

PROTECTING YOUR POSSIBILITIES PODCAST WITH LUKE FEDLAM

Episode 28: Ethics in Athlete Education | Feb. 17, 2021

The following is a transcription of the audio podcast recording. It is largely accurate but in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors.

Luke: I'm sports attorney Luke Fedlam, and welcome to the Protecting Your Possibilities podcast. Each conversation we focus on sharing information and having conversations around how athletes can best educate and protect themselves or their life outside of their sports.

Thank you so much for tuning in to the protecting your possibilities podcast. I'm your host, Luke Fedlam. And excited for another conversation with you. Again, thank you all so much for, you're reaching out for your support, I get texts and emails from folks just finding an episode that they really enjoyed or thanking me for an episode, let me thank you. Because ultimately, I just feel like this is part of what I'm here for, which is to educate and protect others through education. And so if I can share 15-20 minutes of a conversation to help others educate themselves, then that is what brings me joy. So thank you so much for your listening.

And when it comes to education, that really is the topic for today. I gave a presentation. I like to say that I give conversations more than presentations, because I like to involve others in what it is that I'm sharing, so that I'm learning as well as sharing information. So I had a conversation with a group at a conference last summer, in the summer of 2020. It was virtual. And the topic that I presented on was the ethics of athlete education. And I was really excited about it, because I'd never given a presentation on this topic before. But knowing that I care so deeply about education, when I was asked to put something together, I was really excited. And I'll tell you a lot of times, I give very similar presentations over and over. And I'm okay with that. Because I always try to find a way to make it unique to that audience. But anytime I get to create an entirely new area of discussion, an entirely new presentation from scratch, there's something really exciting about it for me, especially when it falls in the area that I care so deeply about, which is how do we educate? And how do we protect?

I mean, ultimately, that's why I created the protecting your possibilities podcast, is to help others understand ways to protect themselves. And now it's geared towards athletes. But again, I've gotten so much positive feedback from others from entrepreneurs, from other business folks, musicians, entertainers, artists, and others who find value in this content. So I'm thankful for all of you. But let's, let's get back to it right? The ethics of athlete education, and I'll put, you can't see my face, but I'll put athlete in air quotes because I think that that again, as I just mentioned, you could look at the ethics of entrepreneur education or artist education and others and find some important similarities. But for now, let's just focus on the ethics of athlete education.

I believe that it is an ethical imperative, that athletes at all levels are educated in a way that prepares them for success outside of their sport. All right, let me say that, again, it is an ethical imperative, that athletes at all levels are educated in a way that prepares them for success outside of their sport. So let's, let's break that idea down. Let's break that down a little bit. Let's just talk about ethics. Right? Why ethics? And why is it an ethical imperative? So first, like what

are ethics? Right? Ethics are, they're our values, our principles and purposes, they're what give us a sense of what's good, what's right, and what is meaningful in our lives. I mean, they really do serve as that reference point for all of the possible courses of action that we could choose in our life, like which direction will go on certain issues. On this definition, an ethical decision is one that's made based on reflection about the things that we think are important, and that we believe are consistent with those beliefs.

All right. So that's what ethics are, they help us kind of understand what we should do. So again, going back, it's an ethical imperative that athletes at all levels are educated in a way that prepares them for success outside of their sport. Here's the deal when it comes to education and athletes. We know that athletes are hyper focused on their athletic performance, and really at all levels. So when we think about this, athletes at the high school level are trying to play at the college level. Athletes at the college level are trying to play professionally and so this just continues to perpetuate, and athletes that transition to the pros are trying to be at the highest level that they can. And we know that not only are athletes hyper focused on their athletic performance, we know that coaches and trainers are also focused on that athlete's performance.

And so division one men's basketball, there was a study, the NCAA goal study of the student athlete experience, and the most recent that I could find was back in 2016. But they report for men's basketball, spending 34 hours a week on basketball activities for football 42 hours a week. Alright, Division One, men's basketball missed 2.2 classes per week during the basketball season, and 21%. Like one out of every five missed more than three classes per week. But again, ethical imperative that athletes at all levels are educated in a way that prepares them for success outside of their sports. What does that mean? Yes, education in an academic setting is critically important for athletes. It's what is going to help them in their lives as they grow and develop in their career beyond their sport.

