

# THE ALL STAR BASEBALL LAW TEAM

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"Whoever wants to know the heart and mind of America had better learn baseball." Jacques Barzun<sup>1</sup>

"[W]e have begun to understand at last that baseball is most of all an enormous and cold-blooded corporate enterprise . . ." Roger Angell<sup>2</sup>

It is difficult to explain why baseball holds such a special place on the American scene. There is something magnetic about play on the diamond, something that defies rational explanation.<sup>3</sup> Some liken all sport to a religion, with rituals and exaltation, triumph and sacrifice.<sup>4</sup> We need not reach for spiritual metaphors to recognize the social centrality of the sport. "Baseball has become a symbol of America . . ."<sup>5</sup> To many Americans, the Field of Dreams is a real part of their day-to-day lives.

There is also the practical side of baseball, the one dealing with money, contracts, club owners and the union. Baseball is an important component

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1. J. BARZUN, *GOD'S COUNTRY AND MINE: A DECLARATION OF LOVE SPLICED WITH A FEW HARSH WORDS* 159 (1954).

2. R. ANGELL, *FIVE SEASONS* 8 (1977).

3. R. ANGELL, *SEASON TICKET* 3-4 (1988). Baseball's chronicler Roger Angell wrote:

Baseball is not life itself, although the resemblance keeps coming up. It's probably a good idea to keep the two sorted out, but old fans, if they're anything like me, can't help noticing how cunningly our game replicates the larger schedule, with its beguiling April optimism; the cheerful roughhouse of June; the grinding, serious, unending (surely) business of midsummer; the September settling of accounts, when hopes must be traded in for philosophies or brave smiles; and then the abrupt running-down of autumn, when we wish for — almost demand — a prolonged and glittering final adventure before the curtain.

*Id.*

4. M. NOVAK, *THE JOY OF SPORTS* 25 (1976). See Generally P. WEISS, *SPORT: A PHILOSOPHIC INQUIRY* (1969).

5. H. SEYMOUR, *BASEBALL: THE EARLY YEARS* at vii (1960). Albert G. Spaulding, a commanding figure in the early years of organized baseball, argued that baseball was "our National Game . . . [I]t has all the attributes of American origin; American character and unbounded public favor." Spaulding added:

I claim that Baseball owes its prestige as our National Game to the fact that as no other form of sport it is the exponent of American Courage, Confidence, Combative-ness; American Dash, Discipline, Determination; American Energy, Eagerness, Enthusiasm; American Pluck, Persistency, Performance; American Spirit, Sagacity, Success; American Vim, Vigor, Virility.

A. SPAULDING, *AMERICA'S NATIONAL GAME* 3-4 (1911).

of the sports enterprise, a part of the significant "commercialized amusement business"<sup>6</sup> in this country.<sup>7</sup> Major league baseball recently signed multi-year television contracts totaling \$1.4 billion.<sup>8</sup> That adequately will cover the salaries of even the most highly paid superstars.<sup>9</sup> Wherever there is big money, there are differences of opinion about how the profits should be distributed.

To resolve disputes arising out of the national pastime, courts, agencies and labor arbitrators developed a body of precedent we might call "baseball law." Over the past century, players have hit legal home runs, like Dodger pitcher Andy Messersmith in his 1975 labor arbitration case that knocked the reserve system out of the box.<sup>10</sup> Players have struck out, like Curt Flood in his antitrust loss in the Supreme Court.<sup>11</sup> The legal action off the field has been fast and furious.

It would be fun to think about the hundred years of baseball law and the baseball business from the perspective of an All Star Baseball Law Team. It is also worth the effort.<sup>12</sup> As the late Commissioner of Baseball, A. Bartlett Giamatti, said: "I do know . . . that how a society takes its leisure is as important a social index of its health as how it does its work. . . So I take seriously patterns of behavior in games . . . as I take them seriously in work."<sup>13</sup> This article will discuss both behavior in the game of baseball and in the work of building and reshaping the law of that industry.

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6. H. SEYMOUR, *supra* note 5, at 3.

7. The Sporting News estimated the 1988 Gross National Sports Product, the sum of the output and services generated by the sports industry, at \$63 billion. The Sporting News, January 1, 1990, at 60, col. 1. See generally G. SCULLY, *THE BUSINESS OF BASEBALL* (1989).

8. Holtzman, *Money in Baseball has a Rich History*, Chicago Tribune, July 1, 1990, at C7, col. 7. Additional revenue from local broadcasting contracts varies from \$49 million a year for the Yankees down to \$4-6 million for clubs in smaller markets. *Id.* The total revenue for all the clubs in 1989 was \$1,241,059,000, an increase of 23% over 1988. *Major Leagues Show Record Profit in '89*, USA Today, Nov. 28, 1990, at C2, col. 6. [hereinafter *Record Profit*]. Operating expenses were \$1,026,550,000, leaving a profit for the 26 clubs of \$214,509,000, an increase of 75% over 1988. *Id.*

9. *Record Profit* *supra* note 8, at C2, col. 6. Roger Clemens, Boston's ace hurler, recently signed a multi-year deal for \$5.4 million a year. *The Money Game*, USA Today, April 22, 1991, at 1B, col. 2. The average 1991 player salary was \$891,188, an increase of 49% over 1990. *Salaries Leap 49%; 32 Make \$3 Million*, Miami Herald, April 10, 1991, at 2C, col. 1.

10. In the Matter of Arbitration between The Twelve Clubs Comprising National League of Professional Baseball Clubs and Twelve Clubs Comprising American League of Professional Baseball Clubs, Los Angeles and Montreal Clubs and Major League Baseball Players Association, Gr. Nos. 75-27 and 75-28, 66 Lab. Arb. (BNA) 101 (1975) (Seitz, Arb.) [hereinafter *Arbitration between Twelve Clubs*].

11. *Flood v. Kuhn*, 407 U.S. 258 (1972).

12. Others have done a more comprehensive job of documenting all of sports law. Professors Bob Berry and Bill Gould, in their memorable article of a decade ago, *A Long Deep Drive to Collective Bargaining: Of Players, Owners, Brawls, and Strikes*, 31 C.W.R. L. REV. 685 (1981), set the standard for any who would follow. See also J. WEISTART & C. LOWELL, *THE LAW OF SPORTS* (1979).

13. Giamatti, *Morality Strikes Out*, 6 THE SPORTS LAWYER 1-2 (1988).

You will not see the All Star Baseball Law Team reported in the pages of *The Sporting News* or *USA Today*. The Team might not have the greatest players of all time - and some are not players at all - but the All Stars hold a special place in the annals of American sports law history. Their actions helped create the business of baseball we know today.

#### THE ALL STAR LINEUP:

1. Monte Ward, ss
2. Napoleon Lajoie, 2b
3. Curt Flood, of
4. Marvin Miller, ul (union leader)
5. Charles O. Finley, co (club owner)
6. Andy Messersmith, p
7. Carlton Fisk, c
8. Pete Rose, 3b
9. Karen Friedman, f (fan)

#### 1. BATTING FIRST - MONTE WARD, SS

Our lead-off batter for the All Star Baseball Law Team is John Montgomery Ward, an important player from the first decades of organized professional baseball.<sup>14</sup> An early chronicler of the game, Henry Chadwick,<sup>15</sup> recognized Ward as one of the most promising players in the country when he was still a teenager.<sup>16</sup> Monte Ward was a Columbia lawyer by training<sup>17</sup> and a shortstop by profession.<sup>18</sup> Ward began his professional career in 1878, two

14. See generally L. LOWENFISH & T. LUPIEN, *THE IMPERFECT DIAMOND* (1980).

15. Chadwick was the sports writer generally credited with inventing the box score. L. LOWENFISH & T. LUPIEN, *supra* note 14, at 44. Chadwick was voted into the Baseball Hall of Fame for his "meritorious service" to the game, the only writer so honored and was known as the "Father of Baseball" P. DICKSON, *THE DICKSON BASEBALL DICTIONARY* 158 (1989). That distinction, however, correctly belongs to Alexander Cartwright, who wrote down the basic rules of baseball in 1845. *BASEBALL 'S HALL OF FAME FIFTIETH ANNIVERSARY BOOK 1* (G. Astor ed. 1988)[hereinafter *ANNIVERSARY*].

16. *ANNIVERSARY*, *supra* note 15, at 26.

17. Ward attended night law school classes while a member of the New York Giants. *BASEBALL'S HALL OF FAME COOPERSTOWN: WHERE THE LEGENDS LIVE FOREVER* 258 (The Sporting News ed. 1988)[hereinafter *COOPERSTOWN*]. He graduated in 1885 and received a \$50 second prize for his work in political science. *Id.* He spoke five languages, wrote columns for national magazines and published *How to Become a Player*, one of the first baseball books for youngsters. L. LOWENFISH & T. LUPIEN, *supra* note 14, at 28.

18. Ward began his career as a pitcher and, like many hurlers of the day, played outfield when not pitching. *THE ENCYCLOPEDIA OF BASEBALL* 1571-72 (8th ed. 1990) [hereinafter *ENCYCLOPEDIA*]. He is credited with developing one of the first successful curveballs. L. LOWENFISH & T. LUPIEN, *supra* note 14, at 28. He threw one of the first perfect games in baseball history. *ENCYCLOPEDIA*, *supra*, at 2279. By 1884, he gave up the mound after compiling a 158-102 record and played infield full time. *Id.* Ward played 826 games at shortstop, turning to second base towards the end of his career. *Id.* at 1572.

years after the formation of the National League of Professional Base Ball Clubs.<sup>19</sup> He played for 17 seasons with the National League entries from Providence, Brooklyn and New York.<sup>20</sup> Ward was voted into the Hall of Fame in 1964.<sup>21</sup>

Monte Ward plays on our All Star Baseball Law Team not because of his prowess on the field, but because of his activities off the field. By the end of the first decade of the National League's existence, the clubs had solidified their oligopoly by controlling salaries and player movement and allocating exclusive territories. In response, on October 22, 1885, nine members of the New York Giants led by Ward created the first baseball union, the National Brotherhood of Professional Baseball Players.<sup>22</sup> Ward created chapters in cities throughout the National League.

The club owners, referred to at the time as "magnates," continued to tighten their control. Management used a system of arbitrary fines and the blacklist to enforce its rule.<sup>23</sup> Under the Brush Classification Plan, put into effect during the off-season of 1888, players were ranked in five categories, with salaries set from \$1500 to \$2500 annually.<sup>24</sup> The owners created a comprehensive "reserve system" to eliminate player-generated movement from team to team. All clubs required players to sign uniform contracts, renewable at the team's option, and assignable to any other club.<sup>25</sup>

Frustrated by his lack of success in improving employment conditions for the players, Ward struck out in a radically different direction. In 1889, his Brotherhood issued a manifesto attacking the National League:

There was a time when the League stood for integrity and fair dealing. Today it stands for dollars and cents . . . Players have been

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19. The National League was formed in 1876 at an owners meeting at the Grand Central Hotel in New York City. ANNIVERSARY, *supra* note 15, at 6-7. The game of baseball had been played for decades in this country prior to the formation of the National League. *See generally* G. KIRSCH, *THE CREATION OF AMERICAN TEAM SPORTS* (1989). Recent research suggests the game was played in New York City in 1845. Butterfield, *Was Baseball Born in NYC? 1845 Article Implies Yes*, *Miami Herald*, Oct. 14, 1990, at 25A, col. 1. The first all-professional team was the Cincinnati Red Stockings, which barnstormed the country in 1869 beating all comers. P. DICKSON, *supra* note 15, at 98. For a delightful fictional account of the Red Stockings' tour, *see* D. BROCK, *IF I NEVER GET BACK* (1989). The nickname was shortened to Reds in 1876. At the height of the Cold War, a Pennsylvania Supreme Court justice complained about the team's moniker. Cincinnati Enquirer sport editor Lou Smith responded: "Let the Russians change. We had it first." *Id.*

20. *ENCYCLOPEDIA*, *supra* note 18, at 1572.

21. L. LOWENFISH & T. LUPIEN, *supra* note 14, at 52.

22. H. SEYMOUR, *supra* note 5, at 221. The current union, the Major League Baseball Players Association, was formed in 1954, the last and most successful of the player organizations.

23. *Id.*

24. *Id.* at 224; L. LOWENFISH & T. LUPIEN, *supra* note 14, at 30. The plan assigned players to different salary levels depending upon their ability and also assigned menial tasks to certain players. *Id.*

25. *Flood v. Kuhn*, 407 U.S. 258, 259 n.1 (1972).

bought, sold and exchanged as though they were sheep, instead of American citizens. 'Reservation' . . . became for them another name for property right in the player." By a combination among themselves, stronger than the strongest trusts, they were able to enforce the most arbitrary measures, and the player had either to submit or get out of the profession in which he had spent years in attaining a proficiency.<sup>26</sup>

On November 6, 1889, using ties forged through the Brotherhood organization, Ward announced the formation of an independent league, the Players League.<sup>27</sup> The rival circuit operated without a reserve clause<sup>28</sup> and with profit sharing and guaranteed salaries for the players.<sup>29</sup> The new league would have "backers," not owners.<sup>30</sup> The League would be governed by a senate of sixteen men, two from each of the eight clubs, half chosen by the players, half by the backers.<sup>31</sup> Baseball players jumped to the new league like kids into a pond, ignoring promises contained in their contracts not to play for any other baseball club, while National League clubs sued to enforce those contract provisions.<sup>32</sup>

Ward's 1889 contract with the National League Giants gave the New York club the right "to reserve" the player for the 1890 season.<sup>33</sup> The Giants sought a preliminary injunction before New York Supreme Court Judge Morgan Joseph O'Brien to restrain Ward from "playing the game of baseball . . . for any person or corporation except the plaintiff."<sup>34</sup> Ward claimed the term "reserve" meant he promised only not to play for another National League club, but the court disagreed.<sup>35</sup> The court found, however, that the reserve clause did not specify the terms of the renewed contract.<sup>36</sup> Too many questions were left unanswered, and the court said the reserve clause was too indefinite to be enforced.<sup>37</sup> Moreover, the court found the contract terms inequitable: "The want of fairness and of mutuality, which are fatal to its

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26. SPAULDING, *AMERICA'S NATIONAL GAME* 272 (1911); see also B. RADER, *AMERICAN SPORTS* 74 (1983).

