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2021: Entering the New Sports Normal

Jeffrey S. Moorad Sports Law Journal

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JEFFREY S. MOORAD SPORTS LAW JOURNAL SYMPOSIUM

2021: ENTERING THE NEW SPORTS NORMAL

How has a global pandemic changed the sports landscape? What does the future role of the student-athlete look like? What part do sports teams and players have in social justice movements? The 2021 Jeffrey S. Moorad Sports Law Symposium discussed these topics from the past year and took a look forward as we enter a new sports “normal.” We were honored to be joined by industry leaders and attorneys, who joined us virtually for these discussions. The Symposium continued to elevate the standards of sports law symposia at Villanova University Charles Widger School of Law and remained one of the premier events that the University hosts.

Panel 1

COVID-19 in Sports

Moderator: Andrew Brandt

Panelists: Jessica Berman, Baird D. Fogel, Ingrid Petri,
Norman Wain

This panel took a deeper look at the immense challenges posed by the pandemic and how sports leagues developed policies in order to both have a season and to protect athletes. Panel 1 addressed which policies worked, which policies did not work as well, and how COVID-19 changed sports overall. Panelists included Jessica Berman, Deputy Commissioner & Executive Vice President of Business Affairs for the National Lacrosse League; Baird D. Fogel, Partner at Morgan Lewis & Bockius, LLP; Ingrid Petri, Associate Vice President for NBA Global Marketing Partnerships & Business Development for the NBA; and Norman Wain, General Counsel & Chief of Business Affairs for USA Track and Field.

Jeffrey Moorad: Good evening. I’m Jeff Moorad. I’m the chairman of the Moorad Sports Law Center, which we started ten years ago now. Seems hard to believe it’s been that long but welcome to our symposium. The first night of the symposium, which, as you I’m sure know is going to focus on

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the COVID impact on the sports industry. We have some exciting speakers. A great panel that's going to be moderated by our Executive Director, Andrew Brandt. You should be in for a good hour of informative information, so we're excited to bring that to you.

You know it it's hard to believe that it was ten years ago, as I said that, Dean John Gotanda and I came up with the idea of a sports law center at Villanova. A law school that I graduated from many moons ago. We after a fair amount of discussion, we decided that a journal made sense; we decided that an annual symposium made sense. And I'm thrilled to tell you that since that original discussion ten years ago, not only as the program become a reality, but in fact, a leader in the education field in sports law. But Dean Alexander has picked up where Dean Gotanda left off. And I commend him on the leadership that he and his team have provided over recent years in continuing to help push the Moorad Center forward in the educating of young lawyers in the waiting. I'm quite excited to be back here again, albeit virtually from California, but nonetheless excited about this this year's program and, in particular tonight's program so I welcome you. I know none of you are here because you get CLE credit, right? Oh, maybe a few. But that's okay.

I also want to thank Morgan Lewis and Bockius, a firm that I'm affiliated with. I chair their global sports practice. And I want to thank them for their sponsorship, which has been in place for multiple years now. We're quite appreciative on the Villanova side for that and, in fact, two of my partners will be highlighted during the next three nights. Tonight, Baird Fogel from San Francisco. He's a partner at Morgan Lewis in San Francisco in the Corporate Business Transaction practice. Baird will join the panel in a few minutes and share some thoughts on the

COVID impact on the industry. So, I hope you enjoy the evening. It's always my honor to toss to Andrew Brandt, who we reached out to almost ten years ago and asked if by chance, he might be willing to leave Wharton and come out to Villanova and lead our Sports Law Center. And not only did he eventually agree to do that but does a terrific job as an industry veteran leading a real program in this area. So, Andrew without any further ado. I look forward to the evening.

Andrew Brandt: Thanks so much, Jeff, and thanks to everyone coming. And everyone in our panel can now show themselves as we'll have our videos open. Appreciate it from Jeff Moorad, the founder of this program. This Moorad Symposium is, of course, our signature event every year. We talk about the cutting-edge topics in sports every year and we do it with the best people out there to talk about it. Obviously, things a little bit different this year. We usually are sitting in the building, where I am right now, the Villanova School of Law, in the big open commons area, with hundreds of people in attendance live, but of course that can happen this year.

So here we are virtually and we're going to make it, I hope, our best symposium yet over three nights. Starting tonight with an all guest panel of three veterans in the industry that I have great respect for, that I'll introduce in a minute.

First of all, as Jeff mentioned, we are being sponsored this year, as we have been the past few years, by the law firm of Morgan Lewis. We appreciate their support; we appreciate everything they do for the Moorad Center and Jeff being part of that firm as well.

So, what we're going to do the next three nights is to look into, as I said, the key topics in sports that we've seen for this year. Through our stu-

dents, through alumni, through my interaction on the media side, we have been able to sort of assess and now we can hear from the experts in the industry leaders.

So, without further ado, I'm going to introduce our panel and we'll get right to it. Our first panelist we're going to go in alphabetical order is, Jessica Berman. Jess is a friend, she is the Deputy Commissioner, Executive Vice President of the National Lacrosse League, doing all things there. She comes from the National Hockey League, where she was Vice President at the National Hockey League and certainly has experience in all measures of team sports and lawyering for these sports. She was also Executive Director of the NHL Foundation, looking forward to hearing from her.

Also, here with us is Baird Fogel from Morgan Lewis. Baird is a partner at Morgan Lewis in the Energy and Sports practice groups. He advises clients in the sports industry, including NFL and NBA teams and has great experience over this past year. And what we're going to tap into him and his experience advising the NFL, not only this past year, but going forward as we head into 2021 in the NFL which, hopefully, for all of us will look somewhat different than 2020.

Also, with us is Ingrid Petri. Ingrid is Associate Vice President NBA Global Marketing Partnerships, Business Development. She's previously worked for both Sports Illustrated, as we share that in common, and the NFL. Ingrid as a lot of you know, is also an alum of Villanova University, so go Cats!

And also, with us is Norman Wain, the General Counsel and Chief of Business Affairs at USA Track and Field. Wain oversees the USATF legal department, negotiates all contracts, manages corporate governance, handles the anti-doping matters overseas, litigation, and manages the

athlete representative program. Gentlemen, ladies, thanks for joining us.

Okay I'm going to start with asking sort of go around the horn. A year ago, we were into it already a couple weeks, so sort of take us through your sport, your league, in terms of where you were, what you had to do right away and how you managed to cope through the pandemic in this full year. What you've done and sort of your role inside assessing where to go what to do, how to work with local authorities, etc., and ultimately in some situations canceling or postponing. Let's start with Jess at National Lacrosse League and then we'll go from there.

Jessica Berman: Thanks, Andrew, and pleasure to be here with all of you and excited to learn from the others on this panel, as well, as we're all in this together and learning as we go and the unprecedented times. I was less than one year into my stint as the Deputy Commissioner of the NLL, with the league achieving massive growth and unprecedented metrics in terms of commercial success in the season last year when COVID shut us down. And unfortunately, we haven't returned to play, although we recently announced our return to play date for December 3rd. Things would – we have bigger problems than the NLL not playing if for any reason, we can't make that target – so fully anticipating being able to return.

In terms of sort of how we approached the stage that, in the circumstances we were faced with, we made decisions really as they were presented to us. It's not as if we said last March, "oh we're done until December of 2021." We processed and discussed and analyzed all the facts and circumstances as they unfolded. Ultimately, we actually came pretty close to executing a bubble this year. I would say we were about eighty percent baked in our strategy and plan, which I was leading internally at the league office. For any-

one who's been involved with something like that, I'm sure Ingrid has you, you know how much work it is to put those plans together so. Ultimately, the unique circumstances of our league, namely that our players, seventy percent of our players live in Canada and playing in the NLL is there a part time job, made it really challenging, particularly given the increasing restrictions in Canada so. The guidelines and the policy from Canada is as all of you may recall, back in February, when we were facing our go, no go date, increased and made it more challenging, not less challenging even though things were generally improving across the COVID landscape, made it such that we couldn't proceed.

But I would say, on the positive side, it's really been a silver lining of COVID for us to be able to innovate and learn how technology can help us to better engage and more engage our fans in a more sophisticated interactive way. We're launching into next year with really unlimited opportunity as it relates to embracing the very different landscape than when we shut down as it relates to sports betting and have used the last year to really redefine and reformulate our strategy as it relates to broadcast, media marketing, digital and it's been really exciting actually, although I can't wait to get back to playing.

I think sometimes and some might say I probably one of the few people who's lived through two full season work stoppages; although, I'm not sure this would count as a work stoppage in the traditional sense, but I was at involved with the NHL in 2004-2005. So, I've been through a shutdown, a full season shut down, twice now in my professional sports career, which is, I might be the only person in all of professional sports who can say that but. Both times, I would say, it was an opportunity to do a start-stop continue analysis for all of our investments to make sure

that everything that we're doing is strategic and laddering to short, medium, or long term ROI and really build relationships with our teams and make sure we understand the ins and outs of how to make them successful coming out of this. So, definitely a hard year, absolutely, but there's been some silver linings and I think we finally feel like there's some wind in our sails in terms of things beginning to achieve a new normal. I don't think we're ever going to return to what life was like before COVID. But I do think that, you know, sports will return and will achieve its new semblance of normal.

Andrew Brandt: Thanks so much, Jess. I think we're going to come back to that because that idea of a new normal is really kind of the name of our symposium. It's never going to be the same, even though people want to get back to where it was, we've learned that there's so many things. But as you said you found that silver lining to do a lot of things that you weren't able to do when things are moving at a big pace.

And you mentioned the word, so we're going to go to Ingrid. Bubble; so, this is the year of the bubble in sports and no bubble got more attention than the NBA at Disney. And we all focus our attention on those games and all these players coming in one space and what they had to do to even start playing and all the friction about even doing that. I know you weren't there and I know you were doing other things, but sort of take us through your world, a year ago and then through the summer.

Ingrid Petri: We've had a bubble, a "wubble" and we just completed "gubble," with the NBA G League. I give I give quite a bit of credit to our events, facilities, and player health teams. They've done such a remarkable job having all three bubbles complete with no positive COVID cases. It just struck me as a remarkable achievement. We definitely – we were clearly the first league to halt

play on March 11th a year ago, which really had a ripple effect, not just across sports but across all of life as we know it. So, just kudos to our Commissioner, Adam Silver, for really taking that stance.

Where I sit, I'm in a business development role, so my world also halted on March 11th, given who wants to answer the phone for a sponsorship opportunity to engage with the NBA when who knows what was going to happen with all of sports, not just the NBA. And for us, in the first, I would say the first few months it was just reaching out to people. I think, just across the board for any industry you're in, checking in to see how your friends and family are doing. A lot of people thought that it would just be a few weeks and then maybe a few months, and no one would again think that we're sitting a year out still dealing with a pandemic.

But to what Jessica was sharing, there's definitely a lot of silver linings, a lot of positive steps, that we've taken as a league with our partners to really engage with our communities to have a positive impact. To not look backwards but look forwards until what our future is and how are we embracing the technology that's at our fingertips. How are we innovating and improving our gameplay? How are we engaging with fans in new and authentic ways that have never been done before?

If you look at our bubble environment, we created a virtual fan experience through Microsoft Teams that had never been done before, and it was a key learning, I think, for all sports to how do we rethink with a game day presentation looks like. How are we incorporating our partners, when all of our roles have become upside down and how are they, and how are we engaging with our fans? So definitely, while it was a hard, I would say six months, now again the silver lining in it is there is so much opportunity.

Andrew Brandt: Ingrid, you mentioned it, and before we move on, I just want to sort of drill down a little bit on that March 11th because it's one of those moments kind of we all remember where we were certainly a sports fans, with the Rudy Gobert positive test. And Adam Silver decided to shut down the league, which kind of shut down sports the next couple of days and kind of shut down the country the next couple days. Maybe it's giving too much credit to the NBA and Adam Silver, but it seemed to have kind of a wow you know, once the NBA took this that seriously it really did have a ripple effect. So, maybe go back to a year ago, a year and two weeks ago, like what was happening in that office, and even if you remember that night, where you decided to cease operations.

Ingrid Petri: I personally can't say what was going on with our senior leadership team, the conversations that Adam was – I would imagine was having with ownership. For him, and what I know of his leadership is that he is decisive. He's not afraid to be a first mover, whether it's making a decision to halt gameplay, to suspend our season, or to support social justice issues or embrace new technology. I would say that Adam is – I don't want to say, the best, Commissioner, there are a lot of good Commissioners out there, but I'm very proud to work for him and work with my colleagues.

Andrew Brandt: Thanks so much. Baird, you've been advising the NFL last year and going forward. You know you and I have talked even before we came on about the timing issue. The NBA, I'm sorry the NFL was so lucky really, they can sit back and watch from March until whenever what the NLL was doing, what the NBA was doing, what these other leagues were doing and testing and tracing and everything else. You sort of had a front row seat into those decision making by Commis-

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sioner Goodell and others, so if you could share some of that.

Baird Fogel:

I'm sure and thank you for having me. Before I gotta get out of that I'm a numbers guy like Jeff and I want to just kind of share a little bit of the impact that COVID had on sports. I think people always talk about it, but they don't really understand the magnitude of it. In the first six months alone, sports lost about \$12.3 billion in revenue because of COVID. Over 1.3 million jobs were lost in sports. A lot of those jobs have been determined already that they're probably not coming back. A lot of what has happened because of COVID is teams and franchises and organizations that become more streamlined and more efficient and they've seen where they can save costs. So, it's been a huge, huge hit on the sports industry in the United States alone, not to mention globally. So, I want to make sure I understood where we have been navigating in the past year, everybody on this panel.

I've assisted clients in the NBA, NFL, professional golf, minor league baseball, big three basketball, and motor sports all on COVID related work the past year. As a lawyer, speaking to future lawyers, I assume in this discussion, it was a huge pivot by lawyers in the past year to quickly bone up on COVID skills and COVID knowledge and be able to help our clients who were drowning in a sea of this stuff, as you can probably imagine, with little to no time to prepare. Some of the work included, you know paycheck protection programs, essential business determinations to try to keep certain industries and franchises open. And it also related to consulting on reopening issues, from sanitizing with COVID kill type of applications, to establishing testing facilities and protocols on site, to even helping with sports betting license applications across the country. As everybody went online instead of in person, sports betting saw

its biggest year ever and once sports came back on more people were betting online than ever before, because the brick and mortar model was, at least last year, dead. And it looks like going forward, it's going to take a huge continuous hit as more people have gone online.

With respect to the NFL directly, Andrew, timing is everything, as we discussed. The NFL had just finished its season, when this all happened. Not to, not to say they were enjoying their advantage, but it was quite an advantage to sit back and watch the other sports, most of them were in the middle of their seasons when this occurred and learn from their mistakes and from their successes. From the bubble approach in the NBA to shortened seasons in Major League Baseball, to you know some of the capacity requirements and issues that that teams and leagues were facing.

I helped one franchise in particular from day one on this stuff and I thought it'd be interesting to share just a few of what some of the unknown measures that the NFL took and posed on the team, so they can have really the only full professional season that occurred in 2020 was the NFL. A testing trailer was set up at each NFL venue. Every person and executive and player that would go into the building that day had to be tested in the trailer and wait in the trailer for the results to come in, before being allowed in the building. There were capacity limits on every building in the NFL. Travel was insane for the NFL. They used to travel in huge caravans with lots of personnel. They were limited to just the players and kind of a skeleton crew of coaches and personnel to assist you know with the games. Despite having about a fifty percent reduction in who could travel, they had to have two times the buses, for example, because of seating requirements and social distancing. So instead of five buses, they

had ten with half the people on them. They had to charter larger planes and have seating plans that were approved by the NFL so that people would have their own rows and be more than six feet apart. The worst part for these folks, and I know the NBA players experienced this in the bubble down in Florida, they could have no outside contact and that included with family members. They weren't even allowed to leave the hotels, or the buses, or the planes, it was a very minimalist type of existence.

But the most I think impressive thing about what the NFL did is they made all the executives and players and personnel wear what they called contact tracing wristbands and you had to have these on at all times, if you took it off, you were done. And the contact tracing wristbands log every single contact any of these folks have with anybody else inside the building or during travel. They would blink read if they got less than six feet, apart from somebody. And what it really did is if somebody was exposed to COVID or had tested positive for COVID they could go back and log exactly who they came into contact with during that time period and alert those other folks and put them into the COVID protocols. You know the geolocation you know technology that came out of these wristbands, I think is going to have incredible applications going forward as we, you know as we start to reopen and try to get to some sort of sense of normalcy in all sports.

I don't want to occupy the time too much, Andrew. I've got some other thoughts on what the future is going to look like, particularly in the NFL, but I'll be quiet for now and turn it back over to you.

Andrew Brandt: Yeah, thanks Baird. I'm not sure everyone knows, again there's a lot of media over the past year about what the all these leagues went through in terms of operating through a pan-

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demic, but some of the things you mentioned are staggering to sort of think about you know, having many more expenses for many less people, all these things went through. You know, I think we'll talk a little more as we go about the financial impact of all this, and what comes back and what doesn't even with staff and personnel.

Baird Fogel: And one more number for you.

Andrew Brandt: Go ahead, one more number. (laughing)

Baird Fogel: \$93,000 lost a minute in 2020.

Andrew Brandt: For all of sports?

Baird Fogel: All sports in the United States, \$93,000 a minute.

Andrew Brandt: Wow. Okay, you just made the next minutes a lot of pressure here. \$93,000 on the line.

Norman, I do want to get to you. You know, this time last year, everyone – well not this time, but two weeks before this time – everyone in sports, us included, in team sports wherever, we're looking forward to July 2020 and Tokyo and USA track and field, being a big part of that. Obviously, things change quickly but talk about your organization as a whole, but also in terms of looking forward to Tokyo and when that decision came down and were you a part of it and how deflating it was for your athletes.

Norman Wain: Well, let me start by again thanking you guys for allowing me to participate on this panel, I really appreciate it. I think back to last year and just listening to what everybody's experiencing and the brotherhood and sisterhood that we have amongst the professionals that we're working and dealing with everything as it was happening. That feeling that you don't exactly know what the right answer is because the facts keep changing on a regular basis definitely keeps you up at night.

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So, for us, I'm thinking back, we were like a week or two removed from our marathon trial, so we had just had athletes that were starting to qualify for the games that summer. And we were gearing up for our outdoor season, which was going to culminate in the Olympic trials and then the games later that summer. And so, as some of the news started happening and municipalities and states started shutting down, right, our athletes were becoming very concerned because they are competing against other athletes from other countries that may or may not be having some of the same shutdowns and access to facilities and training. And in our sport and the Olympic movement, right, these athletes are training for this competition that happens once every four years and if they're not able to be successful in that competition, yes, they have world championships, but the Olympic Games, have a lot of influence and impact on their marketability.

So, athletes are starting to get psychologically and emotionally like concerned as they were beginning to fear that they would might be other advantages that were had in other countries and so our executive leadership started looking and talking directly with our constituents, with our stakeholders, with our athletes and getting a sense of understanding. And we were one of the first NGBs to reach out to the USOPC and say "hey, you know it might be time to say look we're not" – I mean, I remember at the time, everybody was like "well let's just see how this is going to go" and so we're saying "hmm we're not sure that our athletes are going to be fully ready and we're thinking that it might be time to postpone the games." So, that decision, obviously, you know, from the USOPC perspective impacts a lot of other different sports across the movement so it's a very complicated analysis in terms of what to do. And again, they're one entity amongst a lot of countries

that participate in the Games, and so there were a lot of pieces in play, as we were working through and trying to navigate those issues.

I'm not going to get into a lot of the details, but I'm sure everybody on this panel and presumably a lot of the folks listening can understand that when you're dealing with other countries and other sports that may have periods where you where you need to get qualifying times in order to either get to a trial, or the Games, and you're not able to have those events over an extended period of time, that presents problems. It presents problems, when for the Organizing Committee, because they have all of these facility setups and the Olympic Village that we hear about, where all the athletes kind of congregate in one area. It starts to present problems if they're going to postpone the Games. What is that going to look like in terms of the contractual arrangements that are made with the facilities locally? So, it just starts having a ripple effect of impact. And so, you're trying to do the best that you can, you're trying to talk to the right organizations and entities, trying to find the right solution, it was a couple of months before the IOC finally made the decision to postpone the Games. From a USATF perspective, we started going into you know looking at contracts, obviously, and trying to make sure what commitments and obligations we have to our partners and what our partners have to us and navigating that landscape and trying to get that cleaned up.

And then, trying to be proactive in terms of infrastructure and everything for this magical mystical date which we all talk about the day the world will open up again, right. So, trying to get a lot of plans in place for that. And then obviously now the contingency planning for the upcoming trials which are going to take place this summer here and all of the COVID proto-

cols that everybody else has dealt with only it's different because you know it'll be easier in one sense, because we're one country, one bubble, but as you start to take the team and move them into a different country, where a lot of the contact tracing issues will come into effect. How do we get athletes from the airport to the hotel and then the hotel to the facility? And try to do all the things that you can to minimize contact tracing because, again, I mean this isn't a you know, you can miss a day or two and go through the protocol and then come out, I mean, when you're dealing with games and these types of competition, I mean you're either there and competing or you're not.

Like I said, it's been it's been very challenging, and again, that's just at the highest elite level. Our organization you got to think of it almost as a pyramid, you've got the elite athletes almost at the top of the pyramid and then at the bottom of the pyramid, you have the millions of runners that compete in long distance running because our sport is long distance running, track and field, racewalking, and so there are different requirements and protocols in place for the long distance running events, right, as opposed to those inside a stadium in track and field, and so a lot of different layers to that analysis. Working with the sport science folks and the CDC and the WHO and trying to make sure you get the right guidance for these races, where the mist of a runner who's running how you know, does it is that enough to – the athlete coming behind them to potentially contract it? If you can't have everybody there can you have events where you compete virtually, which is a little bit of a challenge too, trying to get those events sanctioned and insured, where you don't have clear visibility over the entire track becomes or feel the competition, if you will, becomes a little bit challenging. So trying to like touch on a lot of the different areas there without going in too

deep, but I know that a lot of folks on this panel, who have a lot of interesting stories to share as well, so I'll dial it down.

Andrew Brandt: No, it's very interesting, very helpful. I mean, I think, where we are, is that we're sort of looking back at all the mountain of tasks that people had to overcome just even consider playing or not playing. People are asking about questions. Yeah, you can send questions and we'll look at them when we get time, but please understand we're not going to have time to get all your questions.

I want to start, so we have looked back now to maybe look ahead. And Jess, you said you're planning obviously for December start again and, obviously, if things aren't ready to start there, we got bigger problems, as you said. What are some of the things you're doing? What are some of the things you will you want to do protocol wise if you know we don't have mass vaccinations by then. Or, alternatively, are you planning that we will? And then, if each of you could also address the issue of vaccinations realistically, practically, politically all the things that go into that decision going forward. Jess.

Jessica Berman: So, my background in labor relations is really helpful here; maintained a really open line of communication with our union. We actually had a change in union leadership in the middle of the pandemic. So, two current players actually have taken over as president, vice president of our union and working with them has been fantastic. They took over on October 15th, so they definitely hit trial by fire in their onboarding to very big roles and big shoes to fill with the leadership that they replace, who had been in place for decades. So, I've spent a lot of my time with them and as it relates to the health and safety of our players and our business, from my perspective, it's always been about transparency and communication consistently. Not just to ask

for something, but also, listening to really ask a lot of questions and understand what stands in the way of us being able to get to where we need to go. And so, you know we will – we’re not scheduled to start till December 3rd, but we’ve already started the conversation. I raised it with the union last week. You know this question of, you know, let’s understand the landscape. Poll your players. Are there going to be players who refuse to be vaccinated because if so, we’re going to need to talk about it and figure out what that means in terms of business planning; because I think we all know that, at least current recommendations from medical professionals is that if we don’t – if every player is not vaccinated then we’re going to have to maintain COVID protocols and there’s costs associated with that.

And so, it’s in all of our best interest to work together on this. The players don’t want the leagues unnecessarily spending money on protocols that can be avoided through other means. But that being said, if there are real obstacles or barriers and people don’t want to take vaccine, that’s something we have to understand. And whether that can be addressed with education or conversations is an open question. And I know this is a lot of this is very front and center issue for a lot of leagues right now and it’s definitely a challenge, right, but you know I think the bottom line is it starts with a holistic understanding of the business and how expenses and costs on the overall P&L really impact the bottom line from our perspective. So, we all know, from a league standpoint, how much additional unanticipated costs COVID has brought to the operation of the business and even in our new normal and the post pandemic world there are going to be safety precautions in place that we never previously even contemplated.

You know I think it'll be more of a presence than the post 9/11 security measures that outlasted the 9/11 period, so we know that some of those protocols and policies and PPE will be here to stay. Many of the league's had infectious disease policies before. I know with the NHL I was personally responsible for maintaining that for the league. And there you know people don't really think about it in this way, but there were a lot of infectious disease issues that came across in the leagues over the past years and decades. So, it's not the first time that things like this have happened. There was a mumps outbreak in the NHL. There was SARS. There was the avian bird flu. There was all kinds of things that OSHA requirements, you know wearing masks and gloves like how you handle blood and pathogens when people are on the field, or on the ice, those are not new issues but there's obviously heightened sensitivity and I think that will remain. How much it sort of builds into our operations and the P&L from a cost standpoint, I think it's still an open question and whether players, and not just players really anyone who's around the field of play, need to be vaccinated in order to minimize the impact of those extra costs.

Andrew Brandt: So true and that really rings resonates home, because at the Packers where I was for ten years, we had a couple, you may have heard of this, MERSA outbreaks. So, we were quarantining, we were testing, we're bringing in specialists in hazmat suits, the whole thing you know back in the day.

Jessica Berman: Right, it just wasn't everyone and it didn't last twelve months.

Andrew Brandt: Right, it didn't shut down the world. Ingrid, you guys are in year two of playing through pandemic. This time non-bubble and so far, so good. I know you've had some hiccups, a lot of teams sort of haven't had their full rosters for

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some quite a while. But as we sit here today on March 23rd, it seems like stadiums are opening up a little bit. I know I talked to people that went to the first game in Philly where they allowed fans last week and it was like there were 50,000 but there were only 3,000. A real sense of hope around what's going on in the NBA, but you're facing the same challenges everyone else is and maybe a dress that "v" word we're starting to talk about.

Ingrid Petri: The word and?

Andrew Brandt: "V," vaccination.

Ingrid Petri: Thank you. I was like is there a new term within the legal world since I'm a non-lawyer. (laughing)

Adam has publicly come out and said that we won't require players be vaccinated. So, I don't work with them in our player health department so that's what I know so far. I do know that the NBA can help, hopefully in terms of – I wouldn't say necessarily promoting vaccinations but promoting the facts behind not just vaccinations but health as it stands. And also cleanliness, we just signed a partnership with Clorox; we're working with them on how are we making our facilities, environments, arenas safer for our fans.

Andrew Brandt: Obviously, as I mentioned you're not bubble this year. Is there any talk or thought to your knowledge about, you know, when you get to those most important games and postseason of doing some kind of bubble because of the ramifications of what could happen if an outbreak occurs on one of the top, you know the semifinalists or the NBA finals? Has that, is that a possibility, or you guys just plowing ahead we're going to do this in stadiums around the country.

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- Ingrid Petri:** I can't speak to that given it's not the department, group, or world that I currently live in at the NBA. I do know that our team across player health, facilities, events is very much looking down the road, risk planning, ensuring that we're able to complete our season and that the 2021-2022 season will hopefully start on time mid-October. That's definitely our goal is to get back to the regular game play and timing.
- Andrew Brandt:** Yeah and Ingrid, I forgot to mention last time and I would be remiss, I mean it was a watershed moment in sports, we have a panel Thursday night about social justice, what happened in the bubble in response to shooting in Wisconsin when the Milwaukee Bucks walked off. We're all the whole league was down, their players and coaches and they had that meeting. What I would have paid to be in that room to listen to what was being said. But it did seem kind of a watershed moment, like the beginning of the pandemic with the NBA kind of leading the way on such a big issue and LeBron and others leveraging owners towards making these arenas voting centers. I thought that was just a magical time for that issue.
- Ingrid Petri:** Definitely, and I have referenced our player health and facilities events, but I have left out on our NBA Players Association. We've worked hand in hand with them from the very beginning of COVID to develop protocols that we need to put in place to ensure that our players are playing within a safe environment. And not just for COVID, but then also to your point, for social justice issues. We care deeply about our players, our communities and Adam is very focused, along with the PA on doing what's right, making the right decisions. Both from an on-court perspective but off the court. So, what happened within the bubble, a lot of us weren't sure if our season would continue. We know how deeply affected our players were, our

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teams, but specifically the Milwaukee Bucks. But definitely was a pivotal moment within the NBA but then it enabled us and motivated us to even double down on what we were doing within the communities. And then really tipped off us working within our communities to open arenas for voting purposes to really ensure that everybody is represented within the vote and to make it a bipartisan issue. It wasn't red or blue issue; it was everybody should go out and vote and that was through collaboration with the PA. And our owners, they really got behind that as well.

Andrew Brandt: Really you know that was a watershed moment. Baird, you guys are entering – I'm saying you guys – in your advising of the NFL, we just talked about it, and here we are year two, again watching and waiting what happens. Like last year, the NFL full speed ahead on free agency, full speed ahead on getting ready for the draft. Looks like they're going to be some in person part of the draft, different than last year. And then getting ready for the season. As Jess and Ingrid talked about, talk about what you see as the relationship with the NFL and its union, which just got a ten-year CBA done last year, and of course, had to do mini CBA about financial for the pandemic here. What do you see going forward as they watch and wait for the next season?

Baird Fogel: Well, the goal as everyone will tell you, as everyone will not tell you, the goal on the inside is one hundred percent attendance in the fall. They are – again timing is everything and they have the luxury of sitting back and watching what the NBA is doing, what Major League Baseball is doing. Major League Baseball is considering about a twenty-five percent attendance this year and a full season, you know with outdoor home venues and no bubble. And so, there they have a luxury again of learning from everybody else's hard-learned lessons.

Obviously, as Ingrid alluded to, nothing can be done without a kind of a collective agreement with the players association. Nothing is going to be imposed on the players that isn't agreed to by the players association and the NFL has worked extremely closely with the players association during the pandemic. I know many of you probably noticed that at every NFL venue the first six rows were cordoned off, and that was a request by the NFL Players Association to keep a player safe because some venues had attendance and fans and they wanted to create a sort of a safety bubble between the fans in the field. And that was all for the players' benefit which the NFL gladly agreed to.

With respect to the vaccine that the same will go there. There has been a lot of discussion already between the players association and the owners with respect to vaccine requirements and how that's going to look. Again, they're going to learn a lot from what the other leagues do and how these seasons play out before the fall. But it is pretty noteworthy when you notice that, in all the public service announcements that we're seeing around the country right now from professional athletes, you won't find one on vaccinations. The jury is still out on vaccinations and the professional leagues and how this is going to look going forward. It's you know – the NBA has taken a stance, and I would I would imagine, most of the other major sports leagues will follow suit but you know, there will be some sort of compromise reached.

With respect to fans, I think it's going to literally be the price of admission for fans. You know it's not that you are forced to get the vaccine as a fan, but if you want to attend sports and try to return back to some sort of normal as a fan, you're probably going to have to get vaccinated. That's kind of where the balance is tilting right now, but who knows we're obviously we're on

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unchartered waters right now and a lot is going to be learned over the next two or three months.

Andrew Brandt: Yeah, I mean, Norman, you're at it again. Another year, but this time we're talking about an Olympics, an Olympics without foreign fans, and an Olympics that's going to be a lot different. As you prepare for this season, I know, things are opening up in your world too. I mean I go to my little triathlons are starting to appear on the calendar now, so I can see things are changing. Tell me going forward the way the way that you look at things and you talked about sprayed mist and are you going to require masks at events? Are you going to require any other protocols that we talked about last year going forward?

Norman Wain: Yeah, I mean I think, for us, I mean I kind of piggyback what Jessica was saying earlier about looking at the entire P&L outlook of how some of this stuff is going to impact the sport and what we do. And thinking things through in terms of how much protocols are in place as it pertains to access to athletes and how close you're getting to them on the field, and who has access to those areas now and who doesn't, and what protocols should or shouldn't be in place? Or how do you deal with athletes that, you know, may not be testing positive yet and where do you set them up around competition levels. And for us, I mean it's breaking down to you got to get them into the area prior to competition, so that they have to test negative before they leave their cities, and then they have to test negative and sit for a couple of days once they land in the venue for the competition, and then again some of the contact tracing that was mentioned earlier.

And just ensuring that you know we're doing things as best as we can to get them to and from competitions. It's like little things that people

normally might not think about like in our sport, where if you're busing athletes from the hotel to the facility, now you can't do it the way you would before where the bus would roll up, everybody would load in, and they go down to the track and start to warm up because you've got to limit the amount of people that are on the bus and a handle that six feet of social distancing. Then in the front and out the back, so that there isn't any going back on each other and like little things like that. But our sport science team has been doing a great job of working with the experts on the subject matter, like I said the CDC, the WHO. They have put forth guidance, so to answer your question, they have put forth like really detailed specific guidance in terms of the type of event and the risks associated with events, because, again, some of the distance running events, the risk would be less than they would a track and field event that is in a facility. Or when you're throwing objects, right, you know, what are the protocols for officials in retrieving them and athletes before handling them again, and you know things of that nature, so that you minimize a lot of the risks associated with that. All of the steps have cost to them and the way you work through that is kind of what we're working through.

And again, we're trying to be proactive at this thing, knowing that information is changing. So, it's almost like you've got plan one if it doesn't and then what that cost structure is going to look like; plan two, if suddenly the world opens up again and some of these protocols may not be as necessary; world two A, where they may not be as necessary, but it would be a best practice to kind of keep them on. And so again, the information is constantly changing; you can only do so much in terms of what you can anticipate because I'm sure everybody on this panel couldn't have anticipated the pandemic and the way that it did or we all would

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have written our force majeure clauses a little bit differently up until this day, right? And then all of a sudden last year hit and everybody's renegotiating force majeure clauses and making sure that you have better protections in place to address these kinds of things.

So, it's a work in progress. I can't sit here and definitively say it's X, Y or Z. What I could say is we're trying to be very methodical, very analytic in terms of planning for certain contingencies and then what the impact will have on the overall business of continuing our mission statement and promoting our sport and protecting the interests of the athletes and the fans. And so, it's a complicated process. There's a lot of factors, and again in our sport, where you have sponsors and volunteers and different governing bodies in the USOPC and the International Federation, which is World Athletics. So, all of these entities like intersect in certain different areas, and so you're trying to make sure that you're kind of threading that needle in terms of depending on the type of event and situation that you're dealing with.

Andrew Brandt: What I'd like to do is sort of a final question all the panelists about you know the overarching name of our symposium this week, the "New Normal." So, Jess, what is going to be the new normal, maybe you've touched on this a little bit, the new normal with the National Lacrosse League?

Jessica Berman: Yeah, I think it will hopefully keep a lot of the good characteristics and element that existed prior but increase access for fans from a technology standpoint. I think you'll see the sports business in general show up, hopefully, with more diversified revenue streams. I think COVID has exposed that for a lot of us, we were more of a live events business than any of us had really realized. Even the bigger leagues that have substantial media contracts had more sig-

nificant revenue vulnerability than I think they probably expected.

And so, I think there's a lot of discussions around how to be more prepared and be more diversified so that we're not solely reliant on being a live events business, which I think is a good thing for fans. It means that there will be more access points to be able to demonstrate your fandom, whether it's digitally or through gaming or gambling or social or digital. And I think there'll be continually innovating virtual experiences so that, for those who can't be in person, for any reason, they can still be excited to support their team. And I also think the way that content has evolved in the last twelve months will be here to stay. I often quote the NHL CMO, who came from Pandora, Heidi Browning. My first meeting with her, she said, "Humans over highlights." That that was her motto. And I think, certainly for leagues that have had either cancelled or truncated seasons, we've had to embrace humans over highlights, but I think a lot of that is here to stay as well. And a lot of leagues have realized the power of the behind the scenes stories to even greater degree than really anyone was doing previously, in that it really creates the dimension of the connectivity that builds your fan journey.

Andrew Brandt: I want to double-click a little bit on that "humans over highlights;" it's a great line. Do you mean more kind of the up close and personal get to know the players, social media, Instagram, all of the above?

Jessica Berman: Yeah, yes, which would be through the voice of the player. But also, for leagues and teams to use behind the scenes content and second screen experience to add dimension to the straight primary game experience. And if any of you have young kids who are old enough to have devices, even if you can get them to sit down and watch TV with you, which I actually

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for my kids to do, they have at least one other device in their hand. There's sometimes a third screen experience and oftentimes it augments the first screen experience. It's like they're following commentary on Twitter or they're following what their youtubers are saying, or I don't even know what they're doing. But I try to learn, because I realized that they are next generation of fans and I use my sample size of two to really understand that the street consumption of the game itself, even with what we would consider, at least my generation, to be a wholesome experience with a play-by-play and color commentary. Like that's enough for me, that's pretty much all I need to understand the full experience, but kids and Gen Z that is like not enough for them. They have sort of, they want many more inputs with lots of different dimensions. And some of it is like their personal, like athletes personal life, something that's like team history, like all these sort of secondary stories that you're seeing teams and leagues tell, in addition to athletes, I think, will be an expected part of what's presented to a fan. And they can sort of pick and choose what they how they want to consume it and what they want to consume and when.

Andrew Brandt: So true about the consumption. You know my sons look at that big thing on the wall that called a TV and they're like, why do you use that? You know, what's that for? You know, it's all different devices.

Ingrid, what is going to be the new normal? We, again, we touched on some of this, as we approach the NBA end of this year, going into next year, which you say you hope is a full complete season.

Ingrid Petri: Hopefully we'll have more fans in arenas first and foremost. To Baird's point, gate revenue is extremely critical to our teams and the league overall. But second to that and sharing is really

doing going deeper with virtual experiences with that digital second screen companion. A lot of our fans are younger and really engage with us across social media. I definitely see another area that will continue to grow is gaming, of both fantasy as well as sports betting. That's an area and which will only see growth as it gets legalized across various States. Another hot craze that's come about during COVID, is the whole idea of NFTs and blockchain and digital trading cards experiences. I'm sure a lot of people have heard about Top Shop, which launched last year, but all of a sudden over the last month has really become a very popular way to engage with our content. And then I would say probably what I think is the best movement has happened over COVID, it is a more diverse workforce across sports. Both on the leadership level, as well as just people coming out of universities, in the way that we go about recruiting who works for the NBA and other leagues and teams. I definitely see that is probably the most positive change that we've had over the last year.

Andrew Brandt: That's a good thing. It's definitely a good thing. Baird, what do you see the new normal going forward, for any of your clients NFL, NBA, etc.?

Baird Fogel: Well, as Ingrid said gate revenues is the game. We've got to get people back. Another number for you. . . Again, all praise to Jeff Moorad. For example, Major League Baseball loses about \$700,000 per game without fans. Do you have any idea of the magnitude of the revenue hit when you don't have fans? People get tied up in TV contracts and they focus on those, but a major part of the revenue comes from fans, obviously, being there and enjoying the game and so we've got to get back there.

There's some, obviously, some big negatives coming out of COVID and some big positives. At the NCAA level, I think you know there's a huge amount of loss. Many programs, a lot of

these folks can attest, are losing sports on a permanent basis, right now, from Stanford to Dartmouth to Cincinnati. You know, all the way down to the SEC schools. There are programs that are going to be permanently eliminated, men's and women's alike, from tennis to golf to swimming. Even football is being canceled at some of these schools, because the revenue hits have been so severe.

A lot of schools are starting to turn to partnerships with sports betting enterprises, as well, as that's become legal. As Ingrid alluded to there's a new revenue stream that's kind of coming out of that whole industry for universities and NCAA member institutions.

In the NFL, some good takeaways have come from this. The teams have learned a lot. I mean we, you know, I think everybody across the sports industry and everybody on this panel learn, we're probably a little more flexible than we thought we be. We weren't prepared for the unexpected, but people pivoted very hard and a lot of people learn that you can kind of get away with some things that maybe you didn't think you could get away with like streamlined personnel and less travel.

You know the NCAA, for example, is considering athletes being more remote learning than ever before, because it's easier to schedule. They can be more successful in school and it's obviously safer for folks. I think remote learning is going to be something that we're not going to soon do away with.

A number of other things that the NFL is also considering, there a lot of new jobs have been created because of COVID. There are, you know, protocol executives and whatnot that help manage all this. I'm sure it's the same in the NBA and the NHL. It's, you know, it's quite something to behold, all the jobs that have been

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created just to try to attack this and get fans back in the seats and keep players safe.

So, it's, you know, it's very interesting. It's a new world and we'll see how it unfolds, but the next three to four months are going to be very telling for a lot of sports, as everyone starts to learn people's comfort levels, what do the numbers look like nationally. Because again it's all about trying to get back to a sense of normalcy and we can we can't do that until the numbers say that we can; until the science has kind of proven that we can all go back to attend games and functioning normally.

Andrew Brandt: You know, if we've only if we could put a date on that. It would make things a lot easier.

Baird Fogel: If you know that day, you'll make a lot of money.

Andrew Brandt: Yeah, they're talking about sports betting, yeah. Norman, what's the new normal with USA Track and Field?

Norman Wain: Well, you know when you're batting cleanup behind like three all-star home run hitters here, there's not a lot of left on base here to pick up so. I think I think diversity and diversification, I think, is key. That was covered; whether it's its diversification of revenue, diversification of workforce, diversification of consumption, diversification and the ways that you engage athletes and fans and your different stakeholders. So, I think I think that is going to become the new normal.

The issue that was just brought up with regard to collegiate sports was kind of where I was going to go, because we have been trying to work with the NCAA and the various conferences to try to be front runners. Because with the absence of March Madness last year, it had a tremendous impact on the athletic budgets at the various universities. And so, we all know

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there's two really big revenue generating sports in college, and then there are the others. Within the movement, I mean, we're really worried about those things because we don't want to see those programs go away because it has a ripple effect both on interest and participation and competitiveness and lots of different things.

Again, it's something that we're trying to be proactive on to try to preserve the integrity of the sport in that regard and trying to continue to grow. I mean like we've got to be more innovative in the way that we present the product. I mean the sport product is a unique product, because the consumption is subjective, right? The textbook case of all of us going to a baseball game and it's a one-zero game late in the eighth and you know somebody is bored because there aren't any runs. Somebody is really impressed because wow these two pitchers are really dealing. The next person is just having a good time because we were able to get to the park without a hitch and the food is really good and it's a beautiful night, we're having a great conversation. So, the way that – and then the last person is on three devices and you know dealing with a lot of different social elements that, aside from just being at the game and so. I think it's unique, I think it presents a lot of challenges, and I think we're going to continue working on ways to be innovative and diversify. And I think that's kind of been the push coming out of this, is for all the organizations and the properties to figure out how they're going to grow their sport in light of this type of changing environment.

Andrew Brandt: That's great. I mean a lot of silver linings coming out of a rough year and a lot of positivity looking forward, I think, from all you guys and ways that we can like you said diversify and get better. We'll leave it at that. Time flies when you're having fun. Jessica Berman, Ingrid Petri, Baird Fogel, Norman Wain, thank you so much

for being part of our Moorad Symposium first night: the COVID effect on sports. Great informative, entertaining stuff.

Panel 2

Name, Image, Likeness & the Amateur Athlete

Moderator: Andrew Brandt

Panelists: Marc Edelman, Malcolm G. Grace, Dionne L. Koller, Blake Lawrence, Vince Nicasro

The Name, Image, Likeness, & the Amateur Athlete panel examined the proposed legislation and upcoming changes within the NCAA. This panel addressed the changing perception of student-athlete rights and the movement that has led to where we are now. The global pandemic somewhat paused discussion and implementation of state laws related to NIL; however, the topic is still incredibly prevalent in the amateur sports sphere today. The panel discussed how the NCAA can maintain its standards of amateurism and the collegiate model in a NIL world. Panelists included Marc Edelman, Professor of Law, Baruch College Zicklin School of Business & Attorney at Edelman Law; Malcolm G. Grace, Assistant Athletic Director for Compliance (Basketball) at Villanova University; Dionne L. Koller, Associate Dean for Academic Affairs, Professor at Law & Dean of the Center for Sport and the Law at the University of Baltimore; Blake Lawrence, Co-Founder & CEO of OpenDorse; Vince Nicasro, Deputy Commissioner & Chief Operating Officer of the Big East Conference.

Jeffrey Moorad: Good evening. I'm Jeff Moorad, Chairman of the Moorad Center here at Villanova Law School and I thank you for Zoom-ing in tonight and look forward to a second evening of fun and information at the annual symposium that the Moorad Center holds.

It's hard to believe that it was ten years ago that Dean John Gotanda and I began talking about the idea of creating a sports law center at Villanova University School of Law. You know, piece by piece as those discussions progressed, we came up with the idea of a sports law journal that students could be involved with, and also an annual symposium. So, I'm proud to say that

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this symposium now represents, I think, nine years, as we look back. Many, many terrific memories over the years of great panelists and great areas that that we focused on behalf of students, as well as practicing lawyers that attend.

So, I welcome you tonight we're excited to be able to put on the second evening in a three-evening trifecta of the symposium digitally, of course. I'm proud to be here albeit from California virtually, but nonetheless with you in in spirit. We're looking forward to a great panel tonight focused on Name, Image, Likeness and the NCAA and college athletics; how the focus on NIL by the colleges and university systems in the country really impacts us college sports going forward. So, it should be a terrific panel moderated by Andrew Brandt, our Executive Director and I'm looking forward to listening.

But separate from that, I also wanted to thank our sponsor Morgan Lewis and Bockius, a firm that I'm affiliated with. I chair their Global Sports Practice and quite proud of the fact that the firm is involved now for the third year as a sponsor of this program. So, thank you Morgan Lewis. A couple of our partners from the firm are participating in these evening programs over the next couple days. None tonight, tonight won't have a Morgan Lewis rep but for me.

So, as I do in every other year it's my honor to toss to our Executive Director, Andrew Brandt. It seems like only yesterday that we reached out to him, almost ten years ago, and asked if he'd ever consider leaving Wharton and coming out to Villanova to lead our efforts around building a sports law center that could provide meaningful education, not only to our students but to lawyers and practitioners in sports around the country and around the world. The good news is he said yes, and we're thrilled to have an industry veteran like Andrew lead our program.

So, with no further ado, please welcome Andrew Brandt. Thank you.

Andrew Brandt: Welcome to everyone and our panelists can turn on their video and audio as well so I'm going to bring them in a second. But welcome to all of you that are attending. It's so exciting to have you here for our second of a three-night symposium at the Moorad Center. Obviously, it's usually – we do it in the Commons in the big building at Villanova Law, but this year it's obviously different. But what an exciting time to be talking about this name, image, and likeness is the issue in college athletics, and you can make the argument in all of athletics, and sport, the business and legal issues of sports for the year. We're so excited to be able to talk about it with people that are experts in the field. I want to have everyone listen to these people. We're going to take questions and answers and answer when we can, but there's so much information about this.

It is you know, since COVID took effect, it was, and you could argue still is the issue to be talked about with student athletes' rights. And here we are in the middle, smack dab in the middle of March Madness – Go Wildcats – and we will have our Wildcat representatives here on the panel. So, without further ado, we will get to the panel and once again I would as Jeff did thank our sponsor, Morgan Lewis, for sponsoring this event and, of course, all of you that are attending, including a lot of students from both Villanova and classes of our panelists.

So, let's introduce our panel. I'll go alphabetically, first of all, Professor Marc Edelman. Marc is a friend. Marc has been repeat offender to the Moorad Symposium. He's a Professor of Law school at Zicklin School of Business Baruch College; also, an adjunct professor at Fordham, where students are now attending. Welcome to those students. Marc writes and teaches on

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sports law, antitrust law, intellectual property, gaming, fantasy sports. A true expert in the field; and he does legal consulting on his own with Edelman Law. Marc, welcome.

Also, with us, we'll go alphabetically again, is Malcolm Grace. Malcolm is our Assistant Athletic Director for Compliance and basketball here at Villanova. What an asset he has been for us, coming from a background of lobbying in Washington, D.C. He handles all the compliance issues for men's and women's basketball and the athletic compliance office. He's taken my students as interns, who are thrilled to be working for him. And he is someone, that is hands on with our signature team at Villanova, the basketball team now in the middle of getting ready for its game against Baylor on Saturday. So, welcome Malcolm.

Malcolm Grace: Thank you very much, Andrew.

Andrew Brandt: Also, with us, Professor Dionne Koller, Professor of Law, Director of the Center for Sport and Law at the University of Baltimore School of Law. Koller's scholarly only focus is Olympic and amateur sports law. She's a frequent media commentator and very well known in this area. We really wanted to have her on the panel once we saw her testifying in the halls of Senate about this very issue this past summer, which will ask her about. Welcome, Dionne.

Blake Lawrence is the CEO of OpenDorse and for those who follow the world of social media, you know his name well. He has taken advantage of this NIL opportunity, which is again not yet official, but is getting ready to implement it across many universities, which we'll talk about. Something he's done for many years on the pro side and about to implemented on the college side; no one better in the world of social media activation and Blake Lawrence of OpenDorse. Welcome, Blake.

Blake Lawrence: Thank you all.

Andrew Brandt: And, of course, last but not least, Vince Nicastro, who was the Athletic Director at Villanova for many years, hiring Jay Wright, among others, and moved to a more august position of helping me with the Moorad Center for a year. Before he was tapped by Commissioner Val Ackerman of the Big East and has been since the Deputy Commissioner of the Big East. We appreciate him joining us in this extremely busy time with couple Big East teams still alive in the tournament. Welcome, Vince.

Vince Nicastro: Thanks, Andrew.

Andrew Brandt: And we'll start, as we started, Marc, I want to start with you. Just to sort of give all our viewers and listeners and the panel sort of a backdrop on where we are on the legal front. Name, image, and likeness has been out there, while we thought you and I, and everyone here, that we'd been talking about it being activated and implemented – I'm sure Blake really thought that – by now in March of 2021. But I'm simplifying here, I want you to expound on it, the issues of COVID and, of course, the *Alston* case coming up here have seemed to delay implementation from the NCAA side. But maybe a legal landscape of where we are and I'll also follow up with Dionne on this, in terms of as we sit here today in late March of 2021, still pandemic world that we're in, where are we with name image likeness rights for student athletes?

Marc Edelman: Well Andrew, first, thank you for having me pleasure to be here. You know the name, image, and likeness issue has been a long time coming. For those of you who are listening who are in law school, I wrote my law school note on anti-trust issues with name image and likeness and I wrote that in 2002. And when I wrote that I had plenty of other people who I cited, so I was far from the first. So, it took a very long period of

time from when the idea first came into prominence, at least in academia to where we are today.

The first, very big step took place in the summer of 2019 and what happened at that point with Nancy Skinner, who is a state senator in California, who's based out of Berkeley, proposed a bill that would have for the first time required any school public or private within the state of California to allow their college athletes to monetize their name, image, and likeness for licensing to third parties. Which, in one way this bill did nothing at all, because California already granted each individual within the State the right to the name, image, and likeness but where it did seem to do a great deal, was it created innate conflict between California state rule, which required every college, public or private, to allow athletes to make money off the name, image, and likeness and the private NCAA trade association rule that says no college may allow. Now, this is not a legal conflict. This isn't a matter of preemption between state law and federal law. This is state law versus a private association, which has to follow state and federal law.

At the last minute before the bill was passed, an amendment was put on to the California bill to delay the date it would take effect until 2023, which was intended as a way to try to allow the NCAA dragging and kicking its feet, to come to their own resolution to allow this rather than being compelled to have some states doing some that didn't. And I had the pleasure of testifying on behalf of that bill at the California state legislature.

Well, what happened was almost as soon as the California bill passed, a number of other states said, "Oh no, we might not be in the best position to compete for athletes because there'll be an advantage to go into California." The ath-

letes in California will have a right that athletes in other states didn't.

So, all these other states that had done nothing, that had dragged their feet for close to twenty years, once they saw a California move, began to move as quickly as they can to get bills of their own. And Florida is interesting because the California bill was Democrat proposed – the Florida bill was primarily coming from Republicans, passed a very similar bill to allow college athletes to control their name, image, and likeness, but it did not have the four-year delay. So, my understanding is it's January 1, 2022 the Florida bill will go into effect. California has since expedited theirs to the same point in time, and there are a number of other state bills that are percolating that will do the same.

So now there is kind of this race going on because the NCAA purports we can't allow some state colleges to have it, but other states college is not to. And the easy thing for the NCAA to do, morally and legally, would be just deregulated, but what they want is standardization. so, there is now this race prior to January 1, 2022 to try to get some form of a federal bill in place to determine on a national level certain rights for college athletes to control their name, image, and likeness. Even if that's passed, it's not clear that that would preempt state law, but what we see going on are a whole lot of proposals on the federal level to now create a bill, and all of this is generated out of Nancy Skinner in California.

Andrew Brandt: Let me follow up, real quick, on that you said that came out of the Republican side in Florida and the Democratic side in California. We've seen bills, and we'll talk to Dionne about the federal side, all manners of the aisle I mean all sides of the aisle so is this – this is obviously a very politically popular topic, correct? We're seeing senators, congressmen from all walks of liberal, conservative, etc. get behind NIL. Is that

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simply because college athletes, the feeling is that that's going to be politically popular?

Marc Edelman: I think it's more than politically popular, but I think the underlying notions and support of this are really deep. This is one of the rare cases where traditional Democratic notions of equity and traditional Republican notions of equity align. It's very easy to see why Nancy Skinner, who's a Democrat from Berkeley, who's a Democrat probably in one of the most liberal districts out there, would support this. We're talking about 1200 member colleges, who are coming together in a way, which are making the wealthy wealthier and arguably exploiting the low-income athletes, who are making all this money for their school and don't have the opportunity to profit off of this and we can understand it very much from the left point of view. But if you look at it from the right leaning point of view as well, and if you think about the traditional doctrines of conservatism, libertarian free markets are right at the front of us. And if you look at the restraint these 1200 member colleges, who are coming together or restraining trade.

Now if you're a capitalist and you believe in traditional capitalism, the one truth check on capitalism is antitrust law. Antitrust law is not anti-capitalism, even though there are a few Congress people have presented it that way. Antitrust law is the way that makes sure that capitalism works. And when you have these 1200 colleges coming together saying, "not only will we not compensate your athletes, but you won't either," that really is an affront on the notion of capitalism and entrepreneurial spirit. I think that identifies – I think a lot of people on the Republican side or the right leaning side identify at least with that component of the issue.

Andrew Brandt: Dionne, let's switch to the federal side. And as I've mentioned earlier on you're calling card

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here, you were able to testify in front of Congress on one of these federal bills talk about that, if you would.

Dionne Koller: Well, I thought the experience of testifying was really interesting. First of all, what I was really impressed with was I think members of Congress want to get this right. I think they were really, really interested in the issues. Sports is always interesting to policymakers. But I think the need to educate was quite clear. I think the average member of Congress doesn't really understand where the market is, for instance on NIL rights.

You know it's not the car dealership anymore, I think, I said that in my testimony. You know that's our that's our typical sort of starting point, is well isn't it the star football player in the car dealership? And, you know, no it's a volleyball player and a YouTube video. So, you know, a lot of it was sort of educating on where we are today what the issues are.

But one thing that was really important for me, and I thought at least some members of the Senate were receptive, is putting the NIL issue in context. I think it's something we don't do in sports very often, which is look at these issues and connect them to the bigger picture, and I think that was really, really important as well.

Andrew Brandt: And you had to do a lot of educating just about what NIL is?

Dionne Koller: Yeah, I mean, I think there were a couple things. I think there were a lot of misconceptions about Title IX. Title IX doesn't apply to third parties, and so this sort of Title IX red herring in the room. There's a you know a lot of work to do on that issue and sort of educating, you know, members of Congress on that. But also educating members of Congress, and again I think they took it seriously and were very interested, which is this is, this is about much more

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than just the three or five star players, this is about everybody, because you can monetize this. Again, you know, we're not just talking about the quarterback here. We're talking about male athletes, female athletes, we're talking about non-revenue sports athletes, and so I think that kind of backfilling was really important to the conversation.

Andrew Brandt: Blake, I saw you perk up a little bit when you said it's not about the car dealer. It's about so much more in YouTube. Talk about some of the things you're doing and the monetization opportunities beyond the star football or basketball player your mind.

Blake Lawrence: Yeah, so OpenDorse, our company, we provide technology to the athlete endorsement industry. Our first partnership was with the NFLPA back in 2013. And we provided the technology that helps athletes monetize their online name, image, and likeness rights. Right, so getting paid to tweet, post on Instagram. We are the backbone of that for the NFLPA, MLBPA NHLPA, all that right.

So, I was pulling numbers, this is Villanova let's talk about that. So, the top twenty-five most valuable athletes on campus, thirteen of them are not men's basketball players. Now I know one way to look at that twelve of them are okay, that's a simple way. Right now, Gillespie, right, on the basketball team he's got, just on social media getting paid his value on getting paid to tweet, getting paid to post on Instagram, is about \$90,000 a year. So that is just like, if you take his metrics compare them to an NBA player and over the historical transaction data, we have over the last ten years, he's estimated to earn about \$90,000 a year just posting on social media. Think of it like a Zillow "zestimate", or you know you want to know your home's value worth like we're just doing that same thing for athletes using social media data. So that's Gilles-

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pie; but then athlete number seven on campus is Stelios Kroudis. Do you guys who that is? I don't know how to say his name correctly. If anyone from this call can name what sport. . .

Andrew Brandt: Malcolm, you know he's talking about?

Malcolm Grace: I'm going to guess men's soccer.

Blake Lawrence: Men's lacrosse. \$20,000 a year, okay? So Stelious is sitting here and he's got an audience of about 16,000 on Instagram, highly, highly engaged. More engaged audience than the nearly any other student athlete on campus okay? And so that's the sneaky stuff, right? It is the fact that every athlete, of course men's basketball across every campus in America, those athletes have a built-in audience to just how it works. Right, but the fact is athlete number seven isn't a basketball player, he's a men's lacrosse player. He's a sophomore, you know, on the men's lacrosse team that has \$20,000 in earning potential right now and just through social media. So, it's not the it's not your grandpa's endorsements right, this is a different era for athletes.

Andrew Brandt: So Blake, you're armed and ready to go right? And this delay or whatever reason, is just putting you on hold longer in terms of you've contracted with different schools. Talk about how you're locked and loaded.

Blake Lawrence: Yeah, so OpenDorse, the very first project introduced was this OpenDorse deals, which is a monetization engine helping athletes make money. And then we introduced for the NFLPA this OpenDorse monitor, which tracks who's getting paid by who, and you know the group licensing agreements and media rights agreements, all that. But then we just recently introduced NIL education products, so this is really about helping athletes prepare for this. Right, to take these estimates and understand how to improve their value. And so, no matter when the rules going effect, Andrew, we feel confi-

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dent that we can help institutions provide value to the student athletes and say, “Hey, no matter what, if you can get paid in 2021 or 2022 or what types of deals, you can get, how you represent yourself in the world matters.” And so, we’re going to start to invest in providing resources to student athletes to do that. I think that’s the byproduct of NIL that not many people talk about is that there’s a deep investment in student athlete development and their personal brand and life skills that most of the time was put to the side. Your resumes used to be the only thing you walked out of college with, right, and now it’s going to be your entire online persona and every student I think can win in that era.

Andrew Brandt: I want to bring in Vince. Vince, you and I’ve talked about this for a long time and you’ve come through this as an athletic director, as an instructor on this issue now and, of course, running the Big East. Do you see this as kind of a natural evolution for student athletes over the twenty plus years, thirty years, you’ve been involved here or is this coming as any kind of surprised, like what Blake’s talking about right now?

Vince Nicastro: I think it is a natural evolution, Andrew. I don’t go back as far as 2002 like Marc does on this issue, but certainly over seven, eight, ten years this has been an issue that’s been out there on the horizon and has picked up momentum obviously over the last four or five years. And some ways, if you go back to my class five or six years ago, the feeling was this was inevitable, right, that at some point student athletes will be permitted to benefit from their name image and likeness and philosophically probably should. And you know I’ve had the good fortune of being side by side with Val Ackerman, our Commissioner, who co-chaired the NCAA’s NIL working group for a period of about eighteen

months and was getting access to information and the discussions. And you know, I think where they ended up philosophically was that, again, this is it right that student athletes, like other students should be able to benefit from.

And then I think the struggle was then you know how do we handle the practical issues that come along with this? And Malcolm's on the front line there, related to the implementation and then appropriate regulation. And I think there are the issues that still need to be resolved, and I think were on the doorstep of being resolved until the brakes were put on this in January.

Andrew Brandt: But let me pick up on that, Vince, the breaks being put on it, are you in a holding pattern waiting for, in your mind, the COVID to resolve, the *Alston* case to be heard and potentially decided? Or when you're getting information from the NCAA, is it more just hold on guys the other things have to happen and then what do you hear about the state bills affecting your schools in different states?

Vince Nicastro: I think all those things are happening simultaneously. I think the expectation is that name, image, and likeness is coming, whether it's coming through the various state patchwork of state laws where it's going to be forced, which may not be the best scenario, or through NCAA legislation. So that work continues on how to put together, again, and appropriate framework that protects not only the students but also the enterprise. And I'm sure there'll be some debate about you know what's the sweet spot for that type of regulation. But that work continues with the hope that once the coast is clear and some of these other undetermined issues are clarified, that I think it will be a relatively quick turnaround to for the association to have NIL. And I'm sure Malcolm can weigh in, and you know our campuses are preparing for the day

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when it becomes either illegal or permissible through NCAA legislation right, one way or the other, to be ready to put their student athletes and their programs in the best position possible.

Andrew Brandt: Yeah Malcolm, you are and are going to be on the front lines of this. And on the one hand, as Vince said, you're trying to assist and help and frankly help monetize these twelve athletes or thirteen athletes, among others, on the other hand, you're going to be monitoring those guardrails, as you're the compliance guy. So, I'm not going to ask, I guess, if it is an awe-inspiring thought to you? Or how do you look at it, you know if and when we know when that day comes, whenever that day is?

Malcolm Grace: It's an interesting issue, because I think as compliance professionals and athletic departments, we have to look at it in one way that's a traditional way of looking at it and in a second way this kind of new. The traditional way is theoretically there's going to be new NCAA legislation. There's going to be a new section in the NCAA manual that applies to name, image, and likeness rights. And as we do with any other vision of the manual, we are required to know those rules. We are required to educate every constituency that we work with our student athletes, our coaches, our boosters, administrative staff, everyone on what they can and cannot do in that space.

And then typically what is also part of our job is some of the paperwork or whatever, or the administrative requirements that are part of it. But one of the additional things that we know we're going to have to do as an institution is to try to figure out how we can best benefit and compete against our peers in this space. As we do in regular competition, this is still going to be an area where we know it's going to be Villanova versus our Big East competitors and national competitor to make sure we're doing

this better than they are. So, there's language in the proposals that we have been focusing on, and that's that the difference between what is institutional assistance versus institutional involvement and that kind of line that we have to sort of toe very closely. We can't help our students develop a business. We can't, you know, reserve space within our athletic department for them to come up with a business idea, but there are certain ways that we can provide them with the assistance, education on rules, maybe help with taxes. Making sure that we're vetting agents, things like that that we've historically done in some areas, but we haven't done in other places. But at the same time, our coaches, have always had an interest in making sure that our student athletes have the best opportunities possible and the best experience while they're at Villanova so, you know, we're going to want to help them succeed with everything they do in the name, image, and likeness space as much as we can.

The social media piece, I think, is to me personally, and I think for all of us across the compliance space is a game changer because pretty much every student athlete is active on social media. It can be far less time consuming than trying to build a whole new business and there may be ways that every single student athlete can monetize themselves on social media.

One that's always been intriguing for me is use of institutional facilities in the past, student athletes, have not been able to run their own camps and use their name, image, and likeness to promote their camp. They haven't been able to use their name, image, and likeness to promote their teaching fee for lessons to student athletes, but now you can do that. You'll be able to use institutional facilities, provided they're made accessible to student athletes, in the same way that they're made accessible to a regular stu-

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dent. So, do we as Villanova want to open up our soccer field, our football field, our basketball courts, for our student athletes, maybe there's legal ramifications for that, but are we going to want to do that if our peers are doing it? I would say, probably so but we might there might be different opinions on that. So, there's a new line that we're going to have to draw as compliance professionals of traditional rules, education, and rules compliance with also trying to make sure that we're helping our student athletes and our programs as much as we can.

Andrew Brandt: It's really interesting because you mentioned the competitive aspect of this. I remember you and I meeting with our coaches back in the early fall and they're saying "it's out there, you know, it's out there. Other schools are talking to the same recruits we're talking to and it's out there." I said, "what's out there?" "NIL it's out there." Well it's not in place to at least January. Well it's out there.

So, I think this is the reality that every major program is dealing with in the major sports and maybe minor sports as well. I guess, I want to ask Dionne and Marc this sort of obvious question: would the NCAA be doing this in your opinion but for legislation and litigation that have come in the past couple of years?

Marc Edelman: I have an opinion, but Dionne if you'd like to go first by all means.

Dionne Koller: Well, I think, to me it wasn't a surprise, of course, that they were saying they were going to do something sort of hoping, you know back in the past when the work groups and all this started. You know let's see if we can keep Congress at bay. That's been for decades; that's kind of any approach that the NCAA's taken. We're working on it, you can defer to us, we're okay. Then, obviously, when the states started to get involved, and they realized they needed Con-

gress's help, then they sort of you know pivoted to asking for a federal solution. But it really wasn't a surprise to me in January with *Alston* pending, it would be – I mean, first of all, they want to play the long game and see if they can get an antitrust exemption out of the Supreme Court. They want to see if they can get the federal legislation for sure. But I think it hurts their chances in the Supreme Court, if you read their briefs and the amicus briefs and support, the heart of their cases is that there's this sort of God-given, immutable, sacred amateurism definition that must be respected by the Court, so much so that we need to throw out the Sherman Act, essentially.

And if you, you know, months before the argument, if you go and change that definition once again to sort of give NIL rights to athletes, you've just undercut your argument. So, I think you know, for all those reasons, it's not surprising that they're waiting. And I think they also saw once policymakers we're getting interested in NIL, this was a way for the NCAA to get the biggest goodie of all, which is okay, we'll play ball on this give us an antitrust exemption too. And so, I think it's not surprising they've you know they're maximizing all of their chances in various fora.

Marc Edelman: Andrew, your question, if I remember correctly, was if not for litigation, would the NCAA be doing anything. Short answer, no they wouldn't. I've been watching the NCAA – well, first, I'm sorry I shouldn't be talking about the NCAA. I'm trying to move away from using the words NCAA, because when people listen to the NCAA it sounds like it's this association that operates on its own, with this circular blue and white logo and somehow, they're the whole thing. The reality is the NCAA is not Mark Emmert sitting in an office in Indianapolis with this blue and white logo. The NCAA is composed of a

number of member schools and at the Division One level, at the highest level, we're looking at somewhere in the neighborhood of one hundred to two hundred schools. And it's a bottom up trade association, so these schools vote on the policy. It's an easy cop-out for the presidents and board of trustees at every school to say look it's the NCAA, look it's Mark Emmert with the blue logo.

But this is what the college presidents of voting on, which is maintaining the status quo. And at the end of the day, I mean they could talk competitive balance, they could talk Title IX as Dionne said, and we know how that's a red herring. At the end of the day, the colleges want to maximize their own revenue and athletic directors and coaches want to maximize their own revenue. And they're generally afraid of anything that will take away from maximizing their own revenue.

Now, if we look over the past twenty years, about times in which there's been reform in this NCAA trade association, it's never come from the college president saying we want to do this, this is the right thing to do. There are two types of situations that push towards this reform that we really need. One is litigation. We've seen it with *O'Bannon* pushing reform. We've seen it with the earlier antitrust case, involving them scholarships for many years back requiring reform. So legal threats are definitely pushing for reform.

The second thing that has pushed for reform is media embarrassment. And the example and media embarrassment, I give is the NCAA for as long as I've been alive have had a rule that I think most of us would consider utterly ridiculous. In their effort of controlling the amount of money that can be spent on college athletes they used to have a rule limiting college athletes' food, right down to the point that they

could have bagels but not cream cheese. Now that rule got overturn essentially overnight, when after UConn won a big game in the NCAA tournament, they asked Shabazz Napier how he felt after for the win and he said, “many of my teammates go to bed hungry.”

Now I wish it wasn't the case, I mean college presidents around the country when they're talking about other businesses talk very woke. And when they talk about business ethics in their classes, they talk about the need for reform. But when you put all of these colleges together and all these college presidents together in a room and they're able to hide behind Mark Emmert and hide behind this blue circular logo with the words NCAA on it, they're not following their own mission. It's taking lawsuits and it's taking PR embarrassments to get this change. At least that's what I see from my personal experience.

Andrew Brandt: Okay, thanks Marc. Vince, you serve some of those college presidents and have heard this criticism out there. And you know, we talked about the natural evolution and the guardrails and I think we talked with Val Ackerman about “hey this is moving forward as much as people say we're stuck in the mud.” So, if you could respond to that in terms of how you see this in serving the presidents that Marc just talked about and whether this is a change that should be, if not applauded, but at least recognized.

Vince Nicastro: Yeah, I think that sometimes the NCAA gets caught in, you know, it's just by its very nature, a slow-moving organization right. If you left to its own devices and its own governance structure to get something even very simple and logical done can take a lot of time and effort. I think it's just by its very nature. So, when you throw it really complicated issue, like name, image, and likeness or transfer rules or some other things, you know, I think it just takes time for all the –

and the diverse constituent group right, I mean. The those at the top of the food chain might have a much different perspective than those at the bottom and those in between.

So, I think, by its very nature it's a very slow moving, not very nimble. And I don't think there's some grand conspiracy here that is saying we don't want to spend any more money than we have to. The issue that Marc brought up about food, I chalked that up to just getting into the bureaucratic vortex of the NCAA. We had a lot of, and no offense Malcolm, I think we had a lot of compliance-focused legislative types trying to manage, how are we going to manage these meals for students. And it wasn't a cost saving issue, it wasn't trying to pocket more money for the rest of the enterprise, I think they just got into this vortex of how can we make this fair and we started legislating things and over legislative things. It sometimes does take an event or someone to step back and say, "Really? We legislated cream cheese on the bagel?" Like that's crazy, but sometimes you know that momentum goes, and it doesn't seem to be an important thing at the time, and then it blows up.

So, I don't know if I was coherent there or answered your question right but, but I do think just and sometimes it's just very slow moving. And it needs, deservedly so, some influence to move things along and I think NIL is one of those things. I mean it's been on the radar for a long time. I think there are a lot of folks and leaders in college sports who understand that it's something that was relatively inevitable, but it was just going to take some time to get you know the critical mass behind it. And then, importantly, to figure out the implementation piece, which is still not refined yet and I'm not sure it will be until. I think it's going to be an iterative process that once NIL is passed, there will be some regulatory framework. And then, as

you go through a cycle or two, you're going to figure oh, we need to recalibrate one way or another to make sure that we're in a sweet spot from a regulation standpoint.

Andrew Brandt: Let me follow up with you, Blake. When you have talked to ADs around the country, and you talked to us at Villanova, when you talk to ADs, presidents, senior/association athletic directors, what's the universal reaction to this? Like, hey Blake, save us. You know is it more tell us what to do, we don't know, or is it is it a fear that this is upon us?

Blake Lawrence: There's two things that are very noticeable when you talk to athletic directors and leaders in athletics that are looking at it. The first one is a feeling like someone else built a weight room, do we need a weight room? Right? Because there's there was a moment in athletics, where everyone's like and – guys, I played football at Nebraska so I got to brag up my Huskers even though you could all beat us right now. We're working on it. But Nebraska started whooping everyone's tail in football back in the '70s and everyone said what do they have that we don't? They had a weight room; they had a strength program. So, there's this feeling like we just have to have something. We have to have a weight room; I don't care what weights are in it. Because if we don't have it and they do we lose. Okay, because in an instant a weight room became the number one factor in recruiting. That's the first thing we see is that NIL is a leading factor in recruiting. If you don't have a partner or a solution for NIL, you lose.

Okay, the second one is the compliance burden. Like Malcolm, I feel for you. Right, because I will tell you the most sophisticated name, image, and likeness organization on the planet is the NFL Players Association. They've got people that work all day, day and night, to review contracts, agreements, group licensing agreements,

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group licensing rights, right, and they've got two thousand athletes. Okay, that's the most sophisticated on the planet. Most players associations, to go the next one, the NBA has 450 players. Malcolm, you have more student athletes to worry about at Villanova than the NBPA has, and you can go look at the headcount of the NBPA on their compliance team. You're talking about dozens of people that do this every day. So, the second part is compliance burden. That's it. I mean you got to figure out how do you compete in recruiting and how you actually manage this burden, because nobody argues, with the fact that it's going to be ultimately good. But we still need to manage it.

Andrew Brandt: Well, I think we decided Malcolm needs a raise.

Blake Lawrence: He needs more hands, man! He needs more hands and more time, that's what Malcolm needs.

Andrew Brandt: What keeps you up at night about this, Malcolm? Is it – is it abuse? By not necessarily our athletes, but competing schools?

Malcolm Grace: Well, yes, that but I think what is not yet answered is who's going to get penalized when a violation happens. So, you know, use the Chevrolet dealership. They form an endorsement deal with one of our athletes and then a violation occurs in that agreement. Let's say the dealer pays the student athlete ten times what is market value, or they don't submit the right paperwork to the third-party administrator and a violation happens. Does Villanova athletics get penalized for that? Does the student athlete alone? Rendered ineligible? Do we have a failure to monitor violation? Do we have a lack of institutional control violation? Those are questions that I think are that are the scariest.

Again, hopefully, the third-party administrator is going to help with a lot of that, where, you

know, the company that wants to have an endorsement deal with the student athlete will submit certain information, where the student athlete submits certain information and by design the institutions not involved. We get disclosures and more the paperwork is done on the student athlete in the company. But if a student athlete somehow ends up ineligible, our teams pay the price. And so those are the things that I think are scary. And certainly from, as I mentioned, the competitive piece. We're going to want as many of our student athletes involved as possible, because we want them to feel like they're going to feel like that's part of having a great experience at Villanova. So, yeah, our workload is going to increase dramatically. But if the system operates as its conceived, ultimately, I think a lot of that responsibility will be with a third-party administrator so there'll be some sharing of the heartburn and the fear. But with all of that said, you know we won't be doing our jobs if we're not monitoring every single agreement and looking at everything that our student athletes are doing.

Andrew Brandt: We have some great questions coming in a lot. I'll get to a couple of them here. Jim asks, will NIL negatively impact revenue from local businesses through migration from school partnerships to ethic partnerships? I think we were talking about this before. If a local business that was sponsoring the school, or in your case, Vince, the conference, decides to go, I just want to pick off the best player spend my money there, whether with Villanova or with the Big East, one at Georgetown, one at Creighton, one at Villanova etc. Do you think that's realistic? Is that something that could and potentially have negative effects on revenue for schools and conferences. Vince?

Vince Nicastro: I've heard this issue raised before and I think it very well could, right? You have the multimedia

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rights holders, usually third parties, who in many cases are guaranteeing, you know, an annual rights fee to a school so they're taking the risk. And access to student athletes has not been an issue prior to this, right? Student athletes could not endorse. And those local businesses would love to have access to student athletes. Now they have access to the student athletes does that impact that multimedia rights holders' ability to cut deals for the university or on behalf of the department? And my sense is it probably will. So, I think their anxiety or concerns are probably well founded. To what extent, I don't know. It's hard to tell. You know will be on the margins or will be significant? I don't know.

Andrew Brandt: Yeah, I mean Malcolm, you said something interesting if a business did that you know would they be interfering with their long term relationship Villanova by taking a short term, you know, association with a player, who may not if it really good in basketball probably won't stay very long. So, there's that risk as well.

Malcolm Grace: It's certainly something we've had some preliminary conversations about. You know, if we had one of our representatives from our marketing team on, I'm sure they would express more concern that maybe I'm expressing from the compliance side but it's certainly a risk.

Andrew Brandt: A question from Cat, one of our star students who graduated last year, what would happen if a school does not want a student athlete taking a certain brand deal or endorsing a certain product because it conflicts with the core values of the school? Anyone can answer here. I don't know if Dionne or Marc you dealt with this issue in terms of the legislation, whether it would go against gambling or if it conflicts with just the values of the school. What's your thought on that?

Dionne Koller: Go ahead, Marc.

Marc Edelman: I know there are a lot of bills that are percolating in different states, and there are different proposed models at the state and federal level. Some have carve outs for vice, and I think that's understandable. There are other bills that have carve outs. I'd say there are certain categories where an athlete would not be allowed to have a competing sponsor from one of the school in the same category. I personally find that to be a lot more problematic.

Dionne Koller: I think that's the area, Andrew, where I think there's a potential for a lot of agreement, bipartisan agreement. I think, coming around the idea that there should be these sorts of relatively limited categories, where the school should be able to say we don't want one of our athlete ambassadors, you know, endorsing a gambling product or something like that. So, I think that's an area where you're going to see a lot of bipartisan agreement, but I think Marc is right in the sense that how you define that, you know, conflicting with the values, conflicting categorically, I think that the devils in the details there.

Marc Edelman: Actually, if I could jump back in for a second. I just want to explain something that you know prior to California, or any other State proposing a bill, the issue was these 1,200 member colleges were coming together and passing a rule that says no college can endorse products. No college athlete can endorse products, so not just their own but others. If the NCAA could just drop this rule; if these 1,200 member colleges get together and drop the rule and no longer have a rule on the federal level, on the national NCAA level, that says no school may allow their college athletes to endorse products and they deregulate that. What would probably have happened would have been those state bills would go away, who knows, maybe they still will.

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Now, if there was no NCAA rule disallowing this and thus no state rule to explicitly allow it, we would have been a world where any individual college would be allowed to make their own decision. And that's the true free market outcome. Now what that probably would have meant was colleges would allow athletes to endorse at least certain products, because the more freedom they provide the better position they would be to get athletes. But with that said, I mean there are going to be public schools that are going to be opposed to certain things they may consider the pornography. You're going to have religious schools, for example, Villanova, that might be opposed to for religious reasons having relationships with players and endorse other products. If we had a true free market and the NCAA didn't put these restraints in place, and thus we didn't need the state bills, then each college will be able to make their own decision and these problems would have gone away.

Andrew Brandt: Well isn't that in a very simplistic way what the Alston case is seeking?

Marc Edelman: Absolutely.

Andrew Brandt: For a free market? And that would throw things into complete, I don't know, Vince, the word chaos if that were to happen?

Vince Nicastro: I think that's a good word, yeah. And you know some of it is the fear of the unknown, right, is we don't really know what the impact of NIL will be on our operation until it happens right so. But the anxiety around what happens if. Will that market sort of settle in and be manageable or is it going to be total chaos for forever? So, I think that's one of the dynamics we're all trying to come to grips with.

Andrew Brandt: Blake, when you hear a restriction on athletes and I are based on vice or based on competing interests with the school or certain image issues, what do you think?

Blake Lawrence: Well, I understand that category conflict, like the category restrictions, based on vice industries. But the slippery slope here is that the first school that says, “We are a Nike school, you cannot endorse Adidas,” is the first school to lose every recruit that potentially wanted to go with Nike but just want to go to that school. Like I think that no schools will have like eventually ever ban a specific sponsor because of an existing sponsor. If so, they are clearly putting their economic benefits of themselves above the student athlete, which is not going to be good in today’s media environment. It’s just not and recruiting wise it’s not. So, it’s just not the specific sponsor bans is not going to exist in a truly competitive recruiting environment.

Andrew Brandt: Interesting question from Matt Dacey, how do you view the future NIL legislation affecting universities retention of athletes as an, I guess we’re talking about the top basketball, football players, as opposed to athletes declaring the draft or bypassing college as a whole and going straight from high school to the G league or MLB draft? Do you think that’s a realistic way for university to retain these A-listers? I don’t know anyone can jump in on this.

Blake Lawrence: Vince, you said it best, we don’t know. I mean we don’t know what we don’t know, none of us can. The truth is that the most competitive thing is that, if an athlete has \$150,000 in endorsement deals in their pocket for staying and they’re looking at the marketing rep at the agency they might sign with before they go pro to the NBA, and that guy can’t get them \$150,000 and he’s bottom of the rack, but if he goes for another year at Villanova then he goes top you know lottery pick, that’s the difference. Because right now that marketing rep shows up with \$100,000 check and he goes well shoot at least get 100 g’s and I’d be a late round pick. That’s the difference, and I think that will make

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an impact on those major sports that have drafts.

Andrew Brandt: You know what concerns me a little bit is what I hear a lot of young people always come to me and I'm sure Vince, they want to be agents and I tried to disabuse them of that but I do talk about the barriers to entry that are all over the place, but now they see an opportunity. They see an opportunity, through NIL and these guardrails, as you know, Malcolm, if you're going to be an agent when you're allowed to be but you're supposedly not going to be their agent for pro, but you can be their agent for NIL. Well there's a lot of young people interested in this right now, a lot, and maybe even you know, seeing it as real opportunities. That scares me a little bit because you're going to have inexperienced people as well intentioned as they are, trying to get these athletes to sign up and maybe they will get them to sign up and they're their NIL agents.

Malcolm Grace: And one of the things that you asked me earlier about heartburn issues, another one is the fact that these name, image, and likeness rights will apply to prospects as well. So, it's not just current student athletes it's prospective student athletes. So, you can be a sixteen-year-old stud football or basketball player and you can start to monetize your rights already and that could impact two things we're talking about right. It could impact eligibility if something goes wrong, before any NCAA compliance person or institutional compliance person has a chance to educate that student athlete. But it could also create a scenario where that student athlete or prospective student athlete is raking in so much money already that. Again, it's another disincentive for enrolling at an NCAA institution. Monetize, do G League, heck you know, play on your local court until your draft age eligible or whatever it is, depending on what the NBA

does. So, yeah I think the monetary opportunities that name, image, and likeness rights will create from anyone, once they get into that elite five star status, I think they're going to be in a position where people will be willing to pay them to endorse and to post social media content.

Andrew Brandt: Winding down a couple last questions, one for Marc and Dionne here, it's a legalese one, what do you think about the viability of the Dormant Commerce Clause challenge to California's Fair Play to Play and similar state laws as what happened in *NCAA v. Miller*? So, explain the question, if you would and answer it best you can.

Dionne Koller: Marc, you want to start?

Marc Edelman: Sure. You know, I have had a lot of conversations about this Dormant Commerce Clause question when I was asked to testify in California. I had discussed it substantially with an advisor for California, who is a constitutional law professor in California and one of the more well-known constitutional law professors in the country. His explanation made all the sense in the world to me because I'm not a constitutional scholar, I'll generally go with it and try to give it to you as best as I could.

This does not seem to create a Commerce Clause issue, and despite the *Miller* case there's a newer case that comes out of one of the district courts that are part of the Ninth Circuit that involve the growing of foie gras that was being imported into California and restrictions on how you could treat animals, which makes the point. My understanding third-hand about why this is not a Dormant Commerce Clause issue is because California or any state that's passing a bill is not treating those that are located in its state superiorly to those who are set located in a different state. So, it's not as if that there is a system in place that is preferential

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to those in their state and inferior to those in the other. It's simply you have to provide a right. Now my separate explanation for this, which I believe trumps that, is in my view, and I know some may disagree, when the 1200 NCAA member schools got together and passed a rule that said no school will be allowed to participate if they allow their athletes to make money endorsing products, those 1200 schools coming together and doing it in agreement, as an anti-trust scholar, is an antitrust violation.

And thus, from my view the bills, such as the California bill and the Florida bill, are simply requiring the public and private colleges that are based within their state, to comply with federal antitrust law, and that also would get rid of the issue in its entirety, from the way I look at it.

Andrew Brandt: Dionne?

Dionne Koller: I think clearly the Dormant Commerce Clause is the challenge that the NCAA is going to bring. I think they're going to try and ride the last time around; they did this and *Miller* as Marc said. But I completely agree with Marc, I mean the circumstances here are very, very different. The challenge in *Miller* and what caused the other state statutes to fall on Dormant Commerce Clause grounds, at that time was different states in the wake of the *Tarkanian* case were passing due process statute, saying "Okay, if you come in and you're going to sanction a coach or a player, or whoever in Florida, you have to give this level of due process in Nevada you have to give this to a level of due process." It was directly sort of regulating the NCAA and how they were doing business in different states and sort of making them adopt different practices. That's not the case here. Really what the NIL legislation is doing here is restoring rights that athletes went to college with; the right of publicity is a right given to all of us by our States. And this is, as Marc said, this is lifting a restriction; this

isn't telling the NCAA you have to have fifty different types of hearings. So, I think the Dormant Commerce Clause challenge is the one they will bring, but I think it is a much weaker case this time around.

Andrew Brandt: The time has flown. I want to go around the horn one more time, sort of give a prediction. I know we're not in the prediction business otherwise would be a sports betting panel. When I guess, and if there's if the answer is it's not happening I don't know if anyone predict that, when will we see NIL rights to college student athletes and will the resolution come from the NCAA alone, the NCAA combined with some federal legislation, federal legislation alone with the NCAA kind of out of the picture and just sort of a vision for the future on this important issue. I'll start with you, Marc.

Marc Edelman: The Supreme Court's going to decide the *Alston* case in late May. The ruling and will be 9-0 in favor of Alston and there'll be some concurring opinions that will be even harsher to the NCAA than the Ninth Circuit. This will cause one of two things. The logical move by the NCAA of going to Congress and seeking to compromise and granting NIL rights for hopes of moving forward. Or alternatively, a whole series of new antitrust cases coming but through directly challenging the restraints on NIL. The first one would be the better way to resolve it, the second would be expensive and unfortunate, but one of those two will lead to change.

Andrew Brandt: Vince, when you hear that how do you respond?

Vince Nicastro: I'm not as certain about the outcome of the case as Marc is. (laughing) 9-0. But I do think that the probably the best-case scenario is to have some partnership on a federal legislative bill that provides NIL rights and that people are comfortable with, and it provides again this sort of common-sense appropriate level of regula-

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tion. Some of which we talked about tonight that I think all parties would agree to. And I think it could be effective as early as next school year.

Andrew Brandt: Malcolm?

Malcolm Grace: Yeah, I think, I believe it was sometime in January when I believe it was an Assistant US Attorney wrote the letter to Mark Emmert and you know let him know that there will be antitrust implications, I mean related to transfers everything else. I think, at that point it was – not only was the legislation taken off of the NCAA’s calendar, I think it was put entirely in the hands of the US Congress at that point. I don’t think there’s much that the NCAA can do at this point with those threats of intervention and with the activity going on in both the Senate and the House of Representatives. I think it has to be a federal result and that’s the best way to get rid of the patchwork of state bills and have something that’s resolved, and hopefully the negotiation can be something that reduces the amount of litigation. So, that’s my that’s my prediction at this point.

Andrew Brandt: Blake?

Blake Lawrence: Within the next five months, there will be a federal bill, federal legislation around NIL rights, getting rid of the state patchwork. The NCAA will have in effect NIL legislation changes, that Malcolm to speak that require a third-party administrator disclosure process, right, to alleviate the compliance burden on campuses. And within the next five years, the way that athlete endorsements work across all levels of sports will look more like they do for a college freshman than they do right now for a fifth-year veteran in professional sports leagues. Right? This will set the standard for the future of athlete endorsements for the next decade. And the next five months have an impact on the next five years of

this entire industry. And if it gets delayed one more year, the only person that loses is the NCAA and who continues to lose is the student athlete.

Andrew Brandt: Before I close with Dionne, just to answering this question about who determines fair market value and if there's cheating or someone shows up for non-job \$100,000 whatever it is. My understanding, and anyone can chime in, is there is going to be a clearinghouse it's some sort of panel impaneled to determine fair market value and make sure that it is fair market value and not some abuse. So I did want to address that the guardrails we've talked about the NCAA regulations definitely address that issue.

Dionne, I'm going to leave you with last word, as someone who testified in front of this Congressional hearing. I thought would be good for you to testify at the end here.

Dionne Koller: Well, thanks Andrew. I agree with Marc that it should be 9-0. I don't think it's going to be 9-0. I think if there was ever a court that was receptive to what the NCAA is trying to sell it's this one. But I think the backstop here is that if the Court, for instance, did imply some kind of anti-trust exemption, I think we have Congress ready to act even on that as well. That can of course be on undone by legislation. I think what the most likely outcome is, I do think they should prevail, that the *Alston* plaintiffs should prevail. I think they probably will, I think what we'll get is a federal bill, a federal legislation out of Congress, but it's going to be with strings. I don't think it's going to be a clean NIL bill. I think the NCAA is going to have to do something on health and safety, well-being. I think you're going to see some other strings in there. I think the NCAA is not going to get what they want for free. And so, I think we will have movement on NIL. I think we're going to start allowing student athletes to

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monetize and I think we're going to see that some of the biggest winners are going to be women. I think we have not really properly thought about the fact that women athletes and non-revenue sport athletes have a huge market. I know Blake is ready for them. So, I think that's where we're going.

Andrew Brandt: Indeed. Thank you, Dionne Koller. Thank you, Marc Edelman. Thank you, Blake Lawrence. Thank you, Malcolm Grace. Thank you, Vincent Nicastro. This has been a fascinating, informative, entertaining panel. Thanks to all the almost two hundred people that joined to watch and enjoy it and as much as I did, I hope you did. Thanks to Morgan Lewis, our sponsor. We'll be back same time, same place tomorrow with our third night of the symposium; we've got social justice and athlete activism. Again, thanks to this panel. We will see you tomorrow night, have a good night.

Panel 3

Social Justice & Sports

Moderator: Andrew Brandt

Panelists: Bob Ley, Kenneth L. Shropshire, Grace E. Speights, Dave Zirin

The Social Justice & Sports panel examined the role of athletes, teams, and leagues in advocating for social justice issues. This panel addressed the heightened role of sports in social justice movements. While social activism in sports is not new, we have seen athletes' and teams' roles reaching new heights in the past year. The panel discussed sports' new role in social justice and where we go from here. Panelists include Bob Ley, Hall of Fame Broadcaster from ESPN; Kenneth L. Shropshire CEO, Global Sports Institute, Adidas Distinguished Professor of Global Sport, Walter Cronkite School of Journalism and Mass Communications, Arizona State University and David W. Hauck Professor Emeritus of Legal Studies and Business Ethics, The Wharton School of the University of Pennsylvania; Grace E. Speights, Partner at Morgan Lewis & Bockius, LLP; Dave Zirin, Sports Editor, The Nation and Author, Jim Brown: Last Man Standing.

Jeffrey Moorad: Good evening. I'm Jeff Moorad, I'm the chairman of the Moorad Center here at Villanova University School of Law, and welcome to the third part of our symposium this year. Obviously, a different year. We're doing it virtually. I'm speaking to you not from the great Law School Center at Villanova, but rather from my home in Newport Beach, California. But it's a pleasure to be able to kick off this program tonight, the third night of probing, cutting edge issues in the sports industry.

And, as you all undoubtedly know, tonight we're going to deal with the challenging issue of social justice in sports and how those issues cross over each other. And we're looking forward to a fascinating panel that will be moderated by the great Bob Ley from ESPN. Bob and I worked on an ESPN 30 on 30 special a long time ago on Manny Ramirez. Boy, that was fun. But the evening should be great. We're excited. Andrew Brandt will set the stage for that, as he always does, as the capable Executive Director of our Center. You know, it seems like only yesterday that John Gotanda, the Dean of the Law School at the time, and I sat down to conceptualize the idea of a Sports Law Center that can provide meaningful education for students and lawyers and practitioners in the sports law area. And I'm happy to say that not only did our dream become a reality, but Dean Alexander has taken that spirit over the years that he's been the Dean and carried forward our ideas about how important this work was. So, thank you, Dean Alexander. Thank you to all of your support staff who make this Symposium as well as our Law Journal and every other part of the Sports Law Program that we're so proud of a reality.

I also want to thank our sponsor tonight, Morgan Lewis and Bockius, a law firm that I'm affiliated with. I actually chair their global sports practice. And tonight we have the pleasure of

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hearing from Grace Speights, who leads the Labor and Employment practice globally for Morgan Lewis. One of the great lawyers in the country, quite frankly. In fact, American Lawyer agreed with me. A few years back, they named Grace the American Lawyer Attorney of the Year in the United States, so she'll be terrific. And the rest of the panel is one that I'm truly looking forward to hearing talk about social justice in our sports industry. So, thank you all for being here. We appreciate the support. I'm sure that none of you are here for CLE credit, right? Yeah, okay, maybe a few.

But I'm glad you are, and we thank you for the support. We hope to be back in person next year, but as I do every other year, it's my honor to toss to our Executive Director Andrew Brandt, who again, seems like only yesterday that we reached out to him and, you know, gosh, nine years ago and asked if he would consider leaving the Wharton School at Penn and coming out to Villanova to run our Sports Law Program, which was really just an idea at the time. We had just begun six months earlier, and thankfully, he said yes. It's great to have an industry veteran like Andrew now as our Executive Director. So, Andrew, with no further ado, I look forward to the event.

Andrew Brandt: Thanks so much, Jeff, and our panelists can turn their videos on as well. Thanks to everyone for coming, especially those who've been here all week with us. Again, three-part symposium this year, on Zoom, virtually, with these cutting-edge topics. And we're so grateful that we were able to do this, despite all the challenges this year, and to get the panelists that we've been able to get and to have the Symposium that we really want. You know, we want the best people talking about the biggest issues. As Mike, the head of our Sports Law Journal, and Charli, and his team put together a great event, and here we

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are with part three, and thank you again to Morgan Lewis, who is represented well tonight, for sponsoring this event, this will dive into the issue of social justice and sports. We'll take this where it goes with these special guests and let me introduce the panel to everyone. First and foremost, the eminent, preeminent broadcaster from ESPN that I, one of the great memories of my life are the over 200 shows it's hard to believe that I was able to sit in as a guest being talked to by this man. From ESPN, eleven sports Emmys, four Edward R. Murrow Awards, one of the prominent, preeminent anchors in modern sports television, we have with us tonight the one only Bob Ley. Welcome, Bob.

Bob Ley: It's a pleasure to be here. I'm amazed you were counting, and even more amazed you didn't bill.

Andrew Brandt: We will be lawyers, we said that a lot. Actually, speaking of that, American Lawyer of the Year. As Jeff mentioned, American Lawyer named Lawyer of the Year Grace Speights for Morgan Lewis. We're so happy to have her. Grace worked with clients in media, entertainment, sports, retail legal service industries, managing internal investigations, conduct workplace culture assessments, advises on crisis management and remediation of potential workplace issues. Grace, welcome.

Grace Speights: Thank you, Andrew. I'm so happy to be here tonight.

Andrew Brandt: We are as well. Also here is Ken Shropshire. Jeff mentioned, it got me away from Wharton, where I was working for and with the prominent Ken Shropshire, who was, forever, the head of the Wharton School, Director of the Sports Business Initiative, professor there, academic director of Wharton sports focus programming, executive education programming. . . And now, Ken is the CEO of a Global Sports Institute, the

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Adidas English Professor of Global Sport at Arizona State University. We lost him here in Philadelphia to much better weather, but glad to welcome him back. Hey, Ken.

Ken Shropshire: Yeah, I'll be back there next week. It's 100 degrees. So, I'd stay here forever.

Andrew Brandt: And with us tonight also is Dave Zirin. And Dave is another longtime veteran with Bob and I on Outside the Lines. His insight is always special, differentiated, and interesting. The sports editor at The Nation, he hosts the popular podcast Edge of Sports Radio, where I was lucky enough to be a guest at one time. He's maybe, and I say this not just because you're here Dave, maybe the foremost voice on player activism. A book with Michael Bennett, a book on Jim Brown, and to come this fall, a book on Colin Kaepernick. Dave, welcome.

Dave Zirin: It's an honor to be here. It's an honor to be here with Bob Ley, with the man they call "Shrop." Ms. Speights, it's an honor to meet you. And to Mr. Brandt, all I'll say, to paraphrase you, is, there will be opinions.

Andrew Brandt: Speaking of which, let's go right there. And I just want to keep this informal, I want to hear from, kind of like you said, the wide-ranging opinions you all have. When I say the words "social justice," from a sports context, what's your first thought? What immediately comes to mind? Start with you, Bob.

Bob Ley: It's . . . in the moment, obviously, as the whole country has been reshaped, reformulated, refocused. It's an emotional topic, obviously. And I when I think about it, I think about marrying the concept of social justice in sports, and the desire for it in society, which is existential to so many people, and academic to so many others, and how much skin people have in the game. Certainly, no pun intended there. Up against, in sport, just the growth and the magni-

tude of what's at stake. None of us, I don't think, a year ago knew what a SPAC was unless we were spackling a wall, right? You wake up every morning, ten new ones have been founded. Sports figures . . . I mean, I read, I do my morning reading, and I see the amounts of money at stake in sports, and I realize that this entire, this Goliath of an industry has grown to the point where it has to have skin in the game in dealing with social equity, social justice, fairly. The NFL would not have signed that hundred-billion-dollar television contract if Roger Goodell had not poured oil on the water by whatever means in 2016, 2017. So, I think it is much more than just the pictures of people principal kneeling. And it's much more than simply the black and white photographs of the 1968 Olympics, of Muhammad Ali. It involves something that is so central to so many people in this country: sports. And I think, it's not . . . because of the way that our country, in the last, say, year and a half, has evolved, changed, and been revolutionized . . . it's at a fork in the road.

Andrew Brandt: Ken, when you think of, you know, when you hear . . . and not so much the “shut up and dribble,” you know that's kind of the extreme, but when you hear people say, well, I just want sports for my release, my entertainment, my comic pages, I don't want to mix it with all the other stuff that I see in society, what do you think when you hear that?

Ken Shropshire: You know, Andrew, I mean, and listening to the first comments, I think about how long it's been that sport and social justice have been intertwined. And how much, you know, the Jim Brown retirement moment, his kind of retort to Art Modell, that Dave writes about so eloquently . . . was really his saying, as a protest word of day was, I am a man. I mean, and Jack Johnson. Dating, marrying white women was his way of saying, I'm free. I can do this. That was the

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social justice of the early part of the century.
And I think about my lone appearance on
Outside the Lines, which was . . .

Bob Ley: Many years ago.

Ken Shropshire: With Bob, me, and Chuck D.

Bob Ley: Yes. Remember that.

Ken Shropshire: And we were talking about Allen Iverson, and what's a posse? And can't he just have friends? This whole evolution. Now it's much more sophisticated, much more powerful because, in fact, because we had the George Floyd moment, that came after the Kaepernick years, that drove us to where we are now, to really face this seriously. And then you mount on top of that, it's this evolution – what happened to the Capitol, what happened with the last President, all these things come together, and sports just . . . this has always been this spotlight on the issues in America, and around the world, in a way that we haven't seen. So, I think very broadly about it now. Much more broadly than I did before the pandemic made me become a more thoughtful person than I've ever been. I mean, I've got all these books behind me now. I had time to do that stuff. That Twilight Zone Episode.

Andrew Brandt: Well, I think what you hit on is, it's been baked into sport, for a long time. We've never really talked about it, right, Dave, I mean you go back to Jack Johnson 100 years ago, but the tipping point of Kaepernick and beyond, seems just, like, so fresh.

Dave Zirin: Yeah. Yeah, when you first asked the question and said, what's the first thing that comes into your mind, for me it was that, wow, this is a conversation over 130 years in the making. And it is baked into the cake of sports, as you said, and I think it's baked into the cake of American sports in a very particular way.

Because when US sports started to be organized and professionalized at the end of the 19th century, it was really only sports for the few. I mean, it was largely sports for young white men. And then you had parallel organizations in the black community that had sports, but as far as official sports, it was for white men. And, at the same time, this ethos was expressed, this idea that sports is America, and if you're good enough, you can make it, you can play on the field, the playing field is America. And that contradiction right in there, sports is for everyone, yet it's also only for the few, is why we've had this 130-year struggle for equal access and for the leveling of the playing field.

So, every time Jack Johnson traversed the globe to actually get that fight with Tommy Burn so he can become heavyweight champion, that was Jack Johnson trying to make sports live up to what its credo is supposed to be. When Jackie Robinson takes the field, and then Martin Luther King calls him a freedom rider before freedom rides, a sit-inner before sit-ins, that's sports trying to assume its place of what it's supposed to be on the American scene. And example after example has come forth. We're at this point, you know, you can't really talk about the civil rights movement without talking about people like Jackie Robinson, Muhammad Ali. You can't talk about the women's movement without talking about Billie Jean King. And fast forward to today. It's like, we can't speak about Black Lives Matter, or the movements that have taken place over the last decade, without speaking about people like Colin Kaepernick, and now so many others who have who have stepped up, you know, from LeBron James, to the women of the WNBA and Renee Montgomery. I mean, so sports and politics have always been fused. But right now we're really noticing it, studying it, and trying to understand it.

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Andrew Brandt: Yeah, we're gonna hit on this theme. And Grace, I want to get to you. When you advise sports related employers, primarily management employers, does this issue come up? And where do you go with it, in advising them and counseling your clients on social justice in general? Or any specific incidents that have happened over the recent past?

Grace Speights: Yeah it definitely comes up. And you know, as I mentioned, Andrew, I do a lot of work with sports-related companies who, you know, are in the industry, who endorse athletes. And I think what I the way I like to look at it is, I think pre-George Floyd, the sports industry, and I'm including employers, I'm including teams and things of that nature, garnered attention to social justice. There's no question about that. I think post-George Floyd, though, the sports industry has finally moved to action. And that's what at least I'm seeing, you know, with my clients. You have employees inside of these sports-related companies who are demanding social justice. Not for themselves, or not only for themselves in terms of their compensation, their pay, promotion. But also for their communities. And you know, when LeBron and the NBA and the WNBA stood up and basically, I think, made a big difference in the whole voting rights and access to voting in October and November, that same push was inside of the companies that I represent. You know, with employee saying, you endorse these types of athletes, you work with these types of athletes, now put into action what they are now out there, doing and pushing. So, I think we saw a big change within the companies that I represent. And a lot of it being driven by athletes they endorse.

Bob Ley: You know, what I'm struck by is, we're all sitting here, and I'm looking at my screen and I think we're all, I can stay with authority, old enough

to have an emotional and intellectual memory of, for example, of 9/11, which will be twenty years ago this year. And I was teaching a course yesterday, and we got into a discussion of historical memory and reference points and I realized, my God, every student that we were speaking to, if they had been born, were, you know, a year or two old. And so for us in our 40s, 50s, 60s or whatever to sit here and talk about our interpretation of it is fine, but the future. . . I mean, there is a generational . . . generational change is being called for, for example, in Washington DC, which is clearly well overdue. I mean, some of these . . . and I'm not an ageist, but I mean, my God, I'd be a spring chicken down there. It's something that I think we need to see.

Dave and I were chatting before we went public here about his conversations with people and thoughts about people at the high school level. Because polling shows that this country really hasn't moved that much, but it is, this is a generational thing, and I think it's almost, we really, those of us in this cohort I think, really have to dial into that. Just finding an acceptable definition of social justice, I think it, varies. And it's up against the so-called cancel culture. I mean there are a lot of countervailing pressures going on. But my basic point is, the answer to a lot of the things that we're going to talk about, they're going to be determined the next ten or fifteen years by people who are certainly a lot younger than me and have different life experiences. And, you know, I remember seeing the '68 Olympics, watching live what happened with the protest in Mexico City, but that's as relevant to somebody as the Archduke Ferdinand, today. So, I think a lot of this is perspective, and it's age, and it's generational, and it's kind of scary, but it's, you know, it's the grandkids that will be changing this.

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Grace Speights: I also think, Bob, If I could just jump in. You know, we've gotten to a place, and I think especially in sports, where I don't think it's all just a black/white issue now. Because of the whole George Floyd movement, the Black Lives Matter movement, there are allies, non-blacks who are behind this push for social justice, and I think that that's different from what we had before. I mean, when Colin Kaepernick took a knee, I mean that was sort of, that was something that I think was easily divisive, because there were people who said, oh he's disrespecting the flag, oh, he's disrespecting veterans, whatever you want to call it, right? But when everyone could look at what happened to George Floyd on the television and see it over and over again. I do think that was a shock to the nation. And I do think that that caused allies to begin to bond, and I think that's going to help sort of push this movement forward.

Ken Shropshire: Andrew, I'll throw two wrenches in here, related to the glory of the progress that we're making. The first is that, as was said, you know there were a lot of statements issued right after George Floyd. But the sustainable impact and the actual action has been much, much more limited than that, I mean, so there hasn't been as much, and it's going to be interesting, probably the wrong word, to see how much staying activity there is. The other thing that's very important, and I've been in a lot of these conversations, and that is this, that the George Floyd moment the Colin Kaepernick action was related to black people. And the further we get away from those moments, the more we get back to, kind of, the old benefit of Title IX, affirmative action, frankly, white women are the ones that are being pushed in front, a lot, when people are claiming they are practicing diversity and accomplishing what needs to be done. And that's not to say, because I have a lot of friends who are white women, that's not to say that to

say that's not important, but that been the easy path, especially for corporate America over the years. The hard work is sustained efforts on race, and the hard work, too, is to figure out, how do you sustain efforts on all these sectors? Race, gender LGBTQ, age, everything. And not shroud whatever you do as, it's diversity, so I got you covered. So that's part of the social justice piece to me. You kind of run away from the murder of a black man, to some of the discussions of today, and as we get further out, which will move further away from that.

Dave Zirin:

Yeah, I'm so struck by what Bob said about this being generational, and I think that point is so important. I mean, first and foremost, I feel like in sports and politics it's, in a lot of ways, always been generational. Like you hear stories about who responded to Muhammad Ali, or who supported Tommy Smith and John Carlos when they raised the fist. I remember interviewing Gregg Popovich and him telling me that, as he put it, the electric moment of his life was when he was in the Air Force and he was watching the '68 Olympics and saw Carlos and Smith. And that's so striking because here's Gregg Popovich, a white dude who's from, I believe it's a Serbian or Croatian stock, I believe, immigrant family, and here he is, he's part of this generation, though, that's rising up. Meanwhile, there were a lot of forces certainly not just in the white press, but the black press, that did not like what Tommy Smith and John Carlos were doing. So that was a generational moment.

Similarly, today, I spent this past year interviewing teenagers who had taken a knee as a way to express their dissent against racism, as a way to express opposition to police violence. And what's so interesting about them, they're 16, 17 years old. That means when Colin first took his knee, they were 12, 13 years old. So for them,

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the logic that you would use the sphere of sports as a place to express dissent was all too clear, and for a lot of these young people in our hollowed out communities—and I do think they are very hollowed out in terms of infrastructure, organizations, community—sports is really almost like the community of last resort. So, if you're upset about something, of course you're going to do it on the sports field. Because that's where everybody in town comes out, that's where you can be seen, that's where you can be heard. And so, for them, sports is more than just sports by virtue of necessity, and for them, Colin Kaepernick is just an example of what to do. Like, oh, we can do that. But they're not kneeling for Colin; they're kneeling because they want a better world.

Bob Ley:

You know what's amazing about Kaepernick and that whole situation is that he didn't kneel at first. He sat for two games. And they didn't talk about it. And it's all . . . I forget the woman who was a sportswriter, I wish, I should have made a note of her name, but puts out a wide picture, and there, you see down at the bottom, Kaepernick sitting. And only then, after two weeks, did someone say what's that, and then approached. I mean, you know, obviously the home run one-on-one we'd all like to have is the whole drill down with Colin about that moment. But until then . . . the other thing that occurs to me is what Ken was talking about, and I think Grace was talking about, but with organizations. And against, I think, what, Andrew, you were talking about earlier about you know people looking at it, the toy shop of sports as an escape. I mean all of this again alludes to the money I was talking about before, all of this is going to our capitalist commercial structure. And then there is going to be absolute conflict, I mean, a rising millennial consciousness notwithstanding, about how far leagues are going to want to go. I mean there's still a large part of me, when I see

officially tagged in the end zone and on the bottom of the grandstands and NFL you know, “End Racism,” which is a great message, but like you know corporate letter boarding from the National Football League about matters of social conscience, I still have a little . . . that’s a little cognitive dissonance for me still, and so, you know. The NBA obviously has led the way with their social conscience, and Adam Silver has shown himself to be a model of forging a relationship and a partnership with his players. Baseball, obviously still feeling their way through this. There’s going to be that point at which, you know, activism interests, at specific moments in time, are going to butt heads, I mean, the closest we got to that, I think, was when the Milwaukee Bucks walked off the court last . . . was it June? May?

Dave Zirin:

August.

Bob Ley:

August. My gosh, yeah, my whole NBA calendar’s akimbo, I don’t even know what month it is now, with the pandemic. And you know, three games that night were postponed. Because a lot of what, you know, making an effective statement comes down to strategy. And, as he so often is and will be going into the future, LeBron James was the smartest guy in the room. Picks up the phone, who’s he call? Barack Obama. Who, you know, by every account I’ve seen of that conversation basically said, you know, okay fine, we’re in the moment, there are emotions, and you have righteous concerns here that are existential and severe, but what are you going to do about it? Harness it, strategize it correctly, work within the structure of the corporation, or at least, you know, this industry of basketball. That’s the challenge. Because you know, this whole country, and with the polling—if those in the audience call up, a little bit later, don’t do while you’re watching all the smart people, except for me, but later, the

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Axios poll, for example, on professional athletes kneeling—you'll see we're exactly where we were three, four, five years ago. Divided by party, divided by race, divided by political inclination on this. We're so polarized, and we're screaming at each other. I mean, I went for breakfast this morning at a restaurant owned by a buddy I've known pretty well, but I've never had this political discussion with him. It was slow this morning and now I was being lectured by a guy I know is very smart, on how the election was stolen. Okay? But that's an example of how, we're talking at each other, we're not talking to each other. And I think the drive for social justice, if the proponents of it, the champions of it, can understand that there is a way to reach out across the divides exhibited in the Axios polling, and make your case, I think there, you know, there are better results to be had.

Andrew Brandt: It does seem like some of these leagues will go to an extent, but not much further, right? So we were doing those shows, four years ago, Bob, when, you know, the “sons of bitches” comments united the owners of the NFL with players in that one week. Remember? They're standing arm in arm, owners and players, kneeling.

Bob Ley: Even Jerry Jones had a little smirk on his face. Because he figured out a way to have both ends against the middle.

Andrew Brandt: And I said to you on the show, I said there's no way. There's no way this will last. And within a week, you know, the owners basically saying, in so many words, all right, back to sports. Like, well you had your moment. But the players weren't all about getting back to sports. I know you remember that time, Dave. Just like Kaepernick was muted for four years and then of course this happened with George Floyd and he becomes front and center again. It seems

like these leagues, or league governance, will go to a point. You know, the video that Roger Goodell put out. But no, not much more. Not too far.

Ken Shropshire: Well, and here's the conversation I've been having, very much related to that, with the Olympic movement. They've now revises the USOC, the USOPC at least, have said, okay, you can protest about race. And, to some extent that is like putting "Black Lives Matter" in the end zone, or "End Racism." It's, you know if I'm, you know—and I'm not—if I'm representing a league or a corporate entity, I'm going to realize, you know, the further I push out and say it's okay, the farther I'm pushing the real protester out of the protest, because the Zirin book of how to protest says, you gotta break some rules. I mean you can't . . . you're not protesting if you're doing something that complies with what the organization has said is okay. So, I think we're in for more. And as to all this generational stuff we're talking about, I think, you know, youth is not being wasted on these young. They're going to find ways to continue to make statements, even if, you know, these slick organizers have said, we'll just change the rules, make it okay, and therefore it won't be protest anymore.

Dave Zirin: And I would say, the generational question is so key. Because I think every sports league is right now living with this existential fear that they're going to go the way of steeple chasing. That they're going to go the way of what boxing was in 1950 compared to today. They all carry this fear, even the NFL with its \$100 billion war chest, you know, this fear of, will we still be what we, are decades down the line? They carry this fear, partly because they know that this young generation, partly because all their, every audience in sports is aging, in terms of core fans. And it's because people the ages of my kids . . . you know, my son will watch a basketball game,

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he will also get on YouTube and watch someone else play a video game for an hour and a half, something, I do not understand the logic of that. But for him and his friends it's a lot of fun to watch other people play video games. That's him. But what they're collectively wrestling with, though, is that this young generation that we're talking about is more diverse, and less tolerant of intolerance. And so they're asking themselves, I mean, I'm not saying that Adam Silver doesn't have goodness in his heart, but I think what everybody is wrestling with, is how do we actually appeal to these fans and show that we care? Because if we don't show that we care about these issues that are important to them, they're not going to think that we're worth their time. And that's the fear.

Bob Ley: Grace, in the companies that you've dealt with, when you have your radar tuned to people who are in charge and making decisions, how much of it is leadership wanting to lead a parade, and how much of it is leadership being pushed, prodded at the end of a pitchfork?

Grace Speights: It's the latter. It's the latter. We don't have many leaders who are stepping up saying, yes, social justice, let's do it. You know? No, this is being pushed by—

Bob Ley: What scares them? What scares them?

Grace Speights: Yeah, well they worry about the . . . social media scares them, okay. All right, because one comment gets placed on social media, it goes viral, and then they do worry about their brand. So, it's all about the brand. It's all about the team. And so that's what scares them, that they're going to lose people. Just as Dave said, how do we make sure that, you know, we do enough to keep people interested in us, to keep people buying our, you know, our brand, buying our apparel? It's not about, let's take a leadership role. And they're being pushed by their employ-

ees. Because most of their employees are young people now who are working in these organizations. They're not people have been there 30, 40, 50 years. These are young people who look at the organization, and if they're not making change, they're going to go somewhere else where they think, you know, there is an interest in making change. So, it's all about brand. It's all about money.

Andrew Brandt: Now, Ken, you, like myself, you've advised many athletes over the years. If you had an athlete who was not LeBron James, who is not a superstar, say, "You know I believe in the cause, but you know, they'll just replace me if I do whatever, if I kneel, if I take this position if I'm like this . . ." There's so many players for so few jobs, the business of sports, right? How would you advise labor in this these kinds of situations?

Ken Shropshire: Well that's interesting, and at two different levels. I mean, you know, I always, I would appreciate seeing more activity by labor unions today.

Andrew Brandt: Yes.

Ken Shropshire: Appreciate, seeing them join in more. I understand why an individual athlete might choose not to. And if I'm counseling somebody, and I have, I mean, even in this head coaching kind of mess in the NFL, to ask people point blank, are you ready not to play or to coach anymore, because that's still the real outcome that can occur. And I'm hopeful that some make the decision to say, yes, it's worth it to me. Or, you know, frankly, many, I have enough money in the bank now, yes, I can I can do this if that's if that's what it takes. But I think you know if you're in the position to advise, you know, all the CLE getters out here, you've got to paint that picture. You know, as much as you would hope—I wrote a book in in '95 longing for another Carlos and Smith and people, you

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know, the book got beat up pretty badly, because you know, why does this guy think any athlete would ever do this? In the time of Jordan and OJ and sort of all the folks making all the money. And so there is an evolution, so there's there is reason to be hopeful that that more people that are not the LeBrons, that don't have the power of that, are more like Kap frankly, that will say, this is important enough to me to step up. But you got to counsel them what the outcome, probably, will be.

Andrew Brandt: And Dave, doing your book this year, last year, however long it took for the Kaepernick book, you talked to a lot of people, you've already mentioned it, they were kneeling at very young ages. What were they doing it for? Was it Colin specifically, or did they have the movement in mind? What movement?

Dave Zirin: Well it's interesting because, first and foremost, the people I spoke to: from every region of the country. Boy athletes, girl athletes. I spoke to athletes from small towns, big cities. It's remarkable that from the Pacific Northwest to the South and Mississippi and in Beaumont, Texas, there's a commonality to the stories that they all told. One of them, which I think we mentioned, is they did less for Colin than for . . . It was response to their own experiences living in this country. I mean Bob mentioned about how, you know, 9/11 I mean, these are young people who've grown up knowing nothing but post-9/11, post-Columbine, surveillance culture, metal detectors at the door.

And then for them, a generationally traumatic moment, something that I frankly just did not realize, maybe, given my age, maybe given the color of my skin, but for them, the killing of Trayvon Martin was their Emmett Till. It was generationally scarring. So, it happens when they're 9, 10, 11 years old, and they're left with this image of the young boy who was killed for

wearing a hoodie, for having an Arizona iced tea and some Skittles, and then no justice coming out of that. And it made them feel like their lives were also expendable. And so, they've been searching for ways to say, I've had enough. And then, of course, in 2014 with Ferguson, 2016 with Alton Sterling and Philando Castille, these moments happen, and they build for these students on what happened to Trayvon Martin. That's the base.

And they just start feeling more and more this desire, just to yell. And then what Colin Kaepernick gives them is a lexicon. He gives them a language to be able to say, here is some space where you can dissent, and it will upset people. Because they didn't want to feel like they were just blogging about it or shouting into the void. But it's that actual friction which gives it meaning, the fact that it does upset people, that it does also cause division and polarization. All of those things are welcome outcomes for them, because they want to be heard for the pain that they've lived through.

Bob Ley:

Good trouble.

Dave Zirin:

Good trouble is, in two words, it.

Bob Ley:

Yeah, no. It's, you know, I'm struck by, you know, you talk about the young kids doing this, and Kaepernick, and I honestly . . . in my own experience just, you know, just the evolution of the way what I've seen just over four or five years . . . I mean, I can remember, making at meetings to coach an argument, well, we're not really sure if Kaepernick's being blacklisted. And it's early on, it's me, a middle aged white guy, you know, I haven't walked in his shoes, and any black man's shoes. And you know, it's irrefutable, this.

Again, we were talking before though about that the whole kneeling question. And the Axios poll I referenced talks about professional ath-

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letes, and Dave wondered if the reaction would be as polarized if people were considering just amateur athletes as well. And I offered the observation at the time, and it's still such an emotional topic for people that don't want to invest the intellectual coin into thinking why the players are doing these things. That, you know, they're not gonna think any further. They're gonna hear kneel, anthem, boom—shut down.

And this gets back to the polarization question. I mean, half the country can have good intentions, strategize, understand the stakes and whatnot. There's still, once you get outside of the Ocala corridor, and I hate to generalize, but I spend half my year well outside of the Ocala corridor, there's a whole 'nother strata of this country out there with different thinking on the COVID vaccine, different thinking on kneeling and social justice, and different definition of social justice. And I think, as I get back, it's incumbent I think on those who are activists to understand that, and I think, to adopt that it. Which is easy for me to say because I haven't had, you know, friends gunned down by cops, and I haven't been I haven't suffered the daily indignities of what it's like to be, you know, all the thousand micro aggressions you must feel. But there, as I said, if there's an attempt at dialogue, if there's an attempt at developing the strategy to understand how the other side of that poll, on the other side of that aisle, if you will . . . there needs to be some understanding and some dialogue.

Grace Speights: Dave, I have a quick question for you. Listening, you know, to you talk about the kids that you talk to. So, I have four kids in their thirties, almost forty, right? I didn't have all those kids, two are step kids but they're still my kids. Okay, so four kids are in their 30s, and we have these discussions all the time, especially about sports. And they and their friends say, you know, we

supported Colin when he took a knee, first when he sat and then when he took a kneel. But it became obvious to them early on that he had no plan for action, it was just a statement in protest and so they, in their minds, quickly lose—I don't want to say respect because they respected him—but sort of the momentum, you know didn't move like they thought it should move. But then they point to LeBron and say, Mom, look at everything that he did, all right? That's what we needed and that's what Colin was lacking. I mean, did you hear that, I mean, from anybody that you talked with?

Dave Zirin:

Yeah, I've heard that, and I've always thought it was never impingent on Colin, to have a plan. That he didn't need to be, that we have amazing activists and lawyers across this country who have a plan and are trying to do it, and it kind of always rubs me a little bit the wrong way when you've got the photo op of the athlete with the police chief, and they're talking through how to make, you know, there' to be less racism from the police department, as if there hadn't been people beating their heads on that wall forever. And, you know, that somehow the athletic opinion in that sphere gets privileged in a way that perhaps it should not.

I do want to say this, though, about the Colin/Lebron comparison. And I think this is the difference between the NBA and the NFL, as well as the difference between Lebron's mega-star status and Colin's status as a, you know, an NFL quarterback who is fighting for a starting job. And the big difference is that, you know, Lebron's first act was done without a plan. It was after Trayvon was killed, and he and Dwayne Wade organized the Miami Heat to pose with their hoodies over their heads. That's 2012. It's years later that you get Lebron, man with the plan. And part of that was that he was given the space to develop that, and he still had

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the platform with which to do it because of his galactic talent. And I think that one of the great sins of the NFL, and I think Roger Goodell would say this, if asked under the hot lights, was that Colin didn't get the space to actually be part of formulating a plan to fight for racial equity inside the NFL. He could have been a force in that regard, and instead, he was pushed to the outside.

Bob Ley: Well, you know what though, Dave? There is that moment, though, and it would have been I guess the fall of 2016, I get my years mixed up though, when Malcolm Jenkins and that thing, if you will, was talking to Goodell and to ownership and there was an ongoing dialogue and I, you know, those that know Goodell will tell you that it was probably his finest hour, while Kaepernick, believe it was more aligned with Eric Allen if I recall correctly.

Dave Zirin: Eric Reid.

Bob Ley: Eric Reid, excuse me. I'm sorry. And, you know, he could have come in at that moment and been part of, not a solution, but I mean it was a \$90 million solution. I mean was that the fare, the tariff of the NFL paid for like, for racial peace? Maybe it was, but I mean, those that were close to it say there was there was a lot of genuine effort on both sides there, and Kaepernick chose to not be part of that. And since that, obviously, his stature is, it's grown exponentially. But he could you know, maybe at that point he knew he was going to, you know, be what Springsteen and Obama claim to be on that podcast—renegades. Really? Right guys? Like when's the last time either of those guys flew commercial? But maybe Kap had that, but at the time, he had a chance to come aboard, and chose not to be part of the dialogue.

Ken Shropshire: But that's the complexity of it all, right? Because, I mean, Kap said let's go further, I mean that was my interpretation of it. And you know, if you want to give the harshest interpretation, it's, you know, many have said, we don't accept bribes. I mean how far to go before money is enough? And you know, and I don't know what call I would make in that moment either, but to think that you could go further and to not be in that, in the midst of that negotiation . . . so I think, you know, if I could criticize anything, it was that PR fallout between those players that, you know, frankly allowed the NFL to in some ways have a public relations advantage of, "look what we did, and he chose not to be a part of this."

Bob Ley: But, and what they did do, I gotta say—and you know, I'm hardly cheerleader for the NFL—but when they expended that money and they made commitments to some of the programs they were involved in, some of the social justice and minimum sentencing reform, I know Malcolm Jenkins was very involved in that state Pennsylvania and whatnot, if you were to in a vacuum go back ten months eight, months and say NFL owners would be spending money for advocacy in these areas, you would have been drug tested. So, you know, there was progress there, but it was not, you know, fifth gear. Maybe it was second gear.

Ken Shropshire: Yeah. Well, ninety million marching up to a couple hundred million, whatever it is now, as they would say, is not chicken feed. It really is—

Bob Ley: Unless you're an NFL owner.

Ken Shropshire: Right, I mean, you're right. That's another way to calculate it, you know, yeah. To the owners, that's not a lot of money. You divide it over ten years, that not a lot of money, yeah.

Bob Ley: Well, I think they were involved with causes and advocacy that you never would have—I mean

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look at Bob Kraft. Like this, with Donald J. Trump, but some of the causes he's attached his name to . . . and, by the way, it's refreshing that opposing thoughts can be held in the same mind. Again, we don't have enough of that in this country.

Dave Zirin:

Yeah. I'm definitely not saying what would I would think would be the right or wrong answer, but you know, covering that closely and talking to folks at the time, I mean the big difference was sort of what we talked about before, was this idea of, all right, if the NFL is going to put money forward, should it go towards pre-existing organizations that are doing the work? Or this player entity that's going to be working around this issues? And there was a real point of difference about, why aren't we supporting people who have trouble keeping the lights on, and let's do it that way. and then Colin Kaepernick gave away a million dollars to organizations to whom fifty grand is not chicken feed. That's a huge deal to keep them going. And the other part of it was it was seen by people around Colin as a check to excuse the fact that he wasn't working. That, okay, you know, Colin's not going to get rehired by any of these NFL franchise owners, but here's the NFL central office giving a check to make sure everything's okay, and that was seen as a bridge too far.

Andrew Brandt:

I think there's the issue that Ken brought up as well, that maybe, Grace, you can comment on. When you're talking about a labor union or labor organization, you have a wide disparity of interests, you know. And who's kneeling and who's not kneeling and, like we just talked about the Kaepernick group with Eric Reid, the Malcolm Jenkins group with Anquan Boldin and Chris Long and other ones, and that's hard, but you wonder if there could be a more central advocate. As you talked about Ken was sort of a

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labor union. Because let's face it, you know, owners are smart they'll divide and conquer, and too often that seems to happen when these causes get to a certain extent, as I talked about earlier, well then there's splintering among the labor.

Grace Speights: But that's across industries. I mean unions have never been really advocates in the in the area of social justice or race issues and things of that nature, because they do have, you know, others who are very vocal who are also members, and they sort of just walk the line of not taking that position. And that's across industries. That's not limited to sports. That's industries represent, you know, workers in the . . . car manufacturers, you know, workers anywhere. It's just the line that they tow.

Dave Zirin: You know, it's amazing to hear you hear you say that, Grace. Because when the NBA players, starting with the Milwaukee Bucks, decided last August that they weren't going to play after the police shooting of Jacob Blake. And then you saw it spread through WNBA, Major League Baseball, Major League Soccer, Naomi Osaka and tennis, and it was just like this wave. One of the reasons why I thought that was a significant moment, was it was the first time you'd really even seen the intervention of labor in the Black Lives Matter movement. Of people expressing their right as laborers to say, we're withdrawing our labor in opposition to what's happening. And saying, no, this is not a boycott, we're not withdrawing our consumer power, this is our labor, and this is a strike against racism. And the night that that happened, I got a ton of phone calls from people who were in teachers' unions, nurses' unions, who were asking like, how do we connect with that? Do you have Chris Paul's phone number? I don't. But they wanted that feel, to be like I want my union to do something. And what you said is a tragic

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truth that ran up against the realities of them as institutions. But that there was this thirst for it when they saw what the athletes did, that was really something.

Ken Shropshire: And the thing I'll add, too, is, you want them to be more like the Brotherhood of Sleeping Car Porters and Philip Randolph. That it does both represent these black men, 70% of the NFL, 80% NBA, but also society to say, here's the power we have. Hey Philip Randolph, I can be . . . call a march on Washington, and impact all of society, because I represent this important sector of labor. I mean, porters being very different from athletes, but the visibility, the power . . . so there is, amongst these unions, there is something special that could be done. But there's so many other issues, you know, going on. But it's a possibility, and I like to keep it out there as, maybe, you know, we try to think of what could be next. Could that be a bigger part of collective bargaining, could that be a bigger part of the kinds of actions they take in the future, when money is not so much of the number one concern?

Bob Ley: Money's always the number one concern, though. Follow the money. What did they say on the Soprano's? I'm from Jersey, it's the father of eternal biblical wisdom, you're only as good as your last envelope, make sure it's, you know it's sticking. And give quickly with the boss. I had a thought, and I have a senior moment, so I'll just pause and let someone else say something. I was going to make a point, and I tried to get funny on it.

Dave Zirin: Then as you're thinking I'll quote a New Jersey's own Danny DeVito, who said in the movie Heist, "Everybody loves money—that's why they call it money."

Andrew Brandt: You know, we've got a great question because, Dave you mentioned Naomi Osaka, and one of

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- the questions here is, the fact that she wore the masks at the US Open bearing the names of people who were killed over the past several years and months, when she was asked what message she was sending wearing those masks, she responded, well, what was the message you got? And so the question is, how do you think athletes will continue to get their audience not just to listen, but to self-reflect?
- Dave Zirin:** Interesting question.
- Bob Ley:** Wow, that's . . . that's heavy.
- Dave Zirin:** Yeah. I mean . . .
- Andrew Brandt:** I mean, ultimately, they have the stage, so can they get the audiences to be more . . . look inward?
- Bob Ley:** I think a lot of that comes with the level of commitment and familiarity, and just knowing what you're talking about it, while you're talking about it. That just comes through. I mean it's one thing it's one thing to buy in and be part of the chorus, if you will, and not just saying anything that, you know, you're not committed to. But to be a leader, and to wear that mask, and to, when asked why, and what this is about, to be able to speak about it with that sincerity and that credibility that's incumbent on activists, it is it to know it. Because if you make the cogent argument without necessarily going right to 10 on the emotion scale, you're going to win people over.
- Dave Zirin:** It makes me think of Floyd Patterson, when Muhammad Ali was barred from boxing for not being part of the draft and for opposing the war in Vietnam. Floyd Patterson, who was Ali's enemy in the ring several times, was asked if he felt like it was a just punishment to for him to have his title stripped away. And Floyd Patterson, who's incredibly, incredibly sharp, he said that he believed that Muhammad Ali was being

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asked to pay too high a price not because of his political positions, and not because he was going to rile up black folks, but because, as heavyweight champion of the world, he could actually influence white people with what he's doing. And that's why he was being forced to pay that heavy a price. And I think that's why the sports platform is so heavily monitored. Because it does have the power to make people reflect and think. Not that it gets through to everybody. But sports, as polarized as our society is, sports is the closest thing to a national language we have. And sports is this one collective space where people from all sides of the line are consuming what is there, so if you have a political message, yes it can polarize, yes it can push people away, yes, maybe they'll turn off their TV, but it can also actually encourage a degree of self-reflection that I think is unique, culturally.

I was asked on a different panel last night about the differences between sports and music with regards to protest. And, to me, sports is like that seminal moment, in I think it was 1969, on Johnny Cash's show when he invited out Bob Dylan to sing *Girl from the North Country*. And that's, please look it up on YouTube, it's a beautiful moment. But then you have Johnny Cash and Bob Dylan together, and that's sports, you know, it's like, it's something that gives you a united audience, even if that audience itself is disunited on so many political questions.

Bob Ley:

I was listening to that song just three hours ago, believe it or not. It just came up on my Spotify algorithm. I remember where my mind had wandered off to there in search of whatever, which is, you know, we're talking about all of these topics with hopefully the pandemic coming down to a manageable level with a different administration in Washington, with, speaking for myself, not reading my phone when I wake

up in the morning to see what the hell happened overnight because of what was tweeted. The point being we're in a different social, political environment. Yeah, we're still polarized, we're still talking at each other. But we're in a we're in a situation that is, it seems a lot less volatile. And the national psychic stress level has been dialed down for the most part, and so this almost comes back, Ken, what you were talking about earlier about, you know, maintaining the focus, keeping the foot down and keeping it relating to what it relates to which is young African American men. And you know, if something tragic were to happen in society, and inevitably it will, unfortunately, we know that's the case, is the kindling the same? Are the stage directions the same? I think we're in a different time because of the different tone that we're hearing and feeling in our daily lives, and I think that will have different outcomes. I mean marginally, not dramatically, but somewhat different now. I think things have settled down a bit and that's not necessarily a bad thing, because we were all living, you know, with the needle pinned to the red for fourteen months as a nation.

Ken Shropshire: Yeah, I think, too, part of what's going on now, in some sense the undue burden we're putting on the athletes, right? Think about that. That Carlos and Tommie Smith were 23, 24 whatever . . . but they weren't necessarily asked to speak and do a whole lot of creative stuff after the fact. They weren't even allowed to, frankly. And because there was Martin Luther King, I mean there was Abernathy, there were kind of that generation of people that were kind of the spokespeople of the moment. And I mean, these men and women don't really have that kind of omnipresent leader saying, you know, come with me and Harry Belafonte and march up this road. So, it's a fascinating time. And the evolution you were talking about for

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Lebron, from going to Beijing and people asking about sweatshops, South Tibet, and him like, not being responsive, rightly so, it's like, you know, I don't know much about sweatshops in South Tibet . . . and then to get the education in the way that he did, and to have an issue that's directly at him, Trayvon, to really allow him to emerge to be this person that he is . . . It's really a fascinating, different time, that we shouldn't, you know, I talk to guys in the G League and guys that are trying to make it and trying to do all this different stuff. But to have them do something with a whole lot of gloss on messaging is really . . . we're asking for a lot.

Bob Ley: Not to mention the pressure on their careers, their career earnings, their brand. You're not an athlete, you're a brand, at that level.

Dave Zirin: I've always taken the position that, something that you know Willie Mays said in the early '60s, he was asked why he didn't speak out more. You know, these aren't new questions, you know. It's like, Willie Mays why aren't you part of the movement, the way other athletes are? And Willie mays said, I believe in the right of every athlete or anybody to speak out, and I hope you'll believe in my right to not speak out. And I try, I think it's important that we have that generosity, because we are living in a time where, if something happens and you don't say something, people assume that you think the opposite, or that you think it's okay. I mean it's a very high pressure time in which we live, but people have lived through high pressure times in the past, and I think it's so important for us to be generous, not only with each other, and not only with people who disagree with us, but also with the people that we look to as spokesmen and spokeswomen, who are trying to figure this out on the fly. Oftentimes doing so because, you know, nature abhors a vacuum. You know, some people have greatness thrust

upon them, and for a lot of these athletes they're finding themselves in a situation they never expected to be in, but people are looking to them, and it's important that we be generous in this process.

Ken Shropshire: Yeah, and a lot of people would point to this, this social media video kind of moment, to relate to what Dave was saying. To look back at the Rodney King moment, apart from the Last Dance kind of commentary that we all have now, is the number of athletes that thought about speaking out but said, ah, never mind, in that moment. But it was it was the same, you know, when you think about, "this could be me," direct moment. The Rodney King moment is even more direct to that age group than Trayvon was.

Grace Speights: Yeah, but I think we're . . . I mean obviously we're in a different time now, and I think given, I mean, I look at these young people, you look at the Black Lives Matter movement that, I mean, really was started by and pushed through by younger people. No leader, no, you know, Martin Luther King or anybody like that, but just young people who are pushing for social justice. And I think, you know, as a result of that, I think we're going to see more of our younger leaders, younger athletes, for example, continue to be a part of that movement and continue to wear masks like Naomi to try to cause people to reflect. And I don't think that the younger athletes, that many of them look at it as a burden. I do agree with Ken—they shouldn't have to carry that burden. But I just think it's part of who they are, this generation. And that they will do it on their own, and they'll continue to do it on their own, and we don't have any senior leaders leading, but I think that's the beauty of this movement.

Ken Shropshire: I agree, and the beauty of teaching college kids, you know, every day, is when I mentioned that,

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you know, where's the leader? They said well that's the beauty of what we had. You can't take out the head. It's inculcated in the culture.

Andrew Brandt: And some are drawn and some are not, and that's what we're talking about here. Do athletes owe any requirement to do this is this? Is this something, I remember, even post-George Floyd, we heard some athletes say well, you know, we're still not hearing from prominent white quarterbacks. You know, we're still not hearing from so-and-so. And I almost felt bad, like, well do we have to? And what we want, out of athletes and everyone is authenticity. And sometimes, you know, we see athletes, where I think even we can see, and not we're not young people, we can see they're not authentic. You know they're just jumping on a cause because it's popular. So, there's that as well.

Ken Shropshire: Yeah, you know, the Ross the initiative and Sports for Equality has this wonderful board with all the network leaders, all the league leaders, and I used to be on that board, and that's one of the conversations we used to have. Well, what about some black people? You know, where, and the ideal is, as we've kind of alluded to, is everybody in the same room. So, you so you don't have information left out, so that you don't have your echo chamber of what you what you think should be done. So, there's a lot of power in some places, without the input that it needs. But the beautiful thing about today, I mean it's certainly many more conversations going on. You know, again, the sustained action and the impact the idea that, you know, in the NFL you have the Rooney rule where in 2003 there were three African American head coaches, and 2021 there are three African American head coaches. Which is, so the idea of, you know, sustainability is one thing, but don't keep doing the same thing over and over again and expect a different result. Add some-

thing to it. You got something, you need something more.

Andrew Brandt: Well we're gonna have to bring this plane in for landing, unfortunately. Time flies. But I will go around the horn one more time. As we've now established the present, how do we look towards the future. In this area, social justice, athlete activism, ethics for causes. I'll start with you, Grace, as we look ahead.

Grace Speights: As we look ahead, I look ahead, believe it or not, with optimism, because I see the work that many of my clients are doing internally. They had to be pulled there to do it, but that's okay. They're starting to do it, and that gives me great optimism, and I just hope that, you know, athletes, young people, Black Lives Matter, will continue the movement and not give up. I'm optimistic.

Bob Ley: You know, I'll just get back to the point I made about the generation. I'm excited to watch what this next generation or two generations will be doing in the in the next decade or so. Because they're not constrained by our experiences and our thinking. And I also think, I hope, that there is a, you know, the activism is sustained and emboldened by intelligent thought and also grace. And Dave touched on it as well, we listen to each other. You know we've been yelling at each other long enough. For the last decade, plus. And if we listen, and inculcate that into this drive for social justice, more people will be on the same page sooner.

Andrew Brandt: Ken?

Ken Shropshire: Yeah, I mean, I think it's two things. In the broadest sense it's, you know, that a father like me won't have to give their son the talk, sometime. That you don't have to take those steps. You know, the graphic conversation I think about is, Frank Robinson, when he was asked over and over again about being the first black

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manager in Major League Baseball in '74, '75, whenever it was. And his response was some version of, you know, it'll really mean something when nobody asks that kind of question anymore. For it to become kind of a commonplace thing in all these different sectors, where, you know, we're not color blind, and we want to appreciate the differences and celebrate and all that, but it's not the quirky kind of a unique special moment that something like that occurs. That it's, this is what we do, and this is the society we are.

Andrew Brandt: Dave, I'll let you have the last word, and you can promote your book as well.

Dave Zirin: Maybe I'm just inspired by being back here with Bob, but I keep thinking of this Bruce Springsteen line, where Bruce says, "The lights go out and it's just the three of us, you and me, and all that stuff we're so scared of." And I feel like that's been this country for hundreds of years. There's been you, me, and then all the stuff we're scared to talk about, which are basically racism, sexism, homophobia, inequality, all these things that have been so baked into this country. And I feel like we're finally talking about it. It took a couple hundred years but we're finally talking about it. You, me, and all this stuff we're so scared of. We're less scared than we used to be, and that makes me optimistic. You know what would make me so pessimistic? If all of these things were going on, and nobody was doing anything. Nobody was saying anything. Pandemic, racism, police violence, inequality, and we were all just taking it like a frog that's boiling in the water. I think we have such a different type of playing field in front of us right now, where people are engaged, and that fills me with a tremendous sense of optimism, even in the darkest of times.

Andrew Brandt: We'll leave it there. Grace Speights, Ken Shropshire, Bob Ley, Dave Zirin. Thanks so much. A

great panel. Thanks for your insights, your perspectives, unique differentiated content. Really appreciate it, thank you. And thanks to everyone for listening, thanks to all the students that put this together. We're also putting out in the chat a Brandt Report. All my students work with me on this report, we do it every year this year. It's on the COVID effect and sports, so you'll all have it there in the chat box. And now I'll turn it over to the leader of our Sports Law Journal that put this symposium together, this great work they did, Michael Horvath.

Mike Horvath:

Thank you, Professor Brandt. So that it's going to conclude tonight's panel regarding social justice in sports, and also wrap up this year's Symposium. On behalf of the Moorad Sports Law Journal, I would like to express my gratitude and appreciation to all of tonight's panelists for their time and insight. Additionally, there are a great deal of people I would like to thank for making this entire event happen.

First, thank you Jeff Moorad for your generosity, support, and help and putting on this Symposium. There's no way, we would be able to do this without Jeff. On a similar note, thank you again, Professor Brandt, for moderating all three panels at the Symposium, and for directing our Sports Law here at Villanova.

Thank you, especially, to Charli Grayson, our Journal's Managing Editor of Symposia, for coordinating this event and for all of her hard work and putting this together. I also want to thank the members of the Moorad Sports Law Journal and the Sports Law Fellows for their commitment to the distinguished Sports Law program here at Villanova Law.

Additionally, a huge thanks to Carla Edwards, Nicole Garafano, Brian Sirak, and Samantha Lare for helping Charli and I through the symposium process and being there every step of

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the way. Last but not least, thank you to all of our guests for joining us this week. This event doesn't happen without you, and we appreciate your support tremendously.