

RECONSTRUCTION: BASEBALL'S NEW FUTURE

*Depak Sathy**

I.	INTRODUCTION	28
II.	BASEBALL'S PRE-COMMISSIONER DAYS	35
	A. The Growth of Baseball	35
	B. The National Commission.	37
	1. The Role of the National Commission	37
	2. The Dismantling of the National Commission	40
	C. The Advent of the Baseball Commissioner Position and the Major League Agreement	43
	1. Constitutional Language of the Major League Agreement	44
	2. Constitutional Changes of the Major League Agreement	47
III.	THE EVOLUTION OF THE COMMISSIONER'S POWERS ...	48
	A. Judicial Intervention of Private Associations ...	48
	B. Judge Landis: Taking Control	50
	C. The Development of the Commissioner's Position from 1945-1992	53
	1. Charles O. Finley & Co. v. Kuhn	54
	2. Atlanta Nat'l League Baseball Club v. Kuhn	56
	3. Chicago Nat'l League Baseball Club v. Vincent	57
IV.	THE BASEBALL OWNERS' PROPOSAL	61
V.	ANALYSIS	64
	A. The Requirements for an Effective Solution	64
	B. Various Solutions	65
	1. The National Commission/Executive Council	65

* B.S., 1991, University of Illinois, cum laude; J.D. expected 1994, DePaul University College of Law. Editor, 1993-94, DePaul Law Review. Mr. Sathy would like to express appreciation and gratitude to Kevin M. Doney, Michael C. Bennett, Kathryn A. Kelly, Steven G. Anderson, Maritoni L. Derecho, Rob Nandola, his parents, Illur and Prabha, and his brothers, Michael and Anup.

2.	The Commissioner	67
3.	The Owners' Proposal	69
4.	The Independent Baseball Rulings Committee Proposal	69
C.	Assessing the Viability of the Four Plausible Solutions	71
1.	Hypothetical #1	71
a.	<i>The National Commission/Executive Council</i>	71
b.	<i>The Commissioner</i>	71
c.	<i>The Owners' Proposal</i>	72
d.	<i>The Independent Baseball Rulings Committee Proposal</i>	72
2.	Hypothetical #2	72
a.	<i>The National Commission/Executive Council</i>	72
b.	<i>The Commissioner</i>	73
c.	<i>The Owners' Proposal</i>	73
d.	<i>The Independent Baseball Rulings Committee Proposal</i>	74
VI.	CONCLUSION	74

*"We've been operating under a set of rules that were created in 1920,
and we're in 1992."¹*

Eddie Einhorn
Co-owner of the Chicago White Sox

I. INTRODUCTION

Major League Baseball (MLB), which is deeply ingrained in the American culture and heritage, is now facing some very difficult times. In previous years, MLB has not been immune to its share of disputes and controversies pertaining to the sport and its governing structure. Through it all, the sport has been able to resolve its problems within the governing structure that has persevered for

1. Alan Solomon, *Retooling Baseball on Owner's Agenda*, CHI. TRIB., Sept. 9, 1992, § 4, at 4.

nearly seventy-five years. Now, this governing body is facing its greatest challenge: a fight for existence. Whereas the previous problems confronting MLB have been resolved within the confines of the governing structure, the latest problem, the rationale behind why MLB owners forced the resignation of Commissioner Francis "Fay" Vincent², raises questions about the effectiveness and the viability of the structure itself. The direction MLB takes in potentially restructuring its governing body may have serious adverse affects on this sport in the ensuing years. As a result, it is pertinent to assess

2. Jerome Holtzman, *Baseball Revolt: Owners Call on Vincent to Quit*, CHI. TRIB., Sept. 4, 1992, § 1, at 1. In early September 1992, the baseball owners gathered for a meeting in Chicago to assess Commissioner Vincent's performance. *Id.* This was the first such meeting ever held without the approval of the Commissioner. *Id.* At the meeting, the owners circulated a list of 13 grievances against Commissioner Vincent. Jerome Holtzman, *Owners' Gathering a Show of Force*, CHI. TRIB., Sept. 3, 1992, § 4, at 5. Four of the grievances led to a no-confidence vote for Commissioner Vincent. Holtzman, *Baseball Revolt: Owners Call on Vincent to Quit*, *supra*.

First, in 1990, Commissioner Vincent acted to end the owners' lockout. *A Commissioner's Demise: Fay Vincent's Downfall*, CHI. TRIB., Sept. 8, 1992, § 4, at 1. Commissioner Vincent entered collective bargaining negotiations with the Major League Baseball Players' Association on February 12, 1990, three days before the start of a management lockout. *Id.* One day later, Commissioner Vincent's proposals for revenue sharing and pay-for-performance were tabled by the Player Relations Committee's, the owner's negotiating tool. *Id.* The owners believed that Commissioner Vincent should not have interfered in the labor dispute with the Players' Association, and that this intervention weakened their position. Holtzman, *Owners' Gathering a Show of Force*, *supra*, at 5.

Second, on June 7, 1991, Commissioner Vincent intervened when the American League and the National League were unable to determine how to divide the one hundred and ninety million dollars in expansion fees obtained from two new National League teams, the Colorado Rockies and the Florida Marlins. *A Commissioner's Demise: Fay Vincent's Downfall*, *supra*, at 1. The National League argued that the American League should not receive the fees because the expansion only involved the National League. Holtzman, *Owners' Gathering a Show of Force*, *supra*, at 5. The American League argued that they were entitled to 50% of the fees. *Id.* Commissioner Vincent ruled that the American League should be allowed to furnish players for the expansion pool in return for 22.5% of the fees. *Id.*

Third, Commissioner Vincent's disliked the operation of the superstations, most notably WGN in Chicago and WTBS in Atlanta. *Id.* Commissioner Vincent had pushed for implementing higher taxes on superstations, which televise games outside their respective territory to prevent these stations from showing games opposite local telecasts of the same games. *Id.* He also wanted to ban superstations from broadcasting baseball games in general. *Id.*

Finally, Commissioner Vincent's utilized his "best interests" of baseball powers to supersede provisions set forth in the National League Constitution when he decided to move the Chicago Cubs and the St. Louis Cardinals to the Western Division of the National League, and the Atlanta Braves and Cincinnati Reds to the Eastern Division of the National League. *Id.* At the end of the meeting, the owners returned an 18-9-1 no-confidence vote in assessing Commissioner Vincent's performance and therefore called for his resignation. Richard Demak, *Baseball Strikes Out*, SPORTS ILLUSTRATED, Sept. 14, 1992, at 13.

the goals of a restructured governing body and strictly scrutinize possible solutions in an attempt to accomplish these goals.

The current governing structure of MLB is comprised mainly of one very powerful individual: the Commissioner.³ The Commissioner has:

broad discretionary police powers to investigate any conduct or activity he deems not in the 'best interests' of baseball and to impose any sanction he finds appropriate. All persons involved in baseball (owners, players, club personnel, etc.) are subject to the jurisdiction of the Commissioner and agree to be bound without appeal by his decisions; they have no recourse to the courts. As such, the Commissioner has the singular power to take away or materially affect significant property interests.⁴

The legal community has debated the scope of the Commissioner's powers, which essentially allows one individual to make unrestricted decisions against parties subject to his jurisdiction and without recourse to the courts.⁵ This unsettled area of law again became a main focal point after the resignation of Commissioner Vincent on September 7, 1992.⁶ Commissioner Vincent's resignation is unfortuitous and untimely because MLB now lacks a clearly defined role of leadership necessary to solve its many problems.⁷ According to the owners, two main problems need to be re-

3. Jeffrey A. Durney, *Fair or Foul? The Commissioner and Major League Baseball's Disciplinary Process*, 41 EMORY L.J. 581 (1992).

4. *Id.* at 581-82.

5. Matthew B. Pachman, *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). Baseball has had eight Commissioners since the creation of the position. They were Judge Kenesaw Mountain Landis, 1920-1944; Albert "Happy" Chandler, 1945-1951; Ford Frick, 1952-1965; William Eckert, 1965-1968; Bowie Kuhn 1969-1984; Peter Ueberroth, 1984-March 31, 1989; A. Bartlett Giamatti, Apr. 1, 1989-Sept. 1, 1989; and Francis "Fay" Vincent, Sept. 13, 1989-Sept. 8, 1992. Alan Solomon, *Vincent Teetering, but . . . Enemies, Issues in Effort to Fire Him Tough to Define*, CHI. TRIB., Aug. 27, 1992, § 4, at 7.

6. Alan Solomon, *Reinsdorf: Move Good for Baseball*, CHI. TRIB., Sept. 8, 1992, § 4, at 6. The ousting of commissioner Vincent was the second most covered story in the sports world for the 1992 year behind Mike Tyson's rape trial and conviction. CHI. TRIB., Dec. 28, 1992, § 5, at 9.

