THE DRAKE GROUP EDUCATION FUND
Realizing The Promise Of College Athletics

FOLLOW-UP NOTES
"The Future of the NCAA -- Transformation or Preservation of the Status Quo?"

The Drake Group Education Fund Webinar Series – Critical Issues in College Athletics -- Hosted by 2aDays.com

Thanks for attending or registering for our January 19, 2023 webinar on collegiate athletics faculty issues. A regular feature of our webinar series is "Follow-Up Notes" which provides links to the recorded webinar, answers to questions from the audience which panelists did not have the time to address or those emailed to us from telephone participants, and information on our next webinar.

1. THE FUTURE OF THE NCAA - Webinar #19 RECORDING

In case you missed any part of the January 19, 2023 webinar, you may access the recorded video here:

"The Future of the NCAA -- Transformation or Preservation of the Status Quo?" Recording

2. UNADDRESSED QUESTIONS FROM WEBINAR ATTENDEES

Following are answers to questions from the audience symposium panelists did not have time to address. Responses are from Drake experts including some of the panelists.

Q1. What does getting the genie back into the bottle look like?

A1: Most observers would agree that it is highly unlikely that there will ever be a return to the NCAA one-member/one vote division membership structure in which divisions operated independently by majority vote except for constitutional or rules that were applicable to all divisions for which an entire membership majority vote was required for action. Significantly, during that governance period, the proposed rule of any Division appearing to "go off the reservation" could be vetoed by a two-thirds vote of the membership. The governance

disintegration of the NCAA began in 1997 when the primary leadership of the Power Five commissioners, instituting a "threat" to leave the NCAA if a new federated governance system was not approved, a provision of which was that the FBS have majority control of what is now the Board of Governors (the entity deciding on distribution of NCAA championship revenues) and an assurance that the NCAA would not start an FBS football championship without 100% of the revenues going to the FBS. The very next year, the FBS started what is now the College Football Playoff, with no worries regarding whether the NCAA would establish its own FBS championship. Since that time, the FBS has been able to get what it wanted, repeating that threat to leave. It was used to get approval of FBS rule-making autonomy and for approval of the 2022 governance proposal. The FBS is effectively autonomous with no check and balance system in place.

One could look at the Ted Stevens Olympic and Amateur Sports Act of 1978 for a way out. That law was enacted after three years of national study of non-school sport by Congress. The Act replaced the AAU with the USOC, an independent federally chartered non-profit organization. One could contemplate a College Athletics Reform Act that might replace the NCAA with a independent federally chartered organization to replace the NCAA that would be governed by independent Board of Directors. Such a structure might establish a governance in which divisions governed their own sports but board of directors governed all financial, academic integrity, health and wellness protections, medical trusts, and other policies using all the proceeds of all national championships to do so. There could be a provision that the replacement organization own all championships and that all proceeds be used for such purposes. First call on championship proceeds could be long- and short-term medical/athletic injury protection of all NCAA athletes. Conferences and institutions would be free to use their own television revenues however they wish.

Such change is not possible from <u>within the NCAA</u> because the FBS likely to continue to act in its own self-interest – not about to approve any guardrails. The only entity with enough power to challenge the NCAA is Congress, which could condition receipt of federal funds on the acceptance of such a structure. The function of a three-year study by Congress would be to untangle all the complicated pieces of intercollegiate athletics, educate all parties, and assemble Congressional support for such a solution. Given the current dysfunction of Congress, getting to the point of mandating the three-year study is likely to be five years out. Granted, getting the "genie back in the bottle" would be a huge lift. But there is a path.

Q2: It seems like the NCAA's abandonment of governance parallels higher education's abandonment of faculty governance. Do you think there is a connection here?

A2: Yes. The faculty, like college presidents, is incapable of controlling the commercial forces and power structure currently operating in college sports. Eighty percent of college presidents admit they cannot control big-time football and basketball programs. Too many powerful alumni and trustees have their fingers in the pie. Change needs to come from the outside. It will be interesting to see what, if anything, precipitates that change – an athlete's death, a major price-fixing scandal, an antitrust lawsuit, a Supreme Court decision, or other idiosyncratic occurrence that ignites a call for a major investigation by Congress – the three year study that could plot a path forward.

