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Emerging Issues in Sports Law: Symposium Transcript

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Symposium Transcript: Emerging Issues in Sports Law



Steve Underwood & Christopher Whitson

SPORTS

I. Introduction

On February 14, 2002, the VANDERBILT JOURNAL OF ENTERTAINMENT LAW & PRACTICE hosted a brief symposium on emerging issues in sports law. We were fortunate to have two eminent practitioners in that field, Steve Underwood and Christopher Whitson, on hand to share their respective views on the subject.

We are pleased to print an edited version of their remarks here. It is of course difficult to capture in print the verve of the spoken word. However, we hope that you find this edited transcript of Mr. Underwood's and Mr. Whitson's remarks as engaging and insightful as did the audience to whom they were originally delivered.

II. Steve Underwood

The National Football League is the premier sports franchise in the world. We are watched by millions of people live every Sunday during our football season. Millions—tens of millions—watch our games on television, and over a billion people this year watched the Super Bowl, live, as it was being played in New Orleans. I can't tell you how gratifying it is, and how proud I am, to be able to work for part of the organization that is the National Football League, and to represent a constituent member of our great league. And I use that term on purpose. We do have a great organization and a great business.

I'd like to talk for just a few minutes, if I can, before we get started, about what our Office of General Counsel does. There's me and two other lawyers, one of whom is very experienced and the other of whom is fairly new. We are in-house lawyers and we are generalists. And, I'm proud to be a generalist. There's still a place for people who have, you know, just a little bit of knowledge about a lot of things—a jack-of-all-trades sort of axiom.

But there is a reason why almost every professional sports organization is moving to have at least one in-house lawyer. All sports are the subject of rules. Lawyers make those rules, lawyers interpret those rules, and lawyers enforce those rules. It's no accident that the commissioner of our league, which as I already indicated, I think, is the greatest professional sports franchise around, is a lawyer.

He was chosen, in part, for that reason. Commissioner Tagliabue was formerly a partner at Covington &

Burling, and most of the league's outside antitrust and labor work is done by that firm. * * * [W]hen the same people that are making the rules and applying the rules and showing everybody how the rules are supposed to work are lawyers, it doesn't hurt anything, and it's no accident, that the commissioners in the other sports [leagues] also have a legal background.

Lawyers think, and are trained to think, in terms of rules and how rules are supposed to be applied. That's why lawyers are becoming more and more important in our business. And ... any time you have as much money as is focused in our industry ... you're going to have lawyers around. That's true for every business.

When the railroads used to have all the money, railroads were the ones that litigated and the railroads were the ones that had the lawyers. Mr. Rockefeller, you know, surrounded himself with lawyers. Where money is, lawyers follow. And that's because lawyers make the rules about how that money is earned, how it's spent, and how it's used to defend whatever the enterprise is that's involved.

In terms of how lawyers got to that place, I started off my career with a small law firm in Houston that represented ... the Houston Oilers. And I started fairly early on in '77 doing sort of minor work, kind of miscellaneous type work, for them. Because there was not a whole lot to do. The minimum salaries at the time I started practicing law in 1977 were in the \$10-12,000 range. Now our lowest minimum salary is around \$200,000. Our player payroll this year will eclipse 100 million dollars, if you include signing bonuses.

We have become a big, big business. * * * [T]he National Football League is ... a television-driven spectator sport that draws on the live attendance at the game[s] and great athleticism to produce a product that people want to watch. But television is the key revenue driver in our business. Yes, you have to have a stadium full of lively, excited fans. Yes, you have to sell suites. Yes, you have to sell ... tickets. Yes, you have to sell concessions. But what makes our business the powerhouse it is, is television. Seventy-five percent of our revenue is derived from television. * * * Its impact on our business cannot be overstated.

Well, again, when that much attention is ... focused on money being delivered to [a] few ... people (we only have 1,500 players at any given time in the league), lawyers

are going to be involved. For what reasons? Labor-related problems, including our collectively-bargained labor agreement and our partnership with the union. How television contracts are negotiated. How the money from television is divided up among the member clubs. And ... franchise relocation. You know the large number of teams that have relocated in the past few years, including ours. And the driver for the relocation is new stadiums. And new stadiums are driving teams to move because all of the other revenue is shared with the other clubs and with the players. And so, when you're looking for revenue streams that you don't have to share, those all come out of your building. That's why we have people like Don¹ sitting in the back of the room. * * *