7. *For Baseball's Owners, Strike Two*, ATL. J. & CONST., Dec. 14, 1992, § A, at 12. "They [baseball owners] eviscerate their only controlling influence, the office of the Commissioner of Baseball, and throw out its most recent occupant, at a time when the game is facing crises in finances and public trust." *Id.* The three main issues that confronted the owners of the game at its annual winter meetings were dealing with Cincinnati Red owner Marge Schott for allegedly making racial slurs, restructuring the vacant Commissioner's office, and relocating the San Francisco Giants. Alan Truex, *Meetings Close with Little Resolved*, HOUS. CHRON., Dec. 10, 1992, at 4. In reference to the Schott incident, former Commissioner Vin-

solved in order to safeguard the sport's existence into the future: economic concerns and labor disputes.⁸

The MLB owners agree that their main concern pertains to the economic aspects of the game.⁹ The economic concerns that the

cent claimed that if he were Commissioner, the Marge Schott case would have been settled. Mike Dodd, *Vincent Says He Would Have Dealt Quickly with Schott*, USA TODAY, Dec. 11, 1992, at C2. Schott was accused of referring to Blacks as "niggers" and alienating Jews by wearing a swastika arm band. Murray Chass, *No Commissioner, and Perhaps No Penalty for Schott*, N.Y. TIMES, Nov. 22, 1992, § 8, at 11. This incident reminded people of the statement made by Al Campanis, a Los Angeles Dodger executive in 1987, when he stated that Black people "may not have some of the necessities" to be managers or executives of major league teams. *Baseball and Bigotry*, WASH. POST, Nov. 25, 1992, at A16. The Dodgers fired Campanis two days later, and Commissioner Ueberroth went on national television to condemn the remarks that were made and to pledge the involvement of minorities in higher level positions. *Id.* The difference between the Schott situation and the Campanis situation is that the baseball reacted slower to Schott's statements. *Id.* The main reason for this slower reaction is that baseball does not have a Commissioner with national respect and the power to act in the best interest of the game. *Id.* Rather, MLB has one of Schott's fellow owners exercising the powers of the Commissioner. *Id.* Deputy Commissioner Steve Greenberg said that without a Commissioner, "decisions get made on a different time frame than they might if a single person were making the decision." Truex, *supra*. As to the restructuring of the Commissioner's position, Allan "Bud" Selig, Acting Commissioner and owner of the Milwaukee Brewers, promises that baseball's next Commissioner "will have the same strong powers to protect the integrity of the game" and the restructuring will occur on the business aspects of the game. Dodd, *supra*, at C2. Baseball is also facing lawsuits from angered Florida investors as well as the city of St. Petersburg whose one hundred and fifteen million dollar offer to buy the Giants was denied by the owners. Robert Green, *Ex-Commissioner Says Baseball Needs Strong Leader*, REUTERS, Dec. 10, 1992. The owners then approved a one hundred million dollar sale to a local San Francisco group. *Id.* There are \$3.5 billion in lawsuits filed against MLB after the owners blocked the proposed move of the Giants to Tampa Bay. Neil A. Campbell, *Baseball Prepares for Trying Times*, STAR TRIB., Dec. 20, 1992, at 4C. Because of this problem and the way the owners acted in ousting Commissioner Vincent from his position, the Antitrust Subcommittee of the Senate Judiciary Committee has decided to investigate the recurring issue of whether it is time for baseball to lose its exemption from the antitrust laws. *Id.*

8. Murray Chass, *World Series; For Baseball, the Worst of Times May Come after the Best of Seven*, N.Y. TIMES, Oct. 19, 1992, at A1. The owners believe that the financial dilemmas facing baseball, namely the economic aspects pertaining to the game, and the labor contracts with the players will determine the future existence of baseball. *Id.*

9. Chass, *supra* note 8. In assessing the overall economic position of baseball, owners project a loss for 1993 and, one owner said "a disaster" for 1994, the first year of the national television package yet to be negotiated. *Id.* But see Jerome Holtzman, *In Cost Squeeze, Baseball Charting the Unknown*, CHI. TRIB., Oct. 4, 1992, § 3, at 13 (stating that the players' union has never believed that owners are losing money). For example,

[o]wners cry they are losing their shirts. Then, guys who bought teams for \$10 million a few years ago are selling them for \$100 million today. The game charges new franchises \$95 million merely for the license. Players cost extra. The average salary in the game is \$1 million. Baseball doled out contracts totaling \$230 million to 36 free agents in one weekend at Louisville during the annual Winter meetings after the 1992 season.

owners would like to resolve are three-fold: (1) the increase in players' salaries, (2) the decrease in value of future television contracts, and (3) the decrease in attendance figures. First, the average MLB player's salary has escalated to over one million dollars, while owners' profits are decreasing.¹⁰ Commentators have stated that owners are, in large part, responsible for the dramatic increase in players' salaries over the last few years.¹¹ For example, team owners purchased the services of thirty-six free agents, spending over two hundred and thirty million dollars, in one weekend at the annual 1992 winter meetings, and the biggest prize went to former Pittsburgh Pirate Barry Bonds, who the San Francisco Giants signed to a six-year, \$43.75 million contract.¹²

Second, one of MLB's main sources of revenue, national broadcasting, will be significantly reduced after the 1993 season.¹³ In

Jim Murray, *Baseball Is Not That Resilient*, L.A. TIMES, Dec. 27, 1992, C2, at 1.

10. Chass, *supra* note 8. Based on the owners' own figures, major league player costs in 1991 amounted to seven hundred and thirty million dollars or 47% of the owners' revenue.

Id. The expenses for the 1991 season in millions of dollars were as follows:

Player and Salary Benefits	\$728.54
Scouting and Player Development	187.23
General/Administrative	179.26
Stadium Operations	140.89
Other	202.51
Total	\$1.438 billion

Jerome Holtzman, *Baseball Unit Advised Big Changes*, CHI. TRIB., Dec. 15, 1992, § 4, at 2. On Opening Day, 1992, 177 players on the 25-man rosters had salaries of two million dollars or more. Jerome Holtzman, *Cost of Winning Raises Stake in Baseball Roulette*, CHI. TRIB., Oct. 6, 1992, § 4, at 4. Approximately 68 players were in the three million dollar bracket, with 22 in the four million dollar bracket, and three in the five million dollar bracket, topped by Bobby Bonilla of the New York Mets at \$6.1 million. *Id.* More surprisingly was the signing of pitcher Steve Howe, a seven-time offender of baseball's drug policy, by the New York Yankees for two years at \$4.2 million, a 250% raise per year following a season in which he pitched only 22 innings. Tim Kurkjian, *Dark Days for Baseball*, SPORTS ILLUSTRATED, Dec. 21, 1992, at 44. A new record of 273 MLB players earned one million dollars or more during the 1993 season. *Baseball, the Big Bucks*, CHI. TRIB., Dec. 15, 1993, § 4, at 1.

11. Murray, *supra* note 9.

12. *Id.*

13. Steve Nidetz, *Baseball's Short-Term Health Hinges on TV Contracts*, CHI. TRIB., Oct. 5, 1992, § 3, at 7. Baseball's 1991 revenues in millions of dollars were as follows:

Gate Receipts	\$523.02
National Television	350.99
Local Television and Radio	307.42
In-park Concessions	130.97
National Licensing and Merchandising	55.43
Other	169.54
Total	\$1.537 billion

Jerome Holtzman, *Baseball Unit Advised Big Changes*, CHI. TRIB., Dec. 15, 1992, § 4, at 2.

1991, national broadcasting revenues comprised over twenty percent of MLB's total revenue, and this revenue producer stems mostly from contracts with the major broadcasting stations.¹⁴ MLB is in its last year of its one billion dollar contract with Columbia Broadcasting System (CBS) and is due to receive two hundred and sixty-five million dollars in 1993.¹⁵ MLB is also in its last year of a contract with The Entertainment and Sports Programming Network (ESPN) which pays one hundred million dollars a year.¹⁶ According to reports, CBS will have lost between \$150 million and \$170 million over the four-year contract with MLB, and ESPN will have lost between \$35 million and \$40 million annually from its contract with MLB.¹⁷ As a result, CBS and ESPN are reluctant to enter into similar contracts, and the owners know they will receive less television revenue in future national broadcasting contracts.¹⁸

The final economic concern the owners have is to determine how to resolve the decrease in total attendance figures after a year in which overall attendance decreased 1.6% and eighteen of the twenty-six teams suffered attendance losses.¹⁹ In order for the owners to resolve any of these problems, they will have to cooperate with the players. Unfortunately, these issues will only add to an already strained relationship that exists between the players and the owners.

Each major league team receives \$15.5 million from national television revenue, but local television revenues are not shared by the teams. Nidetz, *supra*. Local television revenues per team range from the New York Yankees who get \$50,000,000 a year to the Seattle Mariners, who get \$3.5 million a year. Jerome Holtzman, *Baseball's Future Course Is Unknown*, CHI. TRIB., Oct. 3, 1992, § 3, at 4. MLB entered into a unique joint venture with National Broadcasting Company (NBC) and American Broadcasting Company (ABC) which will create a prime-time game of the week and another round of playoffs in 1994. *NBC, ABC Join in Deal for Prime-Time Baseball*, CHI. TRIB., May 9, 1993, at 4. The new contract is for six years. *Id.*

14. *NBC, ABC Join in Deal for Prime-Time Baseball*, *supra* note 13.

