

## PROTECTING YOUR POSSIBILITIES PODCAST WITH LUKE FEDLAM

### Episode 29: So What Exactly Is a Non-Agent Sports Lawyer? | Feb. 24, 2021

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

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

Thank you so much for tuning in to the Protecting Your Possibilities podcast. I'm your host, Luke Fedlam. Excited for another, protecting your possibilities conversation. This one, though, is going to be a little bit different. I have gotten such great feedback regarding this podcast. And I've had some questions from folks who want to better understand actually what I do on a regular basis. And I thought, why not share that information on a podcast? So here you go.

I am a non-agent, sports attorney. A non-agent sports attorney. So a lot of times people ask, well, what does that even mean? And what does it mean to be a sports attorney non-agent? Like what is that all? What does that all mean? And what I share is that I'm not registered as an agent with any of the players unions of the professional sports leagues, because my focus is on really serving as a general counsel; as a lawyer for individual professional athletes and sports related businesses.

So my focus on a regular basis is not on finding athletes deals or finding them marketing opportunities, or investment deals and things like that. My job is on a regular basis to review, analyze, and ultimately negotiate them in a way that best protects the athlete. And I got to be honest with you, I love what I do. I absolutely love the work that I do, because it's centered around two things. It's centered around education, and protection.

You know, when we think about it, I think I would be remiss if I didn't take this last Wednesday of Black History Month to provide a bit of a shout out, if you will, for Black History Month. And in particular one of my icons in life. I think oftentimes, it's important to recognize and acknowledge the shoulders upon whom you stand to achieve and do the things that you get to do. And for me, it's a no brainer for me that I look back in history, and one of the most influential attorneys in American history, not just Black history, because Black history is American history. But one of the most influential attorneys in American history, in my mind, is Charles Hamilton Houston. Now, Charles Hamilton Houston is really known as the lawyer who dismantled Jim Crow. And to give you some context, he was a graduate of Amherst College, he served as an officer in World War One. He was a graduate of Harvard Law School, I believe he was the first black editor of the *Harvard Law Review*. And he ended up becoming the Dean of Howard University's Law School. And there he taught, he mentored, he coached and guided a generation of lawyers who fought against segregation. A generation of lawyers to include Thurgood Marshall.

And over the years, he recognized that the Supreme Court's ruling in *Plessy v. Ferguson* was centered around this idea of separate but equal. And he knew that you could dismantle the

notion of separate but equal by addressing it at education, at the level of education. If you could look at education that could be the cornerstone to bring down this society that was built on blacks and white being separated. And that education in particular was not equal. And so case after case after case, he helped to create this strategy, so that ultimately, even though he wasn't there to see the final ruling by the Supreme Court, but ultimately, and *Brown v. Board of Education*, Thurgood Marshall was able to argue that separate was not equal. And that through the ruling in *Brown v. Board of Education*, we moved into equality under the law. And when I think back to Charles Hamilton Houston, I look at a lawyer who set the stage for everything that I can do right now, in terms of educating others, to ultimately protect them, to provide them the education and the protection necessary to be successful and whatever it is that they do in life. Whether that's in their life outside of their sport, whether it's for entrepreneurs, for others who are trying to manage the business that's going on around them, I am thankful for the work of Charles Hamilton Houston.

So that is my thanks. And recognizing the shoulders upon which I stand as a black lawyer working to ensure equal opportunity, education and protection for athletes and others.

So, with that being said, what does my day to day look like? What is my job entail? I've had different people refer to me in different ways, not really understanding exactly what I do. And even some who do understand a little bit of what I do have referred to me, you know, as an enigma, as something that's different, you know, out here in this space.

Really, what it comes down to is anything that an athlete is ultimately going to sign their name to, my job is to make sure that they understand what it is that they're signing, and that they're protected in whatever agreement, whatever document that is. Now as a large law firm, we work with our clients on all of these different traditional kind of law firm, if you will, matters, right? Things like real estate, due diligence and due diligence around private investment deals, and estate planning and tax issues and litigation when someone has been taken advantage of, or someone needs to go after you know, someone labor and employment when you're starting up and building out a business. And then how do you manage the growth and development of that business. Intellectual property and protecting that intellectual property that's specific to you. So all of those things come into play when we're working with athletes, it's just that we approach those various areas through the lens of the unique challenges and complexities that individual athletes face in their life. Because their lives are different. And when you kind of dig even deeper, there are some areas and some things that we focus on that are very specific to kind of where we're at right now.

So you've got college football season that came to end about five or six weeks ago, and you had college football players who are making the decision to transition into the professional ranks. And my focus when working with these athletes, is to help make sure that they understand the agent agreements that are getting put in front of them. And potentially the marketing agent agreements if they're different than their player-agent contracts, or even potentially endorsement deals as well. So it's the idea of looking at what these contracts are saying. So a lot of times what you'll see and to be honest, we're kind of entering and about to enter that phase with college basketball, as well as we're, you know, headed into March Madness next month, and you've got players who will be transitioning out of college basketball and, and heading into, you know, preparation for the NBA or international basketball opportunities.