[T]hose are the reasons why lawyers have become so prominent in professional sports. We have to have people to solve the problems that are created by the circumstances of our business model. What do lawyers do for professional sports teams? This isn't the model for all member clubs. Some member clubs are still driven

by the people at the club who are football-oriented. They're interested only in the final product. Some clubs are not interested in having lawyers because they don't think they need

lawyers. And, maybe they don't. I'm not going to speak for our sister clubs. But you may be surprised at the breadth of what we try to do for our club. * * *

[F]irst we manage our litigation and clients. And we have a wide range of claims and suits to take care of. There are league-wide suits. There are labor arbitrations. There are player suits, from time-to-time. And you know the Corey Stringer case² that's been filed in Minnesota, for example.

We had a somewhat similar experience a few years ago that ended up as a ... cert. denied case of the United States Supreme Court, *Smith v. Houston Oilers*,³ a 1996 Fifth Circuit case We have a lot of workers' comp problems in our business. * * * [O]ur work comp expense this year will be over a million dollars, just like it is every year. Unlike most businesses, we spend all of our effort and all of our money trying to get people well, as opposed to getting them out of the comp system. We're more interested in having them come back on the

field. These are people who we are paying an average of a million dollars a year to show up, and they have to be well. So you have full-time trainers, full-time doctors, full-time attention from Baptist Hospital [B]ut we still have work comp claims when they finish their careers.

We have stadium-liability-related cases, from as simple as slip and fall, to ADA cases. * * * [W]e are one of the few facilities, incidentally, in the country, that has never faced a suit under the Americans With Disabilities Act.⁴ We got sued under that Act in Houston the week the statute—the facilities portion of the statute—became effective. * * *

We also handle claims related to intellectual property. For those of you who do not know, the National Football League and its merchandising arm ... is the number two licensed-merchandise wholesaler in the world. Behind whom? Disney. When you get past Mickey Mouse, we're it. And we sell billions of dollars worth of merchandise, branded merchandise, every year. We have some lapel collector pins. I have one for each of

you, by the way, before you leave today. A gift from the Titans. Don't say we never gave you anything.

Franchise relocation has become important. Most franchise relocation is

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accompanied by suits. We were the only National Football League team to move that did not have a lawsuit after it got its move under way. We did have one in Houston. We had to sue to get out of Houston. And we have recently instituted a lawsuit against the Metropolitan Government over the [stadium] lease. But we think it's a minor matter, and think it's going to get resolved. And we're certainly working toward that end.

The second most important thing that we do is develop and administer contracts. Our Office produces 500 contracts a year: player contracts; suite contracts; promotional and sponsorship contracts; local radio, television, and other media contracts; employment agreements; [and] stadium-related agreements for PSL's, suites, [and] concessions. You name it. We are awash in a sea of agreements. And our Office is called on to keep track of all of those, to monitor them * * *

But that's not the beginning and end of our contract issues. We have training camp contracts, contracts for

the sale of our tickets through Ticketmaster, licensees that handle merchandise promotional agreements, and so forth, Baptist Hospital, AmSouth [and] our radio licensee. They go on and on and on. We spend hundreds of hours a year in [our] Office ... keeping track of all of those agreements and when they expire.

We fortunately ... don't have to negotiate all of them. * * * [O]ther people in our organization do a lot of that. But some of them we do, including work on our player contracts. We assist management with labor-related concerns. Our players file grievances under their collective bargaining agreement. We help our football staff manage those claims, and take care of them when they move to arbitration.

Virtually all of our player disputes end up in arbitration and we manage those from beginning to end, in connection with our labor arm, the National Football League Management Council, which is our collective bargaining ... unit

We also monitor, to some extent, our player benefits. Our players have the most extensive set of benefits, we think, of any professional athletes, and for that matter, almost any employees anywhere. The list of benefits goes on and on and on. Our collective bargaining agreement, including salary cap provisions, is over 350 pages. And guess who wrote it—lawyers. Lawyers wrote it, and lawyers are used to interpret it. And lawyers handle the arbitration cases.

We handle—at least at one level—a large number of intellectual property concerns in connection with our marks. As you know, we have our new marks, the Titan marks. Those were developed by the creative arm of National Football League Properties. And National Football League Properties and its legal staff help us protect those trademarks.

We also have a lot of copyright concerns with our television and radio broadcasts, with our publication, and with our Internet website, which this year approached two million hits. We have a number of stadium-related issues that we monitor, including our relationship with the Metropolitan Government. Our lease with Vanderbilt, for example, is developed and negotiated by our Office.