15. Nidetz, *supra* note 13, at 6.

16. *Id.* ESPN has paid eleven million dollars to buy out its option to continue beyond 1993. Campbell, *supra* note 7.

17. Nidetz, *supra* note 13, § 3 at 6.

18. *Id.* at 7. The parties representing CBS and ESPN want at least a 30% reduction in rates compared to the last contract. *Id.* Several media analysts state that fees that each team may receive from a possible new national television contract could be as low as seven million dollars per team. Campbell, *supra* note 16. Jackie Autry, controlling voice for the California Angels, said, "[t]he chances of the TV money remaining as it is today are zero. It's impossible. If the ball clubs aren't willing to position themselves now to be prepared for that, there's probably going to be no baseball." David Cunningham, *Baseball Storm Clouds Swirl "It's Going to Be Absolute Financial Ruin and Chaos," Autry Says*, TOR. STAR, Oct. 23, 1992, B1.

19. Chass, *supra* note 8. But see Jack Romanelli, *It's Not All Gloom in World of Sports*, MONT. GAZETTE, Dec. 27, 1992, at D2.

The second major problem owners believe must be resolved in order to safeguard MLB's viability concerns potential renegotiations with the players.²⁰ The current collective bargaining agreement between the players and the owners expires after the 1993 season.²¹

These problems demonstrate the difficult issues MLB must now face, and the resignation of Commissioner Vincent only compounds these difficult issues by raising questions about the governing structure at a time when baseball desperately needs strong leadership.²² Until MLB resolves the role and scope of powers a Commissioner should have, assuming that the owners of MLB even intend to maintain a similar structure, the economic concerns and the labor dispute, among other problems, will remain. MLB is at the crossroads and is in need of strong leadership.

This article will attempt to provide a strong governmental struc-

20. Chass, *supra* note 8. Negotiations between the owners and the players could lead to a strike by the players or a lockout by the owners. David Nightingale, *Business As Usual*, THE SPORTING NEWS, Dec. 21, 1992, at 23. A lockout occurs when the owners withhold employment as a means of placing economic pressure on players to acquiesce at the bargaining table. JOHN C. WEISTART & CYM H. LOWELL, THE LAW OF SPORTS, 826 (1979). A lockout can be used only in good faith and if the bargaining process has reached an impasse. *Id.* at 827. On the other hand, the players main weapon in the bargaining process is a strike, which is a refusal by players to work. GEORGE W. SCHUBERT, et al., SPORTS LAW § 6.3, at 171 (1986). All seven labor negotiations between the owners and union have produced work stoppages. Ross Newhan, *Baseball Owners Open Door to Talks*, L.A. TIMES, Dec. 8, 1992, C2, at 1. There have been four strikes and three lockouts. *Id.* Baseball had strikes in 1972, 1980, 1981, and 1985, and lockouts in 1973, 1976, and 1990. Jack O'Connell, *Baseball Owners Vote to Reopen Labor Talks; Close Vote Raises Possibility of Baseball Lockout*, HART. COUR., Dec. 8, 1992, at D1.

21. Chass, *supra* note 8. The owners by a 15-13 vote decided to open the current Basic Agreement between the owners and the players, and the owners also fulfilled the three-fourths requirement needed to institute a lockout if they are dissatisfied with the path of negotiations. Nightingale, *supra* note 20. *But c.f.* Jerome Holtzman, *But Owners' Related Move Makes '93 Lockout Unlikely*, CHI. TRIB., Dec. 8, 1992, § 4, at 1 (stating that although the owners decided to reopen negotiations with the players, the owners amended the by-laws of their Player Relations Committee so that three-fourths of the clubs would have to vote for a lockout as opposed to the previous majority).

22. Mark Bradley, *James Baker Best Pick As Baseball Commissioner*, ATL. J. & CONST., Dec. 9, 1992, § C, at 1. Bradley stated that:

TV money, once thought to be a bottomless well, is drying up. A spring lockout looms, and if there's no lockout, there might be a summer players' strike. Congress is set to review baseball's antitrust exemption. Not since the Black Sox Scandal has baseball faced a time of such crisis, and there is no commissioner in sight. It took the stern Judge Kenesaw Mountain Landis to lift baseball from the Black Sox rubble. A man both powerful and wise is needed to do the same now.

Mark Bradley, *James Baker Best Pick As Baseball Commissioner*, THE ATL. J. & CONST., Dec. 9, 1992 § C, at 1.

ture for MLB. Part II discusses the history of MLB before the creation of the Commissioner position, and the events that led to the creation of the Commissioner's position. Next, this article examines the language of the Major League Constitution which describes the role and scope of the Commissioner's position, and which serves as the source of the Commissioner's powers. Part III analyzes the evolution of the Commissioner's powers by focusing on the role Judge Kenesaw Mountain Landis, the first Commissioner, had in shaping and molding the position as well as the role his successors had in further defining the powers of the Commissioner. Part IV presents the owners' proposal for the restructuring of baseball's government. Finally, this article will test the effectiveness of various solutions and proposals and conclude that the one developed in this Article may be the most effective solution.

II. BASEBALL'S PRE-COMMISSIONER DAYS

The Commissioner's position and the powers that accompany this position did not simply appear out of thin air but were formed out of necessity to save the game of baseball. This section first discusses briefly the historical growth of the sport of baseball, and its inevitable need for some form of central governing control, namely, the National Commission; the successes and failures of the Commission; and, finally, the necessity for a Commissioner. Second, this section examines the rules promulgated to guide the decision-making powers of the first Commissioner, Judge Landis, and his successors.

A. *The Growth of Baseball*

Until 1869, people who played baseball were considered amateurs, and these amateurs played in local clubs and for recreation.²³ In 1869, the Cincinnati Red Stockings became the first

23. HAROLD SEYMOUR, 1 BASEBALL: THE EARLY YEARS 4 (1960). Baseball evolved directly from an English game called rounders and it was known and played by this name in America until 1839 when Abner Doubleday supposedly invented current day baseball. *Id.* The first organized baseball team was the Knickerbocker Base Ball Club of New York in 1845. *Id.* at 15. A group of gentlemen met to play baseball starting in 1842, and, a few years later, in 1845, one of them suggested that they form their own club. *Id.* Although baseball became America's National Pastime and enjoyed by all, initially, baseball was exclusive to those who could afford to partake in these social clubs. *Id.* Baseball's great popularity and rapid expansion is due to several reasons. *Id.* at 26. First, both sides had an equal opportunity to win,

professional baseball team.²⁴ Shortly after, many other teams turned professional.²⁵ In 1876, eight professional teams formed the National League from the National Association for Professional Baseball Players.²⁶ The National League consisted of teams located in Boston, Brooklyn, Chicago, Cincinnati, New York City, Philadelphia, Pittsburgh, and St. Louis.²⁷ Although other leagues existed throughout the country,²⁸ the National League received most of the public attention,²⁹ established the rules, governed the game,³⁰ and possessed the best players.³¹

In 1901, the newly created American League challenged the National League.³² The American League consisted of eight teams

and the game did not have a time restriction. *Id.* Second, the fans were able to understand the rules and follow the plays of the game. *Id.* Third, no other major sport existed to compete with baseball for fan attraction. *Id.* Finally, the newspapers covered the sport in great detail. *Id.* at 33.

24. *Id.* at 56. The Red Stockings were outraged after the Washington Nationals decisively beat them in a game in 1867. *Id.* The Red Stockings were determined to have a winning team and resolved this by paying all of their players. *Id.* The Red Stockings hired Harry Wright, a player and an instructor for a local cricket club, to put together the best players on one team. *Id.* The payroll for the 1869 season was \$9,300. *Id.* at 56-57. With these players in 1869, the Red Stockings went undefeated, winning 56 games and tying one game. *Id.* at 57.

25. *Id.* at 59. Other clubs were jealous of the success of the Red Stockings, so they decided to spend money to attract the best players available. *Id.* For example, the Chicago club decided to allocate \$20,000 to obtain the best players by advertising in the newspapers and other journals. *Id.*

26. *Id.* at 75. The National Association for Professional Baseball Players, created in 1858, collapsed mainly for three reasons. *Id.* The first factor that led to the downfall was a notion referred to as "revolving". *Id.* at 51. Revolving occurred when players made agreements with clubs and accepted compensation in advance of playing, only to move to another team that offered more money. *Id.* The second factor was the rampant gambling that infiltrated the game. *Id.* at 52. The fans and players started betting on games and this led to player dishonesty and corruption. *Id.* For example, during a game, if a ball were ready to be caught, gamblers who waged bets on the batter's team would shoot their pistols or partake in other acts in order to distract the players. *Id.* at 53. Finally, fixing or throwing games, referred to as "hippodroming," was the final element that destroyed the National Association for Professional Baseball. *Id.* The Association lacked the power to deter these acts and the sport slowly lost public confidence. *Id.* at 75.