27. L. LOWENFISH & T. LUPIEN, *supra* note 14, at 35.

28. Ward described the reserve clause as a "fugitive slave law." ANNIVERSARY, *supra* note 15, at 29.

29. *Id.*; B. RADER, *supra* note 26, at 74; see L. LOWENFISH & T. LUPIEN, *supra* note 14, at 36. Players did sign three-year contracts at the same salary they had received in 1889. H. SEYMOUR, *supra* note 5, at 229.

30. L. LOWENFISH & T. LUPIEN, *supra* note 14, at 35. The backers demanded the first \$10,000 in profits. *Id.* at 36.

31. H. SEYMOUR, *supra* note 5, at 228.

32. H. SEYMOUR, *supra* note 5, at 235. The National League's law firm, Evarts, Choate & Beman, had assured its client success in the litigation. *Id.*

33. Metropolitan Exhibition Co. v. Ward, 9 N.Y.S. 779 (N.Y. Sup. Ct. 1890).

34. *Id.*

35. *Id.*

36. *Id.* at 781.

37. *Id.* at 782. For example, what was Ward's 1890 salary? What were his obligations?

enforcement in equity, are apparent. . . ."<sup>38</sup> The court characterized the Giants' construction of the contract as a "spectacle." Under its reading, the player could be bound for years, but the club had an obligation for only ten days.<sup>39</sup> This lack of mutuality doomed the Giants' claim.<sup>40</sup>

The Players League was a great success on the field, as well as in the courts. It erected Brotherhood Park in New York on a site adjacent to the Polo Grounds and challenged the Giants head-to-head for the public's attention. On opening day 1890, 20,000 patrons attended a Players League game, 1,000 spectators watched the Giants.<sup>41</sup> About 80% of the National League's players moved to the new league,<sup>42</sup> and they won every lawsuit brought by the established teams.<sup>43</sup>

However, the idealistic Ward, his cohorts, and backers were not prepared for the rough style of business play of the 1890's. The National League established a "war fund" headed by the League strongman Albert Spaulding and pounded the Player's League financially by scheduling games in direct competition and distributing free passes throughout town.<sup>44</sup> Through propaganda, threats, and intimidation, the National League induced the Players League's naive and inexperienced financial backers to desert the rebel cause.<sup>45</sup>

The Players League folded after one year of play, forcing the players to return to the National League with major reductions in their salaries.<sup>46</sup>

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38. *Id.* at 783.

39. *Id.*

40. *Id.* The Giants had argued Ward was irreplaceable. The evidence revealed however that Ward's 1890 replacement at shortstop, Jack Glasscock, earned the same salary as Ward did the prior year. L. LOWENFISH & T. LUPIEN, *supra* note 14, at 42.

41. A. DANZIG & J. REICHLER, *THE HISTORY OF BASEBALL* 53 (1959).

42. H. SEYMOUR, *supra* note 5, at 233. Defectors included future Hall of Famers Dan Brouthers, the 19th century's greatest slugger with sixteen .300 seasons and a .417 average in 1887; Pud Galvin, baseball's first 300 game winner; Hugh Duffy, who later hit .300 for ten straight years with a .438 average in 1894; and Ed Delahanty, the first player ever to hit four home runs in a game. *ENCYCLOPEDIA*, *supra* note 18, at 719, 726, 863-64, 838. Delahanty will figure prominently in the story of Napoleon Lajoie, our next All Star.

43. *See, e.g.,* Metropolitan Exhibition Co. v. Ewing, 42 F. 198 (S.D.N.Y. 1890). In his opinion denying the Giants' request for an injunction against Buck Ewing, later called the Babe Ruth of his day. Federal Judge William P. Wallace employed Ward's description of the reserve clause as forcing a club's "manager by his throat to keep his hands off his neighbor's enterprise." *Id.* at 203. *See also* Philadelphia Ball Club, Ltd. v. Hallman, 8 Pa. C. 57, 62 (1890).

44. L. LOWENFISH & T. LUPIEN, *supra* note 14, at 43. Spaulding stated, "I am for war without quarter. I was opposed to it at first, but now I want to fight until one of us drops dead." *Id.* at 44. The sign in Spaulding's office read: "Everything is possible to he who dares." *Id.* at 46.

45. *Id.* at 44-49; *See also* B. RADER, *supra* note 26, at 74. Henry Chadwick had changed his mind about Ward by that time, describing Ward's Brotherhood as "a secret terrorist organization." L. LOWENFISH & T. LUPIEN, *supra* note 14, at 44.

46. L. LOWENFISH & T. LUPIEN, *supra* note 14, at 50.

Ward played in Brooklyn for two years, then returned to the Giants to complete his career.<sup>47</sup>

Ward's off-field activities a century ago foreshadowed the role the modern players union would play in revolutionizing professional baseball. His Players League adventure ended dreams that the business of baseball could operate without owners.<sup>48</sup> Despite the ultimate failure of his efforts, Ward duly earned his honored place as the leadoff hitter on our All Star Baseball Law Team.

## 2. BATTING SECOND - NAPOLEON LAJOIE, 2B

Batting second for the All Star Baseball Law Team is the greatest second baseman of all time, the 6' 1", "Big Frenchman," Napoleon Lajoie. He was unquestionably one of the finest and most popular ballplayers of his time, playing twenty-one years in the majors around the turn of the century.<sup>49</sup> His lifetime batting average was .338.<sup>50</sup> He was elected to the Hall of Fame in 1937, the second year of its existence.<sup>51</sup> "Larry" Lajoie, as he was

47. *ENCYCLOPEDIA*, *supra* note 18, at 1571-72. Ward retired from baseball in 1894 at the age of 34 to practice law full time. He represented baseball players, including Fred Pfeffer, a Brotherhood activist, who sued Giants owner Andrew Freedman for suspending him in violation of his contract. *COOPERSTOWN*, *supra* note 17, at 258. Ward also represented Amos Rusie, the fastest pitcher of his day. *Id.* Rusie's performance on the mound so terrorized players that the pitching box was moved back five feet, resulting in the rubber being reset at today's distance — 60 feet 6 inches from the plate.

48. See A. SPAULDING, *supra* note 5, at 270. Spaulding wrote:

As one who has been connected with both ends of the baseball problem - with reasonable success I may fairly claim - it has been my fixed belief that, like every other form of business enterprise, Base Ball depends for results upon two interdependent divisions, the one to have absolute control and direction of the system, and the other to engage - always under the executive branch - in the actual work of production. The theory is as true in the production of the game of Baseball as in the making of base balls or bats.

*Id.*

49. Lajoie started and ended his career with the National League club in Philadelphia. He played and managed for Cleveland from 1903-15. Lajoie won the Triple Crown in 1901, the first year of the fledgling American League, with a .422 batting average, 14 homers and 125 runs batted in. He also led the American League that year in hits, doubles and runs scored. He ranks 10th in all-time leaders in career hits, 20th in at bats, 18th in batting average, 5th in put outs, and 7th in assists. *ENCYCLOPEDIA*, *supra* note 18 at 1121-22.

50. *ENCYCLOPEDIA*, *supra* note 18, at 1121-22. The 1990 edition of the Baseball Encyclopedia lowered Lajoie's career average from .339 to .338. Research uncovered additional career hits but many more additional at bats not counted in the original records. The new edition has caused some controversy, because it also adjusted the ranking of other notables on the all-time lists. The 1990 edition is the first "official" record sanctioned by Major League Baseball. *Id.*

51. His plaque in Cooperstown reads: "Great Batter and the Most Graceful and Efficient Second Baseman of his Era." Lajoie was one of the "Eleven Immortals," the inductees present for the dedication of the shrine at Cooperstown in 1939: Grover Cleveland Alexander, Ty Cobb, Eddie Collins, Walter Johnson, Napoleon Lajoie, Connie Mack, Babe Ruth, George Sisler, Tris Speaker, Honus Wagner, and Cy Young. P. DICKSON, *supra* note 15, at 146.

known, still holds the American League single season batting record for hitting .422 in 1901, the year he won the Triple Crown.<sup>52</sup> How he achieved that mark is an interesting story and is the basis for his inclusion on the All Star Baseball Law Team.

At the turn of the century, National League owners imposed a \$2500 a year salary limit on the best players, although some were paid more "unofficially."<sup>53</sup> Lajoie was under contract with the Philadelphia entry in the National League, officially known as the Philadelphia Nationals, but nicknamed the "Phillies" by the local fans. Colonel John I. Rogers, owner of the Philadelphia franchise, was a lawyer who had drafted the original reserve clause and the standard player contract declared unenforceable in Monte Ward's case.<sup>54</sup> Rogers refused Lajoie's demand for a \$500 raise in salary to equal the \$3000 paid outfielder and first baseman Ed Delahanty.<sup>55</sup> Lajoie had received an offer of \$24,000 over three years from Connie Mack, owner of the crosstown rival Philadelphia club in the newly-created American League.<sup>56</sup> Rogers offered Lajoie an even better deal — \$25,000 for two years — but he would not budge on the demand for the extra \$500.<sup>57</sup> Consequently, Lajoie jumped to the American League Athletics for the 1901 season.<sup>58</sup>

The Phillies sought to recapture their star second baseman in state court based on the terms of Lajoie's partially performed contract which bound him to his former club for as long as it wanted to employ him.<sup>59</sup> Like Ward, Lajoie had promised he would not play for another team. The trial

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52. *ENCYCLOPEDIA*, *supra* note 18, at 1124.

53. L. LOWENFISH & T. LUPIEN, *supra* note 14, at 59.

54. *Id.*

55. Delahanty was the oldest of five Cleveland brothers (Ed, Frank, Jim, Joe and Tom) to play in the majors and the only one to be enshrined in the Hall of Fame. He hit four home runs in one game in 1896, hit over .400 in 1894 and 1899. Twice during his sixteen year career, Delahanty went 6 for 6 in a game, and it was Delahanty who registered the fifth highest all-time career batting average of .346. *ENCYCLOPEDIA*, *supra* note 18, at 838.

56. The American League was created by iron-fisted Ban Johnson, who would dominate professional baseball for the first two decades of this century. Recommended by Cincinnati owner John T. Brush to be president of the Western League in order to get him out town, Johnson took full advantage of growing player discontent with the National League. The players had created their second union, the Players Protective Association, in 1900. That same year, Johnson changed the name of his circuit to the American League and placed a franchise in Chicago, Albert Spaulding's hometown. In 1901, he recruited disenchanted players to the new circuit. L. LOWENFISH & T. LUPIEN, *supra* note 14, at 57-64.

57. *Id.* at 68.

58. Interestingly, Ed Delahanty also jumped to the new circuit to play for the Washington club for \$4000 a year. It was not his only jump. Ed Delahanty reportedly died while crossing the Niagara Falls bridge on July 9, 1903. His body was found downstream. COOPERSTOWN, *supra* note 17, at 66. Lajoie and Delahanty were not alone in abandoning the senior circuit. H. SEYMOUR, *supra* note 5, at 314. Of the 182 players on American League rosters in 1901, 111 were former National Leaguers.

59. See *Philadelphia Ball Club, Ltd. v. Lajoie*, 10 Penn. Dist. Rep. 309 (1901).



court concluded that, while Lajoie was a great player, his services were not "unique," the traditional prerequisite for granting injunctive relief.<sup>60</sup> The court denied the Phillies' request for an injunction.<sup>61</sup> While the Phillies appealed to the Pennsylvania Supreme Court, Lajoie played the 1901 season in the American League for the Athletics,<sup>62</sup> setting that circuit's single season batting record that stands to this day.<sup>63</sup>

The Phillies prevailed in the Pennsylvania Supreme Court.<sup>64</sup> The court ruled that because Lajoie could not be easily replaced, he was sufficiently "unique" to warrant issuance of an injunction.<sup>65</sup> The court noted that Lajoie was part of a team that had played together for years, characterizing his performance as "peculiarly meritorious as an integral part of the team work which is so essential."<sup>66</sup>

The Pennsylvania Supreme Court then reviewed Lajoie's claim that the employment contract lacked "mutuality," the same argument the New York Supreme Court accepted in Monte Ward's case twelve years earlier.<sup>67</sup> Under the contract, the club could terminate Lajoie on ten days' notice or renew his option indefinitely.<sup>68</sup> Although the parties held very different rights, the court ignored the Ward precedent and ruled that the inequality did not void

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60. *Id.* at 314. In the famous case involving opera singer Johanna Wagner, the daughter of composer Richard Wagner, the English court refused a demand for specific performance of a personal service contract. *H. SEYMOUR, supra* note 5, at 236 (discussing *Lumley v. Wagner*, 1 De Gex, M. & G. 604 (1852)). Ordering a ballplayer to play for a club would present challenging problems of enforcement and compliance. How would a court know if a batting slump was contempt of the injunction? Courts were reluctant to compel "involuntary servitude."

