



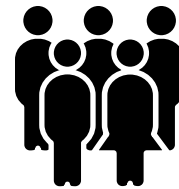
Protecting and Promoting the Health of NFL Players: Legal and Ethical Analysis and Recommendations

Chapter 14

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Family Members



Families can play a crucial role in protecting and promoting player health, including by encouraging players to seek proper medical care and appropriately consider long-term interests, and they can offer support through challenging times. Unfortunately, in some cases, family members can also put inappropriate pressure on players or otherwise negatively influence their health. Thus, players' families, which include spouses, siblings, parents, adult children, and extended relatives, are an important set of stakeholders whose roles we must address.^a

Additionally, friends often play a similar role to that of family members and thus much of what we say in this chapter can also apply to them.

^a We acknowledge that the issue of NFL players and domestic violence is an important one. However, these issues are outside the scope of this Report. Our focus here is on the effect of a family on the player and his health, not the effect of a player on family health.

In order to ensure that this chapter was as accurate and valuable as possible, the President of the Off the Field Players' Wives Association (a group of NFL player wives), Ericka Lassiter, who is also a Family Advisor to The Football Players Health Study at Harvard University, arranged for three wives of former NFL players to review a draft of this chapter prior to publication. Two of the wives provided comments.

(A) Background

When it comes to a person's health, family is extremely important.¹ NFL players are no different. Family members can provide guidance, comfort, love and support. NFL players—given the multitude of issues with which they must deal—certainly benefit from having a caring and supportive family.

However, NFL family members sometimes may be the source of problems for players. In 2016, the minimum salary for an NFL player is \$450,000 for a rookie and \$675,000 for a player with at least three years' experience.² Clearly, NFL players are paid well while playing as compared to the general population. Thus, it should not be surprising that NFL players frequently feel pressure from family members for financial support.³ Coupled with the short careers of NFL players, it is also not surprising that family pressure can financially ruin current or former professional athletes.⁴

As with the general population, NFL players marry and divorce. A 2009 NFL-funded study of former NFL players by the University of Michigan (Michigan Study) provides some data.⁵ The Michigan Study found that, of 1,063 former players interviewed, 76.3 percent between the ages of 30 and 49 at the time of the study were married before or during their NFL careers.⁶ In addition, of the former players interviewed and between 30 and 49, 75.5 percent were currently married (a statistic that would include second marriages).⁷ By comparison, only 64.4 percent of American men between 30 and 49 are married.⁸

The divorce rate for professional athletes has been estimated at 60 to 80 percent,⁹ though the figures obtained as part of the Michigan Study are very different. The Michigan Study found that only 19.7 percent of former players between 30 and 49 had ever been divorced.¹⁰ By contrast, 25.6 percent of all American men between 30 and 49 have been divorced.¹¹

Of those former players aged 30–49 at the time of the study and who had married before or during their NFL career, 7.6 percent had their marriage end during their career, 13.3 percent had their marriage end less than five years after their career ended, and 6.9 percent had their marriage end five or more years after their career ended.¹²

Figures from a 2014–2015 survey of 763 former players by *Newsday* paint a different picture than those from the Michigan Study. The *Newsday* survey found that 29.8 percent of former players interviewed experienced “marital problems” during their career and 48.2 percent experienced “marital problems” after their career.¹³ While “marital problems” are different from divorce, the *Newsday* survey suggests that former players' family lives are not as stable as was suggested in the earlier Michigan Study.

Also, the Michigan Study found that former players between 30 and 49 had a mean of 2.28 children.¹⁴

Clearly there are many factors that affect the constitution and stability of NFL families. Some players are lucky to have excellent support systems before, during, and after their careers, while others do not. The question is what are the legal and ethical obligations of family members as they concern an NFL player's health?

Before moving on, it is important to know that there are limitations to the *Newsday* and Michigan Study analyses.

The *Newsday* survey is limited as follows: (1) the survey was sent via email and text message by the NFLPA to more than 7,000 former NFL players, thus eliminating former players who were less technologically savvy and also possibly skewing the sample towards those former players closer to the NFLPA; (2) the response rate for the survey was low (approximately 11 percent); and, (3) the study does not discuss the demographics of those that responded, making it difficult to ascertain whether those who responded are a representative sample of all former players.

