

## BECOMING IN-HOUSE COUNSEL FOR SPORTS TEAMS AND INTERNATIONAL FRANCHISES

*The Out of Bounds Symposium welcomed three panelists to discuss the intricacies of working as an in-house attorney for an American sports team and establishing international franchises. This panel was moderated by Editor in Chief Barbara Zaragoza who introduced the three speakers: Ms. Cassie McBride, Ms. Caroline Perry, and Mr. David Cohen.<sup>1</sup>*

**MS. ZARAGOZA:** I'm very excited to introduce our three panelists today.

First, Cassie McBride is Vice President and General Counsel for the National Hockey League's San Jose Sharks. As a California Western alum, in 2018 she was named California Westerns Rising Star. Her experience includes working as General Counsel for the Jacksonville Jaguars and as Associate Counsel for the Tampa Bay Buccaneers.

Our second panelist is Caroline Perry. She is the Senior Vice President, Business Administration, and General Counsel for the San Diego Padres where she oversees the Padres accounting department, legal department, and public affairs department. Ms. Perry has worked with the Padres since April 2011. She earned her law degree from Columbia University, where she was the managing editor of the Columbia Business Law Review.

Finally, I'd like to introduce David Cohen, a California Western alum who is both the founder and CEO of Major League Business, LLC, as well as General Counsel for Tempus Ex Machina. Mr. Cohen was also Tampa Bay Buccaneers General Counsel for five years and Head of Legal for the Angels for nine years. His commitment and enthusiasm for his work has earned him the title of "Top 10-Thirty-Something In-House Counsel" by the Association of Corporate Counsel in 2013.

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1. This transcript has been edited for grammar and readability.

I have individual questions for each panelist.

First, Ms. McBride, what are some unique international law challenges you face as in-house counsel for an American sports team, and specifically, what kinds of immigration law challenges do you face?

**MS. MCBRIDE:** Thanks Barbara, and thank you all for having me participate today in the program.

There are a couple of areas I can highlight. In general, when I think about taking an American sports brand international, the most obvious example to me is the Jacksonville Jaguars' relationship with London. I spent about six seasons with the Jaguars and an integral part of our business strategy was to elevate our presence overseas as part of the National Football League (NFL) international game series. It was an exciting time for the franchise because we were able to strike a deal with the league to play one game in London per season through 2020. We were the only franchise to do that during the former model of the international game expansion. As a result, we ended up having a long-term deal, and we created a new entity. It was domesticated in the United States but qualified to operate in the United Kingdom. We ultimately built a full team overseas.

With creating full teams overseas, you are able to lay the foundation for what those business operations are going to be and advise every step of the way from entity formation to hiring and onboarding talent. It was a great learning experience because as the attorney you have exposure to a whole subset of international laws that you typically would not experience when you are in-house counsel for an American team. It involved everything from employment agreements to data privacy. We were focused on the General Data Protection Regulation (GDPR) and it allowed us to stay ahead of the curve when we were building out our domestic data privacy programs.

We also formed a United Kingdom charity, which served as the charitable foundation arm of our entity. In the United States it is easier to set up a not-for-profit business. However, setting up our United Kingdom charity was a two-year process due to all of the regulatory hurdles regarding the unique dynamics of our business. There were a lot of interesting legal issues that arose during that period.

The second part of the question regarding immigration is interesting. After spending so much time in the NFL, it was really few

and far between in terms of the international talent that we would have to secure a P-1 visa. The P-1 is for professional athletes. From time to time, we had international football players, one from Canada, and one from Australia. The NFL has an established brand recognition, making visa processing of the applications a relatively seamless process, even though it did not come up very often.

However, when I was in Jacksonville, the [Jaguars' ownership] formed a new professional wrestling company, All Elite Wrestling (AEW). We engaged the talent and the wrestlers directly, and wrestling is really a truly global product, and so immediately upon launching we had a roster of up to fifty or so international talent.

When you are a startup, you have to essentially process all of those visas at once. I remember working with so many different immigration law firms and trying to strategize on how to prioritize the visas. Changing politics also impacted whether the talent at issue is actually qualified for the P-1 visa versus an O-1 B visa. A P-1 visa is for a professional athlete, while O-1 B visa is for a professional entertainer who also has an athletic component to their role.

Then, of course, the pandemic completely changed the game with all the travel restrictions. For us, this was a pivotal time because we continued our live events business, we had a weekly primetime television show, and the talent still needed to be there in order to compete in their matches. The focus became figuring out how to get people across the border into the United States to participate in events. We worked with United States Citizenship and Immigration Services (USCIS) to make sure that we had all of the travel requirements in place. The biggest takeaway from the whole experience was that immigration law is not very black and white. The reviewing officer has a big impact on how the filings are reviewed and then ultimately processed and approved.