61. *Philadelphia Ball Club Ltd., v. Lajoie et al.*, 10 Penn. Dist. Rep. 309 (1901).

62. The Athletics have been an interesting franchise. They were owned and managed for fifty years by Connie Mack (grandfather of the current U.S. senator from Florida of the same name). The team moved to Kansas City in the mid-1950's, and then to Oakland after the 1967 season, where its owner, Charles O. Finley, later made baseball law headlines (and our All Star Baseball Law roster) for his misdealings with Catfish Hunter and Commissioner Bowie Kuhn.

63. The modern Major League record is .424, the 1924 performance of the Cardinals' Rogers Hornsby. Before the turn of the century, Hugh Duffy (.438 in 1894), Tip O'Neill (.435 in 1887) and Wee Willie Keeler (.432 in 1897), and Ross Barnes (.429 in 1876) all surpassed that mark. *Encyclopedia supra* note 18, at 863-64, 1305, 1087, 655.

64. *Philadelphia Ball Club v. Lajoie, Ltd.*, 202 Pa. 210, 51 A. 973 (1902).

65. *Id.*, 51 A. at 974. "He may not be the sun in the baseball firmament, but he is certainly a bright, particular star." *Id.* at 217.

66. *Id.* Lajoie need not be one of a kind, the court said. The question was whether he was readily replaceable, and he was not. As a second baseman, Lajoie played the pivotal role in the doubleplay, even at the turn of the century the pitcher's best friend. The Rev. Billy Sunday, a former White Sox outfielder, said of Lajoie: "He works as noiselessly as a Corliss engine, makes hard plays easy, is great in a pinch, and never gets cold feet." ANNIVERSARY, *supra* note 15, at 45. In 1900, Lajoie led the league with 69 doubleplays with journeyman Monte Cross at shortstop, the third year the two had worked together around the second sack. Cross jumped leagues to join his old teammate with the Athletics for the 1902 season. Alas, as we shall explain below, Lajoie was traded to the Cleveland team after 87 games.

67. *Lajoie*, 202 Pa. at 219, 51 A. at 977.

68. *Id.*

the contract.<sup>69</sup> The club had paid for its right to terminate at will with a "large salary," and although the court would not affirmatively require Lajoie to play for the Phillies, the court ordered that he could not play for any other club.<sup>70</sup>

The *Lajoie* case was crucial to the development of the modern professional baseball enterprise. After the decision, courts would consider professional baseball players presumptively "unique," justifying equitable relief. Courts would uphold one-sided uniform employment contracts. *Lajoie* solidified the established league's control over its players. Through the negative injunction (enforcing the covenant not to play for another team), the league could enforce contractual restraints on player movement not only within the league but between leagues. *Lajoie* allowed an established league to evolve into a cartel, allocating player resources to meet its needs while dominating the player market.

The story has a curious ending for All Star Lajoie. Philadelphia traded him to the American League entry in Cleveland, then nicknamed the Blues.<sup>71</sup> The Phillies sought to enforce the Pennsylvania injunction in the Ohio courts, which refused to give it full faith and credit.<sup>72</sup> The injunction against Lajoie was in force in Pennsylvania, however. When the Cleveland team traveled to play the Athletics in Philadelphia, Lajoie went to Atlantic City on vacation.<sup>73</sup> Within a year the American and National League signed the National Agreement, ending the war between the circuits by treaty.<sup>74</sup>

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69. *Id.* at 219-20, 51 A. at 978.

70. *Id.* at 222, 51 A. at 978. The foreseeable effect of granting a "negative injunction" would be to drive the player back to his former club where he could both earn money and play baseball. That was not what happened with Lajoie, however.

71. ANNIVERSARY, *supra* note 15, at 45. The National League Cleveland franchise was nicknamed the Spiders from 1889 until 1899 when the name was changed to Blues, the color of their bright uniforms, in 1901, the first year of play in the American League. After Lajoie joined the club as player-manager, fans voted in a contest sponsored by a local newspaper to change the nickname to the "Naps" to honor their great new ballplayer. After Lajoie left the team and returned to Philadelphia, they became the Indians in 1915, once again the product of a newspaper contest. The Native American so honored was the popular Luis Francis Sockalexis, who played brilliantly for the Cleveland Spiders from 1897 until 1899. See P. DICKSON, *supra* note 15, at 101; COOPERSTOWN, *supra* note 17, at 163.

72. Philadelphia Ball Club Co. v. Lajoie, 13 Ohio Dec. 504 (1902).

73. ANNIVERSARY, *supra* note 15, at 35.

74. L. LOWENFISH & T. LUPIEN, *supra* note 14, at 70. The National Agreement, the peace treaty of 1903, pledged "to perpetuate baseball as the national game of America, and to surround it with such safeguards as to warrant absolute public confidence in its integrity and methods." *Id.* The Agreement contained no provision for a championship series, however. The American League Boston franchise challenged the National League's New York Giants to a postseason series in 1904, but John T. Brush, owner of the Giants, declined, deriding the junior circuit as a "minor league." The New York populous was upset, wanting more baseball and the opportunity to beat the Beantowners. The Boston team, then known as the Pilgrims, had defeated the Pittsburgh Pirates five games to three in the first World Series in 1903. Brush changed his mind, but too late for the 1904 season. In a letter to the President of the National

Lajoie continued his career with Cleveland until returning to the Athletics for the 1915 and 1916 campaigns.<sup>75</sup>

### 3. BATTING THIRD - CURT FLOOD, CF

Curt Flood's suit against baseball in 1970 earned him a spot on the starting All Star Baseball Law Team. Flood was also a great baseball player, although not of the rank of Ward or Lajoie. His lawsuit attacked baseball's reserve system, the owners' rule which prohibited him from working for the employer of his choice.<sup>76</sup> Flood's concerns paralleled those of Monte Ward and the Brotherhood of the 1880s. He tried a different strategy, one that would prove as futile as Ward's rival league venture. Flood filed suit under the antitrust law which prohibited "any contract, combination or conspiracy in restraint of trade."<sup>77</sup>

Some background is necessary to understand Flood's case. The baseball antitrust story began decades earlier in 1914 with the creation of the Federal League, a somewhat feeble challenger to the Major Leagues' hegemony over professional baseball.<sup>78</sup> The Federal League struggled for two years before folding, with many owners bought out by Major League owners. Ned Hanlon of the Baltimore Terrapins was offered a pittance as settlement, and he

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League, Brush proposed procedures to govern the future World Series. The Major Leagues adopted the "Brush Rules" in 1905. They were in place in time for Brush's Giants to defeat Connie Mack's Philadelphia Athletics four games to one in the 1905 World Series.

75. ANNIVERSARY, *supra* note 15, at 45-46. Lajoie's contest with Ty Cobb for the American League batting crown in 1910 is legendary. Lajoie was a popular ballplayer, while Cobb earned his fellow players' disdain. Ahead by a few percentage points, Cobb sat out the last few games of the season, confident in winning the title. Lajoie went 8 for 8 during a season-ending doubleheader in St. Louis, which included seven bunts laid down in front of rookie third baseman Red Corrigan who had been instructed to play deep. Collusion could never be proven, yet it was obvious to all observers that the players wanted Cobb to lose. He did not. He prevailed by less than a point over Lajoie, the players' choice. *See id.* at 45; COOPERSTOWN, *supra* note 17, at 163.

76. *See Flood v. Kuhn*, 408 U.S. 258 (1972). Baseball's reserve system made good economic sense to the owners, even though some might question its fairness and legality. Owners in a league certainly would want to work together to achieve the highest return on their investment. For example, a league would want to allocate exclusive territories to maximize attendance. It would work to equalize talent to insure competitiveness on the field to keep the fans' interest. Without a reserve system, the richest owners might purchase the best players and destroy this competitiveness. Under the reserve system, all players signed uniform contracts, no tampering was allowed with reserved players, contracts were assignable to another club, and the club retains the option to renew the player contract.

77. *See Sherman Anti-Trust Act*, 15 U.S.C. § 1, et seq. (1988); *Clayton Act*, 15 U.S.C. § 12, et. seq. (1988).

78. A. DANZIG AND J. REICHLER, *supra* note 41 at 67, 68. Federal League teams had some interesting franchise nicknames. The Brooklyn club was known as the Tip-Tops, named for the owner's best-selling white bread. Two franchise nicknames combined city and league names, The Chifeds and Buffalofeds. L. LOWENFISH & T. LUPIN, *supra* note 14, at 87.

turned it down.<sup>79</sup> Feeling cheated, Hanlon brought suit based on federal antitrust laws against the American and National League owners and the Federal League owners who had been favored with larger offers. He was awarded \$254,000 in the trial court.<sup>80</sup> On appeal, baseball's attorney George Wharton Rogers argued that the sport was "a spontaneous output of human activity . . . not in its nature commerce."<sup>81</sup> The court of appeals agreed, ruling: "[t]he fact that the [club owners] produce baseball games as a source of profit, large or small, cannot change the character of the games. They are still sport, not trade."<sup>82</sup>

In 1922, the Supreme Court heard the *Federal Baseball* case in oral argument the day before the beginning of baseball season in the District of Columbia.<sup>83</sup> Chief Justice Taft, former President of the United States<sup>84</sup> and a third baseman at Yale, presided.<sup>85</sup> Taft had earlier been offered the newly created position of baseball commissioner, which he declined, but apparently did not feel it necessary to recuse himself from the baseball case.<sup>86</sup>

Justice Holmes, a former amateur baseball player,<sup>87</sup> writing for a unanimous Supreme Court, concluded that baseball exhibitions were "purely state affairs," not affecting interstate commerce.<sup>88</sup> Traveling across state lines was "a mere incident, not the essential thing."<sup>89</sup> Thus the antitrust laws did not cover the business of baseball. It was, as a later court would

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79. ANNIVERSARY, *supra* note 15, at 110. Before moving to the front office, Hanlon played outfield from 1880 to 1892 with Cleveland, Detroit, Pittsburgh and Baltimore and was active in the Brotherhood movement. He then managed the Baltimore franchise until 1898, followed by seven years managing in Brooklyn and two years in Cincinnati.

80. ANNIVERSARY, *supra* note 15, at 110. Hanlon won \$80,000 in the trial court, trebled under the antitrust law provisions, plus attorneys fees. Co-counsel for Hanlon at the trial was attorney John Montgomery Ward, our All Star Baseball Law leadoff hitter. L. LOWENFISH & T. LUPIEN, *supra* note 14, at 52.

81. L. LOWENFISH & T. LUPIEN, *supra* note 14, at 105.

82. National League of Professional Baseball Clubs v. Federal Baseball Club of Baltimore, 50 App. D. C. 165, 269 F. 681 (D.C. Cir. 1920).

83. Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs, 259 U.S. 200 (1922).

84. In 1912, Taft was the first President to throw out the first pitch of the baseball season at the invitation of Senators' owner, Clark Griffith. L. LOWENFISH & T. LUPIEN, *supra* note 14, at 178. Taft is also credited with originating the seventh inning stretch. P. DICKSON, *supra* note 15, at 349-50. In 1910 at a Pittsburgh Pirates game, Taft stood up to stretch in the seventh inning. The crowd stood up out of respect.

85. L. LOWENFISH & T. LUPIEN, *supra* note 14, at 106. Another Yale baseball player, first baseman George Bush, currently inhabits the White House. A potential White House aspirant, New York Governor Mario Cuomo, pitched in the Pittsburgh Pirates minor league system before pursuing his political career. Egan & Eatman, *In the Running*, The National Sports Daily, November 6, 1990, at 3, col. 1.

86. Taft's vote did not make a difference, however. *Id.*

87. L. LOWENFISH & T. LUPIEN, *supra* note 14, at 106.

88. *Federal Baseball*, 259 U.S. at 208-209.

89. *Id.*

say, "not one of Mr. Justice Holmes' happiest days."<sup>90</sup> Although *Federal Baseball* has been defended as reflecting the then current notions of interstate commerce,<sup>91</sup> by the 1920s baseball had become a major business.

Thirty years later, in *Toolson v. New York Yankees*,<sup>92</sup> the Supreme Court had the opportunity to rectify this error. Instead, the Court per curiam reaffirmed the precedent, saying that while *Federal Baseball* was wrong, Congress had been given the opportunity to correct it, and had not.<sup>93</sup>

Finally, Curt Flood came to bat. A strong performer for over a decade in the St. Louis Cardinal outfield,<sup>94</sup> Flood was traded shortly after the end of the 1969 season to the Philadelphia Phillies.<sup>95</sup> Cardinal General Manager Bing Devine sent Flood a two-sentence letter that read: "Enclosed herewith is Player Report Notice No. 614 covering the outright assignment of your contract to the Philadelphia Club of the National League, October 8, 1969. Best of luck."<sup>96</sup>

Flood refused to leave the business interests he had developed during his years in St. Louis. He wrote to Baseball Commissioner Bowie Kuhn: "After twelve years of being in the major leagues, I do not feel I am a piece of property to be bought and sold irrespective of my wishes."<sup>97</sup> Flood turned to Marvin Miller, Executive Director of the Major League Baseball Players Association, for advice and assistance.<sup>98</sup> The Players Association board unanimously backed his case.<sup>99</sup> Represented by former Supreme Court Justice Arthur Goldberg,<sup>100</sup> Flood filed suit in federal court in New York City and lost in the lower courts based on the *Federal Baseball*<sup>101</sup> and *Toolson*<sup>102</sup> prece-

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90. *Salerno v. American League*, 429 F.2d 1003, 1005 (2d Cir. 1970), cert. denied sub nom. *Salerno v. Kuhn*, 400 U.S. 1001 (1971).