And so what we do is we look at these types of agreements that are put in front of athletes, the agent agreements first. You know, looking at those, it's very much, you'll hear a lot of times like,

oh, there's standard agreements. And there's a little bit of truth to that there is a standard agreement, and those standard agreements are related to the collective bargaining agreements for those professional leagues. And in basketball, it's called the SPAC, or the standard player agent contract. In football, you have the SRA, the standard representation agreement. And in those documents, those are already negotiated documents that are part of the collective bargaining agreement for that particular league. And when you review those agreements, there's only certain information that actually gets filled into those, right, they're not really negotiated agreements, the only thing that really changes is the player's name, the agent's name, and then typically the fee provision around what the fees will be and what the agent is charging on those fees. But that's just the first agreement. Typically, you'll then have another agreement, and those other agreements could run the gamut of different types of agreements from the pre-draft training agreement, the pre-combine training agreement. We've seen marketing agreements, you know, vehicle use agreements. I mean, there's so on and so forth, training agreements, etc. So that's where those agreements are not standard. They're very much that standard. They run from very well drafted professional agreements to agreements that you know, maybe were poorly constructed, I think would be the nice way to, to say. And my job is to go through those agreements and help the athletes, and the athletes family understand how those agreements work together with that standard rep agreement, and the impact that it has on that player. For a host of reasons. What happens if the player were to decide to terminate the agreement? How much time do they have of notice that they have to provide? What type of fees would they have to pay back. So if the agent was providing or paying for lodging, transportation, pre-combine training with personal trainers, etc., all of those fees, one of those fees have to be paid back.

Also, something that's big in those agreements is, you know, how do the fees work beyond even the first agreement, because in certain instances, there will be, you know, you'll see a lot of times that the agent will charge a particular fee for the first agreement, let's call it less than 3%. So if they come out and say, we'll charge 1% on this first agreement, but then if you don't use us, that same agent, if you don't use that agent for your second agreement, then you'll have to pay the difference between whatever you paid and 3%. So if you paid 1%, and you don't use them for your second contract, and terminate them before your second contract begins, or is negotiated, then you'd have to pay that difference between that 1% and 3%. So you'd have to come out of pocket and pay 2%. So what does that mean? I mean, those are real numbers, right. And so it's important for the athlete for their team, for their family to understand all of the provisions in these other agreements, because that type of language is oftentimes in a separate agreement.

It's also important to understand what it means when you have a marketing agreement, is that an exclusive agreement or a non-exclusive agreement, right? What happens if a deal comes directly to you, and you, you know, you want to negotiate that agreement, as opposed to it going through your agent, what happens, you know, if it's a hometown company, right, a smaller company from wherever you grew up, and they've known you and your family for years, and they want to do a deal with you, you know, is that something that has to go through your agent where your agent gets their fees or not. And it's those kind of situations, those kind of scenarios that get worked out in the drafting and/or negotiating of these other ancillary agreements, right.

So people who are in the sports space, you know, would agree that typically the first person that an athlete looks to hire is an agent, right? Because that's really what this industry has kind of established for these players, it's become the norm of, you know, I got to get my agent. And then what happens is, oftentimes, that agent may be will either direct players to a financial advisor or to other professional service providers. But a lot of times, you know, we have the

opportunity to get involved before that final decision is made on the agent to help negotiate that agent contract. Because it's important when you think about empowerment. It's important when you think about leverage, that the agent is really working for the athlete, not the other way around. And so when the athlete has the opportunity to negotiate the terms of their agent contract, that instantly kind of puts them in a bit of a different footing than an agent just putting an agreement in front of them and the player kind of blindly signing that.

So this is a lot of what I get involved with in the day-to-day as players are transitioning into professional sports or transitioning between agents, marketing agents, player agents, etc. We get involved in that work. It's also a lot of work that focuses on the protecting the privacy of athletes. So privacy is a big deal. So whether you're going through a home purchase process, how do you keep you know your name and information private and not part of public record? Right. And there are some different ways in which you can do that. When you think about the various agreements that you might have in place with other service providers, it's important to have very well drafted privacy or confidentiality provisions. So whether it's an agreement for someone who's going to be a personal trainer for the offseason, it's important to have confidentiality, even a housekeeper that's coming in to clean the house once a week or every couple of weeks or whatever that may be. Same thing. Confidential provisions within the agreement are critically important because that's ultimately what protects the player. Because what you don't want is someone who's providing you a service, maybe they overhear something or they see something or they make note of something that ultimately then they turn around and try to sell it to TMZ or share that information publicly that could potentially put that athlete in a negative light. And so that's why confidentiality, privacy is so critically important, as well.

So hopefully this has given you some insight a little bit more insight into kind of the work that we do regularly with athletes to ultimately protect them. And that that doesn't even get into the depths of kind of what I mentioned at the top of the show, which is this idea of the real estate and intellectual property and the business structure and setup and the labor and employment issues and all those other kind of more traditional corporate issues that athletes and business owners deal with. But these are some of the things that are unique to professional athletes. And that's why it's so important to make sure that you have counsel that understands you, as a client. To have counsel that understands you as an athlete, so that they can very specifically address the unique challenges and complexities that you face, both personally and professionally as a professional athlete.

So that's a little bit more insight. Hopefully, you've gained something out of it. Again, please do feel free to continue to reach out. You can reach me on social media @LukeFedlam. You can you know, email me, you know, put up some stars, for our podcast, share with some colleagues and friends, some teammates, what have you. Feel free to reach out with any questions because again, this isn't something that's just a normal kind of job. I absolutely love what I get to do every single day, I get to work with great people and set them up for success outside of their sport, so that they can positively impact themselves, their families and their communities. And I get to do that every single day. So I'm thankful for that. And I'm very thankful for you for listening to the podcast. And again, please do feel free to reach out with any topics that you want to hear or any questions that you might have. I can't wait to talk to you again real soon. Have a great day.

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