

OBSERVATIONS FROM THE SKYBOX

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WHEN I was first approached about participating in this year's Symposium on Leadership in Legal Education, I was flattered but also nervous about what I might contribute to the endeavor. It occurred to me that there might be value, as well as perhaps a bit of an escape, in looking to another field for lessons on the administration of law schools. Most professionals have periodic flights of fantasy and contemplate what life might be like in a different career path. My years of work in the sports law world¹ have made it quite easy and tempting to place myself in various key positions in professional sports front offices, as well as other challenging and intriguing positions in all aspects of the sports world. As I have done so, it has occurred to me that there are some interesting comparisons between the sports world and legal education. In particular, I believe there are similarities, and some interesting contrasts, between the life of a dean and that of the CEO of a professional sports franchise. I will, thus, explore some of these parallels over the next several pages.

As I sit here in my office looking out² over the empty stadium that is the law school in August, contemplating the passing of the trade deadline, I wonder what it would be like to be a sports executive—would it be a lot like the job that I currently occupy or would it be something radically different?³ Would it be as rewarding and challenging? Would the egos and the temper tantrums appear any different? Would there be an opportunity to make an impact on the community? What would be the upside, and what would be the most significant negative aspects of the job? What would it be like for my family? Would I have any friends in the profession, or would I have to rely on the family dog and my spouse for advice and counsel? Are the jobs really interchangeable? Would my law school be comfortable with Andy

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1. I have authored numerous law review articles on various aspects of sports law and am co-author of *SPORTS LAW: CASES AND MATERIALS* (with Yasser, McCurdy & Weston) (4th ed. 2000). I am also a member of the Board of Directors of the Sports Lawyers Association.

2. The beginning of this paragraph, "As I sit looking out," is how my recently retired (to the faculty) Associate Dean Jerry Anderson contends I always begin my column in our alumni magazine. Perhaps I did, but I have broken that habit. It appears here as a parting thank you to him for a wonderful, long, strange trip.

3. It is this sort of occasional career change fantasy that makes it easier to pass the dog days of summer. It occurs to me that rather than directly discussing the various interesting or challenging issues I have encountered in three different deanships, I will draw upon my experiences in the world of sports law and draw comparisons to the roles and challenges of a front office executive in one of the five major professional leagues. I will also attempt to make this the last footnote, since the editor assured me that footnotes were unnecessary and indeed might be viewed very harshly by the editors of this symposium.

McPhail of the Cubs or Pat Croce, formerly of the 76ers, as the dean of the school? I doubt it. Would the Cubs hire me as general manager? Certainly not. There is, however, some entertainment value, at the very least, in evaluating the comparisons between the two positions. Some of the same qualities may be quite important in both jobs and some of the same conceptual issues may present themselves.

As with legal education, a sports franchise has many components that must work together in order to assure the success of the operation and its mission. There are the coaches, the ownership, the scouts, the front office staff, the fans, and, most important of all, the players. In a law school, the dean must work and interact with the university board of trustees, the president, the staff, the faculty, the alumni, and, most important of all, the students.

I am going to draw comparisons not only between the general areas of sports and legal education, but also between the specific responsibilities of a CEO of a sports franchise and a CEO or dean of a law school. There are other comparisons possible as well. The president of a university is comparable to the owner of a sports franchise. One can draw comparisons between the faculty and the coaches. It is also possible to draw links between faculty and players. However, the strongest comparison with the players would be with students. I think it is also possible to compare the fans with the alumni of a law school. There are financial, publicity, and marketing issues, and matters involving recruiting that are common to both areas.

