Fordham Intellectual Property, Media and Entertainment Law Journal

Volume 12 *Volume XII*
Number 2 *Volume XII Book 2*

Article 3

2002

Keynote Address

David C. Howard
Senior Vice President, Business and Legal Affairs, New York Met

Keynote Address

David C. Howard[1]

MS. COHEN: The Fordham Sports Law Forum is starting a new tradition this year. Every year we are going to award the Fordham Sports Law Professional Award to a Fordham Law School alumni with outstanding achievement in the sports law industry. When we came across Dave Howard who was a 1985 graduate of Fordham Law School, we realized there was no better way to start the tradition.

We did our research on what the School's impression of Dave Howard was when he was here. Our Associate Dean Martin's fondest memory in his thirty-year career at Fordham Law School is his memory of the student-faculty softball game when he hit a double over Dave Howard's head, which is pretty apropos considering Mr. Howard's position on the New York Mets.

As Senior Vice President of Business and Legal Affairs, Mr. Howard directly manages several divisions of the New York Mets. He is in charge of running the legal, marketing, broadcasting, media relations, and human resources department, as well as the Florida facility. Mr. Howard is also a member of the Executive Committee that oversees the Club's business operations. He represents the Club at Major League Baseball meetings and is actively involved in strategic business issues and negotiations, including the new stadium project that we heard about earlier today.

Mr. Howard was named the first General Counsel in Club history on February 10, 1992. He was promoted to Corporate Secretary on January 20, 1994, to Vice President of Business Affairs on November 8, 1994, and to his current position on January 1, 1997. He was a staff member of Major League Baseball's Restructuring Committee in 1993 and 1994 as well.

---

[1] Senior Vice President, Business and Legal Affairs, New York Mets. A.B., Economics, Dartmouth College, 1982; J.D., Fordham University School of Law, 1985.

Prior to joining the Mets, Mr. Howard was Associate Counsel for the Office of the Commissioner of Major League Baseball. Previously, he had been associated with the law firm of Davis Polk & Wardwell and had served as law clerk to The Honorable George Pratt, U.S. Circuit Judge for the Second Circuit Court of Appeals.

Mr. Howard graduated Magna Cum Laude from Dartmouth College in 1982 with an A.B. in Economics and Cum Laude from Fordham University School of Law in 1985 with a J.D.

At Dartmouth, he played both football and baseball and was a co-leader of Athletes in Action. At Fordham University School of Law, Howard ranked second in his first-year class and was Managing Editor of the *Fordham Law Review*.

With John Feerick, the Dean of our Law School, and Michael Kahn, the Editor-in-Chief of the Sports Law Forum, I would like to invite up Mr. Howard and present him with the First Annual Fordham University Sports Law Professional Award, which we plan to present every year at our annual symposium to distinguished individuals in the sports law industry.

Please join me in giving him a round of applause.

[*Applause.*]

MR. HOWARD: Thank you, Jessica, and thank you, ladies and gentlemen. It is an honor to be here. I remember the day referenced by Dean Michael Martin quite well, actually. We played a co-ed softball game over in Central Park—the Board of the *Law Review* against the faculty. The primary reason why that ball went over my head is because I had observed the faculty's batting practice, and I had made the assessment that Dean Martin probably could not hit the ball over my head if I played shallow in left field. That may suggest why I am on the business side, not the baseball side, at the Mets. Scouting perhaps was not going to be a strength of mine. But, I did chase down Dean Martin's hit, and was happy to hold him to a double.

It is a privilege, as I said, to be here. I was, indeed, privileged to have attended this Law School. It gave me a tremendous educational experience and sent me on my way to what is a very rewarding legal and business career. I am very proud to be an alumnus of Fordham Law School and go out of my way to extol its virtues to whomever I can.

I am particularly proud to have been a direct beneficiary of Dean Feerick's legacy here. My first year of law school was also Dean Feerick's first year as Dean.

He and I were just chatting about how my class lived through the major capital improvements that this School has seen. As a matter of fact, starting as early as the fall of my second year, we literally would have situations where we would be in class and the lights would go out, or there would be pounding in the hallway, or the occasional water leak, or something of that nature. But it was a real honor to have witnessed a radical transformation of this physical plant to put it on a par with what I believe is the quality, from a jurisprudence and academic standpoint, of this Law School. Dean Feerick, you ought to be commended for the job you have done.

