



THIS WEEK'S PROGRAM

June 11, 2024

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*Mike Ingersoll,
Associate
Womble Bond Dickinson*

*Name, Image, &
Likeness (NIL)*

by **Susie Masotti**

Mike Ingersoll, Associate at Womble Bond & Dickinson was introduced by Rotary Member, **Andy Dinkin**. Mike is currently an attorney, but his claim to fame is he played offensive line for the Tarheels. While in Chapel Hill he earned his undergraduate and law degrees. Mike's NFL career included stints with the Kansas City Chiefs, Tampa Bay, and New England and he played in the CFL. He is a proud husband and dad of a 2- and 4-year-old and lives in Weddington. To make him even more interesting, before he was interested in a football or law career, he wanted to write comic books! Today he will be speaking to us about Name, Image and Likeness as it relates to college athletes today.

Mike gave some insight into college and professional sports by advising that within a team there are groups (such as offensive linemen, running backs, etc.) and they truly have a pack mentality. Once you play with someone, you stick with them for life. That's true of his time at UNC and with all the teams he played with professionally.

Mike's firm is famous for tobacco legislation prior to merging with Bond & Dickinson out of the UK in 2017 when he joined the firm. He got into sports and entertainment law as a passion – long before “NIL” we called it athletes rights or player compensation back in his sports days. He played

for the 2010 Tarheels who were “nipped” by the NCAA for what the news likes to call “paper classes.” Mike let it be known that 95% of what you saw or read about that incident is not true. Mike had already been writing about these topics before and during law school but that experience, more than anything else, led him into the law practice of sports and entertainment.

In 2021 his passion became a legal reality with the Alston vs. the NCAA. The Supreme Court case was unanimously deemed an antitrust act and specifically Brett Kavanaugh’s comments regarding the NCAA laid the road map for what we saw just 30 days later when the NCAA began allowing players to receive compensation for their own Name, Image and Likeness (NIL).

NIL is basically endorsement deals; much stigma around it but it’s the same thing you see professional and Olympic athletes already taking advantage of. This includes endorsing non-profit organizations. From the player’s perspective, you can sign up for the Consolidated Collective which may include funds from boosters, independent businesses, large corporations, and others that support the athletic programs of a school. Those collectives are truly an independent business. The rule is that the school can now write the check and connect entities (such as boosters and sponsors) but they are not involved in the day-to-day business. This is becoming more of the norm. The collective reaches out to donor bases, sponsors, etc., and all the funds go into a war chest. Depending on your team, position, and a variety of other factors, the percentage of that fund is paid to individual athletes. That is the exchange. The pay cannot be based on the individual or team’s performance – pay for play is a big no-no for the NCAA to this day. Players must give something back to those donating to the collective.

Players with agents can negotiate their own separate deals outside of the collective (this includes high school athletes as well). Individuals can sign up to be a booster – same concept – you can put up a small amount and receive less benefit or more money for more benefits. Collectives run close to \$0 at the end of the year. It truly is a support system for the athletes.

How much an athlete is worth is dependent upon what school they go to, their personal performance, the position you play, how visible you are and more. Dion Sanders’ sons are great examples of this – their compensation is much higher than some others that you might think earn more, but because they have higher visibility, their compensation is higher. Your deal with the collective is generally higher than you can get on your own as a regular athlete. At the outset there were a few players who made a lot of money, but like any business it stabilized. The spring 2024 portal is a perfect example with good game reps, solid play putting yourself into the portal will net you more than \$1,000,000. Conversely if you’re a 3 – 4-star athlete with no game reps, perhaps you didn’t get any playing time but have a high profile, you can make more than \$300,000 depending on your potential. A 4 – 5-star high school athlete can earn as much as \$100,000 but that market is dwindling down because collectives are focusing on keeping their current players, not using the NIL to recruit high school athletes. This is another example of the market stabilizing itself.

From an investment standpoint, men's basketball funds are primarily focused on point guards and centers, but the NBA allows players who play after just one year in college to participate in the NIL. You might be better off focusing on the same school's football quarterback and linemen who are required to be in school by the NFL for three years.

Regarding NCAA enforcement – the NIL violation presumption bylaw presumes you made a violation which means you must prove that you didn't. For lawyers that's a higher standard. The NCAA ran into trouble recently – the two-times transfer rule and the injunction against using NIL as an inducement (either to come to the school, stay at the school, or transfer to another school). The NCAA was enjoined from this prohibition. If you are going to do a deal with an athlete for your business, the numbers won't shock you. What you will be surprised about is the exclusivity – it is rare. For legal purposes, agent contracts must stop at the end of their NCAA career which has drawn more agents into relationships with players earlier in hopes of keeping them when they enter the professional leagues.

When you are talking to someone about compensation, consider whether you are going to pay them in goods or cash. If an athlete is going to accept goods if they are represented well, there is also cash involved to pay the taxes on the goods. In 36 states you can sign a deal with a high school student, but if you don't have a parent signature it may be voidable.

The bottom line – there can be no quid pro quo – they must provide something not related to their performance as an athlete (appearances, autographs, etc.). The types of deals are what you'd expect, autograph signings, trading cards, jerseys, appearances, notoriety, internet clicks, people attending your events, etc. The morality exclusion is up to each school (tobacco, alcohol, etc.).

North Carolina is somewhat in a nether world on the issue regarding high school students. Right now, NCSIA (private schools) can do NIL in North Carolina, anyone else presumptively cannot because the state board of education has not passed a ruling on the NIL. There are no NIL rules right now and not in the foreseeable future.

The question was asked about how this affects the team as a whole - how does a Senior deal with a freshman coming in and making more money and getting more notoriety? The way the teams currently deal with it is group licensing – UNC was the first to do this. However, we live in a free market and as we all know the free market isn't fair to everyone.

What protects smaller schools that don't have a lot of money to give from the big schools that have access to more money? Theoretically that is very real. It's related to complimentary consolidation. Mike's prediction is that at some point in the future major college football will align like the NFL – two leagues. People say the NCAA is dead, but Mike disagrees with that –

they will remain a rule-making authority, run championships, etc. The question is now going to be how a player transferring from a smaller school to a larger school can test the anti-trust situation again.

A guest asked if contributions to the collective are tax deductible. The IRS came out last summer and ruled they are not tax deductible. The IRS decided that the collectives are not charities. Even if you're organized as a 501©3 it's likely not tax deductible. Many donors split their donations to the collectives but also went back to donating to the booster club (such as the Ram's Club in Chapel Hill).

Is it safe to say we no longer have amateur sports? We all lived under the NCAA's definition of "amateur" sports for decades. Mike suggested looking to the Olympics model as a guide for the future - Michael Phelps isn't poor and he is still an amateur athlete and isn't paid for play. Amateurism isn't dying, it's evolving.

Finally, a guest asked how the NCAA will handle portal players regarding their payment from a collective. Currently in professional sports, you can be traded for equal value or wait until their current contract ends. How is that being handled with the NCAA now? It's a contract problem. The way Collectives have gotten around it by using monthly or quarterly renewable contracts. This is yet another area that is evolving as we navigate new experiences.

A recording of the meeting can be found here: <https://vimeo.com/957835027>
The program introduction begins at approximately 32 minutes and 50 seconds.