27. *Id.* at 79.

28. *Id.* at 82.

29. HAROLD SEYMOUR, 1 BASEBALL: THE EARLY YEARS 82 (1960).

30. *Id.*

31. *Id.*

32. *Id.* at 313. Ban Johnson, President of the American League, stated his League's intentions:

The National League has taken it for granted that no one had a right to expand without first getting its permission. We did not think that this was necessary, and have expanded without even asking for permission . . . If we had waited for the National League to do something for us, we would have remained a minor league

located in Boston, Chicago, Cleveland, Detroit, New York, Philadelphia, St. Louis, and Washington.³³ The American League challenged the National League's monopoly power over baseball, and, after two years, forced the National League to share the game of baseball.³⁴ Since professional baseball grew to a size that required some form of central control, the institution of the National Commission was formed in 1903.³⁵

B. The National Commission

1. The Role of the National Commission

The National Commission was formed primarily to administer to the restructuring of professional baseball which consisted of eight teams from the old National League, eight teams from the new American League, and several minor league teams.³⁶ The National Commission was a three-man body comprised of the National League President, the American League President, and a third member of their choosing who served as chairman.³⁷

The National Commission not only administered the consolidation of the two leagues, but it also regulated the actual playing of the game on the field, enforced the rules instituted for governing the game by imposing fines and suspensions for violations, and arbitrated disputes between clubs.³⁸ The National Commission relied upon rules and agreements that existed between and within the American League and the National League,³⁹ and the combination of such rules was commonly referred to as the National

forever. The American League will be the principal organization of the country within a very short time. Mark my prediction.

HAROLD SEYMOUR, 1 *BASEBALL: THE EARLY YEARS* 313 (1960).

33. *Id.* at 312.

34. *Id.* at 322. By the fall of 1902, most of the National League owners had expended much time and money without any prospect of winning, so they decided to reconcile. *Id.*

35. H.R. Rep. No. 2002, 82d Cong., 1st Sess., at 204 (1952).

36. HAROLD SEYMOUR, 2 *BASEBALL: THE GOLDEN AGE* 9 (1971).

37. *Id.* August (Garry) Herrmann was the person chosen by the Presidents of each League to serve as chairman of the three-man National Commission. J.G. TAYLOR SPINK, *JUDGE LANDIS AND TWENTY-FIVE YEARS OF BASEBALL* 42 (1947). Herrmann was chosen because of his actions of both averting a potential war between the American League and the National League that may have destroyed the leagues and for bringing the leagues together. *Id.* Herrmann was also the President of the Reds and his holding of both offices simultaneously was one of the main reasons the National Commission would eventually fail. *Id.*

38. SEYMOUR, *supra* note 36, at 16.

39. *Id.* at 6.

Agreement.⁴⁰ At the heart of these rules were the "reserve clause" and "territorial rights."⁴¹

The "reserve clause" gave teams a complete and continual option on a player's services.⁴² The National Commission made cer-

40. *Id.* at 9.

41. *Id.* at 6.

42. *Id.* A player who signed a contract with a club essentially signed with that club for the duration of his career. *Id.* at 107. The player agreed not only to play for the specified time period mentioned in the contract, but he also agreed to adhere to a "reserve clause" which allowed the club to "reserve" him for the following year. *Id.* Since teams formed every contract in this way, every contract that a player signed would bind him with that team. *Id.* The player would be able to leave his team only if his team decided to release him or if his team assigned his contract to another team. *Id.*

The reserve clause has been challenged in baseball as well as in other sports. See e.g. *Flood v. Kuhn*, 407 U.S. 258 (1972) (concluding that Curt Flood's claim of being unable to approve or disapprove a trade to another team did not extricate the special exemption to antitrust laws for baseball); *Toolson v. New York Yankees*, 346 U.S. 356, 357 (1953) (affirming a lower court's dismissal of an antitrust case brought by players challenging the reserve system); *Gardella v. Chandler*, 172 F.2d 402 (2d Cir. 1949), *appeal after remand*, 174 F.2d 919 (1949) (remanding a lower court's dismissal of a player's challenge of the reserve system on an antitrust violation for a specific determination of whether baseball expansion constituted interstate commerce). Whereas baseball and hockey have historically used the reserve clause, giving the club a perpetual right to renew players' contracts, other sports, such as basketball and football, use an "option clause" which allows the club to renew the contract unilaterally for only one more additional year. JOHN C. WEISTART & CYM H. LOWELL, *THE LAW OF SPORTS* 502 (1979).

In the National Basketball Association (NBA), after the case of *Robertson v. National Basketball Ass'n*, 389 F. Supp. 867 (S.D.N.Y. 1975), where the court stated that restraints on players would not be exempt from antitrust laws in a preliminary decision, the basketball players and owners reached a new agreement that abrogated the old player restraint system. *Id.*, at 507. Under the new agreement, a player would be a free agent after his contract ends and the club may not unilaterally renew his contract. *Id.* The club though possesses the right of first refusal in which it is given the opportunity to match an offer that the free agent receives, and, if the club does match the offer, the player must accept the new offer. *Id.* at 508. In football, the league initially followed the option clause coupled with the Rozelle Rule, named after National Football League (NFL) Commissioner Pete Rozelle. *Id.* at 502. The Rozelle Rule required that any team signing a free agent must compensate the original employer. *Id.* The Rozelle Rule has been challenged many times. See e.g. *Mackey v. National Football League*, 543 F.2d 606 (8th Cir. 1976), *cert. dismissed*, *National Football League v. Mackey*, 434 U.S. 801 (1977) (affirming that the Rozelle Rule violated the antitrust laws and that the league failed to justify the restraint); *Bryant v. National Football League*, 632 F.2d 313 (1975) (holding that the Rozelle Rule when coupled with the option clause of a standard player contract violates Section 1 of the Sherman Antitrust Act); *Kapp v. National Football League*, 390 F. Supp. 73 (N.D. Cal. 1974) (holding that the restraint rules in the sport were patently unreasonable). In 1993, the NFL owners and the National Football League Players' Association (NFLPA) finally ended a five-year impasse concerning free-agency, when both sides signed a seven-year labor agreement. Don Pierson, *Free-Agent "Window" Accord Opens Door to Labor Peace*, CHI. TRIB., Jan. 7, 1993, § 4, at 1. Players will be free agents after five years of service in the NFL, which will be reduced by a year when the salary cap is instituted. *Id.* Teams can sign free agents only from March 1 to July 15 of each year, which will mit-

tain that every club adhered to this clause and refrained from trying to obtain "reserved" players.⁴³ Every club also agreed not to play against any club that violated the "reserve clause."⁴⁴ The rationale behind this restrictive practice was to prevent the wealthier owners from obtaining the best players and driving the poorer teams out of baseball.⁴⁵ It was necessary to limit the competition for players' services.⁴⁶

The second restrictive practice dealt with the "territorial rights" clause which gave each club a monopoly within the area in which it operated.⁴⁷ This practice was based on the notion that within an area limited fan interest existed, and it would be financially beneficial if teams did not compete for this limited interest.⁴⁸ Despite the attempt to grant monopolies of specific areas to teams, the disparity in the size of the markets for each team eventually made this policy ineffective.⁴⁹ Some markets were obviously much larger than other markets, making it difficult for the smaller markets to compete.

As a result of its changes, the National Commission had the support of the press and the baseball public.⁵⁰ Professional baseball, to this point, had been above reproach due to its honesty and

igate the bargaining power of players. *Id.* Under the agreement, the NFLPA was recertified as the exclusive collective bargaining representative of the players, thereby protecting the NFL from further antitrust challenges. *Id.* at 8. Teams who lose free agents will be allowed an extra draft choice. *Id.* The two sides also agreed to reduce the annual draft to seven rounds, to institute a rookie salary cap, to establish a salary guarantee and cap, and to make the NFL pay \$195 million in damages and attorneys' fees to settle outstanding litigation. *Id.* In hockey, the case of *Philadelphia World Hockey Club, Inc. v. Philadelphia Hockey Club, Inc.*, 351 F. Supp. 462 (E.D. Pa. 1972), held that the National Hockey League (NHL) was not allowed to use the reserve clause to the detriment of a second emerging league, the World Hockey Association. *Id.* at 519.

43. SEYMOUR, *supra* note 36, at 6.

44. *Id.*

45. *Id.* Because competition for services of players escalated player salaries, owners wanted to cut their salary expenditures. *Id.* at 106. As a result, the reserve clause served two purposes. *Id.* First, it stopped clubs from bidding up salaries, and second, it created parity between the wealthy clubs and the less wealthy clubs. *Id.* The critics of the reserve clause denounced its very existence for three reasons. *Id.* at 112. First, the critics believed it was an intolerable restraint on individual freedom and the right to work where one chooses. *Id.* Second, they believed that the reserve clause did not create parity among the teams because the wealthier teams would still get the best players. *Id.* at 113. Finally, the reserve clause limited the players' ability to play and earn money. *Id.*

46. *Id.*

47. *Id.* at 7.