There are also two potential limitations to the Michigan Study. First, the Michigan Study population only included players who had vested rights under the NFL's Retirement Plan; meaning, the players generally had been on an NFL roster for at least three games in at least three seasons. There is likely a significant but unknown percentage of NFL players who never become vested under the Retirement Plan. Second, responders to the survey were 36.8 percent African American and 61.4 percent white—almost a complete reversal of the NFL's population of current players. While the racial demographics of former players is likely closer to the population of the Michigan

Study, *i.e.*, there were more white players than in the current NFL, the Michigan Study did not provide such data on the former player population and did not adjust or account for the racial demographics of the former player population. In a telephone call with Dr. David Weir, the lead author of the Michigan Study, he explained that: (1) due to limited resources, the population of players to be studied and contacted was limited to the data and contact information available to and provided by the NFL; and, (2) the NFL did not provide racial demographics of former players and thus the study could not adjust for that factor. Weir also believes that the racial demographics of former players is substantially similar to the racial demographics of the Michigan Study's participants. Finally, Weir explained that, during the internal review process with the NFL, the study was leaked to the media, preventing the study from being amended and submitted to a peer-reviewed publication.

(B) Current Legal Obligations^b

At the outset, it is important to be clear that we are analyzing the obligations of family members to players, rather than the obligations of players to their families. Although players have obligations to their families, that is outside the scope of this Report.

When it comes to legal obligations of family members, there is a significant body of law, family law, that governs these relationships but little of it is relevant to the health of NFL players. The most common understanding of the legal relationship between spouses results from cases of divorce, where the parties have to divide their property and determine alimony and child support obligations in accordance with state law. However, divorce law generally does not elucidate the obligations of spouses to one another while married. Moreover, any such obligations would generally extinguish upon divorce.^c

There is some case law holding spouses and parents to be fiduciaries and thus subject to fiduciary duties under law.¹⁵ Generally speaking, a fiduciary is “a person who is required to act for the benefit of another person on all matters within the scope of their relationship; one who owes to another the duties of good faith, trust, confidence, and candor; . . . [o]ne who must exercise a high standard of care

in managing another's money or property.”¹⁶ Whether a fiduciary relationship exists is a fact-based inquiry into the nature of the relationship.¹⁷ In other words, where an individual trusts and relies on a person to look out for his or her best interests, a fiduciary, and thus a legal, relationship can be formed.

If an NFL player consults with his family about health concerns, *and* a family member is held to be a fiduciary to the player (which may be unlikely), then the family member is legally obligated to provide advice that is in the best interests of the player, regardless of the effect on the family member. For example, if a player explains to his wife-as-fiduciary that he is suffering from post-concussion symptoms and is considering retirement, the wife's advice must be principally concerned with the player's best interests as opposed to how the wife might benefit from the player's continued playing. As a practical matter, these types of conversations and balancing of pros and cons often occur naturally and are the subject of a mutual decision making process. Nevertheless, it is important to understand that family members may have legal obligations to one another. That said, these obligations, even where legally recognized, may not often be enforced.

Several professional athletes claim to have been led to bankruptcy as a result of letting their parents handle their financial affairs.

In addition, family members might assume fiduciary, contractual or other legal obligations by virtue of taking on roles and responsibilities beyond just being a family member. For example, if a family member undertakes to handle a player's financial or legal affairs, then the family member will likely have assumed a fiduciary role on behalf of the player and could be held to the legal and ethical standards of financial and legal professionals. Indeed, several professional athletes claim to have been led to bankruptcy as a result of letting their parents handle their financial affairs.¹⁸ The legal and ethical obligations of contract advisors are discussed in Chapter 12, and the obligations of financial advisors are discussed in Chapter 13. If and when family members play either of these roles, the content of those chapters would also apply.

^b The legal obligations described herein are not an exhaustive list but are those we believe are most relevant to player health.

^c Similarly, family law statutes control the obligations of parents to their children, but only until the child reaches a certain age (typically 18). As all NFL players are legally adults, their parents no longer have any obligations to them that would be governed by family law statutes.

(C) Current Ethical Codes

There are no known ethical codes for family members.

(D) Current Practices

Interviews with players and contract advisors confirmed that family members play a role, but often a secondary one, in player health decisions. Players, of course, have varying relationships with their families, which dictate how involved a family member might be in advising a player or the player's contract advisor on various matters. A family member's involvement might vary depending on the player's point in his career.