91. ANNIVERSARY, *supra* note 15, at 110.

92. 346 U.S. 356 (1953).

93. *Id.* at 357.

94. Flood's lifetime batting average was .293, with a .987 fielding percentage. In 1963 and 1964, he had 200 or more hits, totalling 1861 for his career. *ENCYCLOPEDIA*, *supra* note 18, at 904. In its 1968 cover story, *Sports Illustrated* called Flood baseball's best centerfielder. L. LOWENFISH & T. LUPIN, *supra* note 14, at 207.

95. *Id.* at 208. On October 7, 1969, the Cardinals sent Flood, Tim McCarver (currently a star television announcer), Joe Hoerner and Byron Brown to Philadelphia in exchange for Dick Allen, Cookie Rojas and Jerry Johnson. When Flood refused to report, the Cardinals sent Willie Montanez and Bob Browning to complete the trade. *ENCYCLOPEDIA*, *supra* note 18, at 2386.

96. Korr, *Twenty Years Later: A Look at the Curt Flood Case*, *The Sporting News*, January 15, 1990, at 37, col. 1.

97. L. LOWENFISH & T. LUPIN, *supra* note 14, at 207.

98. *Id.*

99. *Id.* at 208-209.

100. *Id.* at 209. Most observers agree that the choice of Goldberg was unfortunate. *Id.*

101. 259 U.S. 200 (1922).

102. 346 U.S. 356 (1953).

dent.<sup>103</sup> Finally, in the United States Supreme Court, he faced his strongest opponent, Justice Harry Blackmun, a devoted baseball fan.<sup>104</sup>

Blackmun started his majority opinion in *Flood v. Kuhn*<sup>105</sup> with a hymn of praise for baseball, listing the greatest players of all time.<sup>106</sup> Blackmun repeated the *Toolson* dictum that *Federal Baseball* was wrong, but stated the precedent was too longstanding to be disturbed.<sup>107</sup> It was obvious the courts would remain closed to players affected by the reserve system. Curt Flood had struck out.<sup>108</sup>

Curt Flood was an important player in the development of baseball law. In fighting the reserve system, he would not compromise his principles or his dignity. His lawsuit showed the ballplayers and their union that Montgomery Ward *had* been correct many decades earlier. Self-help, not litigation, was the base path to follow. Within the decade, collective bargaining and the use of economic strength would tally winning scores for the players. Under a collective bargaining regime, players would trade the court litigation for strikes, negotiations and arbitration as the methods to seek redress for what they saw as imbalances in the business of baseball.

#### 4. STARTING UNION LEADER - MARVIN MILLER

The Major League Baseball Players Association changed the baseball business. Started as a fraternal organization of ballplayers in the 1950s,<sup>109</sup> the Players Association became a real union as the result of the work of one man who deserves a spot on our All Star Baseball Law Team roster. Our Team's starting union leader is Marvin Miller.<sup>110</sup>

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103. *Flood v. Kuhn*, 316 F. Supp. 271 (S.D.N.Y. 1970).

104. *Flood v. Kuhn*, 407 U.S. 258 (1972).

105. 407 U.S. 258 (1972).

106. *Id.* It is reported that Justice Marshall telephoned Justice Blackmun to complain there were no blacks on his list. R. WOODWARD & S. ARMSTRONG, *THE BROTHERS* 191 (1979). Blacks were added, but Marshall still dissented. *Flood*, 407 U.S. at 288. (Marshall, J. dissenting). Justice White joined the opinion, but disassociated himself from Blackmun's opening paean to the national pastime. *Id.* at 285.

107. *Flood*, 407 U.S. at 273-74.

108. *Id.* *Flood* resurfaced recently as the commissioner of the Senior Baseball League in Florida in 1990. The old-timers experiment folded after one year.

109. The Major League Baseball Players Association, founded in early December 1953 at a meeting in Atlanta, was the fifth labor organization of baseball players. The first was the Brotherhood of the 1880s described above. See *supra* note 19 and accompanying text. The League Protective Players' Association lasted two seasons from 1900-1902 during the American League war with the National League. Attorney David Fultz started the Baseball Players' Fraternity in 1912, and it lasted until 1918. Lawyer Robert Murphy led the American Baseball Guild for one season in 1946. J. DWORKIN, *OWNERS VERSUS PLAYERS: BASEBALL AND COLLECTIVE BARGAINING* 8-20 (1981).

110. Miller's successor, the current Executive Director of the Major League Baseball Players Association, Donald Fehr, has demonstrated similar stalwart traits. Fehr held the union

In 1965, the leaders of the Players Association — Robin Roberts, Jim Bunning, Bob Friend and Harvey Kuenn — established a search committee to find a new full-time spokesman for the players.<sup>111</sup> Roberts sought advice from Professor George Taylor of the Wharton School, a leading labor economist, who suggested Marvin James Miller, an official with the Steelworkers Union.<sup>112</sup> Miller was offered the position, and he accepted, conditional upon membership approval.<sup>113</sup> Soon thereafter, he was approved by a vote of 489-136.<sup>114</sup> In 1966, Miller established the first permanent office of a baseball players' union on Park Avenue in New York City, and he hired Richard M. Moss as legal counsel for the Association.<sup>115</sup>

Although players unions had existed in the past, none had entered into formal collective bargaining negotiations with owner representatives.<sup>116</sup> That happened for the first time under Marvin Miller. In February 1968, the clubs and the Players Association entered into a Basic Agreement, which contained a formal grievance procedure, increased the minimum salary, and provided for a joint labor-management study of the reserve system.<sup>117</sup> If there were any conflicts between the terms of the Agreement and the Major League Rules, they were to be resolved in favor of the contract.<sup>118</sup> In the

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together through the difficult 1985 and 1990 negotiations. We will discuss his successes below. See *infra* notes 209-214 and accompanying text.

111. L. LOWENFISH & T. LUPIEN, *supra* note 14, at 196. Bunning, now a Congressman from Kentucky, on June 21, 1964, pitched the first National League perfect game since fellow unionist, John Montgomery Ward. Wulf, *The Jock Caucus*, SPORTS ILLUSTRATED, February 23, 1987, at 62.

112. J. DWORKIN, *supra* note 109, at 30. A 1938 graduate of New York University with a bachelor of science degree, Miller worked first with the War Labor Board's Wage Stabilization Division and the United States Conciliation Service. He started his labor career with the Machinists Union, then moved to the Steelworkers three years later where he met Professor George Taylor. *Id.* at 29-30.

113. L. LOWENFISH & T. LUPIEN, *supra* note 14, at 196-97. Miller was not the first choice. The committee first offered the position to retired judge Robert C. Cannon, who had served as the Association's lawyer since 1959. Cannon, who really wanted to become Commissioner of Baseball, refused the offer. *Id.*

114. *Id.* at 199.

115. Moss later tried the Messersmith arbitration case before Peter Seitz and was co-counsel for Cleveland outfielder Brett Butler in the 1986 baseball salary arbitration case before the author.

116. The American public has difficulty understanding why high salaried professional athletes would unionize. The central motivating factor for unionization is player uncertainty concerning job security. Management retains a broad range of discretion over the careers of the players, and those careers are very short. Players also believe that owners ignore their grievances and they wanted better benefits, in particular in pensions. Unionization allowed the players to maximize their economic strength. See J. DWORKIN, *supra* note 109, at 5-7.

117. L. LOWENFISH & T. LUPIEN, *supra* note 14, at 203.

118. *Id.*

next collective bargaining agreement, effective in 1970, management agreed to the arbitration of grievances before a neutral arbitrator.<sup>119</sup>

Interestingly, some of the Players Association bargaining power with the owners resulted from the organizational efforts of the Major League umpires under federal labor law. In the 1935 Wagner Act, Congress redirected national policy to favor employee organizational rights.<sup>120</sup> Did that statute, which only covered employers in interstate commerce, include the business of baseball? In *Federal Baseball*,<sup>121</sup> Justice Holmes had said baseball did not affect interstate commerce. A group of umpires brought a test case to the National Labor Relations Board.<sup>122</sup>

The umpires filed a petition with the agency seeking an election to determine whether a majority of all the umpires in the American League wanted the union to represent them for purposes of collective bargaining.<sup>123</sup> The Board would have to decide whether the statute covered baseball. In what must be considered a major upset,<sup>124</sup> in 1969 the Board decided to take jurisdiction over the business of baseball.<sup>125</sup> The agency rejected the *Federal Baseball* precedent as an aged artifact. It felt the Supreme Court had effectively overruled *Federal Baseball* by a series of subsequent cases that found all other sports affected interstate commerce. It can no longer be seriously contended that the Court still considers baseball alone to be "outside of interstate commerce."<sup>126</sup> Although the Board had discretion to decline jurisdiction in certain circumstances, it could find no good reason to do so here.<sup>127</sup>

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119. *Id.* at 211. Also, in the 1970 contract the owners recognized the Players Association as "the sole and exclusive collective bargaining agent for all Major League Players." That agreement also raised the minimum salary, decreased the maximum salary cut during an option year, and guaranteed a player's right to use an agent in contract negotiations. *Id.*

120. Labor Management Relations Act, 29 U.S.C. § 141 (1988). The statute prohibited discrimination against union activists and required management to bargain in good faith with a union selected by a majority of its employees. *Id.*

121. 259 U.S. 200 (1922).

122. American League of Professional Baseball Clubs, 180 N.L.R.B. 190 (1969).

123. *Id.*

124. Baseball history is filled with upsets, none more stunning than the Cincinnati Reds sweep of the Oakland A's in the 1990 World Series. Las Vegas odds were 30-1 against such an outcome. Weir, *A's Can't Sweep Failure Under Rug*, USA Today, Oct. 22, 1990, at 3C, col. 1. The New York Giants' sweep of the Cleveland Indians in the 1954 World Series was of equal magnitude. Willie Mays began the Series with a stunning back-to-the-plate basket catch of Vic Wertz's 440-foot drive in the Polo Grounds. The Tribe never recovered.

125. American League of Professional Baseball Clubs, 180 N.L.R.B. 190 (1969).

126. *Id.* at 190. The agency ruled only three years before Justice Blackmun proved its prediction wrong in the *Flood* case. See *supra* notes 104-106 and accompanying text.

127. Management's primary argument was that baseball had an internal self-regulatory mechanism through the Commissioner's Office. Therefore, the Labor Board should not waste its time resolving disputes between owners and umpires. The Board rejected this fanciful argument; the Commissioner, of course, was not neutral. He was selected and paid by the owners. Management then argued that Congress sanctioned special treatment for the baseball industry



As a result of the umpires' action, Miller and the Players Association could use the Board as another lever in negotiating baseball labor disputes. Although far more important in sports with weaker unions, such as professional football, the fact that baseball owners could not discriminate against union adherents and were required to bargain in good faith added legitimacy and bargaining power to the Players Association.

In 1972, the Players Association had to establish its credibility at the bargaining table in the face of management intransigence on pension and medical benefits issues. Miller followed the wishes of his player representatives and led the players out on strike before the start of the season, the first collective bargaining strike in baseball history.<sup>128</sup> Public opinion sided with management during the work stoppage, and the owners saw the challenge as an opportunity to break the union.<sup>129</sup> Eighty-six games were cancelled before the strike was settled with the help of federal mediators. The Players Association achieved its bargaining goals, and the formal agreement was signed on February 28, 1973.<sup>130</sup>

Starting with the 1973 agreement, the contracts Miller negotiated for the Players Association contained an alternative system for resolving individual player salary disputes.<sup>131</sup> No longer would players have to hold out for higher salaries, a common occurrence in other professional sports. Under

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in labor matters, but the Board could find no evidence to support that. *Id.* at 244. Finally, management argued that the Board could not handle the international aspects of baseball involving the Canadian entry in Montreal. (Toronto did not join the American League until 1977). The Labor Board responded it could and would deal with international problems, as it did with many industries. *Id.* It directed an election, later won by the union. See Hoffman, *Is the NLRB Going to Play the Ball Game?*, 20 LAB. L.J. 239; see also *The Balance of Power in Professional Sports*, 22 ME. L. REV. 459, 478 (1970); J. WEISTART & C. LOWELL, *supra* note 12, at 788.

128. This was not the first work stoppage in baseball history. Curiously, that occurred in 1912, in support of one of the most detested players of all time, Ty Cobb. Cobb had jumped into the stands and attacked a New York reporter, Claude Lueker, after he heckled the Detroit star. American League President Ban Johnson indefinitely suspended Cobb. His Detroit teammates struck on May 12, 1912, in sympathy with Cobb. The Tigers game with the Athletics that day was played with strikebreakers recruited from the sandlots of Philadelphia. The Athletics won 24-1. The next game was cancelled. After Ban Johnson threatened the strikers with lifetime suspensions, they agreed to return to work. Cobb was reinstated after a ten day suspension with the payment of a small fine. J. DWORKIN, *supra* note 109, at 13-14.

129. "It is clear that some of the more dedicated Cro-Magnons among the owners . . . saw the strike as a precious opportunity to strain, and perhaps crack, the labor union of their upstart, ungrateful young employees and, above all, to discredit its executive director, Marvin Miller." FIVE SEASONS, *supra* note 2, at 27. Angell reports that the owners were "almost wholly" responsible for the players' strike. *Id.* at 26.