48. HAROLD SEYMOUR, 2 BASEBALL: THE GOLDEN AGE 9 (1971).

49. *Id.*

50. SPINK, *supra* note 37.

integrity. Those associated in the sport assured the public that baseball was "played on the square, first, last and all the time."⁵¹ However, this support was short-lived. The National Commission's unifying effect gradually dissipated as internal conflict developed between the members of the Commission and among the team owners.⁵²

2. The Dismantling of the National Commission

Four incidents concerning the rights of players precipitated the downfall of the National Commission.⁵³ These four incidents affect-

51. SEYMOUR, *supra* note 36, at 275.

52. H.R. Rep. No. 2002, 82d Cong., 1st Sess., at 204 (1952).

53. FRED LIEB, *BASEBALL AS I HAVE KNOWN IT* 105 (1977). The first players' rights case concerned George Sisler in 1915. *Id.* Sisler was a great all-around ball player at the University of Michigan, and Branch Rickey, manager of the St. Louis Browns, signed him after Sisler graduated. SPINK, *supra* note 37, at 41. Barney Dreyfuss, the owner of the Pittsburgh Pirates, also had acquired the rights to Sisler after purchasing a contract Sisler signed when he was 17. *Id.* at 62. This conflict went before the three-man Commission. *Id.* Johnson, President of the American League voted for Rickey, while Governor Tener, President of the National League, voted for Dreyfuss, and Herrmann, the Chairman, voted for Rickey. *Id.* Dreyfuss was extremely infuriated because he knew Herrmann and Johnson socialized at many events. *Id.* This incident led Dreyfuss to campaign for a neutral Chairman for the Commission. *Id.* at 43. Dreyfuss was the sole maverick for this cause initially, but, as time progressed, more owners converted to his side. *Id.*

The second player's rights case involved Scott Perry in 1918. *Id.* A dispute arose over the rights of Perry between the Philadelphia Athletics and the Boston Braves. *Id.* Again, this case went in front of the Commission, and, once again, Herrmann had to make the deciding vote. *Id.* This time, Herrmann sided with the Boston Braves of the National League. *Id.* Philadelphia then procured a court injunction restraining the National Commission and its Chairman from enforcing the order. *Id.* Dreyfuss again voiced his frustration because when Herrmann decided against him in the Sisler case, Dreyfuss had to adhere to the order, but when Herrmann decided against the American League, Philadelphia sought court intervention. *Id.*

The third player's rights case involved Jack Quinn in 1918. *Id.* Charles Comiskey, owner of the Chicago White Sox, acquired Quinn from the Vernon club of the Pacific Coast League before its season was suspended. *Id.* The Vernon club also sold Quinn's title to the Yankees. *Id.* Being an American League only matter, this conflict went before Johnson. *Id.* at 49. He awarded the pitcher to the Yankees, and this precipitated the Johnson-Comiskey break. *Id.*

The final player's rights case in 1919 was the most significant of the four and led to the eventual election of Judge Landis as Commissioner. *Id.* at 49. Carl Mays, a pitcher for the Boston Red Sox, walked off the field in the middle of a game against the White Sox. *Id.* Mays, who had won 43 games over the two previous seasons, blamed his poor start in 1919 on the poor fielding of the team. *Id.* Mays ignored Red Sox President, Harry Frazee's, orders to play and went fishing. *Id.* Many teams were interested in trading for Mays, but Johnson decided that Mays could not be traded until he returned to the club. *Id.* at 50. Later, Johnson read that the Red Sox traded Mays to the Yankees. *Id.* As a result, Johnson suspended Mays

ed the National Commission because the decisions made by the three-man body demonstrated conflicts of interest between individuals in charge of making decisions about the game.⁵⁴ When an issue was before the National Commission for review, the chairman of the National Commission had to cast the tie-breaking vote.⁵⁵ Since the chairman of the Commission, August (Garry) Herrmann, simultaneously occupied the position of President of the Cincinnati Reds and was a good friend of Ban Johnson, the American League President, Herrmann would be influenced by Johnson.⁵⁶ The owners of the other clubs believed that the chairman's friendship with the American League President affected his judgment, especially when owners in the National League had a gripe against an American League owner.⁵⁷ The owners felt disenchanted with the National Commission, and this lack of support was detrimental to the existence of the National Commission.⁵⁸

The National Commission's ultimate demise was due to its ineffectiveness in controlling the gambling that became rampant in organized baseball.⁵⁹ At a time when the National Commission was losing the support and respect of its own constituents, organized baseball faced its most serious threat for existence — the Black Sox Scandal.⁶⁰

The 1919 White Sox were one of the best teams in organized baseball and were favored to defeat the Cincinnati Reds in the World Series. However, eight White Sox players conspired with a

indefinitely and issued instructions to umpires that Mays was not allowed to pitch any games in a Yankee uniform. *Id.* The Yankees procured a temporary injunction restraining both Johnson and the umpires from prohibiting Mays from pitching. *Id.* As the season progressed, the intensity of the feud increased. *Id.* at 51. The Yankees finished in third place, but Johnson was able to convince Herrmann to withhold their award for finishing in third place. *Id.* The Yankees filed a five hundred dollar suit against Johnson on the grounds that Johnson had planned to drive the Yankees out of baseball. *Id.* The club owners decided to hold a meeting to resolve this problem in which the owners reinstated Mays without penalty and New York received its third place money. *Id.* Johnson no longer had the power to support his friend Herrmann, and John Heydler, the National League President, refused to re-elect him. *Id.* Since Johnson and Heydler could not agree on a chairman, the 1920 season did not have an actual Chairman and Johnson and Heydler had to resolve any controversies. *Id.* at 56.

54. SPINK, *supra* note 37, at 56.

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. Durney, *supra* note 3, at 584.

60. LIEB, *supra* note 53, at 106.

syndicate and plotted to let the Reds win the World Series.⁶¹ In the nine game series, the White Sox lost the first two games and two out of the next three.⁶² The White Sox won the next two games, and rumors circulated that either another syndicate of gamblers infiltrated the World Series and wanted the White Sox to win or the original fixers failed to pay the players all the money they had promised them.⁶³ The White Sox lost Game Eight because Chicago gangsters threatened to kill the Chicago pitcher on the mound had he won.⁶⁴ After the Reds won the series five games to three games, the baseball public was infuriated with the prospect that baseball players could throw a World Series.⁶⁵ The owners of the clubs were also very concerned about the future of baseball after the Black Sox Scandal, and, more specifically, whether or not organized baseball could rebound from such a catastrophe.⁶⁶

Because club owners decided that some dramatic act was needed to restore public confidence in the game,⁶⁷ the owners reconsidered a restructuring plan for the baseball government devised by Albert D. Lasker, a minority stockholder of the Chicago Cubs.⁶⁸ Lasker's plan called for baseball to be run by three unbiased and financially disconnected individuals with unreviewable authority.⁶⁹

61. *Id.* The "unholy octet" included Arnold "Chic" Gandil, a hard-hitting first baseman; "Shoeless" Joe Jackson, one of the greatest natural hitters of the game; George "Buck" Weaver, an All-Star at third base and shortstop; Eddie Cicotte winner of 28 games in 1917 and 29 games in 1919; Claude Williams, an equally successful left-handed pitcher; Oscar "Happy" Felsch, a fast, slick-fielding center fielder with a lifetime batting average of .290; Charles Risberg, a shortstop with great range; and Fred McMullin, a utility infielder. *Id.*

62. *Id.* In Game One, Cicotte and the White Sox lost 9-1 and after the game catcher Ray Schalk told reporters that Cicotte did not pay any attention to his signs. *Id.* at 108. The White Sox also lost Game Two. *Id.* Charles Comiskey, the President of the White Sox, surmised that something was wrong but, at that time, everyone thought that baseball was too honest to be corrupt. SPINK, *supra* note 37, at 59. The Sox lost the next two out of three games with Cicotte and Williams registering the losses. LIEB, *supra* note 53, at 109.

63. LIEB, *supra* note 53, at 110.

64. *Id.* Williams surrendered five runs in the first inning and the White Sox lost 10 to 5. *Id.*

65. SPINK, *supra* note 37, at 64.

66. *Id.*

67. SEYMOUR, *supra* note 36, at 312.

68. *Id.*

69. *Id.* at 311. Lasker thought baseball was too important to be run by individuals from inside the game. *Id.* The plan stated that "[t]he mere presence of such men [unbiased individuals] on the Board would assure the public that public interests would first be served, and that therefore, as a natural sequence, all existing evils would disappear." SPINK, *supra* note 37, at 64. Lasker proposed that this new Commission "would have sole and unreviewable power over players, managers, umpires and club owners, even to the extent of declaring an

This was unlike the National Commission which consisted of three individuals who were closely connected and intimate with baseball affairs.⁷⁰ Some of the clubs initially disagreed with the Lasker plan,⁷¹ but on November 12, 1920, the sixteen owners met in Chicago and agreed to frame a basic governmental structure based on Lasker's plan,⁷² which is still in existence today. The owners next concern was deciding who would implement this new government in order to get baseball back on track.