When it comes to current players, while they generally discuss their current injuries and health concerns with their partners or other significant family members, they tend to rely most on their contract advisor and the doctors involved (e.g., club and second opinion) to determine the appropriate course of action. Relatedly, it is likely the contract advisor who will handle the logistics of the care.

The below quotations show the differences in player opinion about the involvement of family in player health matters:^d

- **Current Player 1:** “[T]hey just kinda offer moral support . . . whatever happened they would have my back . . . [B]ut it’s really up to me – I’ll make those decisions for myself.”
- **Current Player 2:** “[Family members] play a huge role in the mental and emotional health of players.”
- **Current Player 4:** “I think parents are huge.”
- **Current Player 5:** “I’m very close to my parents. And they’re always actively informed of what my injuries are, they make suggestions. But I would say my family’s very, very limited in their involvement in my health and safety.”
- **Current Player 6:** “As far as career decisions, I think family is a major, major factor . . . The family can be helpful if somebody has a wife and kids to come home to and they have this structure at home.”
- **Former Player 3:** “I don’t think you can overstate the importance of a solid family unit behind you.”

Players approaching retirement are particularly likely to consult with their family members concerning their health. The players we interviewed discussed sometimes being

“torn” between the desires of their family members that they stop playing and their own desires to keep playing.^e Family members often see a player when he is at his worst, perhaps even unable to move after a game, practice or particular injury. It is in these moments that family members often encourage players to stop playing for the sake of their future health. Nevertheless, encouragement and convincing are often two very different things.

Anna Welker, the wife of wide receiver Wes Welker, provides a positive example. As Wes continued to suffer concussions during his career, Anna educated herself about brain injuries in professional football. Then, at Anna’s behest, Wes agreed to get regular MRIs and to see his own neurologist twice a week.¹⁹ Although Anna still had concerns about Wes’ continuing to play, she took a proactive step in furthering the health of her husband.

Several players, contract advisors, and financial advisors also affirmed that family members sometimes place excessive pressures, particularly financial, on players. Family members might expect or request gifts, jobs or cash.²⁰ Former NFL player Phillip Buchanon claimed that his mother demanded \$1 million from him when he was drafted in 2002.²¹ Current players explained these concerns:

- **Current Player 2:** “[T]he wrong kind of family member can put a strain on your health. . . . [Y]ou have those family members that are maybe looking for handouts.” “They think it’s an easy meal ticket. I think some women are smart enough to see that and try to take advantage of it.”
- **Current Player 4:** “There’s definitely family members, girlfriends, friends, acquaintances, all those people [that] will ask you for money.”
- **Current Player 6:** “I know situations where families were a cancer to players . . . Football players have gotten into a lot of trouble because they have problems with their brother who is a troublemaker and they trust in their brother but their brother might have been the worst thing for them.”
- **Current Player 9:** “It’s family members, it’s friends, it’s those people that it’s very hard to say ‘no’ to.”
- **Former Player 3:** Players might feel pressure from family to continue playing “because the players might be the breadwinner for, not just for themselves, but maybe for a parent, or taking care of siblings, cousins, uncles, etc.”

^d We reiterate that our interviews were intended to be informational but not representative of all players’ views and should be read with that limitation in mind.

^e Family members might also want players to keep playing, as was apparently the case when former San Francisco 9ers defensive end Justin Smith retired after the 2014 season. See Josh Alper, *Eric Reid: Even Justin Smith’s Wife Wants Him To Come Back*, ProFootballTalk (Apr. 9, 2015, 6:33 AM), <http://profootballtalk.nbcsports.com/2015/04/09/eric-reid-even-justin-smiths-wife-wants-him-to-come-back/>, archived at <http://perma.cc/9E8F-RRCG>.

Additionally, family members might set out to be substantially involved in the player's career, including potentially handling the player's financial matters. These situations can lead to mismanaged finances and broken family relationships. During the 2014 Rookie Symposium, when discussing family members or old friends or girlfriends that do not have the player's best interests in mind, St. Louis Rams running back Zac Stacy bluntly advised rookie players to "cut 'em off."²² At the same Symposium, former NFL player Donovan Darius discussed the "most consistent concerns of players: How do you deal with females understanding that you're now a target? How do you deal with the entitlement of family members who now see you for what you can give them? Who can I trust to support my interests in the NFL?"²³

(E) Enforcement of Legal and Ethical Obligations^f

Litigation between professional athletes and their family members is rare but not without precedent.