130. Needless to say, not all players were thrilled with the strike. Pete Rose, another Baseball Law All Star whose story is discussed below, remarked that the strike cost him a 200 hit season. He ended with 198 hits. J. DWORKIN, *supra* note 109, at 33. However, Rose did play in 154 games that year, a normal quota of games in most years of baseball history.

131. See Abrams, *Sports Labor Relations: The Arbitrators Turn at Bat*, 5 ENT. & SPORTS L.J. 1 (1988); Chass, *The Arbitrator's Game*, SPORT, June 1987, at 29, col. 3.

the salary arbitration system, neutral arbitrators jointly selected by management and the Players Association decide between the demands of eligible players<sup>132</sup> and the offers of the employing clubs. The arbitrator may not compromise. His decision, to which must be made within twenty-four hours, is based on the criteria set forth in the collective bargaining agreement.<sup>133</sup> The player then reports to spring training camp.

Marvin Miller, the "quintessential hard-liner,"<sup>134</sup> created the most powerful trade union in professional sports. Through collective bargaining, the threat and use of the strike and resistance to owner lockouts,<sup>135</sup> Miller created a money machine for the ball players that has resulted in a dramatic improvement in the terms and conditions of their employment.<sup>136</sup> He certainly deserves the "clean-up" spot on our All Star Baseball Law roster.

##### 5. STARTING OWNER - CHARLES O. FINLEY

Our All Star Baseball Law Team must have a baseball executive. Many could be nominated for that position: Connie Mack, the owner and manager of the Philadelphia Athletics for fifty years; George Steinbrenner, for seventeen years "The Boss" of the New York Yankees, who was banned from baseball in 1990; Rube Foster, the creator of the Negro National League. Branch Rickey, "The Mahatma," might be a good choice. Remembered as the man who integrated organized baseball when he signed Jackie Robinson,

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132. From 1974 until 1986, players with more than two and less than six years of Major League service were eligible for salary arbitration. As a result of the 1985 negotiations — and a one day strike — the pool of eligible players was reduced. The new contract required three years of service. The 1990 negotiations, discussed *infra* note 213, enlarged the pool of eligible players.

133. Article VI, § F(12)(a) of the current collective bargaining agreement states:

The criteria will be the quality of the Player's contribution to his Club during the past season (including but not limited to his overall performance, special qualities of leadership and public appeal), the length and consistency of his career contribution, the record of the Player's past compensation, comparative baseball salaries . . . the existence of any physical or mental defects on the part of the Player, and the recent performance record of the Club. . . .

Basic Agreement between The American and National League Professional Baseball Clubs and Major League Baseball Players Association, Article VI, § F(12)(a), effective 1973. [hereinafter 1973 Basic Agreement].

134. Creamer, *Palace Coup in the Baseball Union: Moffett Out, Miller In*, SPORTS ILLUSTRATED, Dec. 5, 1983, at 15.

135. Baseball management took the offensive in 1976, again locking out the players. The 1980 negotiations featured a one-week spring training strike, but the major battle was postponed until 1981. The result was a 81-day strike, the longest in professional sports history.

136. See Dworkin, *Salary Arbitration in Baseball: An Impartial Assessment After Ten Years*, 41 ARB. J. 63 (1986).

Rickey also invented the farm system for developing talent.<sup>137</sup> A University of Michigan trained lawyer,<sup>138</sup> Rickey changed baseball forever.<sup>139</sup>

Despite Rickey's credentials, another owner holds the starting management slot on our All Star Baseball Law Team: Charles O. Finley of the Oakland A's, one of the most controversial and interesting owners in sports history. Finley, however, is not likely to be elected to the Hall of Fame.

Charles Oscar Finley was one of a kind. A former steelworker from Gary, Indiana, Finley's business, marketing group disability insurance for physicians, made millions.<sup>140</sup> He bought the Athletics and ran the club singlehandedly, often instructing his manager on player changes during a game. Finley designed the A's garish uniforms so they could be seen from the bleachers. He tried to persuade Vida Blue to change his first name to True and brought his mule, Charlie O, to all functions.<sup>141</sup> Despite these distractions — or maybe because of them — the A's won the World Series in 1972, 1973 and 1974.<sup>142</sup>

Finley changed the game of baseball in important ways. He was responsible for the 1973 adoption of the designated hitter rule in the American League.<sup>143</sup> He also convinced baseball executives that weekday World Series games should be played at night to maximize television exposure. Two other Finley ideas were not adopted: his easier-to-follow bright orange baseball and a designated runner rule.<sup>144</sup> Finley taught baseball executives that a

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137. COOPERSTOWN, *supra* note 17, at 212. Rickey explained his success as follows: "Luck is the residue of design." P. DICKSON, *supra* note 15, at 324.

138. Rickey, who managed the St. Louis Browns and Cardinals before moving to the front office, was one of five Major League managers trained as lawyers: Miller Huggins (New York Yankees), Hughie Jennings (Detroit Tigers), Monte Ward (Brooklyn Dodgers and New York Giants), and the Oakland A's current field boss Tony LaRussa, who managed the Chicago White Sox for eight years before moving to the West Coast in July 1986. G. WILL, *MEN AT WORK* 28 (1990). All but LaRussa are enshrined in the Hall of Fame. *ENCYCLOPEDIA*, *supra* note 18, at 27. It is likely that the current Oakland skipper will join them.

139. Because of his efforts to integrate baseball, Rickey has a generally positive image today. In the late 1940s, however, Rickey was quick to brand opponents of baseball's reserve clause as having "Communitistic tendencies." L. LOWENFISH & T. LUPIEN, *supra* note 14, at 165.

140. McGrath, *Former A's Owner Finley Still Going Against Grain*, *The National Sports Daily*, Aug. 17, 1990, at 9.

141. *FIVE SEASONS*, *supra* note 2, at 57-58, 190.

142. Roger Angell wrote that "considerable evidence suggests that the A's were united and matured most of all by their shared individual resistance to the Finley style and the Finley presence." *Id.* at 58. Yet Finley's teams hold the baseball record of five consecutive division titles and they won three consecutive World Series. McGrath, *supra* note 140, at 9. Finley has been described as "alternately brilliant, irrational, clever, devious, creative and nasty." Hecht & Eatman, 1972: *Back to the Future*, *The National Sports Daily*, October 16, 1990, at 3, col. 1.

143. The National League wanted to adopt the designated hitter rule in the early 1930s, but Commissioner Landis quashed the idea. L. LOWENFISH & T. LUPIEN, *supra* note 14, at 217.

144. *FIVE SEASONS*, *supra* note 2, at 58.

baseball game was a product to be marketed to the fans,<sup>145</sup> and he sparked the economic explosion of the game.<sup>146</sup> Finley was involved in two important baseball law events. His stinginess produced the first important free agent and his firesale of A's stars generated a major test of the baseball commissioner's powers.<sup>147</sup>

Finley's A's were blessed with great pitching. The best hurler was a sparkling righthander, Jim "Catfish" Hunter.<sup>148</sup> In 1974, after a 25-12 season with a league-leading 2.29 earned run average, Hunter filed a grievance against his employer, claiming Finley failed to make payments required under his contract. Arbitrator Peter Seitz resolved the dispute.<sup>149</sup>

In the extended negotiations over his 1974 and 1975 contract, Hunter had insisted that half his \$100,000 salary be paid "to any person, firm or corporation" he designated; he wanted to defer income and avoid taxation.<sup>150</sup> Finley claimed he had never agreed to the demand, but Arbitrator Seitz found to the contrary. Apparently, Finley belatedly discovered that as a result of Hunter's deferred compensation scheme Finley's club could not deduct the \$50,000 as a business expense in the current year *and* he would lose control over the funds. Finley refused to make the promised payments.

Section 7(a) of the standard player contract provided: "The Player may terminate this contract . . . if the Club shall default in the payments to the Player. . . ." Arbitrator Seitz found this provision "pellucidly clear."<sup>151</sup> Fin-

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145. Finley should share that accolade with creative owners such as Bill Veeck of the American League's Cleveland, St. Louis, and Chicago franchises. *See generally* B. VEECK & E. LINN, *THE HUSTLER'S HANDBOOK* (1965).

146. Finley continues his inventive ways. He recently patented a new football with fluorescent yellow lengthwise stripes that is easier to see and pebble-like protrusions that are easier to grip. In January 1990, the National Federation Football Rules Committee approved use of the ball and the National Collegiate Athletic Association followed suit in September 1990. Dodd, *College Teams Come to Grips with Finley's New Invention*, *USA Today*, December 24, 1990, at 12C, col. 5. Finley markets it at the high school and college level from his Chicago insurance company office. McGrath, *supra* note 140, at 9.

147. Finley was certainly not the first stingy owner. Boston owner Arthur Soden reneged on a promise to pay for James "Orator" O'Rourke's uniform in 1879, used his marginal players as turnstile attendants, and required his players to go into the stands to retrieve foul balls. L. LOWENFISH & T. LUPIEN, *supra* note 14, at 30, 41.

148. In a fifteen year career, Hunter won 224 games and lost 166, with a 3.26 earned run average. He won more than 20 games for four consecutive years, 1971-1974, for the dominant Oakland squad. He followed in 1975 with a league-leading 23-win performance for the New York Yankees that included 30 complete games. Roger Angell described him as "a control pitcher of the very first rank . . ." FIVE SEASONS, *supra* note 2, at 55. Hunter was elected to the Hall of Fame in 1987. *ENCYCLOPEDIA*, *supra* note 18, at 1928.

149. In the Matter of an Arbitration between American and National Leagues of Professional Baseball Clubs (Charles O. Finely and Co., Inc.) and Major League baseball Players Ass'n (James A. ("Catfish") Hunter), Gr. Nos. 74-18 and 74-20 (1974) (Seitz, Arb.).

150. *Id.* His attorney had obtained an Internal Revenue Service letter stating this method would avoid taxation until "those amounts are paid or otherwise made available. . . to you or your beneficiary." *Id.* at 7.

151. *Id.* at 21.

ley's default meant Hunter was justified in terminating his contract. Arbitrator Seitz ruled the contract no longer bound him. Thus, Catfish Hunter was a free agent.<sup>152</sup> On New Year's Eve 1974, Hunter signed a contract with the New York Yankees for \$3.25 million.<sup>153</sup> Charlie Finley was responsible for creating the first important free agent, but Hunter would not be baseball's last free market millionaire.

Finley was also the protagonist in a major challenge to the powers of the Baseball Commissioner.<sup>154</sup> After winning three World Series, Finley tried to cash in some of his best players at the height of their market value. On June 14, 1976, Finley negotiated agreements to assign the contracts of Joe Rudi<sup>155</sup> and Rollie Fingers<sup>156</sup> to the Boston Red Sox for \$2 million. The next day he negotiated an agreement to sell Vida Blue<sup>157</sup> to the Yankees for \$1.5 million.

Under Major League Rule 12(a), the Commissioner had the power to disapprove player contracts. After holding a hearing on June 18, Bowie Kent Kuhn, the Wall Street lawyer who was appointed Commissioner in 1969, refused to approve this A's firesale.<sup>158</sup> Finley brought suit in federal court in

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152. *Id.* at 40. In addition, Seitz ordered the club to pay Hunter the remainder of his 1974 salary with interest.

153. ANNIVERSARY, *supra* note 15, at 314. Hunter pitched for the Yankees until 1979, when he retired. USA Today recently reported that Hunter now works his farm in Hertford, North Carolina. USA Today, Oct. 16, 1990, at C4, col. 3.

154. The 1903 National Agreement had established the three-person National Commission to govern baseball. The Black Sox scandal led to the creation of a one-man Commissioner's office, headed for decades by former federal judge, Kennesaw Mountain Landis. The owners signed the Major League Agreement, a contract between the clubs giving broad power to the Commissioner. After Landis' death in 1944, the owners limited the Commissioner's powers by revising the Agreement, but after three quiescent Commissioners, A.B. "Happy" Chandler, Ford Frick and William Eckert, powers were restored when Bowie Kuhn took the helm in 1969.

155. Joe Rudi played sixteen years in the Major Leagues, mostly in the outfield. His career batting average was .264, with 179 home runs. He twice batted over .300, and led the American League in hits (181) and triples (9) in 1972 and doubles (39) in 1974. ENCYCLOPEDIA, *supra* note 18, at 1404.

156. A great relief pitcher with a memorable waxed mustache, the aptly-named Fingers spent 17 years in the Major Leagues. He compiled a lifetime 2.90 e.r.a. and holds Major League records with 341 career saves and 6 World Series saves. He led his league in saves in 1977, 1978, and 1981. He won the Most Valuable Player award in 1981 while pitching for the Milwaukee Brewers. He is fourth on the all-time list with 944 appearances as a reliever and led his league in that category in 1974, 1975, and 1977. ENCYCLOPEDIA, *supra* note 18, at 1824-25.

157. Vida Blue completed 17 years in the Major Leagues, compiling a 3.26 e.r.a. His 1971 rookie performance earned him the Most Valuable Player award: a 24-8 record, a league-leading 1.82 e.r.a., with 8 shutouts and 301 strikeouts. ENCYCLOPEDIA, *supra* note 18, at 1685-86. Blue ended his career at age 34, released mid-season by the Kansas City Royals. He then entered a drug treatment center. SEASON TICKET, *supra* note 3, at 53.

158. Charles O. Finley & Co. v. Kuhn, 569 F.2d 527 (7th Cir. 1978), *cert. denied* 439 U.S. 876 (1978). Kuhn was concerned with the possible ruining of the A's, the question of baseball's reserve system, and the chance that baseball would lose competitive balance in favor of the owner's buying power. *Id.* at 531.