Q3: Should not there be lifetime coverage for athletic injuries? A national model similar to the VA?? Why not? At the very least this is a benefit that must be available for what treasure and time the athletes provided?
A3: Agreed. The almost complete abdication of responsibility for college athletes' medical injuries is inexplicable. Less than one percent of the $15.8 billion in revenues generated by Division I is spent for this purpose.

Q4: The panel has highlighted just how difficult it is to navigate what is arguably a professional business model at the Power 5 level. Does it make sense to carve out the Power 5 schools and treat them differently than the balance of the association, and is it realistic to think that the member schools at that level would ever agree so as to create one set of rules to create competitive balance, much like they do in professional sports or is that unlikely since it allows the most successful schools to continue to be successful?
A4: What we are seeing now is the Power 5 creating its own professional business model in order to increase the distance between itself and the Group of 5 or any other competing subgroup. Leaving the larger whole poses antitrust risks for the Power 5. It needs the "cover" of the larger membership to give the impression that it is not a monopoly. We doubt that the Power 5 seeks an exit.

Q5: The main issue is not remediating athletes to the level where they can compete academically, which in turn only encourages fraud. Remediation should occur before competition and intensive training.
A5: While The Drake Group agrees that freshman ineligibility, especially for academically underprepared college athletes is desirable, freshman ineligibility as a possibility appears to have gone by the wayside as a possible solution because of commercial pressures to win and produce revenues. Institutions will not risk any policy that encourages the best athletes to leave college early or go directly into professional sports. The Drake Group is examining other academic solutions as we speak and plans a major paper on the issue of Division I football and basketball graduation rates before the end of the year.

3. OUR NEXT WEBINAR #20 - "*Name, Image and Likeness (NIL) 1.5 Years Out - What Have We Learned and Potential Pathways Forward?*"

REGISTER HERE

SAVE THE DATE! Thursday, February 16, 2023 – 2:00-3:30 p.m. EST

Given that we are closing in on the first two years of college athletes being able to profit off their own names, images, and likenesses (NILs) after 100 plus years of restrictions by the NCAA on outside earnings related to the skill or notoriety of players, it is vital to assess how this dramatic change has affected the college sports industry. A stellar line up of expert panelists will discuss the burgeoning NIL industry and its impact on intercollegiate athletics in America. Topics include the growth of "booster NIL collectives," protection of college athletes from unethical agents, and

whether universities are educating athletes on financial literacy and IRS obligations. Significant Title IX and other gender equity issues have been raised with regard to the relationship between institutions and collectives and institutions engaging in co-licensing and group licensing with their own athletes. With large sums of money now flowing directly from boosters to athlete, will this impact athletic department sponsorships and donor contributions? What are the costs and benefits created by the new industry of NIL-related businesses like Opendorse, Altius Sports Partners, and On3, among others. Panelists will also opine on the prospect of federal intervention, legal entanglements, and whether existing NCAA outside employment rules will ever be enforced given current fears of litigation.

4. ACCESS RECORDINGS OF PREVIOUS WEBINARS

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?"

WEBINAR #6 -- "Keeping Everything We Love About Collegiate Sport While Fixing Its Failed Governance Structure"

WEBINAR #7 -- "A Continuing Disgrace: Addressing Intercollegiate Athletics Race Issues"

WEBINAR #8 -- "The Disintegration of the NCAA: The Price of Rejecting National Governance"

WEBINAR #9 -- "Lack of Accountability for Athlete Abuse in College Athletics"

WEBINAR #10 -- "College Athletes' Freedom of Speech and Expression – or the Lack Thereof"

WEBINAR #11, #12, #13, #14 -all sessions of the May 19, 2022 The Allen Sack National Symposium – Advancing Integrity in College Sport,

WEBINAR #11 --SESSION 1 -- "GIVING COLLEGE ATHLETES THE RIGHT TO UNIONIZE"

WEBINAR #12 -- SESSION 2 -- "MANDATING A COLLEGE ATHLETES' BILL OF RIGHTS"

WEBINAR #13 -- AWARDS LUNCHEON -- "A VISION FOR THE FUTURE"

WEBINAR #14 -- SESSION 3 -- "NAME, IMAGE, AND LIKENESS – CHAOS OR OPPORTUNITY?"

WEBINAR #15 -- "Critical Issues for Athletic Programs at Historically Black Colleges and Universities"

WEBINAR #16 -- "College Athletics Reform – Where Are the Faculty?"

WEBINAR #17 -- "Brain Trauma: Are We Doing Enough to Protect College Athletes?"