C. The Advent of the Baseball Commissioner Position and the Major League Agreement

When the sixteen owners gathered in Chicago on November 12, 1920, to agree on the new framework of the governmental structure of baseball, they also unanimously elected Judge Kenesaw Landis of the United States District Court of the District of Illinois as the first Commissioner.⁷³ The club owners believed that baseball needed a strong individual to regain public confidence and to steer baseball in the right direction, and Judge Landis' strong personality caught the eye of the owners.⁷⁴

offending magnate out of baseball." *Id.* at 65.

70. SPINK, *supra* note 37, at 64.

71. SEYMOUR, *supra* note 36, at 314-19.

72. *Id.*

73. SPINK, *supra* note 37, at 71. The owners also decided that the Chairman of the Board of Control would be elected by a majority of the American League and the National League clubs. *Id.* The Chairman's successor would be elected in the same fashion and that this procedure would be incorporated in the new national agreement. *Id.* If any disagreement exists on inter-league matters, the National League was entitled to cast one vote and the American League was entitled to cast one vote to resolve the matter, and, if a tie results, the Commissioner would cast the deciding vote which would end the matter. *Id.*

74. *Id.* at 74. In 1905, Landis was appointed to the United States District Court for the District of Illinois by President Theodore Roosevelt. *Id.* at 16. It was in this position that the owners first noticed Landis. LIEB, *supra* note 53, at 115. In 1915, Judge Landis heard a case concerning professional baseball's denial of the Chicago Federal League's access to their player market. *Id.* The Federal League was an independent third league, and it wanted to be part of professional baseball. *Id.* The Federal League brought its action pursuant to the Sherman Act and asked the court to declare the National Agreement which governed professional baseball illegal and dissolve the alleged combination maintained under the National Agreement. *Id.* Among the relief asked for included declaring the acts of the National Commission void, declaring contracts made under the Agreement void, ordering professional baseball to dismiss all suits they have instituted against contractual jumpers, and restraining them from instituting any more such suits. *Id.* Contrary to his reputation as a trustbusting judge, Commissioner Landis withheld a judgment to force settlement. *Id.* See *United States v. Standard Oil Co. of Indiana*, 155 F. 305 (N.D. Ill. 1907) (where Judge Landis fined Standard Oil twenty-nine million dollars for rebating). The two leagues settled the case, and the own-

Landis was reluctant initially to accept the position, but he finally agreed when the owners assured him that he would have absolute power⁷⁵ after the American League and the National League formed a new agreement.⁷⁶ As a result, John Heydler, President of the National League, wrote the Major League Agreement for both Leagues in which the owners agreed and Landis signed on January 12, 1921.⁷⁷

1. Constitutional Language of the Major League Agreement

The creation of the Commissioner's position and the powers of this position are delineated in the Major League Agreement enacted by the owners of both leagues in 1921.⁷⁸ The 1921 Agreement delineated the role of the Commissioner in Articles I and VII.⁷⁹

ers of baseball looked favorably toward Judge Landis for averting the dissolution. LIEB, *supra* note 53, at 115. Many people believed that Judge Landis saved baseball in 1915 because if Judge Landis decided that baseball was a trust, the game would have been thrown into chaos. *Id.* All the great players would have been free agents and a great scramble between the MLB and the Federal League would have ensued. *Id.* The owners of baseball believed that Judge Landis had built a favorable reputation while serving as a judge and that he would be able to command the respect of all those involved in the game. *Id.*

75. *Id.* The minutes of the January 12, 1921, club owners' meeting indicated that Judge Landis accepted the office of Commissioner only on the express understanding that there would be no limitations on his authority. *Id.* It is ironic to note that even though the owners designed the Commissioner position and unanimously elected Judge Landis, he never showed a great deal of respect to the owners and it seemed that he had a secret contempt against the owners. Spink, *supra* note 37, at 74. Landis always favored the underdog. *Id.*

76. SPINK, *supra* note 37, at 319.

77. *Id.*

78. *Id.*

79. Major League Agreement, arts. I, VII (1921). The Agreement reads, in pertinent part:

Article I.

Section 1. The office of Commissioner is hereby created.

Section 2. The functions of the Commissioner shall be as follows:

- (a) To investigate, either upon complaint or upon his own initiative, any act, transaction or practice charged, alleged or suspected to be detrimental to the best interests of the national game of baseball; with authority to summon persons and to order the production of documents; and, in one case of refusal to appear or produce, to impose such penalties as are hereinafter provided;
- (b) To determine, after investigation, what preventive, remedial or punitive action is appropriate in the premises, and to take such action either against Major Leagues, Major League Clubs or individuals, as the case may be;
- (c) To hear and determine finally any dispute between the Major Leagues which may be certified to him for determination by the President of either Major League;
- (d) To hear and to determine finally any dispute to which a player is a party, or any dispute concerning a player, which may be certified to him by either or any of the disputants;

The Agreement provided the Commissioner with extremely broad investigative and punitive powers.⁸⁰ Article I, Section 2 gave the Commissioner complete authority "to investigate, either upon complaint or upon his own initiative, any act, transaction or practice . . . suspected to be detrimental to the best interests of the na-

(e) To formulate, and from time to time announce, the rules of procedure to be observed by the Commissioner and all other parties in connection with the discharge of his duties. Such rules shall always recognize the right of any party in interest to appear before the Commissioner and be heard and the right of the Presidents of the two Major Leagues to appear and be heard upon any matter affecting the interests of the Major Leagues, or either of them.

Section 3. In the case of conduct detrimental to baseball by Major Leagues, Major League Clubs, officers, employees or players, punitive action by the Commissioner may in any case take the form of a public reprimand. In the case of a Major League or Club, the Commissioner may impose a fine not exceeding Five Thousand Dollars (\$5000.00) for any one offense. In the case of a Major League Club, punishment may extend to temporary deprivation of representation in joint meetings held under this agreement. In the case of any official or employee of any Major League Club, punishment may extend to suspension or removal. For such conduct, a player may be declared by the Commissioner temporarily or permanently ineligible to play for any Club which is a party to this agreement.

Section 4. In the case of conduct detrimental to baseball by organizations not parties to this agreement, or by individuals not connected with any of the parties hereto, the Commissioner may pursue appropriate legal remedies, advocate remedial legislation, and take such other steps as he may deem necessary and proper in the interests of the morale and the honor of the game.

Section 5. The Commissioner shall hold office for seven (7) years and shall be eligible to succeed himself. His compensation shall be Fifty Thousand Dollars (\$50,000.00) per annum.

Section 6. The first Commissioner under this agreement shall be Kenesaw M. Landis. Upon the expiration of his term, or upon his resignation or death during his term, his successor shall be chosen by a vote of the majority of the Clubs composing the two Major Leagues. In the event of failure to elect a successor within three (3) months after the vacancy has arisen, either Major League may request the President of the United States to designate a Commissioner, and the person when thus designated shall thereupon become Commissioner, with the same effect as if named herein.

....

Article VII.

Section 1. The Major Leagues, and their constituent Clubs, severally agree to be bound by the decision of the Commissioner, and the discipline imposed by him under the provisions of this agreement, and severally waive such right of recourse to the Courts as would otherwise have existed in their favor.

Section 2. The form of player's contract to be proposed to the Major Leagues by the Advisory Council, and all the contracts between Major Leagues or Clubs and their officers and employees, shall contain a clause by which the parties agree to submit themselves to the discipline of the Commissioner and to accept his decisions rendered in accordance with this agreement.

Major League Agreement, arts. I, VII (1921).

80. SEYMOUR, *supra* note 36, at 322.

tional game of baseball" and the power to take punitive action.⁸¹ Article I consisted of five other sections: the first section created the Commissioner's position;⁸² the third section stated the Commissioner's remedial and punitive powers in dealing with persons associated with baseball whose conduct was deemed "detrimental to baseball,"⁸³ the fourth section stated the Commissioner's powers to deal with people not associated with the Agreement whose conduct was "detrimental to baseball,"⁸⁴ the fifth section addressed the length of term and compensation for the Commissioner,⁸⁵ and the final section stated that Judge Landis was the first Commissioner and addressed the voting requirements to obtain a successor.⁸⁶

Article VII is comprised of two sections, entitled "Submission to Jurisdiction of Commissioner."⁸⁷ This section forces the owners to be bound to the Commissioner's decisions⁸⁸ and to waive their rights to contest the decision in court.⁸⁹ The second section allowed all player contracts made in the Major Leagues to contain a clause which made the parties bound to decisions made by the Commissioner.⁹⁰

These Articles represented Judge Landis' desire for absolute authority of the game, i.e., to be a virtual czar.⁹¹ The owners were desperate for a strong individual to restore public confidence in the game and viewed Judge Landis as the savior of organized baseball. As a result, the owners were very willing to accommodate Judge Landis' demands for control over "whatever and whoever" had to

81. *Id.* Major League Agreement, art. I, § 2(a)(b) (1921).