Additionally, however, it's critical to remember real world practical education as well. And so why is that practical education an ethical imperative? Well, it's an ethical imperative, because we know the statistics, right? We know that at the college level, only 2%, less than 2% of student athletes are going to actually play their sport professionally, right, less than 2%. But yet, studies show that over 50%, so 52% of student athletes think that they'll actually play pro. So 2% will 50% think that they will. So if a student athlete thinks that they're going to play pro, it's critically important that they receive real world practical education, to help them be successful beyond their sport, when they're done.

So we know these statistics, we know that athletes are hyper focused, we know that their coaches and trainers are hyper focused on that athletes performance. We know that when an athlete transitions, from college, to the pros, that they are extremely focused on their performance so that they can get drafted the highest possible. And we also know that athletes who believe that they're going to go pro make decisions based on the fact that they believe they're going to go pro, we know that coaches will support that belief, because it's that belief that helps coaches to maximize the performance of that athlete in their sport, by feeding into this notion that they're going to go and play professionally. So there has to be this point. It's an ethical imperative, that these athletes will get the opportunity to have real world practical education, on the topics that will help them be successful outside of their sport.

You've heard me talk a lot in this podcast these past episodes about name, image and likeness. And a lot of times we talk about the state of name, image and likeness where things are at from a legislative and rulemaking perspective, and talk about some of the education that needs to

come. But let's talk a little bit more specifically about how name image and likeness has the potential to transcend the various levels of sports that we see. And this hopefully can help make it clear why it's an ethical imperative, that real world practical education is critical for young people. And please, let me provide this disclaimer, I'm not asserting that practical, real world education needs to take the place of academic education, nor am I asserting the fact that these two kind of lanes if you will, or areas of education are mutually exclusive. I'm merely highlighting the fact that in certain instances, having a real world and practical understanding of various topics, is what will help athletes at all levels not get taken advantage of or not lose out outside of their sport.

Let's take name image and likeness as that example and try to make this a little bit more clear for you. So, name image and likeness has the potential of affecting high school and college student athletes, and it already affects professional athletes. We just don't call it name, image and likeness--name, image and likeness is something that has been a term or phrase that's been created to help highlight the idea that college student athletes will be able to be compensated for the use of their persona rights, right the rights that they have in themselves. That hasn't been an issue at the professional level. So we don't really call it name, image and likeness. But that's really what it is at the professional level, pro athletes get compensated for licensing the use of their name, image and likeness. So name, image and likeness is this topic, this area that affects athletes, or has the potential to affect athletes at all levels, high school, college and the pros.

So why is it an ethical imperative that there is practical real world education, around name, image and likeness? I mean, the clear answer is the fact that if you don't receive that education, if you don't take on that education, then you have a higher likelihood of being taken advantage of, kind of bottom line, right. So let's look at it at the pro level and see what happens.

So I work as a lawyer, a sports lawyer who's not an agent, my focus is on working to protect athletes as they transition from college into the pros. And while they're a pro, and when they transition out of the game and are retired player, right. And so we provide legal services to these athletes, not as an agent, really acting as like their outside General Counsel. So when an athlete transitions from college, to the pros, whether it's basketball, football, whatever the sport, there is usually some form of preparatory period before they get drafted. I know baseball happens a bit differently, hockey a little bit differently. But let's just look for now at basketball and football. And the transition comes where they declare for the draft and then go through this process where there's a combine, there are pro days, there are private workouts, all of these things happening in this finite period of time before the draft occurs, and the focus of the player and again, to no fault of their own, rightly so their focus is on their performance at the highest level, so they can maximize their draft stock, if you will. So, when they transition, though, they're transitioning from college where their focus is reinforced that it should be on academics and their sport, not on the business side of sports. And so they transition out. And now all of a sudden, all of these things have to happen at once, they're hiring an agent, they're potentially dealing with business opportunities that are coming their way. And at the same time, they're going to prepare for their combine for their training for their interviews, and all of these things.

And so when these opportunities to leverage their name, image and likeness come, there oftentimes isn't a lot of knowledge and understanding around what an endorsement deal is, they typically have not seen a marketing deal or an endorsement deal. So when someone says, "Hey, you can make some money, thousands of dollars for showing up and doing this photo shoot or this video shoot or wearing this particular brand of headphones during the draft period,

or what have you.” This has been the first time that the athlete has dealt with this more times than not.

And so having an understanding and education around what it means to engage in marketing opportunities is critically important. What are you giving up when you're licensing the use of your name, image and likeness? How does the compensation of what you're receiving align with the intellectual property rights that you're giving up and for how long? It's understanding the marketing agent that is getting paid for finding you this opportunity? And how are their interests aligned with your interests, in terms of what you're being asked to sign and agree to? Okay, so that's at the pro level, and that happens.