We handle our ADA concerns. Our Office publishes annually a guide for guests with disabilities. It's the most extensive published guide in the league. We're very proud of it. And, as I say, it's one of the reasons we're one of the few large facilities in the country that has never faced an Americans With Disabilities Act suit.

Those are some of the items that we work on routinely. We, of course, get a lot of work in connection with our franchise relocation. If you all won't repeat it, when we were going through the move and working here (sometimes) seven days a week on our relocation documents, I told our outside lawyers that if I had known what we were going to have to go through to get here I would have quit. I never dreamed how difficult making the move would be. And those of you who have followed our history here know that it was a very difficult delivery. We spent a year in Memphis and then came here and played at Vanderbilt for a year, all while our stadium was under construction.

We had all kinds of problems in our relocation in connection with the Cleveland move, which took place during ours and spurred Congress to consider whether or not NFL franchises could relocate. Congress, undertaking that, delayed our move by a year, thus delaying stadium construction for a year, and caused ... our move to be spread out over two years. Before it was over with, they didn't want us anywhere. We were trying to get out of Memphis and Houston, and to our new home at Adelphia.

We also deal with the mundane in our shop. Tickets and

WE also handle claims related to intellectual property. For those of you who do not know, the National Football League and its merchandising arm ... is the number two licensed-merchandise wholesaler in the world. Behind whom? Disney. When you get past Mickey Mouse, we're it.

ticket contracts, PSL's and suites—all of those are printed forms that we developed, and when we have difficult issues with them, they call on us to get them worked out.

We handle a number of media-related issues, and that's one of the things I want to talk about in the last few minutes that I have Let's talk about new media. That's the focus, I think, of the most important trend

in our business. And [let us] focus, if we can, on the Internet, because that is becoming a real gem for our industry. And I'm sure all of you have been exposed to it. You have to put yourself, though, in my place. I'm 50 years old, and I have a story I want to tell you that will only take a minute or two, to sort of acquaint you with my generation.

I was, in 1970, a freshman at the University of Texas in Austin, and was taking courses toward a degree in journalism. And one of the courses that you take is mass communication. And my first day of class, a 70-year-old man hopped out on the stage. His name was Stanley Donner. Dr. Donner was sort of the mass communication guru, a student of Marshall McLuhan,⁵ and thought to be one of the foremost mind[s] in mass communication He was a very spry 70-year-old man, and the class had 650 students when I started. And there I was from a little town and sort of overwhelmed by the experience. And he said, "I want to tell you all what's going to happen." He said, "I've just been to this thing in New York and spent two weeks there, and ended my summer there." He said, "there's a black box coming that's going to sit on top of your television and you're going to be able to watch movies, and kind of, whatever you want to, on demand. It's going to be here. It's five or 10 years away, but it's coming."

What he was talking about was the Sony Beta tape player. And it did not appear in this country for about six or eight years after that. I forgot about it. When he was making those remarks, I thought, you know, . . . what is he talking about? * * * Most of my life we didn't even have a television in my house, much less, you know, a black box that sat on the television.

And he was right. The videotape business, now DVD, has sort of revolutionized entertainment at home. You don't go into a house that doesn't have a VHS player. They're ubiquitous. And there's probably one in this room, unless I miss my guess. There's a cabinet full of electrical routers and switches. * * *

And I want you all to remember this. What's coming next, for those of you who don't know (some of you may know better than I do) is a new TV and a new box to sit on top of [it] that's going to revolutionize the way you watch television. We have a Sony television in my house, and it's got a picture-in-picture. I think those are fairly common.

But, someday, when you're watching a National Football League game, maybe even a college game, what the Internet is going to provide to you, once broadband reaches its full potential, [is the ability to use your remote to] summon up live game statistics on another part of the screen.

[At this point, Mr. Underwood draws on a dry-erase board a large box divided into several sections of varying dimensions.]

You'll have your television screen, which will be, let's say, theatre-style . . . and over here you'll be watching the live presentation of the game on high definition TV, unless I miss my guess. And over here, if you want to, you can summon up the live game stats that will be adjusted after every play, and you can watch what's going on as the game progresses. For those of you who are not fans of the National Football League, people who watch our games intently are very interested in the statistics. In this column, say, you'll have the live game stats as the game progresses. Over here, in this column, . . . you'll be able to ask your remote to summon up the statistics on Eddie George, if he's still playing, for that game. (And let's hope he is.) How many pass receptions, how many yards. Down here somewhere you'll be able to ask for his entire history as a player, and it will tell you everything he's ever done: honors, stats, career stats, what he did in college, where he went to college, [and] how many children he has. All the information you might want to know about him . . . you can summon up while there's a commercial on. We want you to watch the commercial, too, by the way.