Lastly, fast forwarding into my current role with the San Jose Sharks in the National Hockey League (NHL). Immigration-wise, the NHL is a combination of what I experienced in the NFL and also in AEW. We have a significant number of international players, and we have a lot of travel cross border to Canada. Having the opportunity to now work with the Sharks, and the league, on its international game strategy is really rewarding given all of the insights that I have had over the past couple of years.

Hopefully, that gives you a little bit of insight from a practical standpoint of some of the issues that in-house counsel face, more broadly, in terms of expansion and visibility of the brand overseas and how it relates to core immigration issues.

**MS. ZARAGOZA:** Our next question is for Ms. Perry. Each major league baseball team also operates a baseball academy in the Caribbean. What are some of the legal issues that you have had to deal with as a result of operating a foreign facility?

**MS. PERRY:** Well, first, I just want to echo Cassie and say how happy I am to be here today. This is a great symposium that you have lined up. With respect to the academies that baseball teams operate in the Caribbean, I will assume that maybe not everybody is aware of the academies and give you a little bit of background.

A tremendous amount of baseball talent comes from the Caribbean, from the Dominican, Cuba, Haiti, Curacao, and Venezuela. Therefore, baseball teams started opening facilities in the Caribbean where they could train and develop young talent. Players are also eligible to be signed to a baseball team at a much younger age if they are an international player. To be signed in the United States, the draft rule is the player must be at least a senior in high school, but to be signed internationally, the player just needs to be 16 years old. Since the players can be signed much younger, they are naturally at a lower level of development. So, we bring the players to our academy and develop them further there, before they come to the United States to join a minor league team.

When the academies first started, most clubs had them in Venezuela. However, as Venezuela became more geopolitically unstable, clubs that had not yet opened an academy chose to open them in the Dominican Republic instead. Then gradually, clubs that had Venezuelan academies either closed that Academy and moved to the Dominican, or opened a Dominican facility as well. At this point in time, all thirty clubs have an academy in the Dominican, and there are just a handful of clubs left that have an academy in Venezuela.

When I first started with the Padres, a little over 10 years ago, we honestly had not put a whole lot of thought into the legal way we had structured our academy in the Dominican. This was a little surprising because we are one of the few clubs that actually owns its facility in the

Dominican. Most clubs rent their facility, but we purchased the land and then built the academy ourselves. It's obviously a little biased but we have far and away the most beautiful academy in the Dominican. So, I was taking a look and reviewing how we had the academy structured both in terms of who owns the property and how our employees were employed. I determined the best way in the Dominican was to set up a separate nonprofit entity, not as a charity, but literally as a nonprofit, because we were not making any money. It was all a complete cost center, we were just sending money down from the United States.

Originally, I had planned to form two nonprofits in the Dominican. One to own the land and the second to lease the facility from the first entity to give us a little bit of liability protection over the property itself. Then, all of our employees in the Dominican would be employed through the second nonprofit. So, we started the process of forming the nonprofits. As Cassie said, that can be an incredibly time consuming process outside of the United States. I like to joke with people that I was not yet pregnant with my first daughter when we started that process and I had returned from maternity leave by the time we finalized the entities—I created life in less time than it took to create a nonprofit in the Dominican. But we ultimately did do it.

This is an example of constantly thinking of the unintended consequences that your actions can take. We were just about ready to transfer ownership of the facility to the first nonprofit when I suddenly realized if we put this property—which is worth several million dollars—into a nonprofit entity in the Dominican (whereas right now it is owned by a limited liability company (LLC) domiciled in the United States) there is a chance that if the Dominican ever went the way of Venezuela, causing clubs to close their academies and relocate them to a new country, I might not be able to repatriate that cash. I could not repatriate those funds if they are held by a nonprofit that is supposed to be using its money for the betterment of athletics in the Dominican Republic. So, at the last moment we called that off because I could not think of a way to get myself fired faster than to have to tell ownership we had ten million dollars trapped in the Dominican Republic, and that I couldn't repatriate and move on to our new academy elsewhere.

Thus, the academy itself is still owned by a United States entity. It's just as I said, thinking about these unintended consequences, taxes are a big thing to keep in mind when you are working internationally

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and how that can affect your international operations, but also your domestic operations. However, we did move forward with the nonprofit, to rent the academy from our United States entity, and employ all of the employees down there.

Employment law is also something that you really have to be on top of when you are operating internationally. There are a lot of very different rules in other countries. Latin America is a good example. They have a lot of severance rules that apply in the Dominican regardless of why you leave your employment. An employee could quit voluntarily and they would still be entitled to a robust severance package from their employer. These are the types of things that are good to know about in advance, so that you can make sure your accounting department is accruing for them appropriately.

Another key component is finding good international counsel in each of the jurisdictions where you have to operate. Fortunately, in baseball with there being thirty of us, we have all done a pretty good job of setting various counsel in different countries and have settled on a handful of good attorneys in different places. That is really important as well: anytime you start to operate in a new country, finding local counsel that you trust that can understand the issues that you are trying to deal with, and make sure you do not inadvertently set your foot wrong anywhere.