One common factor for both areas is competition. Competition exists for players, fans, and revenue; and for students, faculty and revenue. Competition exists on the field and in the classroom. Competitive ability often turns on the amount of resources available to the franchise. In professional sports, particularly baseball, the discussion of the discrepancies between small market teams and large market teams is all the rage today. Indeed, in baseball, the differences may lead to a very devastating work stoppage following the conclusion of the current season. In sports parlance, the market size that is most relevant is the television market. It has been nearly a decade since a small market team has been dominant in baseball, although there are signs that Minnesota, Florida and Oakland are becoming competitive, at least on the field. In legal education, there are certainly small market teams and large market teams. As with baseball, there is no revenue sharing in legal education. There is, however, for public schools the state subsidy that is analogous to revenue sharing. The ability to offer a legal education at a very inexpensive cost to resident students also gives these institutions an advantage akin to a large market team. Obviously in legal education we are not, at least not most of us, vying for television dollars or typical fan support.⁴ We are, however, all attempting to attract the top faculty and the best students possible. The resources available to schools and the levels of the schools' prestige and reputations are certainly related to revenues generated both from tuition and donors. The tuition dollars are in some instances

4. There are those in legal education that suggest that the law schools missed their opportunity nearly thirty years ago to have the equivalent of television money when Westlaw and LEXIS were launched. It has been suggested that the schools should have negotiated deals with the two providers for payments to the law schools, rather than the way it has developed with the schools paying a stipend to the two companies for the right to have free access for faculty and students. No one suggests that the missed opportunity would have provided the same sort of funding that television currently provides for the five major sports leagues.

strictly related to the size of the student body, but in some instances are related to the prestige and reputation of the school. The accompanying success of graduates of the large market schools affects the annual contributions and the major gifts to enhance endowments. In legal education, as in professional sports, it is generally a case of the rich getting richer. There are schools that can be readily compared to the Yankees. Indeed, the one that comes to mind is in the same city.

It should be noted, however, that players from small market teams do regularly make all-star teams—and not only because the league rules mandate representation from each franchise. The ability of the individual players from the small market teams or the faculty and students from the small market law schools should never be underestimated.

On the revenue front, a dean does have some of the same opportunities that a sports CEO has to develop sponsorships, signage, and naming rights deals. Most of our naming rights deals are for scholarships, professorships, and the like. But, there are certainly many instances of the naming rights to our playing facilities being sold. There are few deals comparable to the Broncos new stadium in Denver or Houston's new baseball stadium. There are some very significant gifts, however, that have provided wonderful new facilities and libraries for law schools. Appropriately, donors have been recognized and thanked for these gifts with their names being attached to the facilities. Legal education also has honored donors by naming professorships, libraries, library collections, individual classrooms, and lectureships after generous alumni and friends. I guess this would be similar to the outfield signs and the Jumbotron advertisements seen in sports arenas and stadiums across the country. Indeed, both sports franchises and educational institutions now have exclusive pouring contracts with either Coke or Pepsi.

Revenues in professional sports come not simply from the sponsorships and naming opportunities noted above, but also through the marketing and promotional efforts that have become so necessary and ever present in the last twenty years. Every major professional sports franchise has a marketing department that must be constantly devising new ways to put fans in the seats and to capture their loyalty in other ways as well. Hat night, bat night, beanie babies night, and bobble head night have become required activities. Many teams offer pre- and post-game entertainment from rock bands in order to attract fans. Most marketing directors believe it will help the team to be successful on the field if there are fans in the stands. Certainly it will help the bottom line.

There is a strong interest and reliance on marketing these days in legal education as well. The coinciding drop in applications to law schools and rise in the perceived importance of popular rankings of law schools has spawned the need for massive marketing efforts. During what has been described by a colleague as "sweeps month" (actually most of the fall), law school deans' mail boxes are flooded with catalogues, brochures, glossy magazines, and DVDs touting the professors, clinics, moot court teams, and new buildings of the 180 plus accredited law schools in the country. The timing of this flood is, of course, just prior to the survey of deans, professors, lawyers, and judges by a national news magazine that produces a well-known ranking of law schools. We do the rock band equivalent with appearances by famous lawyers and jurists throughout the academic year. I have yet to receive a bobblehead of a famous professor or one of my decanal colleagues, but I am sure

it will happen soon.⁵ In fact, we could surely learn something from the marketing gurus of Major League Baseball. For it is these rankings that do apparently influence prospective students and may affect the number of applications to a particular school or its yield rate in a given year. Certainly they have an impact on university board members and alumni of law schools. Impacts on both of these sectors could have a significant effect, either positive or negative, on a school's bottom line.