Down here, . . . if there's a disputed play, you'll ask it to summon up six or eight camera angles of the same play, which you can then watch in a T-bone like fashion. Or, if you'd rather, you can watch it live. Every one of our games has somewhere between 16 and 24 cameras that are recording every play, every motion on the field. And you can just select the ones that you want, or as many as you want.

And the observation, I think, for those of us who are sort of old-fashioned is, won't that add to the entertainment experience? And the answer is yes. Remember now, we're in the entertainment business, and we're driven by television. That's what makes our business go. And . . . it may not work for my generation. They may not be interested in doing all of that—they just like to watch the game

in peace. [But] some of you might, my children might.

* * * And, if you don't want to watch this game, then you can watch another game. Or you can watch six games at once (if you want to) that are taking place at the same time that our game is taking place.

That's what's coming. You can mark her down. And the reason that it will be of interest is because people will want to enrich their entertainment experience, and the Internet and broadband will enable them to do it in a big way. Some of this information may be delivered by satellite. I was in a league meeting in 1993, listening to someone sort of drone on about a Hughes satellite that had just been put up. It was the second Hughes satellite that had been put up, and it was equipped with enough transponders to deliver television signals to people at home for all the NFL games.

And they have this experimental project to deliver

WHAT'S *coming next, for those of you who don't know (some of you may know better than I do) is a new TV and a new box to sit on top of [it] that's going to revolutionize the way you watch television.*

live NFL games to people on a pay-per-view basis called the Sunday Ticket. And nobody really thought it would work. The owners, by and large, are older men. They weren't really intrigued by the idea of satellite delivery of television. The league had yet another reason for wanting to do that, which is to cut off people from pirating television signals in the bars on Sunday for games that were blacked out. But that was really the primary reason.

It was secondary that you might generate some revenue from people subscribing to watch games in other cities at home. This past year—not ten years later, eight years later—Direct TV sold 12 million subscriptions at 150 bucks apiece. Now, the league didn't get all of that. Some of it went to the satellite company, and some of it to Direct TV.

But those who believe that the old style of delivering media content is going to go on forever, are mistaken. It's going to change. And it's going to change because there are better delivery systems. There's the Internet, which is able to enrich the entertainment experience.

* * *

That's a preview of what's out there. So for those

of you who are focusing on intellectual property, or on media, or have [an] interest in those subjects, that's what professional sports is really about. So you need to buckle down about those areas. It's what's coming. And it's an important emerging trend in professional sports, particularly in the National Football League.

* * *

Don't leave without your Titans lapel pins.

III. Christopher Whitson

I am a member of a law firm in Nashville named Sherard & Roe. We are outside counsel to the Predators, and we are primarily a corporate law firm, specializing in transactions and business dispute resolution. We've had the pleasure of representing the Predators for five years now. That's from their inception. The reason I bore you with what my law firm does is because that is

exactly what we do for the Predators. We represent them in their relationships and transactions with the NHL, the government, other business entities, and their fans.

I'm not sure what this audience would consider an emerging issue,

so I'm going to give you a chrono-

logical list of the types of transactions we've done for the Predators. I will say, however, that emerging issues come daily, and those emerging issues come from your client, who has usually found a new way to secure revenues. A naming rights deal, a simulcast over the Internet, securing an e-commerce company to run your website and sell merchandise and tickets—those are all emerging issues to me. Like Steve, I'm a generalist. Therefore, new issues come to me constantly; but, I will say, as an attorney, the best thing you can do is be willing to learn, quickly and thoroughly, new issues.

* * *

Let's just go through the things we've worked on for the Predators, because I've personally found them fascinating. It[] [has] been the most rewarding part of my career over the last five years. The first thing we did is the limited partnership agreement. We formed a limited partnership because you would have different partners putting in different assets, whether those assets were money, time, sweat equity, [or] knowledge. Whatever these assets are, there are ultimately discus-

sions on the valuation of [the] assets. At the time that Craig Leipold decided, or dreamed up, that hockey would work in Nashville, the first thing was to secure his partners. Now, the limited partnership agreement lives on and governs the way the partners ... deal with each other Whether the company needs new capital, whether it needs new partners, or whether the existing partners want to transfer their interests, that document lives on and governs.