**MS. ZARAGOZA:** Mr. Cohen, our third question is, could you describe the franchises you work with abroad? What are they and how popular have they become? And in which countries have they been the most successful?

**MR. COHEN:** Well, I worked with a lot of entities in a lot of places over the years and even now, working with the sports tech startup, we are dealing with potential acquisitions. We are actively growing and have employees in a number of different countries. So, we are very much in a place where we are looking globally since sports are global.

There is a lot that you need to know outside of the United States. For example, if you take a look at some of the big leagues, you've got the four or five big ones here in the United States, but there's some pretty big international ones too. Obviously, the European Premier League (EPL) in soccer is huge. There are some really big soccer

leagues in Germany and Spain. If you look, there was quite a bit of talk about media rights coming up for the Cricket League in India. Yes, it tends to be very regional in some ways. There is Major League Baseball, NFL, NHL, and NBA, which primarily operate within the United States and Canada, with some games occasionally abroad. The NFL has some games in the United Kingdom and Mexico. I think they also announced they are going to have a game in Munich next year. So, it is continuing to grow globally.

However, we are purchasing equipment, and importing goods from China, Japan, and other countries. Caroline talked about the employment aspects of things and that's something that I've learned a lot about. We have employees right now, as I mentioned, in several countries. I remember some of the issues that Caroline mentioned we also dealt with, and these issues can be quite different from American laws and are often very complex.

I remember an instance where an organization I was with caught a group of employees in the midst of fraud. They were literally stealing from the company and in one instance, we actually had to pay someone to quit after they had stolen from us, which is such a foreign idea for us here in the United States. But we need to understand that the rules we abide by, the norms that we have here in the United States, are not always the same elsewhere. Culturally, there are many differences. If you take a look at compliance issues, in some countries, it may be the norm to slip someone a gift or grease the proverbial wheels. There are strong laws in the United States that prevent those kinds of kickbacks, especially with government officials. Culturally, it may be a part of how business gets done in other countries. There is a legal side of understanding things, there's the business side, but there's also getting a good understanding of the present culture and finding a way to navigate between all three without breaking any laws.

One of the fun things about what I am doing now is that we are developing technology that is sport agnostic; we can use it just about anywhere. There is a possibility we could be going into lots of different markets. So, we are preparing for what is going to happen, where we are going to go, and even where our potential customers are going to be with what we generate.

**MS. ZARAGOZA:** Our biggest question for most registrants was for Ms. McBride and Ms. Perry. For women in a male dominated sport, how does the industry treat you as in-house counsel?

**MS. PERRY:** I think that sports has gotten potentially a bad rap with its lack of diversity, obviously, on the field in professional sports. At least in the fields that we all work in, all of the players are men. We are gradually starting to see some women move onto field coaching positions, which I think is great. This year I was joking that one-hundred percent of the teams that had females on the field in baseball made it to the post-season. Unfortunately, they were only two of the teams, but still one-hundred percent.

Whereas in the rest of the front office, I think it is a lot more akin to your average company. The sports operations department, in our case the baseball operations department, still has opportunity for improvement in that area. But, for example, we have an all-female legal department at the Padres. The way I normally phrase this is to day—it's less common than you hear, but not as common as you'd hope. There are eight or nine female general counsels among the thirty NFL teams. There are a lot of female associate general counsels across the league, and I think that's pretty reflective of most of the business operations department, such as accounting departments, ballpark operations departments, or ticketing departments. Thus, it is not an overly male dominated field. That being said, there is still a negative perception you feel in some meetings that you are in. But, I'm also fortunate, or unfortunate, to have spent all of my career in generally male dominated fields, so at some point, it just becomes something you do not even really notice. Cassie, I do not know if you have had a different experience?

**MS. MCBRIDE:** I would generally agree with everything Caroline just said. For me, in particular, a couple of times I was wearing either Buccaneers gear, when I worked with David, or Jaguars gear in the airport, and people would just say, "You work for the team, that's great. Are you a cheerleader?" This is 2022 and that scenario happened just a couple of years ago. The fact that I have to explain myself, unfortunately still exists, and it's a blunt reminder that we still have a long way to go.

To Caroline's point, there definitely has been progress in terms of the number of women being elevated on the business side, and in particular here at the Sharks, the Director of the Hockey Administration is a woman. There was just an announcement that one of the teams now

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has a new female assistant general manager. We have seen some progress in baseball and in football as well, but again, it is all about moving the needle and making that incremental change year after year. Also, we cannot shy away from having the difficult conversations.

I'll also share that, like Caroline, we have an all-female legal team and human resources team. Thus, on the business side, it is certainly as close, if not even more skewed towards females fifty-fifty in terms of the gender gap. Lots of progress has been made, but there is still a long way to go.

**MS. ZARAGOZA:** Thank you all very much for speaking to us.