^f Appendix K is a summary of players' options to enforce legal and ethical obligations against the stakeholders discussed in this Report.

In 2013, Philadelphia Phillies (Major League Baseball) first baseman Ryan Howard was sued by his twin brother, Corey Howard, alleging that Ryan had breached agreements to employ Corey and other family members.²⁴ Ryan countersued, alleging that Corey and his family members had fraudulently stolen millions of dollars from Ryan under the guise of handling Ryan's financial and legal affairs.²⁵ Ryan specifically alleged that Corey had abused the relationship of "trust and confidence,"²⁶ *i.e.*, a fiduciary relationship, between the brothers. The lawsuit was settled on undisclosed terms in October 2014.²⁷

In 2012, Dallas Cowboys offensive lineman Tyron Smith was forced to obtain a protective order against his parents and siblings after they allegedly continued to harass him with financial requests.²⁸

However, as discussed above, there are minimal legal and ethical obligations between NFL players and their family members in the absence of additional duties like those alleged in the *Howard* case. Thus, while NFL players could conceivably sue family members for breach of contract or breach of fiduciary duty in the appropriate circumstances, such claims are not unique to the relationships between NFL players and their family members.



(F) Recommendations Concerning Family Members

Family members often are and should be one of a player's most trusted allies and confidants in matters concerning their health. In most cases, family members love and care for the players who are their husbands, fathers, sons, or brothers. Nevertheless, just as some players are not prepared for an NFL career, the same is sometimes true for family members. Below are recommendations concerning family members that can help improve the ways in which they support players.

Goal 1: To maximize the supportive role of players' family members in protecting and promoting player health.

Principles Advanced: Respect; Health Primacy; Empowered Autonomy; and, Collaboration and Engagement.

Recommendation 14:1-A: Family members should be cognizant of the gaps in their knowledge concerning the realities of an NFL career, and the NFL and NFLPA should offer programs or materials to help them become better health advocates.

The lives of players and their families are obviously intertwined. A player's career can have meaningful implications for his family members, particularly financially. Nevertheless, despite their best intentions, family members, like most people, might not have an accurate understanding of an NFL player's likely career length and earnings, as well as the physical risks players face in playing the game. Ideally, family members, with the help of the NFL and NFLPA, can understand the tenuous nature of an NFL career and encourage players to think long term. At the same time, family members should be careful about the pressures they might place on players.

Family members often are more in touch with concerns about the player's life than a contract advisor or financial advisor might be. Consequently, family members can help themselves and players by learning about a player's health situations and understanding what might be done to safeguard them, including but not limited to the player's physical, mental, and financial situations.

We do not suggest any formal legal or ethical responsibility for family members to advance player health in these ways, but we do recommend that interested family members be supported with adequate resources. For example, the NFL and NFLPA could provide information and seminars on relevant health issues or support systems and programs for players and families suffering from various conditions.

Goal 2: To separate family members from professional management of players' careers and affairs.

Principles Advanced: Empowered Autonomy; and, Managing Conflicts of Interest.

Recommendation 14:2-A: Players should select and rely on professionals rather than family members for managing their business, financial, and legal affairs.

Player financial and legal matters are complicated issues that should be handled by qualified professionals. Even if a player's family member is qualified, it is often best to preserve relationships by avoiding the conflicts that may arise by mixing family and finances. In Chapter 12: Contract Advisors and Chapter 13: Financial Advisors, we make recommendations for improving those industries to ensure that the professionals player do rely on are well-qualified.