The next thing we did was approach the NHL and negotiate an expansion agreement with them. There were four teams coming in all at the same time. The expansion agreement [presented] any number of issues, but one of the most important to the Predators was coming in earlier than the other three teams. That's because you would have the Titans coming [to Nashville] within a year or two. * * * The NFL is the 800-pound gorilla.

In Nashville, hockey is brand spanking new. They needed a couple of years to get on their feet. The NHL, to a certain extent, didn't know whether we could get ready that quickly. So that's one big issue. Other issues were: What is your sphere of influence going to be? Can the St. Louis Blues⁶ broadcast their game into Davidson County? Can the Thrashers⁷ sell their merchandise in Gallatin? We've got to get a protected sphere in place.

The most obvious, and probably the most difficult, of the issues [involving] franchise agreements [is determining] what level of pre-sales ... you are going to have? Tickets, suites [and] dollars that will be derived from radio [and] TV. Also, what is your facilities agreement going to look like? Which brings us to our relationship with Davidson County and the State of Tennessee.

At the exact same time you're negotiating with the NHL, you're negotiating with the city. Luckily, there was a new arena looking for a large tenant—a wonderful facility. Having said that though, you need suites, you need offices, you need practice time. The most obvious issue with respect to a license and use agreement is what's going to happen to the stream of revenues? Those revenues come from suites, tickets, parking, concessions, merchandise, naming rights, and any number of others [areas], and all of those revenues have to go somewhere. The

vested interest of the city is that it pay for its building, and the building needs to be profitable to the extent it can be. The interest of the partnership is that it is taking an enormous risk and, therefore, it needs to extract [its share of] those revenues, as well.

The next agreement with the city (and all of this is being done at one time, basically by five partners inside my firm), I think, is one of the most interesting, because at the time, we didn't have players, we didn't have a team, we didn't have anything. So we're trying to look into the future. The next agreement is the management of the arena. The Preds interest in that [agreement] is they want to make sure that the building will be up to the level they want. They also need to secure the schedule. They also need to make sure the concessions are, basically, up to the quality they want associated with their team. On the other hand, the interest of the city is to keep the franchise interested in running the arena as a profitable business. So both sides had a vested interest in an affiliate of the Predators running the building. That is Powers Management.

At the time we founded Powers Management, it was a little LLC with no assets, basically. And they were going to take over once the existing manager left. Now, managing an arena may have more issues than managing the Predators. You've got millions of people walking into the building. You've got to keep acts [and events] coming in. I venture to say that Powers Management now has as many employees as the Predators do.

But, anyway, it is just interesting for me because in 1997 it was theoretical: let's form this LLC, and, by the way, they'll run the building someday. It's now five years later, and I get as many questions from Powers Management as I do from the Preds. Different staffs, different issues.

All of those documents were signed on June 25 of '97. We all sign and then we're all off to the races. Con-

I will say, however, that emerging issues come daily, and those emerging issues come from your client, who has usually found a new way to secure revenues.

gratulations, you've got 15 months to do everything you need to do [for the Franchise to play its first game], and there is an enormous amount to do in a small amount of time. First is the banking documents. The monies from those banking documents are going to go to help with the franchise fee. They're also going to give you working capital.

To Steve and I, those would seem like very easy documents. You're going to give me X dollars, at Y interest rate, and you are going to take as collateral every asset I have. But, because you're dealing with Skadden, Arps, [the document has] got to be 250 pages long. They just cannot do with less than that. That took, basically, one person full-time to negotiate what, at the end of the day, you will see is usually only 30 pages for most situations.

Okay, from that point forward, you've also got to get all these Suite Licenses in place. You've got to get the simple Club Seat Ticket Agreements in place.

Absolutely, the most interesting thing, I would say, are the media contracts. * * * At the time, the Preds [negotiated] a radio agreement, a cable agreement, and an over-the-air television agreement. I found them truly fascinating, because, one, I don't do a lot of it, but, two, there are so many issues. With radio you've got the 82 games: Do we simulcast? Can we go over the web?

With television, you've got cable and over-the-air battling each other for the number of games they're going to broadcast. Personally, the biggest ... tank of piranhas I've ever been in is with Fox, the cable people. I've now done two deals with Fox, and they differ in nature quite a bit. [Which brings me to] another interesting thing about the media agreements. They can take on any form you want. It can be a partnership, ... or it can simply provide for a rights fee, but then who's going to do the production? Who's going to pay for the production? Who controls the content? The NHL does not derive near the magnitude of revenues from TV that the NFL does. Nevertheless, it's still an important source of revenue.