Chicago, claiming the Commissioner's actions were *ultra vires* and an unconstitutional denial of due process, but Judge Frank J. McGarr rejected Finley's claims and he appealed.<sup>159</sup>

The United States Court of Appeals for the Seventh Circuit upheld the trial court determination.<sup>160</sup> The court reviewed the history of the "basic charter" of baseball, the Major League Agreement, and the broad powers given the Commissioner to determine whether an act was "not in the best interests of baseball."<sup>161</sup> The Commissioner could take preventive, remedial or punitive action to protect and defend the game. Finley argued that previous commissioners had approved player sales and Commissioner Kuhn's action was an "abrupt departure from well-established assignment practice . . . ."<sup>162</sup> Commissioner Kuhn explained how Finley's case was different. This wholesale redistribution of talent would disrupt the competitive balance in the league and debilitate the Oakland club.<sup>163</sup>

Baseball was unique, the court of appeals said, in the breadth of power given the Commissioner.<sup>164</sup> It agreed with the trial court's conclusion that the Commissioner "acted in good faith, after investigation, consultation and deliberation, in a manner which he determined to be in the best interests of baseball" and that "[w]hether he was right or wrong is beyond the competence and the jurisdiction of this court to decide."<sup>165</sup> The Commissioner had not been motivated by malice.<sup>166</sup> The court also ruled enforceable Article VII, Section 2, of the Major League Agreement in which the clubs agree to be bound by the Commissioner's decisions and waive recourse to the courts.<sup>167</sup>

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159. *Id.*

160. *Id.*

161. *Id.* at 532-35.

162. *Id.* at 536. Connie Mack had successfully marketed his best players after winning the World Series in 1931. L. LOWENFISH & T. LAPIEN, *supra* note 14, at 117. The tight-fisted Mack was not ready to play his players at championship rates of pay. He sold his starting left fielder Al Simmons, third baseman Jimmy Dykes and centerfielder Mule Haas to the White Sox for \$100,000. *ENCYCLOPEDIA supra* note 18, at 2504.

163. *Finley & Co.* 569 F.2d at 531. 1976 was also an unsettling year because of the results of the Messersmith arbitration. *See infra* note 172-181 and accompanying text. Rudi and Fingers could become free agents at the end of the 1976 season. Finley negotiated the sale mid year because he could not count on the players resigning with the club after the season's close.

164. *Id.* at 538.

165. *Id.* at 539. The owners certainly thought he was right. Twenty-one of the twenty-five club owners testified as witnesses in the trial court, all in support of the Commissioner. *Id.*

166. *Id.* at 540.

167. *Id.* at 541-44. This ruling was generally consistent with state law decisions involving the nonreviewability of decisions of private associations. The court reserved the possibility that some Commissioner actions in contravention of law or the Major League Agreement itself could be reviewed, as well as decisions taken without "the basic rudiments of due process." *Id.* at 544.

In November 1980, two years after the court of appeals decision, Charlie Finley sold the A's and retired from baseball.<sup>168</sup> His confrontation with the Commissioner had firmly established the parameters of baseball governance.<sup>169</sup> The court ruled, in effect, that owners of baseball teams had established a private club and could set their own rules.<sup>170</sup> All the answers would be bound by those rules, and none could seek recourse through the established judicial system. Although club owners might not like it, the ball-players and their union played inside baseball's governance structure. Finley's misadventure with Catfish Hunter proved that the inside court — private labor arbitration — was as powerful as the judiciary. It was a labor arbitrator who finally dislodged the magnates' absolute power over the players.

## 6. STARTING PITCHER - ANDY MESSERSMITH

Our Team's starting pitcher is the Dodgers' Andy Messersmith.<sup>171</sup> His grievance attacked the reserve system, the hundred-year-old player restraint mechanism that bound players to their clubs in perpetuity.<sup>172</sup> The grievance claimed that the negotiated uniform player contract option clause should be

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168. Holtzman, *Money in Baseball has a Rich History*, Chicago Tribune, July 1, 1990, at C7.

169. There were, of course, cases before Finley's, such as St. Louis Browns owner Phil Ball's suit against Commissioner Landis in 1931. *Milwaukee Am. Ass'n v. Landis*, 49 F.2d 298, (N.D. Ill. 1931). Federal Judge Walter C. Lindsley threw out the action, describing the Commissioner as endowed "with all the attributes of a benevolent but absolute despot and all the disciplinary power of the proverbial pater familias." *Id.* at 299; see also L. LOWENFISH & T. LUPIEN, *SUPRA* note 14, at 118.

170. It is also a very valuable club of which to be a member. Gerald W. Scully reported that in the period 1974-84 team revenues rose 13.5% annually. G. SCULLY, *THE BUSINESS OF MAJOR LEAGUE BASEBALL* (1989).

171. Although not quite of Hunter's caliber, Messersmith was a fine hurler. Over a 12 year career, he won 130 games, lost 99, compiling a 2.86 earned run average, and led the National League with a 20-6 record and 7 shutouts for the League Champion Dodgers in 1974. He did not face Hunter in the 1974 World Series, won by Oakland in five games. *ENCYCLOPEDIA*, *supra* note 18, at 2046-47.

172. In the Matter of Arbitration between The Twelve Clubs Comprising National League of Professional Baseball Clubs and Twelve Clubs Comprising American League of Professional Baseball Clubs, Los Angeles And Montreal Clubs and Major League Baseball Players Ass'n, Gr. Nos. 75-27 and 75-28, 66 Lab. Arb. (BNA) 101 (1975) (Seitz, Arb.). Messersmith's action was later joined by the Expo's Dave McNally. McNally compiled a career 184-119 record for Baltimore from 1962-1974, leading the League with 24 wins in 1970. On December 4, 1974, he was traded to Montreal with Rich Cogens and a minor leaguer for Ken Singleton and Mike Torrez. He pitched in 12 games for Montreal in 1975 before retiring and pursuing his grievance. *ENCYCLOPEDIA*, *supra* note 18 at 2046-47, 2453. Other players had explored the possibility of filing a similar grievance. Cardinals' star catcher Ted Simmons started the 1972 season unsigned. He was ready to test the owners' interpretation of the reserve system. L. LOWENFISH & T. LUPIEN, *supra* note 14, at 219. In mid-season Simmons accepted a favorable contract offer from St. Louis, which mooted his case. *Id.*

read as allowing renewal for one year only. Labor arbitrator Peter Seitz heard the case.<sup>173</sup>

In his opinion, Seitz interpreted the complex and interwoven terms of the Major League Baseball Rules, the collective bargaining agreement, and the uniform player contract. First, he considered the owners' claim that the grievance was not arbitrable, that is, beyond the arbitrator's jurisdiction. The collective bargaining agreement's arbitration clause only covered disputes about the terms of the agreement. Article XV plainly stated that "this Agreement does not deal with the reserve system."<sup>174</sup> If the terms of the Agreement did not deal with the reserve system, management argued, the dispute could not be heard.<sup>175</sup>

Seitz recited the numerous terms of the Agreement that did "deal with the reserve system."<sup>176</sup> The parties must have had some reason for including the incongruous Article XV. The evidence showed the Players Association had proposed Article XV during negotiations to avoid the possibility it might be held jointly liable for an antitrust violation had the *Flood* case turned out differently.<sup>177</sup> Thus, Seitz concluded the parties had no intention to keep challenges to the reserve system out of arbitration.<sup>178</sup> Seitz ruled the matter arbitrable.<sup>179</sup> Turning to the merits, Seitz said the one-year option clause in the uniform player contract was just that — an option for one year and not forever. If the parties wanted an endless contract, they could have said so.<sup>180</sup> But might a team be able to "reserve" a player not under contract? Although not all the Major League Rules pointed in the same direction, Seitz read the Rules consistent with the parties' practice. A player could not be placed on a reserve list unless he was under contract. Seitz granted the grievance.<sup>181</sup>

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173. Seitz was the third permanent umpire under the collective bargaining agreement. In 1970, management and the union selected Lewis Gill of Philadelphia to serve as their neutral, followed by Gabriel Alexander of Detroit in 1972. L. LOWENFISH & T. LUDIEN, *supra* note 14, at 121. Seitz received his undergraduate and law degrees from New York University. He served as Vice President of the National Academy of Arbitrators and a permanent umpire for professional basketball and in the steel industry, as well as in his most famous role in professional baseball. Seitz looked like Hollywood's image of the labor arbitrator, with flowing gray hair and three-piece suit attire.

174. *Id.* at 103.

175. *Id.*

176. Seitz also noted that the Uniform Players Contract, which is incorporated into the Basic Agreement, requires the players to abide with all provisions of the Major League Rules. It is the Major League Rules which establish the reserve system. Moreover, section 10 (Renewal Clause) of the Uniform Players Contract enables a club to "reserve" the services of a player who had signed for a previous year. *Id.* at 105-107.

177. *Id.* at 108.

178. *Id.* at 108-110.

179. *Id.* at 110.

180. *Id.* at 113.

181. *Id.* at 117. Seitz appreciated the importance of his ruling. He attempted without success to encourage the parties to reach a negotiated settlement on the issues. *Id.* at 117-18.



The dismantling of the player restraint system revolutionized the baseball business. In 1976, the parties negotiated reasonable limitations on free agency which required a player to serve six years in the Major Leagues before becoming eligible for free agency.<sup>182</sup> Andy Messersmith's grievance created a marketplace for talented experienced ballplayers, which, in turn, accelerated the rise of salaries. When combined with salary arbitration, average salaries increased tenfold in a decade. Then, suddenly, the free agency market dried up. It was time for another Baseball Law All Star to come to bat.

## 7. STARTING CATCHER - CARLTON FISK

In 1985, officials of the Major League Baseball Players Association noticed that attractive free agents, such as Carlton Fisk, the White Sox catcher, were not receiving offers from competing clubs. Fisk filed a grievance claiming the owners had "colluded" by agreeing not to make offers to free agents; Fisk's collusion grievance makes him a Baseball Law All Star.

Carlton "Pudge" Fisk is nearing the end of a Hall of Fame career.<sup>183</sup> He has completed his 21st year behind the plate, split almost evenly between the Red Sox and the White Sox.<sup>184</sup> Fisk ranks second all time in number of

The gulf was too wide, however. The owners did not accept Seitz's ruling without a fight. They brought suit in federal court to vacate the arbitration award. Applying well-established principles of federal arbitration law, both the district court and court of appeals enforced the arbitration award. See *Kansas City Royals Baseball Corp. v. Major League Baseball Players Ass'n*, 409 F. Supp. 233 (W.D. Mo.), *aff'd*, 532 F.2d 615 (8th Cir. 1976). The union was represented in court by its future Executive Director, Attorney Donald Fehr.

182. J. WEISTART & C. LOWELL, *supra* note 12, at 523.

183. Roger Angell's description of Fisk rings true:

No catcher of our time looks more imperious than Carlton Fisk, and none, I think, has so impressed his style and mannerisms on our sporting consciousness: his cutoff, bib-sized chest protector above those elegant Doric legs; his ritual pause in the batter's box to inspect the label on his upright bat before he steps in for good; the tipped-back mask balanced on top of his head as he stalks to the mound to consult his pitcher; the glove held akimbo on his left hip during a pause in the game. He is six-three, with a long back, and when he comes straightup out of the chute to make a throw to second base, you sometimes have the notion that you're watching an aluminum extension ladder stretching for the house eaves. . . . Fisk's longitudinal New England face is eroded by reflection. He is a Vermonter. . . . Pride is what he wears most visibly . . . .

SEASON TICKET, *supra* note 3, at 38.

184. Fisk moved to the Chicago club after winning his free agency through arbitration. In the Matter of the Arbitration between Major League Baseball Players Association (Carlton E. Fisk) and Major League Baseball Players Relations Committee, Inc. (Boston Red Sox) Gr. No. 80-35 (1981) (Goetz, Arb.). Under the terms of the collective bargaining agreement, Article XVII, § A(2)(c), a player became a free agent if his club failed to offer a new contract by the date specified in the uniform player contract. The Red Sox failed to meet the December 20, 1980, date included in Paragraph 10 (a) of Fisk's contract. In fact, it mailed the contract the next business day, but Arbitrator Raymond Goetz found no excuse for the delay. The express

games as a catcher. On August 17, 1990, in the second inning of the second game of the Chicago-Texas doubleheader, Fisk hit a 2-1 pitch from Charlie Hough over the left field wall for his 328th home run as a catcher (349 total in the Major Leagues) surpassing Johnny Bench's major league record for most home runs by a catcher.<sup>185</sup> Fisk is characteristically modest about his accomplishments: "I've played a long time and been decent at what I do . . . [y]ou play a long time and all that stuff adds up, I guess."<sup>186</sup> It added up to a stellar career. Fisk's major contribution, for our purposes, however, was not behind the plate, but in the grievant's chair at an arbitration hearing.

The collective bargaining agreement between the owners and the Major League Baseball Players Association contained a clause prohibiting collusion by either management or players in matters involving free agency.<sup>187</sup> During the 1976 negotiations over free agency, management demanded anti-collusion protection, remembering the joint holdout by Sandy Koufax<sup>188</sup> and Don Drysdale<sup>189</sup> prior to the 1966 season. The union responded that if players

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condition was not met. Thus, although Fisk's free agency was "indeed an unfortunate consequence for the Club in comparison to the minor inconvenience to him flowing from the belated contract tender, that is the inevitable effect of the condition to which the parties agreed" in their collective agreement, a condition from which an arbitrator "is powerless to deviate . . . ." *Id.* at 20.