[*Applause.*]

"Keynote address" may be an overstatement of what I intended to deliver today. I intend to offer some of my insights and opinions on the subjects that are on the agenda of today's Symposium.

I will start with the issue of stadium financing. This is a subject that is near and dear to my heart.

By the way, I will save some time to field your questions

STADIUM FINANCING

There have been a lot of successful public-private partnerships in the stadium-financing area, particularly in Major League Baseball. I think baseball is probably the sport in which you see this most dramatically. When you go from Baltimore, to Cleveland, to Denver, now in Seattle, San Francisco and Phoenix, there have been many empirical examples of the revitalization of downtown areas, and there are many yet to come. There are two that are coming on-line this year, in Pittsburgh and Milwaukee,[2] and there are several that have already received funding and are in the early stages of design development.

As a matter of fact, with regard to those stadium projects that require public referendums, which is not all of them, but of those, since 1990 there have been thirty-six such referendums and twenty-eight have passed. That is a pretty high percentage, higher than I think most people would anticipate.

I think it shows that the public recognizes the significant public benefit to these projects. It derives not only from the return on the investment of the public dollars, but also what it does to spur on ancillary economic activity and to enhance the reputation of those communities.

Downtown Baltimore, before Camden Yards was built, did not have a great reputation. Although the Inner Harbor project had begun,[3] the Stadium was the capstone that put them over the top. Now it is actually an enormous tourist attraction.[4] People actually plan summer vacations to visit the downtown Baltimore area.

Cleveland is another good example. The downtown Cleveland area was blighted, and the Gateway development project, which included the Gund Arena as well as Jacobs Field, again spurred an enormous revitalization there.[5] Now, Cleveland is one of the best cities in which to live in the United States.

So there are many examples where the public-private partnership has produced enormous benefits both publicly and for the private institutions.

---

[2] Christopher Carey, *Stadium Plans with Broad Reach Have Been Hit and Miss*, ST. LOUIS POST-DISPATCH, Apr. 28, 2001, at 12, *available at* 2001 WL 4458387.

[3] Raymond Daniel Burke, *City Reborn Since Last "Monday Night" Game*, BALT. SUN, Jan. 7, 2002, at 11A, *available at* 2002 WL 6946725.

[4] *See id.*

[5] Michael Zawacki, *Who's In Charge Here?*, INSIDE BUS., Apr. 1, 2001, at 28, *available at* 2001 WL 23912250.

By the way, of those eight public referendums that did not pass, two were in Phoenix, which most recently did have a successful referendum with regard to the Arizona Cardinals Football Stadium.[6] Three of them were in situations where alternative funding mechanisms were developed to go ahead with the project, one of those being in San Francisco,[7] one being in Pittsburgh which was partly state funded,[8] and then also in Columbus, Ohio, with the National Hockey League (hereinafter "NHL") team.[9]

There are many public benefits, in my view. Tax generation is an important one; there are direct tax benefits from these projects from sales, income, property, use and payroll taxes. Many municipalities and states are taxing the incomes of visiting players,[10] which is an enormous pool of money from which to gain some benefit. There is also the economic impact from direct and indirect spending that is associated with these projects. I am not going to quibble with some of the economists who may be here as to whether there are substitutionary effects, whether those moneys would have been spent anyway, or what the proper multiplier is that you should utilize. In our experience with the Mets, a large percentage of ticket customers are from outside New York City; if we did not play within the City limits, I believe most if not nearly all of that revenue would not otherwise be spent within the City limits.

[6] Gary R. Blockus, *The NFC East Title Should Be for the Birds: The Improved Eagles, with a Healthy Offense, Should Overtake the Giants and Win the Division*, ALLENTOWN MORN. CALL, Sept. 2, 2001, at S4, *available at* 2001 WL 23158386 ("Cardinals fans can look forward to is a new stadium, which surprisingly passed muster in a voter referendum last fall.").

[7] Johnette Howard, *San Fran Park Puts Rudy's Bid to Shame*, NEWSDAY, Dec. 16, 2001, at C02, *available at* 2001 WL 9266754.