So, now, we've kind of worked our way up to opening night. And we still haven't discussed the plain strange agreements. For example, the charter flight agreement. You've got to get your players around quickly. Seems like a simple document, but what is your remedies section? The NHL really frowns on missing a game. They just don't like it. Your team is in Colorado, and you're supposed to go to Vancouver [for a game the next day]. You don't want your players on the runway, cramping up, dehydrating, because the charter people can't get their flight up. So you've got to have a strong and thorough list of remedies. I'd personally never done one of those agreements, but since 1997 I've done a couple.

The pyrotechnic agreement. If y'all have been to a

Predators game, they want to put fire everywhere. It's entertaining. But, as an attorney, do you really want fire when there[] [are] 16,000 people in an enclosed building? I didn't. But they did. And so, it just raises a host of issues.

THERE *were four teams coming in all at the same time. The expansion agreement gave you any number of issues, but one of the most important to the Predators was coming in earlier than the other three teams.*

There is the software license agreement for your scouting system. The Preds put a scout everywhere. Latvia, anywhere. You've got very proprietary information, which you have got to protect at all costs. It's a unique document that you have to craft at the time [for the specific needs of your client].

Your sponsorship agreements, which are enormously important—a big source of revenue for the NHL. * * * My favorite: Budweiser had an exclusive on the ice [Arena], while Miller had an exclusive for the rest of the building. Let's see y'all pull that off! * * *

The most important document we've done since the first game is the naming rights agreement. It is exceedingly important for any franchise. Great source of revenues. And from that point forward, Adelphia and Gaylord Entertainment have their name on the building. You want them to do well, and they want your building to do well. These are, of course, strongly negotiated documents.

It has been my experience that there is not a huge difference between what I do for the Predators and what I do for other clients, such as a large hotel company. This year I had the pleasure of negotiating bringing the Rockettes⁸ to Nashville. That document is incredibly individualized, but it has many of the exact same issues you face with the Preds. So, people always refer to me as a sports lawyer, but I personally think of myself as a generalist.

Nevertheless, I enjoy sports law, because you can see the product. My eight-year-old son, past the Titans, all he can talk about is the Preds. When I get home at night he wants to know who's been traded. It's fun. It's out in the public. I would hope all of you would have

the opportunity to get into it if you wanted to. But, to a certain extent, the way I got into it was fairly random. I began with the law firm at about the time all this was being done. They took me down to meet the Predators, and the Preds are a very young organization. Their head of business is probably 42. Their CFO is probably 40. I'm 39. I guess they felt comfortable with me. And so, it's five years later and they're probably 40 or 50 percent of my business.

I'm going to leave it open to questions. Any of those transactions that sound interesting, y'all just ask.

JELP

Steve Underwood is General Counsel to the Tennessee Titans and an Executive Vice-President of Adelphia Coliseum. J.D. University of Houston, B.J. University of Texas.

Christopher Whitson is a partner at the law firm of Sherrard & Roe in Nashville, Tennessee and is counsel to the Nashville Predators. J.D. Vanderbilt University Law School, B.A. University of North Carolina.

Notes

1. Don Mclaughlin is an Executive Vice-President of Adelphia Coliseum.
2. *See generally Stringer Files Suit Against the Vikings*, N.Y. TIMES, Jan. 16, 2002, at D2.
3. *Smith v. Houston Oilers, Inc.*, 87 F.3d 717 (5th Cir. 1996), *cert. denied*, 117 S. Ct. 510 (1996).
4. 42 U.S.C. §§ 12101-213 (1994 & Supp. IV 1998).
5. *See generally* MARSHALL McLUHAN, UNDERSTANDING MEDIA: THE EXTENSIONS OF MAN (MIT Press 1994) (1964).
6. The St. Louis Blues are a member of the National Hockey League. *See generally* St. Louis Blues, at <http://www.stlouisblues.com> (last visited Apr. 24, 2002).
7. The Atlanta Thrashers are a member of the National Hockey League. *See generally* Atlanta Thrashers, at <http://www.atlantathrashers.com> (last visited Mar. 5, 2002).

8. The Radio City Rockettes are the "world's most famous precision dance troupe." Radio City Music Hall, *The Radio City Rockettes*, at <http://www.radio.city.com/ble.html> (last visited Mar. 5, 2002).