Endnotes

- 1 See Laura A. Siminoff, *Incorporating patient and family preferences into evidence-based medicine*, 13(Suppl. 3) BMC Med. Informatics and Decision Making S6 (2013) (“recognition of the influences family members and other caregivers have within the clinical encounter—by offering opinions and participating in treatment-related decision making—is needed and could lead to more efficient and effective health care.”); Carin Reust, *Family involvement in medical decision making*, 28 Fam. Med. 39 (1996) (“patients acknowledge the context of family life in medical decision making, while families actively promote patient autonomy. Consideration of nonmedical burdens related to family roles and relationships takes an equal or higher priority than consideration of medical burdens. Family is, and should be treated as, a significant moral participant in medical decision making.”)
- 2 CBA, Art. 26, § 1(a).
- 3 See Tim Keown, *Financial Requests Overwhelm Smith*, ESPN (Nov. 26, 2014), http://espn.go.com/nfl/story/_/page/hotread141125/dallas-cowboys-tyro, archived at <http://perma.cc/G8QQ-FUEK>; Anna Katherine Clemmons et al., *Money Confidential*, ESPN (Nov. 25, 2014), http://espn.go.com/espn/story/_/id/11931251/nfl-nba-nhl-mlb-stars-divul, archived at <http://perma.cc/MT5K-CHM9> (survey of 37 professional athletes revealed that, on average, players were asked for a loan from a friend or family member 25.5 times in the last year and that only 27.6 percent of loans are paid back); Robert Pagliarini, *Why Pro Athletes Go Broke*, Chi. Trib., Aug. 6, 2013, http://articles.chicagotribune.com/2013-08-06/lifestyle/sns-201308061630--tms--pagliarictrnp-a20130806-20130806_1_athletes-nfl-player-financial-stability, archived at <http://perma.cc/M49C-6UST>; Pablo S. Torre, *How (and Why) Athletes Go Broke*, Sports Illustrated, Mar. 23, 2009, <http://www.si.com/vault/2009/03/23/105789480/how-and-why-athletes-go-broke>, archived at <http://perma.cc/4E3Z-NHL6>; Melissa Isaacson, *Paradise Lost, Paradise Found, Big Money Brings Out ‘Friends’ Young Stars Don’t Know They Had*, Chi. Trib., Mar. 5, 2000, available at 2000 WLNR 8289967; Mary Judice, *Pro Football Players Make More Money in a Few Years than Most People Do in a Lifetime, But Spend it Like There’s No Tomorrow*, New Orleans Times Picayune, Sept. 12, 1999, available at 1999 WLNR 1256308.
- 4 *Id.*
- 5 David R. Weir, et al., *National Football League Player Care Foundation Study of Retired NFL Players*, Inst. for Social Research at Univ. of Mich. (2009), <https://ns.umich.edu/Releases/2009/Sep09/FinalReport.pdf>, archived at <https://perma.cc/6G5Q-LN2M?type=pdf>.
- 6 *Id.*
- 7 *Id.*
- 8 *Id.*
- 9 Torre, *supra* note 3.
- 10 Weir *supra* note 5.
- 11 *Id.*
- 12 *Id.* at 15.
- 13 See Jim Baumbach, *Life After Football*, Newsday, Jan. 22, 2015, <http://data.newsday.com/projects/sports/football/life-football/>, archived at <http://perma.cc/77DP-LUUE>.
- 14 Jim Baumbach, *Life After Football*, Newsday, Jan. 22, 2015, <http://data.newsday.com/projects/sports/football/life-football/>, archived at <http://perma.cc/77DP-LUUE>.
- 15 See Swanson v. Morrison, 172 Wash.App. 1040, *2 (Wash. Ct. App. 2013) (“spouses... owe each other the highest fiduciary duties”) (internal quotations omitted); Vickery v. Vickery, 999 S.W.2d 342, 357 (Tex. 1999) (“A husband and wife owe each other special fiduciary duties”); Smith v. Smith, 860 P.2d 634, 643 (Idaho 1993) (“The marital relationship imposes the high duty of care of a fiduciary upon each of the parties”); Unander v. Unander, 506 P.2d 719, 722 n.2 (Or. 1973) (“spouses . . . have a fiduciary duty to each other”); Murphy v. Murphy, 694 A.2d 932, 936 (Me. 1997) (discussing fiduciary duty owed by parent to child); L.C. v. A.D., 971 S.W.2d 512, 517 (Tex. App. 1997) (same); Robinson v. State, Dept. of Health and Rehabilitative Services on Behalf of Robinson, 473 So.2d 228, 230 (Fla. Dist. Ct. App. 1985) (same).