82. Major League Agreement, art. I (1921).

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. Major League Agreement, art. VII (1921).

88. Major League Agreement, art. VII, § 1 (1921).

89. *Id.* The owners unanimously adopted and signed the following resolution:

We the undersigned, earnestly desirous of insuring to the public wholesome and high-class baseball, and believing that we ourselves should set for the players an example of the sportsmanship which accepts the umpire's decision without complaint, hereby pledge ourselves loyally to support the Commissioner in his important and difficult task; and we assure him that each of us will acquiesce in his decisions even when we believe them mistaken, and that we will not discredit the sport by public criticisms of him or of one another.

Jerome Holtzman, *Commissioner's Post Awaits Selig*, CHI. TRIB., Nov. 26, 1992, § 4, at 1.

90. Major League Agreement, art. VII, § 2 (1921).

91. *Id.*

do with baseball.⁹²

2. Constitutional Changes of the Major League Agreement

The Agreement has remained, for the most part, the same document that was written in 1921, with the exception of a few minor changes. In 1944, the owners amended the Agreement in two significant ways.⁹³ First, the owners deleted the provision in the Agreement restricting the clubs right of recourse to the courts to challenge the actions of the Commissioner.⁹⁴ Second, the Commissioner was not allowed to invoke his "detrimental to the best interests of baseball" power against conduct which did not violate a specific league rule.⁹⁵

These two amendments which seemingly mitigated the Commissioner's powers were short-lived. In 1964, Commissioner Ford Frick convinced the owners to make three changes in the Major League Agreement.⁹⁶ The first two changes abrogated the amendments adopted in 1944 and returned the powers that the Commissioner enjoyed prior to 1944.⁹⁷ The third change addressed the Commissioner's power to determine actions which were "det-

92. SEYMOUR, *supra* note 36, at 322.

93. Major League Agreement, art. VII, § 2 (amended 1944).

94. *Id.* The following section was deleted from the 1944 Agreement:

The Major Leagues, and their constituent Clubs, severally agree to be bound by the decisions of the Commissioner, and the discipline imposed by him under the provisions of this agreement, and severally waive such right of recourse to the Courts as would otherwise have existed in their favor.

Major League Agreement, art. VII, § 2 (amended 1944).

The owners repealed the provision barring recourse to the courts because lawyers for the owners believed that this paragraph was meaningless since "no court would uphold such an agreement." FORD FRICK, GAMES, ASTERISKS, AND PEOPLE: MEMOIRS OF A LUCKY FAN 211-12 (1973).

95. Major League Agreement, art. VII, § 2 (amended 1944). The amendment provided that "[n]o Major League rule or other joint action of the two Major Leagues and no act or procedure taken in compliance with any such Major League rule or joint action of the two Major Leagues shall be considered or construed to be detrimental to baseball." Major League Agreement, art. VII, § 2 (amended 1944).

The owners intended this change to be a written codification of a restriction that Commissioner Landis believed applied to the "best interests" clause. FRICK, *supra* note 94, at 211.

96. Pachman, *supra* note 5, at 1417.

97. Major League Agreement, art. I, § 3 and art. VII, § 2 (amended 1964). In his memoirs, Frick stated his belief that the new provision implied a "moral obligation" on the part of the owners not to challenge the Commissioner's actions in court. FRICK, *supra* note 94, at 212.

rimental to the best interests of baseball."⁹⁸ The clause in Article I, Section 2, which reduced the Commissioner's involvement in baseball disputes only in situations which were "detrimental to the best interests of baseball," was changed to read "not in the best interests of baseball."⁹⁹ The old language seemed to connote that the Commissioner may intervene only in issues that were deemed harmful to baseball, whereas the new language connotes that the Commissioner may intervene in issues he deemed simply not in the "best interests of baseball." In reality, the case law discussed below does not distinguish between this language because the courts have shown great deference and respect for the decisions of the Commissioner regardless of the words of the Agreement and how he has interpreted the Agreement.

The Major League Agreement resembled the original 1921 agreement, with the only significant change being to the wording of the "best interests" clause.¹⁰⁰ Ironically, it is the "best interests" clause that has been the main source of dispute between the Commissioner and the club owners.

III. THE EVOLUTION OF THE COMMISSIONER'S POWERS

Since the inception of the Commissioner's position, the owners and the Commissioners have struggled with determining the powers of the position. In many instances, judicial intervention was necessary. This section will first examine the judicial approach in defining the powers of the Commissioner and then the approaches that Judge Landis and his successors took in interpreting their powers and molding the position of the Commissioner.

A. *Judicial Intervention of Private Associations*

MLB is a private business association which consists of twenty-eight clubs and contains its own intra-disciplinary structure which

98. Major League Agreement, art. I, § 2 (amended 1964).

99. *Id.* This change in language may seem significant because of the change of the word "detrimental" to "not in" conveys a broader range of powers for a Commissioner. The court in *Charles O. Finley & Co. v. Kuhn*, 569 F.2d 527 (7th Cir. 1978), *cert. denied*, 439 U.S. 876 (1978), implied that the change broadened the Commissioner's powers because, no longer did "the Commissioner [have] to find conduct 'detrimental' to the best interests of baseball in order to take remedial or preventive action." *Id.* at 533 n.11.

100. *Finley*, 569 F.2d at 533 n.11.

has been nearly impervious to judicial interference.¹⁰¹ In general, the court system has been very reluctant to interfere with the disciplinary structure of private associations. Courts essentially allow a private association to structure itself in order to accomplish the goals of the association, and this is no more evident than in MLB.¹⁰² Courts will respect the structure adopted by an association so long as it does not infringe with public policy or is not operated arbitrarily.¹⁰³ A recent court decision stated that "a voluntary association may, without direction or interference by the courts, draw up for its government and adopt rules, regulations and by-laws which will be controlling as to all questions of . . . doctrine or internal policy."¹⁰⁴ Essentially, the Commissioner's position was created to deal with "all questions of doctrine or internal policy" in baseball.

The court's rationale in dealing with associations stems from both constitutional and practical concepts.¹⁰⁵ The court's approach to dealing with associations may have developed, in large part, from the

'generalized freedom of association' implicit in the First Amendment and the concept of liberty found in the Due Process Clauses of the Fifth and Fourteenth Amendments. Intervention by the courts into private association affairs may be challenged on constitutional grounds as an 'interference with the protected sphere within which groups are free to act as they wish.'¹⁰⁶

The judicial system does not get involved because it is not practical.¹⁰⁷ Courts are reluctant to get involved with associations because they may not be as familiar with the significance of various rules that have been interpreted within the association over the years.¹⁰⁸ As a result, in order to avoid getting embroiled in private affairs, courts will often refrain from interference so long as the association demonstrates some overall semblance of "fairness" in its operations. Despite a presumption against court interference in

101. Durney, *supra* note 3.

102. *Id.* at 587.

103. *Id.*

104. Loigman v. Trombadore, 550 A.2d 154, 161, 228 N.J. Super. 437, 444 (App. Div. 1988).

105. DURNLEY, *supra* note 3, at 596-97.

106. *Id.*

107. *Id.* at 598.

108. *Id.*

a private association's affairs, courts have intervened in some internal affairs of MLB where questions of fairness have arisen.

B. Judge Landis: Taking Control

Judge Landis was a strong individual who wanted great powers at a time when organized baseball was in need of a savior.¹⁰⁹ Judge Landis demanded and received vast powers which he deemed necessary to run baseball and to restore public confidence effectively.¹¹⁰ The team owners, after granting Judge Landis the powers he desired, also essentially allowed Judge Landis to define the broad powers of the Commissioner's office, as he implemented his mandate to clean baseball.¹¹¹

Upon entering office, Judge Landis stated that his policy would be to "keep baseball what the millions of fans throughout the United States want it to be."¹¹² Judge Landis' goal was to "clean out the crookedness and gambling responsible for it (baseball's poor image) and keep the sport above reproach."¹¹³ Judge Landis also stated that nobody would be above his judgment, not even the owners.¹¹⁴

Judge Landis demonstrated his power as the Commissioner when he disciplined players who were alleged of committing wrongs even though the players may have been exonerated in the judicial system. Judge Landis' first act was to exempt the eight White Sox players who tainted the 1919 World Series from baseball for life, even though the players were exonerated of criminal charges.¹¹⁵

109. See *supra* notes 73-77 and accompanying text.

110. *Id.*

111. BOWIE KUHN, *HARDBALL: THE EDUCATION OF A BASEBALL COMMISSIONER* 24 (1987).

112. SPINK, *supra* note 37, at 74. Spink elaborated that Judge Landis outlined his plans for the government of the game, dwelling particularly on eliminating the crookedness and gambling and keeping the sport above reproach. *Id.* Judge Landis demanded strict honesty from anyone associated with MLB, and he would be merciless on anyone who did not abide by his demand. *Id.* Judge Landis would be the unquestioned leader of the game. *Id.* at 76