[8] *Lemieux, Governor to Discuss Arena*, AP ONLINE, July 25, 2001, *available at* 2001 WL 25486897 ("The state funded one-third of the costs of stadiums for the Pirates and Steelers.").

[9] Letter to the Editor, *Blue Jackets, Arena are Great Benefit to City*, THE COLUMBUS DISPATCH, Apr. 29, 2001, at 2C, *available at* 2001 WL 17870873.

[10] *See, e.g.*, John Futty, *Income Tax on Athletes: Causing Less Furor*, THE COLUMBUS DISPATCH, Dec. 30, 2001, at 8A, *available at* 2001 WL 31622625; Patrick Sweeney, *Minneapolis Mayor-Elect Offers Plan for Baseball Stadium*, KNIGHT-RIDDER TRIB. BUS. NEWS, Nov. 29, 2001, *available at* 2001 WL 31006652; Felix Doligosa, *Travel Taxes: Out-of-State Jocks Pay to Play Here*, DENVER POST, July 6, 2001, at C01, *available at* 2001 WL 6756458.

And there is the benefit of civic pride—the civic pride element, which was touched upon by the panel earlier today. The City of New York, which is the greatest city in the world, has old and substandard sports facilities. If the City of New York is going to get the Olympics, or at least is going to submit an application for the Olympics in 2012, a lot has to be done from a physical plant standpoint to accommodate that.

I couldn't help but notice in a recent newspaper article that described the NYC 2012 campaign's map of where the proposed facilities would be located to accommodate the various Olympic events, that the only currently existing stadium facility that was not included on that plan was Shea Stadium.[11] Perhaps the omission suggests it is not a facility in which the organizers have pride. But, in any event, civic pride is an important consideration.

We still talk about the Jets move from New York City to New Jersey. It was discussed here this morning. The Jets leaving New York is something that we have been talking about now for seventeen years, and there is a move to get them back, and they should be in New York. There is no question they should be in New York.

Again, there are private benefits, but the private benefits are somewhat symbiotic with the public because, to the extent the additional revenues allow the team to maintain competitiveness; such as the Cleveland Indians, for example; that just drives additional tax revenues and ancillary economic activity. And again, it builds on itself and works together.

As for our situation at the Mets: Shea Stadium is an outdated design, certainly. It was one of the first multi-purpose/multi-use facilities that proliferated in the 1960s and 1970s. The concept was that a circular design could accommodate both football and baseball;[12] in reality, it does not serve either use very well. The circular design forces significant compromises to the ideal sightlines

[11] Stephen L. Kass & Jean M. McCarroll, *New York's Green Olympics*, N.Y.L.J., June 28, 2001, at 3.

[12] Robert W. Bailey, *New York Forum About the Yankees: Whose Stadium Is It Anyway?*, NEWSDAY, July 8, 1993, at 44, *available at* 1993 WL 11380380.

for baseball and football. The deficiency of such a design is demonstrated by the fact that once all the currently funded stadium projects are completed, Shea Stadium will be the only circular/multi-use-designed stadium facility remaining in Major League Baseball. It is not a distinction, architectural or otherwise, of which we should be proud.

Moreover, it is well beyond its originally anticipated useful life. It was completed in 1964 at a cost of $24 million.[13] In 2001, the City will receive approximately half that in Shea Stadium-generated revenue, a combination of our rent and other revenue streams that the City derives directly from Mets games at Shea. This, by the way, does not include direct tax revenues that are also generated. So, we do our part to pay a more than fair return on that original investment. I think it is time for the City to reinvest in an appropriate facility for the Mets. We recognize that the Mets will need to pay a significant portion of the construction costs and we are prepared to enter into a public-private partnership with the City and the State of New York.

The Mayor's Office estimated that the 2000 Subway World Series would generate $225 million for the City of New York.[14] That would have been for seven games, and I only wish it had gone seven games. But nevertheless, it does show the type of economic impact that these facilities can generate.

Again, eighty-one home games, as compared to the eight regular-season home games of a football team: it is a ten times multiple. We do not have as high an average attendance, but the Yankees and the Mets last year drew six million people between them,[15] which is just extraordinary. It is the first time in the history of New York baseball

[13] DUNCAN BROCK & JOHN JORDAN, THE COMPLETE YEAR-BY-YEAR N.Y. METS FAN'S ALMANAC 27 (1992) ("The Mets' new home, the long-anticipated William A. Shea stadium in Flushing Meadow, cost $25.5 million to build.").

[14] Dom Amore, *New York, New York at Long Last, Mets and Yankees Both Get Tickets to the World Series*, HARTFORD COURANT, Oct. 18, 2001, at A1, *available at* 2000 WL 23025808 ("Mayor Rudolph Giuliani . . . estimated the Subway Series will bring more than $200 million in business to the city.").

[15] *Hearing Before the House Comm. on the Judiciary*, 107th Cong. (2000) (*Baseball's Revenue Gap: Pennant for Sale*, testimony of Allan H. Selig, Commissioner of Major League Baseball), *available at* 2000 WL 28973086 ("Last season, the Yankees and Mets

that has happened, and it is an extraordinary economic engine that should be maintained.

Let me make a couple of comments on naming rights. I think it is a little bit too easy for public officials to say naming rights revenue should be used to offset development costs. "Naming rights" is a broadly used phrase that includes a very large number of marketing and sponsorship elements that go well beyond just putting a corporate name on a building.

A naming rights deal is by necessity an extensive, often times comprehensive, business relationship between the sponsor and the host sports franchise involving a litany of sponsorship and marketing assets. Those assets are typically within the jurisdiction of the team as opposed to the local municipality. In fact, many of those rights and assets can only be granted by the team, things such as use of trademarks/logos within the team's licensing territory and other marketing elements that are of extraordinary value to sponsors and advertisers. When you hear naming rights numbers of $100 million at Staples Center,[16] $200 million at FedEx Field,[17] and $300 million at Reliant Stadium in Houston,[18] it is not just for putting the corporate name on the building. There is a lot of value and a lot of assets that the team can bring to that equation. So, we should always keep that in mind as that issue is discussed.

drew 6,027,878 [people].").

[16] Bill Shaikin, *Money Player; Alex Rodriguez Has Silenced Talk About Record Contract With Record-Setting Season*, L.A. TIMES, Oct. 4, 2001, at D4, *available at* 2001 WL 2523121 (reporting the $116-million naming rights agreement for Staples Center).

[17] *See Sports Business & Industry: Top Stadium & Arena Naming Rights Deals* (reporting that the FedEx deal cost $205 million over twenty-seven years), *at* http://www.sportsvueinc.com/Facts/NamingRights.htm (last visited Feb. 4, 2002).

[18] Jim Kirk, *Reality Zone May Block Big Naming Price*, CHI. TRIB., July 31, 2001, at 3, *available at* 2001 WL 4099346 (noting that "the biggest recent naming-rights deal, for example, was for a new multiuse stadium in Houston for pro football's expansion Houston Texans: Reliant Energy signed a $300 million deal over 32 years.").

RELOCATION IN BASEBALL

Tom Ostertag—whose judgment I respect immeasurably, in part because he once hired me to work with him in the Baseball Commissioner's Office—I think summarized it well. The antitrust exemption serves baseball well by maintaining franchise stability. In fact, for the most part, in Major League Baseball history when there has been relocation, the city that lost the team would eventually get a replacement team. It happened twice in Washington, and it may happen again—for all we know—there.[19] Recall, for example, that the Boston Braves moved to Milwaukee, left Milwaukee and went to Atlanta. In response, Milwaukee ultimately got a team from Seattle, as the Seattle Pilots became the Milwaukee Brewers. But then, we had another expansion team placed in Seattle, the Mariners.[20]

So, relocation does not seem to resolve many issues in baseball. Whether or not that will be a tool used to resolve some of the economic issues affecting some of our teams remains to be seen.

I think it is, at best, a short-term fix; I do not think it is a long-term solution, because, typically, the markets that are not currently represented within Major League Baseball are probably not much better positioned to support a team on a long-term basis than the existing host city.

DRUG REGULATION IN SPORTS

In baseball, from what I have been told, then-Commissioner Peter Ueberroth tried to get a comprehensive drug policy incorporated into

[19] Dave Sheinin & Mark Asher, *Baseball Has Its Eye on RFK; D.C. Venue Could be Ready for a Team for 2002 Major League Season*, WASH. POST, Dec. 14, 2001, at D01, *available at* 2001 WL 31542437 ("Two high-ranking baseball sources discounted the possibility of a team playing at RFK in 2002, but said there could be a franchise in the Washington area by 2003.").

[20] Ken Daley, *Brewers Headed to National League; Milwaukee to Play '98 Season in NL Central*, DALLAS MORN. NEWS, Nov. 6, 1997, at 12B, *available at* 1997 WL 11533649.

the collective bargaining agreement, known as the Basic Agreement in Major League Baseball, and was frustrated in his efforts. I understand that he was willing to have the Players' Union draft a comprehensive policy, to no avail. Baseball has not yet established a comprehensive drug policy on the Major League level.

I was a little bit surprised to hear in the panel discussion earlier about the notion that anabolic steroids and other performance-enhancing drugs are regulated primarily because of the perception that they affect competition. I think that is an important consideration, but I think a far more important issue is the safety and health of the players. The players are competitive by nature. I mean, to their very souls they are competitive, to the point that they may need to be protected from themselves. There is such an overwhelming urge to have an edge in your competition, to keep your job, to make the big dollars, to have a long career, that many times players do not use good judgment in terms of what they use to enhance their performance.

Certainly, the use of performance-enhancing drugs carries an enormous risk of long-term adverse health consequences. If you look at the average life expectancy of NFL veterans, it is far below the national average, and one wonders what are the causative factors.[21] Part of that may be dietary. Part of it may be these men are so large that it may be there is somewhat of a congenital or genetic predisposition. I wonder, however, whether performance-enhancing drugs also play a role there.

And yet, many times you hear athletes—and Lyle Alzado was one who admitted that he used anabolic steroids,[22] which ultimately played a causative role in his death from cancer—many of these

[21] Bob Padecky, *NFL Experience Taking its Toll on Kennedy*, PRESS DEMOCRAT (Santa Rosa, Cal.), July 24, 2001, at C1, *available at* 2001 WL 5874990 ("'Our life expectancies from this job are short,' said Lincoln Kennedy, the Raiders' 335-pound offensive tackle. 'NFL players are dying young,' he said, referring to a players' association report that contends NFL veterans die at an average age of just 58.").

[22] Shaun Powell, *The Last Word: Not all Comebacks are Happy Returns*, NEWSDAY, Dec. 31, 2001, at C28, *available at* 2000 WL 10051272 ("Everyone's suspicions were confirmed years later when [Lyle Alzado] revealed he took too many steroids, which eventually contributed to his death.").

people will say, "If I had to do it again, I would do it the same way." This is not what you want to hear. So I think that is an area that will require a cooperative effort in the collective bargaining in every sport.

Baseball is not immune from it, because right now there is no regulation in baseball.[23] Steroids are not even considered a banned substance. We had the issue with androstenedione a couple of years back with Mark McGwire's acknowledged use of that unregulated substance,[24] which some experts believe to be in the steroid classification. I know for Olympics purposes it is considered a banned substance for that reason,[25] because it purportedly produces testosterone in your system. And yet, baseball did a study and the study was inconclusive, so nothing was done as a result. So, players can still use it, and I think it is not a good situation.

We have seen in baseball a re-orientation towards the power game. Until recently, speed and defense, especially in the National League, was the way that teams typically had success, and now everything seems to be about the long-ball. Players are compensated for power numbers, run production numbers. And so, there is again a natural inclination from a competitive standpoint for these guys to say, "Hey, I want to be bigger and stronger and hit the ball farther," and this may be an option that some of them pursue.

I think most baseball players do not do it, by the way. I do not think it is a rampant problem, but in my opinion it is an issue that must be addressed.

---

[23] Debate, *Alert on Substances*, USA TODAY, Dec. 28, 2000, at 10A, *available at* 2000 WL 5799146 ("Androstenedione, which made news when home-run champion Mark McGwire disclosed he was using it, is so close to being a steroid that it's banned by the Olympics and many sports leagues. Two federal agencies are studying whether it and other supplements can be classified as controlled substances.").

[24] *See id.*

[25] *See id.*

I look forward to the next discussion topic. I think baseball is a unique animal in so many ways. It is obviously the oldest professional sport. It is one that derived from a series of local organizations. People look at the antitrust exemption from a 1922 Supreme Court decision,[26] and they ask, "How in the world could they have determined that it did not come within the rubric of the antitrust laws, because it was not an issue affecting interstate commerce?," which is a bit hard to understand.

But yet, back then I believe, and today it is very much the case, this is a series of local exhibitions, and the revenue in baseball derives predominantly from local revenues. Unlike the other sports, and particularly football, approximately three-quarters of all revenue in baseball is generated at the local level.[27] And so, you have this entire industry that has developed with that as the fundamental premise.

There are extraordinary problems with trying to change that because, most notably, team asset values were based on that presumption. To change that now would cause, potentially, extraordinary transfers of asset values from larger-revenue to lesser-revenue clubs. Perhaps that can be addressed in some creative financing scheme.

But, it is one of those potentially imponderable problems that, hopefully, we can resolve in conjunction with our friends at the Players Association, because baseball economically is not in good shape. We are at a point where the debt in the industry has risen dramatically. The losses are extensive. Notwithstanding what you may hear in the newspapers, there are very few teams that make

[26] Fed. Baseball Club of Balt. v. Nat'l League of Prof'l Baseball Clubs, 259 U.S. 200 (1922) (holding that baseball is exempt from the Sherman Act).

[27] Luke Cyphers, *The Sharing Game*, N.Y. DAILY NEWS, Dec. 9, 2001, at 95, *available at* 2001 WL 27989746 (reporting that "most baseball revenue is local—ticket sales, luxury boxes, cable contracts, etc.").

money on an operating basis in baseball, and many of the teams only do so if they make the post-season.

So, it is an industry that is not healthy from a financial standpoint but is extraordinarily healthy from a fan interest standpoint, and hopefully we can put our own house in order.

At this stage, I would like to invite you to ask questions. I will be happy to answer them.

QUESTION AND ANSWER SESSION

QUESTIONER: How do you view baseball's current revenue sharing system and its relationship, if any, to a possible salary cap?

MR. HOWARD: That is a good question. In the 1994-95 collective bargaining negotiation, player compensation was the primary issue,[28] and that tends to be joined with revenue sharing. The goal of the owners then was to get a salary cap structure similar to what exists in the other professional leagues, where a percentage of league revenue is shared with the players.[29] It has worked extremely well in the NBA and it is working well in the NFL. It does suggest that the players and owners are partners in promoting their game and in generating revenue, and it also indicates that there will be a fair sharing of that revenue with the players.

The problem with that original proposal was that the Union opposed it because the plan originally had a ceiling on team payrolls, and there was a very significant revenue-sharing component. And, while the Union can certainly speak for itself, my perception was that the Union's opposition was based on their philosophical opposition to any salary cap or significant restraint on salary growth.

---

[28] George Diaz, *Salary Caps; Picking out the Real Losers*, ORLANDO SENT., Aug. 7, 1994, at C10, *available at* 1994 WL 4723385.

[29] *See, e.g.*, Harold Henderson, *Salary Cap Essential if Players Want to Maintain Free Agency*, USA TODAY, Oct. 19, 1994, at 14C, *available at* 1994 WL 11071117 (reporting that "[t]he current NFL system includes not only free agency and a cap, but also a floor, meaning the players collectively receive a guaranteed slice of leaguewide revenues.").

The end result in that negotiation was that we did not have the cap, but we still had substantially increased revenue sharing. The extent of revenue sharing in baseball is probably not an issue that most people recognize. First, there is the centrally-generated revenue that is shared equally, although it is not generated equally. The larger markets are more attractive to national media rightsholders. In addition, those markets have most of the highest-grossing trademarks in baseball. Each team shares only in one-thirtieth of that revenue along with all the other teams, under the Major League Baseball Central Fund and Major League Properties Agency Agreements.

On top of that, the revenue sharing plan agreed to in the last round of bargaining significantly increased the percentage of local revenues shared with all clubs. So, we were left with a large transfer of funds to smaller markets clubs that had no obligation to spend it on player payroll. In fact, in some cases the transferred revenue was simply dropped straight to the bottom line, making these teams profitable.

This may be an example of the law of unintended consequences. It irks a lot of the teams that work very hard to generate revenue and are not profitable, who take risks, who are budgeting a small loss or sometimes a larger loss with the hope that there will be another return either in the post-season or in subsequent years.

I will not, however, speak about the upcoming negotiation, because the Commissioner mentioned a little while ago that his powers of sanction, including million-dollar fines, would be used on individuals who comment on negotiations. We do not make as much as the players do in baseball. I have four children whom I hope to send to Fordham Law School someday, so I have to try to preserve my asset base.

But it is a significant issue. The Mets organization, I will talk about the last go-around, we were more than willing to go along with a system that had increased revenue sharing as long as it also had some sort of restraint on the growth of salaries. Obviously, this time around we are not commenting.

QUESTIONER: Do you think it is realistic for the City of New York to participate in funding new stadiums for both the Mets and the Yankees?

MR. HOWARD: Yes, I think it is realistic. I think it is aggressive. But I do know that Mayor Giuliani has said for many years that he recognizes that he has two teams and that what he will do for one, he will do for the other. I think actually that was demonstrated on the minor league side, where there were very comparable facilities created in two areas that are, by the way, generating a lot of interest and enthusiasm. In Coney Island, I know that since construction for that stadium has begun,[30] commercial rents have already risen, and they have not even played a game there yet.

So, I think it is an aggressive goal. I would like to point out, however, that Shea Stadium never received hundreds of millions of dollars for renovation, which I believe was the case for Yankee Stadium in 1974-1975.[31] So if there has to be a pecking order, we would be happy to go first.

The funding may be partly in place for the baseball facilities because of the Corporate Rent Tax that the Mayor did not rescind. It remained in place for several years, and that money is somewhere out there, and I think could help finance the City's contribution to both the Mets' and the Yankees' facilities.

And, I think, to the extent something happens on the West Side with the Jets potentially, I think that would be primarily a State-funded facility given that it would be developed in conjunction with the expansion of the Javitz Center, which is State-owned. Of course, the City would presumably have a substantial role.

---

[30] John Henderson, *New Twist(er) to an Old Story: Cyclones Revive Brooklyn Ball*, DENVER POST, Sept. 6, 2001, at D1, *available at* 2001 WL 6761691 ("In Brooklyn, [Mayor Giuliani] built a baseball stadium. He dipped into the city coffers for $39 million for a beautiful, state-of-the art, 7,500-seat KeySpan Park and took out another $11 million to clean up Coney Island's once-famed boardwalk.").

[31] Gersh Kuntzman, *Ruth's House: A Big Hit Since '23 Debut*, N.Y. POST, Dec. 26, 1999, at 4, *available at* 1999 WL 27659928 ("Yankee Stadium may just be renovated, just as it was in 1974, when the city spent $100 million to refurbish it and keep the team from following the NFL Giants to New Jersey.").

Anybody else?

QUESTIONER: What is your view on the new rules regarding deferred compensation payments in player contracts?

MR. HOWARD: That was a significant issue actually in the last collective bargaining process. Under the old collective bargaining agreement, the Clubs did not necessarily have to fund players' deferred compensation accounts; the Club could just essentially make a bookkeeping entry and charge that account with interest and pay it at some future date. And because it was so easy to do, I think it was occurring more and more frequently.

The current rule is that if you are going to defer compensation, you have to fund the account. So you actually have to put the cash away, which I think lessens the incentive to enter deferred salary arrangements. There may be some exceptions, and Arizona may have been one, where they got some relief with regard to that funding requirement.

But it is a very valid point. You are putting off the day of reckoning. It is a situation where your books look better from a GAAP[32] standpoint, and short term from a cash flow standpoint, but ultimately that money is going to have to be paid. It has to be paid with real dollars at the time that these folks are expecting their money, with interest.

So it is a manifestation of the industry's debt problem. It is in a different form, but it is an issue, and it is one that clubs should be cautious in doing.

QUESTIONER: How do you feel about the competitive imbalance in baseball that results from higher payrolls and the negative effect it has on small-market teams' chances of winning a World Series?

MR. HOWARD: Well, we had two teams with payrolls of less than $30 million that were in the post-season last year, and I don't think it cannot happen. I think the issue that you have is can they

[32] *See* U.S. GAAP (containing detailed information on Generally Accepted Accounting Principles in the United States), *at* http://cpaclass.com/gaap/gaap-us-01a.htm (last visited Jan. 29, 2002).

sustain it? Once their younger players start to get to arbitration age, can they sustain the success? I do not think it is impossible, but I understand it is a substantial challenge.

And, by the way, spending money is no assurance of success, as some of the teams have demonstrated. I will not name them, because but for the grace of God go we. But there is no assurance that because you have the revenue that you are going to be successful.

One of my issues with regard to supposed competitive imbalance is that I do not believe parity is an ideal. I do not think parity is what led to the renaissance of the NBA. I think the NBA's renaissance was due to the fact that Los Angeles, Chicago, New York, and Boston had star players on good teams. In my opinion, and I think this is where the central offices have a little bit of a divided point of view, there is this notion that, "Hey, there is imbalance." But for the generation of revenue on a national or central level, you must have strong teams in the major media markets. That is what is going to drive your TV revenue.

The NFL is a unique animal. They have a system, because they play once a week, that they regionalize nearly all their televised games. Because of the regionalization of the NFL games, it is really more or less a local game.[33] You have the one national game, and everything else is regionalized. It has certainly worked for them. It was brilliant foresight by Pete Rozelle and by Wellington Mara on behalf of the New York football Giants, who at the time was the 800-pound gorilla who said, "You know what? Let's go in this direction."

At about the same time, in baseball, we did not have national contracts to speak of. The Yankees actually had a national television network. That is why you hear of people all over the country who were Yankees fans in the 1950s, not because Mickey Mantle was from Oklahoma, but because you could watch their games anywhere in the country.

[33] Steve Nidetz, *Baseball's Still on TV—Just Look a Little Harder*, CHI. TRIB., Apr. 4, 1994, at 5, *available at* 1994 WL 6467053.

And, interestingly, I learned when we went to Japan last year that Japanese baseball has a similar situation. They do not have defined local territories in which to broadcast their games. As a result, the Tokyo Giants have a national television franchise and they have significant revenues. They are a very good team. We actually played them in an exhibition game, and I would say they are a mid-level Major League caliber team.

But, your point is a valid one. It is a very significant issue. But I think there has to be a proper balance with regard to a problem of fan perception of competitive imbalance and the importance of the large media markets to national sponsors and rightsholders.

QUESTIONER: Who owns and controls team trademarks and player likenesses?

MR. HOWARD: Well, the teams own their names, logos, service marks and trademarks, but the teams have self-imposed limits as to how they will exploit those assets. They have essentially pooled their global rights and hired Major League Baseball Properties and MLB International, as their agents, to market those intellectual property assets nationally and internationally. That money is then collected and distributed equally.

The teams have limited rights within their marketplace and their television territory, to grant rights, none of which, by the way, are retail merchandise-related; they are mostly sponsorship licensing-related. So we can give Pepsi the right to use the Mets logo in our television territory, but we could not do that outside of our territory.

There are some issues there with regard to what Major League Baseball Properties does that might impede or intrude upon an exclusive relationship that we have with a sponsor. For example, we would not want MLB to give Coke the right to use the Mets logo in the Mets' marketplace when Pepsi is our exclusive soft-drink sponsor. The rules do not permit such single-club licensing without that club's consent. So that is fundamentally how it works.

From a likeness standpoint, we have the right to use the player likenesses for broadcast and promotional purposes. We do not have the right to use their likeness to the extent it becomes an endorsement of a particular product by that player.

Beyond that, likenesses are licensed collectively by the Players Association on behalf of the players. For example, the manufacturers of baseball cards have to get two licenses, one for the use of the marks and the other for the use of the player likeness. And sometimes you will see a player on the cover of a cereal box in a generic uniform and cap, which looks, in my opinion, quite hokey. That is because the manufacturer chose only to get a player license and not a Major League Baseball Properties license.

Thank you very much for your time and enjoy the afternoon.