So then let's bring it down to the college level. So now at the college level, you're most likely younger, basketball is a bit different because of one and done's, but for the most part, you're younger, and you're going through this. We're going to be seeing this coming later this year, when name image and likeness goes into effect, that there are going to be decisions that you're going to have to make, you're going to have to go through the process of selecting advisors, you're going to have to understand these contracts that are going to be put in front of you.

You're going to have to have a good understanding of how do you manage money, financial literacy and personal financial management but also business financial management. So if you start a company and entity, that is your loan out company, you'll have to understand how to manage the finances of a business, then you'll have to understand how do you protect your brand? How do you protect the brand that is ultimately potentially going to be able to make you money. So again, these areas are critically important for you to be educated in.

And if you take that down to the high school level, there are going to be individuals at the high school level, who are student athletes who may be in order to keep their eligibility at the college level, up until this point, have not been able to participate in name image and likeness opportunities. And again, we don't know exactly what the legislation or rules are going to be at the high school level, it's most likely going to be determined by the various associations responsible for where that high school player competes. So whether it's the state's High School Athletic Association, whether it's private school alliance, or what have you, there are going to be rules. And we don't know exactly what those rules are, but they're most likely going to have some relation to what the NCAA ultimately decides, and truly what the federal law might then be, as it relates to name, image and likeness.

And so we know then, at the college level, at the high school level, that there will be a need, that it will be an ethical imperative, that athletes receive education in a way that prepares them for the business that now is going to be happening around them right now. And I get it, this isn't a conversation on amateurism and the importance of amateurism and trying to keep the business out of high school and college sports. Let's be honest, the business is already there, it's just that there's now going to be an opportunity for the athlete to participate in that business.

But let's be clear, it is an ethical imperative, that athletes at these high school, college and pro levels receive education in a way that prepares them for success outside of their sport. And so if it's a High School Athletic Association, if it's the NCAA broadly, or individual member institutions, colleges, universities, athletic departments. It's an imperative, an ethical imperative, that they are preparing student athletes for success outside of their sport, in receiving real world, practical education that will help these athletes navigate this business that will now affect them. And help them understand what it is that they are ultimately going to be signing their name to whether it's a marketing agent agreement, whether it's a marketing opportunity with a

brand, to do social media influencing to go and do speaking engagements back at their hometown to tutor or coach run camps, clinics do cause marketing for nonprofits to set up and establish their own nonprofit or even set up their own for-profit business entity to provide a product or service that has nothing to do with their athletic ability.

But if high schools, if colleges and universities are there to educate our young people, then it has to be said once again. In case you missed it the other times I said it, it is an ethical imperative. That high schools that colleges, universities, educate our student athletes in a way that prepares them for success, so that when they leave their sport whenever that is when they leave their sport in high school and don't become a student athlete in college. But they're navigating opportunities around them to get involved and engaged in in entrepreneurial endeavors, or whether it's a college student athlete that puts in 30-40 hours a week in their sport, but when they leave college, they're now making a decision between grad school or going to get a job in the career field that interests them. Do they have the decision making skills at their ready? Do they have the ability to understand agreements that might get put in place in front of them? Do they understand financial literacy and personal financial management so that they can successfully navigate either the financial aid that they get as a grad student or that they understand how to manage a budget in their first job after they leave school? Do they know how to continue to develop their brands that their brand can help them as they seek out opportunities to grow their career within their chosen profession, again, it's an ethical imperative. We owe it to student athletes to make sure that they're educated in a way that prepares them for success.

Thank you for engaging with me in this, this topic that as, as you can probably tell from listening means a lot to me, because education is the pathway. Education is the key to unlock doors to take new paths, for so many who maybe otherwise wouldn't have those opportunities. So again, thank you for tuning in. Thank you for listening. If you found value in this conversation, if you found something that just stuck with you, please do share this podcast episode with others, with your colleagues, with your friends, with others leave a rating, ranking stars, whatever it is on the platform that you're listening to this podcast, but also feel free to reach out to me on social media at Luke Fedlam. You can find me on LinkedIn on Twitter on Instagram. You can also find me on Clubhouse thinking I'm going to probably take some of these conversations to clubhouse as well. But again, thank you for tuning in. Thank you for listening. I look forward to talking to you again real soon. Have a great day.

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