WEBINAR #18 – "Students, Employees or Both? Is There an Alternative Educational Model for College Sport?"

WEBINAR #19 "The Future of the NCAA -- Transformation or Preservation of the Status Quo?"

5. QUESTIONS ABOUT THE DRAKE GROUP EDUCATION FUND AND 2aDAYS.com

The Drake Group Education Fund (TDGEF) is a new 501(c)(3) non-profit education sister organization whose mission is to ensure that the promise of college athletics is realized for all stakeholders. TDGEF produces *The Allen Sack National Symposium on Integrity in College Sports* and the *Critical Issues in College Sports Webinar Series*, conducts fact-based research on intercollegiate athletics and develops position papers and other educational materials that influence public discourse on current issues and controversies in college sport. To access a full library of print and video educational materials on current issues in intercollegiate athletes, visit **www.thedrakegroupeducationfund.org**. All educational materials are available free of charge. If you believe The Drake Group Education Fund is doing good work, please also consider making a tax-deductible donation to support our webinars, educational research and programs. You can donate and learn what we do **HERE**.

The Drake Group (TDG), a sister organization to TDGEF, is a 501(c)(4) non-profit organization whose mission is to educate policymakers and advance legislative initiatives that foster academic integrity and athlete well-being in intercollegiate athletics. For the most current information on The Drake Group and college athletics related bills being considered by Congress, visit TDG **HERE**. TDG needs volunteers to contact their senators and representatives to advance

collegiate athletics reform legislation. Learn about legislation and **VOLUNTEER/JOIN HERE**.

2aDays.com. Interested in helping high school and college athletes learn more about athletic programs at institutions they are considering attending – and the ratings of coaches in these sport programs? Check out our webinar partner **2aDays.com**.

6. THANKS TO OUR WEBINAR #19 PANELISTS

JULIE SOMMER, MODERATOR, Attorney, The Drake Group President-Elect; expert on the status of state NIL bills, The Drake Group liaison to the Uniform Law Commission that developed a model NIL statute, and author of a comparative analysis of current federal NIL bills. Julie is a member of the Washington State Bar Association, King County Bar Association and Sports Lawyers Association; former NCAA All-American swimmer at the University of Texas at Austin, member of an NCAA National Championship team, USA Swimming National Team member and listed among the top ten in World Swim Rankings.

J. KENYATTA CAVIL, Ed.D., Dean and Interim Associate Dean of Academic Affairs, College of Education and Professor, Department of Health, Kinesiology and Sport Studies, Texas Southern University. Dr. Cavil specializes in sports business leadership, entertainment and sports analytics. He is a preeminent scholar on critical sports studies and his research interests include the sporting HBCU diaspora, HBCU sports culture theory, and HBCU athletics aesthetics. Dr. Cavil's *Inside the #HBCU Sports Lab* with Mike Washington and Charles Bishop is a streaming show, ultra-popular with HBCU sports fans, airing twice a week on various digital media platforms.

DONNA A. LOPIANO, Ph.D. Adjunct Professor of Sports Management, Southern Connecticut State University; President of Sports Management Resources, a consulting firm; Past-President of The Drake Group; member of The Drake Group Education Fund Board of Directors; former CEO of the Women's Sports Foundation (1992-2007) and Director of Women's Athletics, University of Texas at Austin (1975-1992).

BETSY MITCHELL, Director of Athletics, Physical Education and Recreation, California Institute of Technology; Sport Management Consultant, strategic planning, change management, facility creation, fundraising, staff development; motivational speaker; former Allegheny College director of athletics and recreation; former Dartmouth College swimming & diving head coach; former instructor of sports management, Notre Dame College of Ohio; former director of athletics at Laurel School for Girls in Shaker Heights, Ohio as well as director of athletics at Thomas Worthington High School in Columbus, Ohio; Olympic medalist, former world record holder and multi time NCAA swimming champion at University of Texas at Austin.

DEREK VAN DER MERWE, **Director of Athletics, Bowling Green State University**; former Associate Vice President and chief operations officer, University of Arizona athletics department; former Vice President of Advancement, Communication and Strategic Initiatives at Austin Peay State University in Tennessee, where he also previously served as director of intercollegiate athletics; van der Merwe has worked in higher education for more than 25 years, serving in leadership roles in both athletics and university-wide positions. He has held leadership positions in the Pac-12 Conference, the Ohio Valley Conference and the Mid-American Conference.