Legal education, like the various professional sports leagues, has had some antitrust issues. As we are all aware, the American Bar Association remains subject to a consent decree and continuing oversight by the Department of Justice stemming from allegations of antitrust violations related to the accreditation process. The sports antitrust issues have attracted greater public attention and have in some instances also coincided with labor difficulties. In legal education we have been fortunate in that there has been very little franchise movement and thus no need to skirt the antitrust laws. Nor have there been any significant difficulties with free agency, rookie drafts, or salary caps.⁶ Legal education has occasionally denied membership in its exclusive club of accredited law schools in much the same way that Major League Baseball and other sports leagues have denied prospective purchasers of franchises entry in to their exclusive club. Antitrust litigation has followed such action, both in legal education and in sports. These comparisons, however, stray from those focusing on the roles of individual deans and sports executives.

An important aspect of the CEO in both arenas is the management of personnel, players and coaches, faculty and staff. In both worlds, the key personnel are highly skilled and typically well respected by their peers. In both worlds, the egos are a significant factor from time to time. Egos can be bruised easily in these arenas and in some cases precede the injured party into a room, which also can create problems for an executive. Can we learn anything from the sports world? Probably that we cannot trade a disgruntled faculty for a player to be named later or a future draft choice, although I know some deans that might want to do so.

We can learn something from the sports world in terms of timing and situational moves. There are many times where putting a coach in charge of the linebackers instead of special teams can be the move that puts a team over the top. Similarly, moving a professor from civil procedure to a course on complex litigation may be the answer for your curriculum or for getting the maximum performance in the classroom from the faculty member.

We can also learn something when it comes to motivational techniques and positive reinforcement of faculty, staff, and students. What does it take to get the top performance from a center on a basketball team who hates to run back on

5. It seems likely that a bobblehead of a law professor—and even more so, a dean—would be designed to bobble in a side-to-side, negative gesture a vast majority of the time!

6. Certainly, some faculty would contend there appears to be a salary cap at times, particularly when contrasting salaries at major law firms with faculty salaries. The good news is that it is unlikely that legal education will be faced with work stoppages such as have occurred in the last several decades in all of the professional teams sports and currently face Major League Baseball.

Obviously my statement about no more footnotes in *supra* note 3 was false. This is, most assuredly, the last footnote.

defense? The right words of encouragement, or prodding with threats of less playing time, can sometimes be the answer. So, too, will words of encouragement, or the provision of an extra research assistant, when it comes to extracting the next publication from a faculty member. Sometimes, the unspoken leverage of the next salary increase can offer the same incentives. Perhaps we also can do more in the way of performance bonuses apart from the salary increases. Many athletes have bonus provisions in their contracts for a set number of yards gained or passes caught. Coaches today also have bonuses for winning a certain number of games or getting to the playoffs.

In both sports and legal education, the CEO has a multitude of constituencies to keep happy and to whom she must answer. The importance of a winning season in both areas cannot be overemphasized, nor can the importance of the total attendance or the annual fund results. The stress and wear and tear on individuals is similar. Average tenure and job stability are very similar in both worlds. The impact on families and friends from these jobs can be considerable. The rewards are also considerable and are the part of the endeavor that keeps us all going and attracts good people every year into applicant pools for the revolving door of the deaning world. The opportunity to play a small role in influencing the direction of a legal education program is similar to helping a team have a winning season. The satisfaction of successfully negotiating an employment agreement with a new faculty member that your faculty has recruited is as rewarding as signing the first round draft pick. Seeing a student accept a judicial clerkship on a prestigious court is very much like having a player picked for the All Star Game. Home runs are hit every day in legal education. The satisfaction it can bring to a dean is every bit as high as it must be in professional sports. As tempting as that move to the front office of the Mariners might seem to be this year, I think I will stay where I am thank you.