On March 18, 1981, free agent Fisk signed with the White Sox. Red Sox officials had stated publicly they thought Fisk was washed up. Bart Giammati later commented: "The Fisk episode was the worst moment for Red Sox fans since the team sold Babe Ruth." Gammons, *Sharp as Ever*, *Sports Illustrated*, Feb. 26, 1990, at 68.

185. Fisk will always be remembered for his dramatic home run off the left field foul pole in the 12th inning at 12:33 a.m. on October 22, 1975, that won the sixth game of the 1975 World Series, the game some consider the greatest ever played. In 1990, White Sox Manager Jeff Torborg called Fisk, at age 42, the "heart and soul" of the surprising Chicago team that went from seventh place to second in the American League West Division.

186. Moton, *Fisk Still Puts Stock in Defense*, *The National Sports Daily*, Aug. 22, 1990, at 5. See generally Gammons, *supra* note 184, at 62-68. One recent story exemplifies Fisk's devotion to the game. On May 22, 1990, Fisk, catching for the White Sox, yelled at then Yankee rookie Deion Sanders for not running to first when he popped up. "I told him, 'There's a right way and a wrong way to do things, and you do it the wrong way.'" Goddard, *Fisk Lights into Neon Deion*, *The Sporting News*, June 4, 1990, at 17. Fisk does it the right way.

187. Article XVIII, § H. This section, entitled "Individual Nature of Rights," stated: "The utilization or non-utilization of rights under this Article XVIII is an individual matter to be determined solely by each Player and each Club for his or its own benefit. Players shall not act in concert with other Players and Clubs shall not act in concert with other Clubs."

188. Koufax, considered the finest left-hander of the 1950s and 1960s, was voted into the Hall of Fame in 1972. With a career e.r.a. of 2.76, and a .95 e.r.a. in World Series competition, Koufax retired at the top of his game in 1966 after a 27-9 season in which he led the National League with a 1.73 e.r.a. Koufax led the league in fewest earned runs for five consecutive seasons. *ENCYCLOPEDIA*, *supra* note 18, at 1798, 1972.

189. Drysdale was the other half of the Dodgers potent pitching duo. He ended a fourteen year career in 1969 with a 2.95 e.r.a., and a 209-166 record. He was admitted to the Hall of Fame in 1984. During the 1965 season, Drysdale (23) and Koufax (26) won 49 games, the second highest total for two pitchers on one team in one season. (The record is held by Detroit's

could not collude, owners should not be allowed to collude. The anti-collusion clause would come back to haunt management a decade later.

After 32 days of hearing, 5,674 pages of transcript and 288 exhibits, arbitrator Tom Roberts<sup>190</sup> issued his decision on September 21, 1987.<sup>191</sup> Roberts found that the clubs had violated Article XVIII of the Agreement by acting in concert. He first reviewed the evidence of free agent activity — or lack thereof. In 1984, 16 of the 24 clubs signed free agents.<sup>192</sup> In 1985, only one of the 29 free agents received an offer from another club.<sup>193</sup> The clubs argued this was simply prudent business decisionmaking, but Roberts found the dramatic change was the result of a common scheme.

The evidence showed that clubs with potential free agents conducted themselves in a way which indicated they knew no other employer would compete for the players' services. Only when clubs stated they were not interested in a player did other employers tender offers. The owners argued their conduct was a continuation of a ten-year trend, but Roberts found no evidence to support the claim.<sup>194</sup> The owners said the crop of free agents were particularly unattractive, but that did not explain why no offers were tendered. Even unattractive free agents were worth something. The owners also complained that the new time schedules included in the 1985 agreement were difficult to follow. Again, Roberts was unconvinced that this could explain the owners' pattern of behavior.<sup>195</sup>

The union proved that in memoranda and at regular meetings throughout the year League Officials and Baseball Commissioner Peter Ueberroth<sup>196</sup> had reminded the owners of the evils of long-term contracts — a euphemism for competitive bidding on free agents. The circumstances all pointed to one

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Hal Newhouser (29) and Dizzy Trout (27), a total of 56). *ENCYCLOPEDIA*, *supra* note 18, at 1798-99.

190. Roberts is also an arbitration superstar of Peter Seitz's stature. Former president of the National Academy of Arbitrators, Roberts also served as a permanent umpire in the airline industry. Midway through the collusion case, baseball management fired Roberts as the arbitrator. The Association grieved and Arbitrator Richard Block ruled an arbitrator could only be dismissed by a party *after* a case was completed. Needless to say, after Roberts issued his award, he was terminated by management.

191. In the Matter of the Arbitration between Major League Player's Ass'n and the 26 Major League Baseball Clubs, Gr.86-2 (1987) (Roberts, Arb.) [hereinafter *Collusion I*].

192. *Id.* at 3.

193. *Id.* Interestingly, that player was Carlton Fisk.

194. *Id.* at 10. He said that the 1986 conduct was "dramatically different" from prior years. *Id.*

195. *Id.* at 15.

196. Peter V. Ueberroth served as baseball's sixth Commissioner from October 1, 1984, through March 31, 1989. An entrepreneur who successfully headed Los Angeles' profitable 1984 Olympics, Ueberroth brought glamour and business sense to the Commissioner's office. Among his first acts as Commissioner was to arbitrate the dispute between the owners and the umpires that came to a head during post-season play in 1984. He ruled for the umpires.

conclusion. The owners had colluded in violation of the collective bargaining agreement.<sup>197</sup>

In a subsequent remedial order on January 22, 1988, Roberts ruled that seven grievants were free agents.<sup>198</sup> He later issued a "preliminary award" of \$10.5 million in back pay, the difference between the amount those affected by the contract violation would have earned under free agency without collusion and what they actually earned.<sup>199</sup>

Arbitrator George Nicolau<sup>200</sup> later decided collusion grievances for the 1986 and 1987 classes of free agents. In his sternly worded opinion in *Collusion II* issued on August 31, 1988, he found a "patent pattern" of bid-rigging by the clubs that "defied fair play" and the free market.<sup>201</sup> Owners suffered "remarkable lapses of memory" in their testimony at the hearing.<sup>202</sup> On July 16, 1990, Nicolau issued the third and final opinion on the collusion claims.<sup>203</sup> Nicolau found that management's "Information Bank" allowed owners to rig bids to free agents and keep offers reasonable. "[T]he Bank's message was plain — if we must go out into that market and bid, then let's quietly cooperate by telling each other what the bids are. If we all do that, prices won't get out of line and no club will be hurt too much."<sup>204</sup> This cooperation, which created a "safe bidding environment," violated the anti-collusion provision.<sup>205</sup>

On September 17, 1990, Arbitrator Nicolau ordered the club owners to pay players \$102.5 million in damages for the 1987 and 1988 contract violations.<sup>206</sup> This is believed to be the largest award in sports history.<sup>207</sup> On De-

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197. *Collusion I* at 16.

198. Foremost among the other seven grievants in *Collusion I* was Detroit outfielder Kirk Gibson. Gibson does not have Fisk's Hall of Fame statistics, but he has an equally dramatic home run to his credit. Two out and two on in the ninth inning of the first game of the 1988 World Series, Dodger Manager Tommy Lasorda called upon the injured Gibson to deliver a victory for "Dodger Blue." In his only appearance of that Series, Gibson struck a home run off Oakland ace reliever Dennis Eckersley. *ENCYCLOPEDIA, supra* note 18, at 2757. The other *Collusion I* grievants were Tom Brookens, Donnie Moore, Butch Wynegar, Juan Beniquez and Joe Niekro. They were all allowed to change teams, but only Gibson made the move, from the Tigers to the Dodgers.

199. Chass, *A \$10.5 Million Reminder of Collusion Ruling*, *The Sporting News*, Sept. 11, 1989, at 52, col. 1.

200. Nicolau is also a leading arbitrator with years of experience as a permanent umpire in the television industry.

201. In the Matter of Arbitration between Major League Baseball Players Ass'n and the 26 Major League Clubs, Gr. 87-3 (1988) (Nicolau, Arb.).

202. *Id.*

203. In the Matter of the Arbitration between Major League Baseball Players Ass'n and the 26 Major League Clubs, Gr. 88-1 (1990) (Nicolau, Arb.).

204. *Id.* at 31.

205. *Id.* at 30-31, 34.

206. *Id.* at 36; see also Bodley, *Owners Ordered to Pay \$102.5M in Collusion Case*, *USA Today*, Sept. 18, 1990, at C4, col. 1. The Union has appointed Tom Roberts to rule on allocating the damages among players injured by managements' collusion.

cember 5, 1990, the owners and the Players Association settled all outstanding damage issues and the clubs agreed to make a \$280 million payment and fifteen grievants were allowed to pursue free agency.<sup>208</sup>

The collusion arbitrations had a major impact on the baseball business. The owners' attempt to stop the dramatic increases in player salaries by a private understanding violated their contract promises. Arbitration provided effective protection for players' rights. The owners only recourse was through collective bargaining. The collusion cases set the scene for the 1990 showdown at spring training.

Baseball owners had watched as the National Football League management effectively destroyed the National Football League Players Association during their 1987 labor dispute. As the baseball negotiations began, baseball management stated publicly it was ready to restructure the salary system in baseball.<sup>209</sup> Management had accumulated a \$200 million war chest and a \$130 million line of credit.<sup>210</sup> The owners were ready to play hardball at the bargaining table. On February 15, 1990, they closed spring training camps and locked out the ballplayers.<sup>211</sup>

Suddenly, a week later the owners dropped their restructuring proposals and Commissioner Fay Vincent entered the negotiations. After "another daunting public exhibition of greed and bluster," the 1990 negotiations ended with a whimper.<sup>212</sup> Eligibility for salary arbitration was the final issue dividing the parties; the differences were compromised, and the season began in April 1990, only a few days late.<sup>213</sup>

207. Chass, *Players Get \$102.5 Million in Collusion Case*, New York Times, Sept. 18, 1990, at 25, col.2.

208. Chass, *Collusion Problem Solved, But Minors Still an Issue*, New York Times, Dec. 6, 1990, at B9, col. 2.

209. Management's proposals were revolutionary, calling for a wage scale based on performance for players with less than six years experience, eliminating salary arbitration and the need for agents. Revenue would be shared between owners and players. Each club would have a salary cap patterned on the National Basketball Association model. It is interesting to remember that in 1888 National League owners paid their players under the Brush Classification Plan which classified players according to skill and paid them under a wage scale. See *supra* note 24, and accompanying text.

210. Chass, *How Baseball Gears Up to Shut Down*, The Sporting News, Feb. 5, 1990, at 46.

211. Hudson, *The Lockout: Day 1*, Los Angeles Times, Feb. 15, 1990, at C 12, col. 1.

212. Angell, *The Sporting Scene: The Pits and the Pendulum*, THE NEW YORKER, May 21, 1990, at 73.

213. Reportedly, the owners insisted on retaining the three year eligibility provision and the union pressed to return to two years, the standard before 1985. The final compromise read:

#### ARTICLE VI - Salaries

##### F. Salary Arbitration

The following salary arbitration procedure shall be applicable:

(1) *Eligibility.* . . [E]ffective in 1991 and thereafter, a Player with at least two but less than three years of Major League service shall be eligible for salary arbitration if: (a) he has accumulated at least 86 days of service during the immediately

Interestingly, the new collective bargaining agreement contains enhanced protection for the players against owner collusion. Article XX(F)(2) allows an arbitrator to award treble damages to a grievant injured through collusion.<sup>214</sup> The contract remedy now mirrors the remedy available in other sports under the antitrust laws. Almost eighty years after Justice Holmes carved out an exemption from the antitrust laws for professional baseball, Executive Director Donald Fehr and the Major League Baseball Players Association put baseball back into the antitrust game.

#### 8. STARTING THIRD BASEMAN - PETE ROSE

Our Baseball Law All Star Team would not be complete without Pete Rose. Rose of the Cincinnati Red Machine was a great hitter. In 24 years with the Reds, Phillies, and Expos, Rose amassed 4256 base hits, surpassing the mark held for decades by Ty Cobb.<sup>215</sup> Rose also holds the record for most games with 3562 and most at bats with 14,053. He managed his hometown Reds from 1984 until 1989. Riding an express train to the Hall of Fame, Rose was derailed by allegations of gambling on baseball games.

Commissioner Peter Ueberroth announced on March 20, 1989, that he was investigating gambling allegations against Rose.<sup>216</sup> Ueberroth's successor, A. Bartlett Giamatti, former President of Yale University and a classical

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preceding season; and (b) he ranks in the top seventeen percent (17%) (rounded to the nearest whole number) in total service in the class of Players who have at least two but less than three years of major league service, however accumulated, but with at least 86 days of service accumulated during the immediately preceding season. If two or more Players are tied in ranking, ties shall be broken consecutively based on the number of days of service accumulated in each of the immediately preceding seasons. If the Players remain tied, the final tie break will be by lot.

