer. I think one of the things that's interesting is how many people in the sports business are lawyers, both acting as lawyers and also acting as business people. So it is a great entry. And I've commented on the past that I think interestingly. . . Slightly different than your question, Cameron. . . . But one of the

things that I think makes practicing in this area so rewarding is that because there are very good lawyers at the leagues and other places who really appreciate what lawyers can bring to the table, and hopefully what they think very good lawyers bring to the table, lawyers are often seen as people who can be the best problem solvers rather than in many areas, where lawyers are seen as someone who's going to block the deal or be the hurdle.

So as I say, I don't think there's one path. I do think it's a combination of going out and becoming as good a lawyer as you can be, and then be focused on opportunities as they may come up. I will say a good path for a lot of people has been to come to Proskauer. We have more than 70 alumni who are now in the sports industry, including two current Commissioners, most recently Jessica Berman at the NWSL. But everything from commissioners to general counsels at leagues and general counsel of teams to every piece of the business.

But I really think that when leagues hire, they want to think they're getting the best and the brightest, and they're looking for talent on the legal side. And so find a way to make connections and other opportunities, but develop the skillset first of being a very good lawyer. And when you heard me go through that list of how broad sports law is, and it's only getting broader, there are so many entry points to the industry that I think you just have to find the way in. But as I say, developing the legal skills is a critical piece of that.

**Cameron Myler:**

Great. Any last words of advice or anything you want to add to what we've already discussed?

**Bradley Ruskin:**

No, thanks. Total pleasure. And look, if there are people on the screen who have other questions, you can email me and find me at Proskauer, or I'm happy to, as many people have been NYU law, now I'm happy to make time for anybody. And send me a note, and I'm happy to have a conversation if you want to ask more concrete questions about getting in the industry or other pieces. More than happy to do it.

**Cameron Myler:**

Thanks so much, Brad.

**Bradley Ruskin:**

My pleasure. Have a great weekend, Cameron.

**Cameron Myler:**

You too.

**Nick Sloan:**

Thank you so much, Professor Myler and Brad Ruskin. That was an excellent conclusion to our colloquium. Another huge thank you again to all of our panelists and everyone who helped make this come together. . . . And finally, thank you all for joining us as well. It was a pleasure to put this amazing event together, and we hope to see you again for next year's colloquium.