113. *Id.*

114. *Id.*

115. LIEB, *supra* note 53, at 116. After confessions of gamblers and players were stolen, Johnson scoured the country for evidence. *Id.* On August 2, 1921, the jury delivered a verdict of not guilty because the jurors thought that throwing a few games was not necessarily a criminal offense. *Id.* at 112. In commenting on the Black Sox Scandal, Judge Landis stated that

[r]egardless of the verdict of juries, no player that throws a game, no player that entertains propositions or promises to throw a game, no player that sits on a conference with a bunch of gamblers in which ways and means of throwing a game are

Another example of his broad reach of power involved a player named Benny Kauff,¹¹⁶ who was arrested for stealing an automobile and receiving stolen goods.¹¹⁷ Judge Landis said Kauff could not play for the New York Giants until the outcome of his trial.¹¹⁸ Kauff was eventually acquitted and applied for reinstatement, but Judge Landis rejected his plea.¹¹⁹ Judge Landis justified his reasoning by stating that "I read every line of that testimony, and the acquittal smells to high heavens. That acquittal was one of the worst miscarriages of justice that ever came under my observation."¹²⁰

In 1931, the United States District Court for the District of Illinois addressed the issue of Judge Landis' use of his great powers and affirmed his use of those powers in *Milwaukee American Ass'n v. Landis*,¹²¹ the first major case that involved the scope of the Commissioner's powers. Although the specific "best interests" of baseball clause was not at issue since the case predated the adoption of the clause, it still served as a bench mark for the powers that the Commissioner was allowed to wield.

This case addressed whether Judge Landis had the power to cancel an owner's option contract with a player. The Commissioner terminated this contract because it allowed the owner of the St. Louis club to manipulate his control of a number of minor league clubs in order to maintain the rights of a player, Fred Bennett.¹²² This team owner's actions violated a provision allowing other teams to claim a player's services once that player was assigned to a minor league club.¹²³

discussed and does not promptly tell his club about it, will ever again play professional baseball.

FRED LIEB, *BASEBALL AS I HAVE KNOWN IT* 112-13 (1977).

116. SPINK, *supra* note 37, at 91.

117. *Id.*

118. *Id.* at 90.

119. *Id.* at 91.

120. *Id.* Ironically, Judge Landis, an individual with immense respect for the law and the judicial system, allowed his judgment and position to supersede the judgment of a court. *Id.*

121. 49 F.2d 298 (N.D. Ill. 1931).

122. *Id.* at 304.

123. *Id.* The provision read as follows:

[A] Major League club may assign a player to a Minor League club, but each of the Major clubs must be given an opportunity to take an assignment; and it is only when no such club refuses to waive such opportunity that the player may be sent to a Minor club.

Milwaukee American Ass'n v. Landis, 49 F.2d 298, 301 (N.D. Ill. 1931).

In response to allegations made by the plaintiffs that the Commissioner's authority was limited to certain activities, the court stated that "the provisions (governing the conduct of the Commissioner) are so unlimited in character that we can conclude only that the parties did not intend so to limit the meaning of conduct detrimental to baseball, but intended to vest in the commissioner jurisdiction to prevent any conduct destructive of the aims of the code."¹²⁴ The court found that the Commissioner had "all the attributes of a benevolent but absolute despot"¹²⁵ whose decisions "should be absolutely binding."¹²⁶ The court also stated that such a grant of power to an individual would not violate public policy by depriving courts of jurisdiction, unless that broad power was exercised "fraudulently, arbitrarily, without legal basis for the same or without any evidence to justify action."¹²⁷

In total, Judge Landis banned a total of thirteen men from baseball for violations ranging from gambling to not making a good faith effort in playing the game.¹²⁸ Essentially, the actions of

124. *Id.* at 302.

125. *Id.* In *Livingston v. Shreveport-Tx. League Baseball Corp.*, 128 F. Supp. 191, (W.D. La. 1955), *aff'd*, 228 F.2d 623 (5th Cir. 1956), the court agreed with the *Milwaukee American Ass'n* decision and found that the Major League Agreement endowed the Commissioner "with all the attributes of a benevolent but absolute despot and all the disciplinary powers of the proverbial pater familias." *Id.* at 197.

126. *Landis*, 49 F.2d at 302 (N.D. Ill. 1931).

127. *Id.* at 303; Pachman, *supra* note 5, at 1417.

128. SPINK, *supra* note 37, at 109-10. In 1922, Judge Landis suspended New York Giant Phil Douglas, one of the best pitchers of the time, after Judge Landis read a letter Douglas had written to Leslie Mann, an outfielder for the Cardinals. *Id.* The Cardinals were in second place behind the first place Giants at the time of the letter. *Id.* The letter read:

I want to leave here. I don't want to see this guy [John McGraw, Giants coach] win the pennant. You know that I can pitch and I am afraid that if I stay I will win the pennant for them. Talk this over with the boys, and if it is all right, send the goods to my house at night and I will go to the fishing camp. Let me know if you all want to do this and I will go home on the next train.

J.G. TAYLOR SPINK, JUDGE LANDIS AND TWENTY-FIVE YEARS OF BASEBALL 109-10 (1947).

When Judge Landis read this note he immediately suspended Douglas from baseball. *Id.* In 1924, Judge Landis suspended Giant outfielder Jimmy O'Connell for life after O'Connell offered Heinie Sans of the Philadelphia Phillies five hundred dollars to play poorly against the Giants. *Id.* at 130. Despite O'Connell's testimony that he was acting on behalf of his Coach Cozy Dolan and other players, Judge Landis did not alter the suspension. *Id.* at 132. Judge Landis also expelled Coach Dolan but exonerated the players that were implicated. *Id.* at 133. In addition, Judge Landis cracked down on "gentlemen's agreements." Such agreements occurred when one owner released a player to another owner expecting to have the same player returned at a future date. *Id.* at 98. Judge Landis also cracked down on "barnstorming," where players from the World Series teams would participate in playing games in small non-Major League towns. *Id.* at 103. Owners feared this practice because

Judge Landis over his twenty-five year reign as Commissioner not only served to mold the office, but the overall deference from the judiciary and the team owners for his actions also served as guidelines for the actions of his successors.

C. *The Development of the Commissioner's Position from 1945-1992*

Although Judge Landis was a strong individual whose decisions were respected by the owners, the vast powers of the Commissioner's position continued to be questioned after he left office. As discussed earlier, the major point of contention between the owners and the players on the one hand and the owners and the Commissioner on the other hand became the proper interpretation of the "best interests" clause. The Commissioner often invoked this clause in a disciplinary context and the owners rarely challenged the Commissioner.¹²⁹ The Commissioner also invoked this clause, despite its controversy, to deal with general baseball matters. This section cannot adequately review every instance a Commissioner's decision has been challenged. Rather, this section will discuss the pertinent issues that shaped the Commissioner's position. First, two early cases that challenged the Commissioner's powers will be examined. Second, the most recent case challenging the Commissioner's powers, and the case which has questioned the

their best players might have gotten hurt in such games. PAUL DICKSON, *THE DICKSON BASEBALL DICTIONARY* 30-31 (1989).

129. See Durney, *supra* note 3, at 589 (stating that various Commissioners have invoked the "best interests" clause approximately seventy times in seventy years, primarily in a disciplinary context). Two recent disciplinary cases reveal insight into the vast powers of the Commissioner position. On July 30, 1990, Commissioner Vincent forced George Steinbrenner, the owner of the Yankees, to resign as General Partner of the Yankees, to reduce his ownership interest in the team to less than 50%, and to limit his contact with baseball personnel severely as a result of Steinbrenner's failure to respond adequately to questions concerning his involvement with a gambler. *Id.* at 595. Steinbrenner signed an agreement which delineated his punishment and prevented him from challenging the Commissioner's decision in court. *Id.*

On August 24, 1989, Pete Rose signed an agreement with Commissioner A. Bartlett Giamatti banning Rose from baseball for life after allegations arose that Rose had wagered on baseball. *Id.* at 592. Commissioner Giamatti had received an investigative report detailing the allegations and scheduled a disciplinary hearing. *Id.* Rose obtained a temporary restraining order against Commissioner Giamatti, questioning Commissioner Giamatti's impartiality, and demanding due process, a fair trial, and an impartial tribunal. *Id.* The Commissioner successfully moved the case to the federal district court, and Rose, with pressure mounting and realizing the federal court's historic support of the Commissioner's office, signed the agreement banning him for life. *Id.* Rose also had to agree to drop the suit and never again institute proceedings against the Commissioner or MLB. *Id.* at 593.

viability of the existence of the governing structure itself, will be discussed.

1. Charles O. Finley & Co. v. Kuhn¹³⁰

Until 1992, *Charles O. Finley & