



# THE DRAKE GROUP EDUCATION FUND

Realizing The Promise  
Of College Athletics

## FOLLOW-UP NOTES

### WEBINAR #6

## “Keeping Everything We Love About Collegiate Sport While Fixing Its Failed Governance Structure”

The Drake Group Education Fund Webinar Series – Critical Issues in College Athletics

Hosted by LRT Sports

*Thanks for registering for our December 2 webinar. A regular feature of our webinar series is “Follow-Up Notes” which provides a link to the recorded webinar, answers to questions from the audience which panelists did not have the time to address (prepared by Drake Group experts), and information on our next webinar.*

### 1. WEBINAR #6 RECORDING

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In case you missed any part of *Keeping Everything We Love About Collegiate Sport While Fixing Its Failed Governance Structure* webinar:

[\*\*ACCESS THE RECORDED DECEMBER 2 WEBINAR HERE\*\*](#)

In addition, Dr. Zimbalist’s opening “*Economics of College Sport in Ten Minutes*” remarks are also available as a standalone video:

[\*\*ACCESS “ECONOMICS OF COLLEGE SPORT VIDEO\*\*](#)

### 2. UNADDRESSED QUESTIONS FROM THE AUDIENCE

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**Q: Separating enforcement from governance is a good idea, but let's put the blame on who are the real culprits. The real villains are academic institutions/members and the College Football Playoff. Why do we keep throwing the NCAA under the bus?**

**A:** First, enforcement is an essential mechanism of governance. We are not suggesting that it be separate from governance. We do recommend that an organization’s commitment to “just”

enforcement include the use of independent investigators, independent judges, and adoption of due process protections for accused athletes, staff, and institutions.

Second, we agree fully that coaches, athletic administrators, boosters, etc. who violate rules and institutions who are complicit in protecting them are so-called “villains.” An important function of governance is discipline of rule breakers.

Third, the NCAA is neither the national office staff nor an independent entity. It is an organization constructed and operated by its members who hire staff to perform governance and program operating duties and who are responsible for effective oversight of their performance. The NCAA consists of its member institutions, not all of whom are villains. These members elect representatives to serve on governance and operating committees and vote on how the mechanisms of NCAA governance operate. The members exercise their control of governance when they (1) vote to determine desired outcomes of athletic programs, (2) demand that NCAA staff and those serving on NCAA committees act in transparent, ethical, and truthful manners, (3) promulgate rules and processes that enable and require members to produce the desired outcomes, and (4) discipline members who fail to follow the rules (enforcement). The Drake Group believes that in the case of all four of these governance functions, the NCAA has failed in regard to both design and execution. All members of the NCAA are at fault, when the system created by the members does not address academic fraud, coach abuse of athletes, adequate health and physical protection of athletes, guarantees of unbiased investigation, due process and unbiased adjudication, etc. and the members accept by not acting to remedy these deficiencies.

**Q: Should we consider beefing up the Faculty Athletic Representative position so it would more resemble an independent watchdog over the athletic enterprise?**

A: Yes. Faculty athletic representatives should be tenured faculty elected by and annually reporting to their respective faculty senates on the achievement of athletic program academic, athlete protection and other desired outcomes. Further, if the institution has an intercollegiate athletics advisory committee, that committee should be majority tenured faculty, elected or appointed by the faculty senate.

**Q: Why does everyone speak of the NCAA as if every member is the same as Division I. There are 748 schools in the NCAA that are not the Division I money mongers. The ills of Division I are not ills of the majority of NCAA, yet all members are often villainized.**

A: The financial ills of Division I are not the ills of the majority of the NCAA. However, the failure of 887 NCAA member institutions to stand up to the threats of 111 Division I FBS institutions in 1996 is directly responsible for the NCAA’s governance failures. Historically, the NCAA was a one-member/one vote national governance organization that had a check and balance mechanism that permitted Divisions II and III to prevent Division I from going off the rails. In 1996, succumbing to the overt threat of FBS conferences to leave the NCAA, the NCAA adopted a federated governance structure with FBS being given voting control of the Board of Governors (formerly the Executive Committee) and a promise that if the NCAA ever started an FBS national football championship, 100 percent of the proceeds would go to only FBS institutions. Thus, Divisions II and III and Division I FCS and non-football schools effectively gave up the check and

balance governance system. That vote began the slide down the slippery slope that has allowed the most commercialized athletic programs to spend their FBS wholly owned College Football Playoff media rights fees on an unrestrained “arms race” with CFP revenues unshared with other NCAA members except for a small FCS “pay off.” The vast majority of NCAA members have remained silent as the FBS used the NCAA “student-athlete” moniker and an invented NCAA Graduation Success Rate as a cloak, to hide the educational and economic exploitation of majority Black football and basketball players, pulling the wool over the eyes of a dotting public that wants to believe the best and deny the worse about collegiate athletics. The silence of many NCAA non-FBS Division I, II and III members has been deafening and appears to be based on the fear that the Division I Final Four money rug will be pulled out from under NCAA’s cost-free national championship system and catastrophic injury insurance program if the FBS should depart.

Indeed, this history and the constitutional revision proposals currently under consideration clearly indicate that the NCAA does not have the internal capability to reinvent itself. The constitution proposals simply shift responsibility and litigation risk away from the national office and to member institutions and conferences. Such fragmentation of national governance would in actuality be the disintegration of any possibility of effective national governance.

The Drake Group continues to believe that the number and complexity of issues that must be addressed requires careful and comprehensive study of academic, financial, enforcement, and health endangering practices that have damaged the academic integrity of colleges and universities, exploited athletes for economic gain, and caused physical and mental harm to these students. We believe these harms can be removed without damaging all the good that intercollegiate athletics provides to campus and community and the individual development of athletes. We also believe that a blue-ribbon Congressional Commission must undertake this examination because the NCAA is incapable of change from within. More important, only Congress has the power to grant a narrow and conditional antitrust exemption to install the authority of a national athletic governance organization to control the cost of athletics and wield the heavy hammer of withdrawal of Higher Education Act funding if institutions don’t install the guardrails required for athlete protection and meaningful educational outcomes. Hearings and assembled research during such a Commission process would educate members of Congress and the general public about what has to be fixed and generate important conversations about how.

**Q: Do you think there should be any differences in the way oversight is done for private and public schools?**

A: Generally, no. All NCAA member institutions should be governed by the same fair oversight system. Division II and III have adopted a regularized system of self-evaluation while Division I has been given a free oversight pass (the Division I certification program was dropped in 2011). The Drake Group believes improvements can be made so that campus oversight is performed by campus-wide assessment committees without athletics representatives similar to committee composition in the higher education accreditation process. If this every 5-year or 10-year athletics certification process is supplemented on each campus by annual reports made to the faculty senate by a faculty-senate elected or appointed tenured Faculty Athletic Representative and tenured faculty oversight committee with high levels of transparency, The Drake Group believes, that these

two elements will address the most critical academic fraud and athlete protection issues facing intercollegiate athletic programs.

**Q: What if there were collective bargaining over health/safety/benefits and time demands? Would that help mitigate the harm to college athletes?**

A: There is probably no more significant roadblock for college athletes seeking meaningful educations than the unreasonable amounts of time they must engage in practice and other athletics-related activities. In every NCAA and conference survey and through numerous research studies, athletes have made their concerns and needs concerning time spent on their sports known. Excessive athletics time demands are interfering with sleep, prohibiting recovery from injury and strenuous exercise sessions, increasing the dangers of concussion, inducing stress that affects mental health, and greatly interfering with academic responsibilities and choices of majors (see [\*Excessive Athletics Time Demands Undermine College Athletes' Health and Education and Required Immediate Reform\*](#)). For years NCAA member institutions have failed to enact the rules necessary to address coaches' excessive time demands. The NCAA "20 hr. rule" is a fake news label hiding 30-to-40-hour work weeks depending on sport confirmed by the NCAA's [\*2019 GOALS study\*](#). Together with other branding devices such as the terms "student-athlete" and "amateur status," the NCAA is selling a bill of goods to the American public to assure them that institutions are not operating professional sports franchises or treating college athletes as employees.

The Drake Group believes that athlete organizing rights can be a valuable empowering mechanism if limited to negotiating for health and safety and time demand benefits and combined with guardrails such as restriction of athlete compensation to educational coin (as contrasted with 'pay for play') and no rights related to athletics academic eligibility standards. Key is maintaining the college athlete's "student" relationship to the University.

**Q: What is the significance of the NLRB legal counsel's position that Division I college football players at private institution should be classified as "employees?" What is the possibility that such a college athlete "employee" classification will be extended to public schools?**

A: While it is too early to predict whether the NLRB will take action in this space, this could be significant for Division I football players and similarly situated athletes, especially among private institutions. To be noted also, is that the opinion discusses the possibility of applying the NLRBA to the NCAA and conferences (and thus public institutions) under the joint employer theory. Either way, we believe that it would be more fruitful for Congress to act on an athletes' rights statute or the establishment of a Congressional Commission as mentioned above, that might result in correcting the athlete control and treatment issues that have instigated the call for athlete unionization. We believe the quality of college athletic programs will not be harmed and the lives of college athletes will be immensely improved if institutions ensure that they are treated as "students." For example, without passing one new NCAA rule, every institution can unilaterally act to afford athletes the following treatment rights:

- a. Athletic scholarship agreements in any amount are guaranteed for six years or graduation whichever comes first and are based on continued voluntary participation in the program and

maintaining a minimum academic standard, non-revocable in the case of injury, withdrawn only by the institution's normal student disciplinary authority on the basis of student conduct standards applicable to all students, and non-revocable for any athlete admitted based on waiver of normal academic admissions standards.

- b. All academic counseling and support programs are administered by regular academic authorities outside the athletic department.
- c. No rules about living on campus or other housing restrictions that are not applicable to all other students are imposed other than for housing during travel to and from away competitions.
- d. Athlete use of a training table or other special meal facilities or study halls separate from other students are optional rather than mandatory.
- e. Athlete attendance at summer school is voluntary.
- f. Athletes are not subject to any restrictions on outside employment excluding reporting requirements related to athletics eligibility or conformance with state or federal regulations
- g. No restrictions on course selection or class attendance during team practice hours or other athletics-related activities are imposed.
- h. No athletic department or team rules may be imposed that are not applicable to non-athlete students unless related to athlete safety (i.e., hazing, bullying, etc.), use of substances prohibited by state or federal law, or performance enhancing substances banned by athletics governance associations.
- i. No athletic department or team rules are imposed that restrict freedom of speech or expression other than those that apply to all students.
- j. Coach or athletic staff surveillance of athlete social media accounts is prohibited.
- k. Gambling prohibitions may not be imposed unless prohibited by state or federal laws, or in the case of the athlete's sport, prohibited by athletic governance associations as a condition of eligibility.
- l. Attendance at practices, games, or other athletics-related activities on weekdays are limited to twenty hours per week with the exception of medical treatment.
- m. Physical activity punishment for lateness to practice or sport-related performance deficiencies is prohibited.
- n. Dress codes for athletics-related travel to home or away contests are permitted only if applicable to other non-athlete extracurricular activities except dress codes related to safety or hygiene (i.e., weight training facilities, wrestling rooms, swimming pools, etc.) or appropriate dress in co-ed physical treatment areas (i.e., training rooms, etc.) are permitted.
- o. No mandatory training or athletics-related activity requirements may be imposed outside the athletics governing body allowable seasons for practice and competition.

**Q: Would you be able to share the slides used in this presentation?**

A: See attached at the end of this document.

### **3. OUR NEXT ISSUE: WEBINAR #7 - “Racial Exploitation in College Sports: A Continuing Disgrace”**

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**SAVE THE DATE! Thursday, January 13, 2022 from 2:00-3:30pm.**

Intercollegiate athletics, especially at its highest levels, exploits people of color. In a recently released [major report](#), The Drake Group examined the many ways that Black and brown college athletes are used for their talent, denied opportunities to excel in the classroom, and are excluded from leadership positions in college sports administration and coaching. The panelists in this webinar will speak on these concerns as they've impacted their own experiences in college sports and suggest solutions to address racial exploitation in college sport, including congressional action.

#### **4. LINKS TO RECORDINGS OF PREVIOUS WEBINARS**

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**[CLICK HERE](#) to enter The Drake Group Education Fund Video Library for recordings of all previous webinars.**

WEBINAR #1 -- "Wild West or Brave New World – National Experts Share Their Thoughts on College Athlete Compensation"

WEBINAR #2 -- "Millionaires or Minimum Wage? Current and Former College Athletes Speak on Athletes' Compensation"

WEBINAR #3 -- "Experts Speak Out on College Athletes' Mental Health"

WEBINAR #4 - "The Transgender Athlete in Girls' and Women's Sports: The Collision of Science, Law, and Social Justice Explained"

WEBINAR #5 -- "Title IX and the NIL Marketplace: Subterfuge or Opportunity to Remedy Historical Inequities?"

#### **5. WAYS YOU CAN HELP**

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If you believe **The Drake Group Education Fund** is doing good work, please also consider making a tax-deductible donation to support our webinars and educational research and programs work. You can donate and learn what we do [HERE](#).

Interested in becoming a change agent by working with **The Drake Group**, a sister organization of The Drake Group Education Fund? We need volunteers to contact their senators and representatives to advance collegiate athletics reform legislation. Learn about legislation and [VOLUNTEER/JOIN HERE](#).

## 6. THANKS TO OUR NOVEMBER 17 PANELISTS!

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### MODERATOR:



**KARL IDSVOOG, Associate Professor, School of Media and Journalism, Kent State University;** former investigative reporter/manager in broadcast and online news producing major reports on politics and corruption in college athletics.



**DONNA LOPIANO, President, Sports Management Resources;** President, The Drake Group; Adjunct Professor of Sports Management, Southern Connecticut State University; former UT-Austin Women's Athletics Director and CEO of the Women's Sports Foundation.



**JAYMA MEYER, Counsel, Simpson Thacher & Bartlett; Visiting Clinical Professor, Sports Law, Indiana University;** member of the Board of Directors, Sports Lawyers Association; Emeritus Member, Board of Directors, National Women's Law Center; Emeritus Trustee, former Vice President, Women's Sports Foundation.



**B. DAVID RIDPATH, Associate Professor of Sports Business at Ohio University, College of Business;** Past President, The Drake Group; research areas include intercollegiate athletics administration, governance, and rules compliance including ethics and components of the NCAA legislative, enforcement, and governance process.



**BRUCE SMITH, Director of Empowerment Strategies, ACES Group**, a consulting firm, working with individual athletes, teams, programs and clubs, families, and schools to build academic skills, personal life skills, and the ability to create pathways to success in the complex athletic environment.



**ANDREW ZIMBALIST, Robert A. Woods Professor of Economics, Smith College;** President-Elect, The Drake Group; author of *Unpaid Professionals: Commercialism and Conflict in Big-time College Sports* (1999), *The Economics of Sport, I & II* (2001), *Unwinding Madness: What Went Wrong with College Sports and How to Fix It* (2017) with Gerry Gurney and Donna Lopiano, and *Whither College Sports* (2021).