Basic Agreement Between the American League of Professional Baseball Clubs and The National League of Professional Baseball Clubs and Major League Baseball Players Association, effective January 1, 1990 [hereinafter *Basic Agreement*]. This provision is obviously even more technical than the infield fly rule. See, Comment, *The Common Law Origins of the Infield Fly Rule*, 123 U. PA. L. REV. 1474 (1975). As a result of this provision, at the end of the 1990 season 87 players qualified for eligibility consideration. Seventeen percent of 87 is 14.79, rounded to 15 players. Ranked according to most service, the following players with less than three years service were eligible for 1991 salary arbitration: D. Jackson (Padres), K. Miller (Mets), D. Gallagher (Orioles), S. Jefferson (Indians), J. Gonzalez (Dodgers), T. Mulholland (Phillies), M. Grace (Cubs), F. Fermin (Indians), D. Hall (Expos), B. Arnsberg (Rangers), B. Robidoux (Red Sox), K. Caminiti (Astros), R. Gant (Braves), C. Candaele (Astros) and N. Charlton (Reds). The New York Times, September 30, 1990, at S3, col. 1.

214. *Basic Agreement*, *supra* note 213.

215. At 8:01 p.m. E.D.T. on Wednesday, September 11, 1985, Pete Rose singled off Padres righthander Eric Show into shallow left field in Cincinnati's Riverfront Stadium. Hit number 4192 was Pete's 3161st single. *ENCYCLOPEDIA*, *supra* note 18, at 1398.

216. John W. Dowd, a New York attorney, investigated Rose for the Commissioner's Office. He wrote in his report: "In order to protect his stature as one of the most famous baseball players in major league history, Pete Rose employed middlemen to place bets for him with bookmakers and at the racetrack and to pay gambling losses and collect gambling winnings,

scholar, continued the Rose investigation. On April 18, 1989, Giamatti made a wrong turn. He sent a letter to Federal Judge Carl Rubin who was about to sentence Ron Peters, one of Rose's alleged gambling connections. Giamatti wrote that Peters "has been candid, forthright and truthful" with baseball's investigators. Giamatti then set a hearing date on Rose's case, but before he could tag the infielder, Rose sought recourse in the Cincinnati home court of Judge Norbert A. Nadel.<sup>217</sup>

Rose's case was another in the series of contests questioning the power of the Commissioner to act in the best interest of baseball, the broad standard embodied in the Major League Rules. We have already discussed one example, the Finley-Kuhn confrontation.<sup>218</sup> Rose's case had a very different procedural setting, however. Commissioner Giamatti had not yet acted against Rose. Rose's suit sought to enjoin the Commissioner from even holding a hearing preliminary to deciding the case.<sup>219</sup>

Sitting in the Hamilton County Court of Common Pleas, Judge Nadel listened to testimony for two days on Rose's request for an injunction. Rose claimed Giamatti had evidenced bias against him in his letter to Judge Rubin about Peters, Rose's accuser.<sup>220</sup> Nadel, who was required to stand for reelection in Cincinnati, granted the temporary restraining order on the ground that Giamatti had "prejudged" Rose.<sup>221</sup> This was the first successful attempt through litigation to interrupt a Commissioner's investigation. On August 23, 1989, the court case was settled as Pete Rose accepted permanent suspension from baseball.

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thus concealing his gambling activities." *Rose Report Released*, USA Today, June 27, 1989, at C1.

217. *Rose v. Giamatti*, No. A8905178 (Ohio Ct. C. P., Hamilton County, June 25, 1989) (LEXIS, States library, Ohio file).

218. After the Finley confrontation, Commissioner Kuhn sanctioned Atlanta Braves owner Ted Turner for tampering with potential free agent Giants outfielder Gary Matthews. Turner brought suit to set aside the sanctions as beyond the Commissioner's power. *Atlanta National League Baseball Club, Inc. v. Kuhn*, 432 F. Supp. 1213 (N.D. Ga. 1977). The court held that despite the waiver of legal recourse provision in the Major League Agreement, it had jurisdiction to review the sanctions. *Id.* at 1218. Although the broad powers granted the Commissioner supported his suspension of Turner, the court concluded that the Commissioner did not have power to deny his club an amateur draft choice. *Id.* at 1226.

219. *Rose v. Giamatti*, No. A8905178 (Ohio Ct. C. P., Hamilton County, June 25, 1989) (LEXIS, States library, Ohio file).

220. Although most commentators agree that courts should not restrict the Commissioner's actions taken under the "best interest" clause, it has been suggested that Giamatti should have been restrained in this case because he prejudged the facts against Rose. Note, *Limits on the Discretionary Powers of Professional Sports Commissioners: A Historical and Legal Analysis of Issues Raised by the Pete Rose Controversy*, 76 VA. L. REV. 1409 (1990).

221. Nadel was unopposed in the Republican primary for the Hamilton County Common Pleas Court judgeship. He faced Democrat Daniel Burke in the November 6, 1990, general election and won handily with 73% of the vote. Nadel said he did not think the Rose decision had any impact on the election. *Judge From Rose Case Re-elected*, USA Today, November 8, 1990, at 2C, col. 5.

On July 19, 1990, the federal court sentenced Rose, who had pled guilty to tax evasion, to five months in jail.<sup>222</sup> When Rose reported to Marion Federal Prison Camp in Illinois on August 8, 1990, his jersey was changed from famous retired number 14 to inmate number 01832061.<sup>223</sup> Rose was eligible to play on the Marion softball team, the "Outlaws."<sup>224</sup>

Rose's final baseball story is not yet written, however. Will the most prolific hitter of all time be excluded from the Hall of Fame? Rose will not bet on it.<sup>225</sup>

## 9. STARTING FAN - KAREN FRIEDMAN

Usually omitted from any discussion of the business of baseball is the role of the fans — the men and women, boys and girls who pay the freight. That will not happen on our All Star Baseball Law Team. Baseball has enjoyed the attention of many millions of fans over the last century. One fan, Miss Karen Friedman, deserves special mention. Eleven-year-old Karen was struck by a foul ball during the ninth inning of a game at the Houston Astrodome in June 1978. She was walking toward the Astros first base dugout to seek players' autographs at the game's end. Karen sustained a broken facial bone and an eye injury. Her parents sued the Astros on her behalf, claiming negligence in its failure to warn Karen or protect her from foul balls.<sup>226</sup>

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222. Perhaps while we are in criminal court we should add the eight Chicago "Black Sox" to our All Star team as the entire bench? Although acquitted in criminal court of throwing the 1919 World Series, Commissioner Kennesaw Mountain Landis banned them from organized baseball for life. Recently, writers have suggested that the current Commissioner reverse this "injustice," especially with regard to "Shoeless" Joe Jackson, one of the great outfielders of his day and a superb hitter. Over his thirteen year career, Jackson hit .356, the third highest average ever behind Ty Cobb (.367) and Rogers Hornsby (.358). *ENCYCLOPEDIA*, *supra* note 18, at 1055. The Commissioner has declined to reverse the call of so revered a figure as Landis. Jackson will remain in foul ground for now. *See generally* E. AISINOF, *EIGHT MEN OUT* (1987).

223. *Rose Pitches Camp in Marien, Ill.*, *The National Sports Daily*, Aug. 9, 1990 at 5.

224. *Rose Begins Five-Month Term: He'll Learn Crime Doesn't Pay More Than 11 Cents an Hour*, *USA Today*, Aug. 9, 1990, at C4, col. 1. Comedian Jay Leno wondered, "If Pete Rose bets on prison softball games, will he be banned from jail for life?" *The Season in Quotes*, *The Fort Lauderdale Sun-Sentinel*, Oct. 4, 1990, at C3.

225. The most recent challenge to the Commissioner's authority to regulate baseball came from two limited partners of the Yankees who protested Commissioner Vincent's permanent suspension of general partner George Steinbrenner. Federal District Judge Ann Bachelder in Cleveland denied their request for temporary relief.

The Vincent-Steinbrenner minuet filled the sports pages throughout the 1990 baseball season. Finally ready to impose a two-year suspension against Steinbrenner for paying Howard Spira \$40,000 to obtain information about outfielder Dave Winfield, Vincent was shocked when the Yankee owner sought instead an agreement that would lead to his removal from baseball. On August 20, 1990, Steinbrenner resigned as general partner of the Yankees, ending seventeen years of turmoil in pinstripes.

226. *Friedman v. Astrodome Corp.*, 79-27215.



In July 1985, a Texas jury awarded Karen \$55,000 for mental suffering and \$125,000 in punitive damages.<sup>227</sup> On August 6, 1985, state district Judge Robert Montgomery overturned the award without opinion.<sup>228</sup> Nonetheless, Karen has had an impact on baseball. Shortly after the jury verdict, clubs throughout the league began to post scoreboard notices warning baseball patrons of the risks of foul balls.<sup>229</sup> Attending games might even have been made safer as a result of Karen Friedman's suit.<sup>230</sup>

### CONCLUSION

We have followed the development of baseball law from its inception, a few years after the establishment of the National League, until today. As columnist George Vecsey wrote recently: "[T]he game hasn't changed all that much, maybe just a few more zeroes at the end of the salaries."<sup>231</sup> We have seen how, almost one hundred years after Monte Ward first battled management, the Major League Baseball Players Association finally won a redistribution of the wealth generated by the sport. Two issues predominated throughout the century: The status of the players and the powers of the Commissioner. They have been resolved for the moment, but not with finality.

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227. *Id.* More recently, young Delbert Yates, Jr. of Valparaiso, Indiana, was awarded \$67,500 by a jury for damages to his eye when struck by a foul ball at a Chicago Cubs game. "I was talking to my sister, and the next thing I knew, I got zapped," Delbert was quoted as saying. Nat'l L. J., Dec. 18, 1989 at 39, col. 4.

228. *Friedman v. Astrodome Corp.*, 79-27215.

229. The author attended a Cleveland Indians game shortly after the Friedman jury verdict. A new notice on Cleveland Stadium electronic scoreboard read:

We want you to have an enjoyable time at the baseball game. However be aware of the danger of thrown bats and foul balls. We warn you that as a Cleveland Indians ticket holder, you assume all risk incidental to the game of baseball, including, but not exclusively, the risk of being injured by thrown bats and/or batted balls. Management its' [sic] agents and players are not liable for injuries resulting from such causes. Thank you - and please enjoy the game.

230. Karen's was certainly not the first torts case that might have had an impact on organized baseball. On July 30, 1921, Victoria Eno was hit by a batted ball during a warm-up "pepper game" between a Reds-Giants doubleheader, one of several going on at the same time. The Ohio Supreme Court reversed lower court opinions that ruled the Reds not negligent and the plaintiff to have assumed the risk. *Cincinnati Base Ball Club Co. v. Eno*, 112 Ohio St. 175, 185 (1925). Distinguishing other cases involving risks during a game, the court held that management had a duty "to make the premises reasonably safe for spectators by having balls thrown and batted under circumstances and at a place where it would be reasonably possible for the spectators to protect themselves from injury." *Id.* Perhaps this case led to the ubiquitous warnings posted on stadia backstops: "NO PEPPER GAMES."

231. Vecsey, *Rod Laver, Lou Gehrig: Still Vital*, New York Times, Sept. 12, 1990, at B10, col. 1.

As the foremost baseball philosopher Yogi Berra said: "It's not over 'til it's over."<sup>232</sup> Baseball law is not over. In this way, baseball law mirrors the game. Tied at the end of nine innings, headed into extra innings, the game might go on forever. Similarly, the "end of baseball law" is not in sight. These stories about our All Star lineup prove that the body of law that controls the baseball business moves as unpredictably as a knuckleball.

The collective bargaining agreement between the Major League Baseball Players Association and the club owners expires in 1995, creating the potential for new legal skirmishes. New issues are on the horizon. The promised expansion of the National League by 1993, the exclusion of women from the umpiring corps, the possible restriction of televised baseball to cable and pay-per-view outlets, the sharing of revenues, all these issues present new opportunities for the development of baseball law.

These All Star Baseball Law players of the first century of the game participated in a law-creation process far removed from the diamond. They helped shape today's multi-billion-dollar business. The people within the baseball enterprise are fascinating, perhaps more so than in any other business.<sup>233</sup> After he banned the Chicago Black Sox from professional baseball for life, Commissioner Landis told Chicago sportswriter Hugh Fullerton: "Baseball is something more than a game to an American boy; it is his training field for life work."<sup>234</sup> That would be especially true, one would think, if you are planning to become a lawyer.

As baseball law continues to evolve over the coming decades, new All Stars will appear, new players in the legal game. These new stars of the courtroom, the arbitration hearing room and other venues will help expand the doctrines we have seen emerge. Baseball — both the game and the business — reflects important aspects of the American character: competitive

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232. Although Lawrence Peter Berra is best known for his philosophic malapropisms, he also was a terrific ballplayer. A leader of the dynastic Yankees of the 1950's, Berra was named Most Valuable Player three times. A notorious bad-pitch hitter, Berra had a career .285 average with 358 home runs. He holds the career records for most World Series hits with 71, games with 75, and at bats with 259. Berra was admitted to the Hall of Fame in 1972. *ENCYCLOPEDIA, supra* note 18, at 678.

233. In a recent article Roger Angell suggests a possible reason for our fascination with stories of the baseball business. Baseball is the lifeblood of many Americans, yet they have no control over the legal skirmishes that determine whether the home team will move to another town or if the ball game will be called on account of a strike or lockout. We are "the excluded constituency of the fans." During the 1990 labor dispute,

fans felt like children . . . helpless in the face of an inexplicable but all too familiar form of authoritarian arrogance. Trying to forget the whole thing . . . is understandable, but a longer sojourn in the dark maze of baseball economics may be more useful in the long run, if only because it could make us feel like participants in this aspect of the pastime, even when we know better.

Angell, *supra* note 212, at 73.

234. L. LOWENFISH & T. LUPIN, *supra* note 14, at 104.

spirit, partisanship, litigiousness, collective strength and success for those with a good eye and quick hands.