- 16 “Duty,” Black’s Law Dictionary (9th ed. 2009).
- 17 Ritani, LLC v. Aghjayan, 880 F. Supp. 2d 425, 455 (S.D.N.Y. 2012) (applying New York law); Carcano v. JBSS, LLC, 684 S.E.2d 41, 53 (N.C. Ct. App. 2009); L.C. v. R.P., 563 N.W.2d 799, 802 (N.D. 1997); Allen Realty Corp. v. Holbert, 318 S.E.2d 592, 595 (Va. 1984); Murphy v. Country House, Inc., 240 N.W.2d 507, 511 (Minn. 1976).
- 18 See Katie Strang, *Jack Johnson: Little Left Of Earnings*, ESPN (Nov. 21, 2014), http://espn.go.com/nhl/story/_/id/11908361/columbus-blue-jackets-d-jack-johnson-files-bankruptcy-parents-reportedly-blame, archived at <http://perma.cc/5UEA-CNMK> (Columbus Blue Jackets defenseman Jack Johnson forced to file for bankruptcy after entrusting \$18 million in career earnings to his parents); Tim Russo, *Bernie Kosar & His Cowardly Dad on ESPN Outside The Lines Story*, Cleveland Leader, Nov. 2, 2014, <http://www.clevelandleader.com/node/23339>, archived at <http://perma.cc/7499-HMD5> (former Cleveland Browns quarterback Bernie Kosar forced to file for bankruptcy after entrusting his career earnings to his father).
- 19 Kevin Van Valkenburg, *Wes Welker Will Not Be Denied*, ESPN The Magazine, Dec. 18, 2014, http://espn.go.com/espn/feature/story/_/id/12046903/is-denver-broncos-wes-welker-putting-future-danger, archived at <http://perma.cc/V5N6-Q3DW>.
- 20 See Michael David Smith, *Trent Richardson says greedy friends and family affected his career*, ProFootballTalk (Aug. 6, 2016, 5:45 AM), <http://profootballtalk.nbcsports.com/2016/08/06/trent-richardson-says-greedy-friends-and-family-affected-his-career/>, archived at <https://perma.cc/5FZV-GYCT>.
- 21 Michael David Smith, *Phillip Buchanon’s Cautionary Tale: My Mom Demanded \$1 Million*, ProFootballTalk (Apr. 11, 2015, 9:50 AM), <http://profootballtalk.nbcsports.com/2015/04/11/phillip-buchanons-cautionary-tale-my-mom-demanded-1-million/>, archived at <http://perma.cc/3ASQ-FZXN>; see also Michael David Smith, *When T-Rich got rich, friends and family had their hands out*, ProFootballTalk (Mar. 26, 2016, 1:09 PM), <http://profootballtalk.nbcsports.com/2016/03/26/when-t-rich-got-rich-friends-and-family-had-their-hands-out/>, archived at <https://perma.cc/Z8EX-QZXR>.
- 22 Robert Klemko, *So This is the NFL, Part I*, MMQB (Jul. 8, 2014), <http://mmqb.si.com/2014/07/08/nfl-rookie-symposium-part-1/>, archived at <http://perma.cc/2E8R-3S38>.
- 23 Robert Klemko, *So This is the NFL, Part II*, MMQB (Jul. 9, 2014), <http://mmqb.si.com/2014/07/09/nfl-rookie-symposium-part-2/>, archived at <http://perma.cc/A9ZM-3WDD>.
- 24 See Complaint, Howard v. RJH Enterprises, LLC, 13-cv-2518 (E.D.Mo. Dec. 18, 2013), ECF #1.
- 25 See Answer and Counterclaim, Howard v. RJH Enterprises, LLC, 13-cv-2518 (E.D.Mo. Jan. 27, 2014), ECF #8.
- 26 *Id.* at ¶ 36.
- 27 Joint Stipulation of Dismissal With Prejudice, Howard v. RJH Enterprises, LLC, 13-cv-2518 (E.D.Mo. Oct. 22, 2014), ECF #40; David Murphy, *The Family Legal Fight Over Ryan Howard’s Finances*, Philly (Nov. 19, 2014, 8:43 AM), http://www.philly.com/philly/sports/phillies/The_family_legal_fight_over_Ryan_Howards_finances.html, archived at <http://perma.cc/H7LD-GNAQ>.
- 28 Tim Keown, *Financial Requests Overwhelm Smith*, ESPN (Nov. 26, 2014), http://espn.go.com/nfl/story/_/page/hotread141125/dallas-cowboys-tyro, archived at <http://perma.cc/G8QQ-FUEK>.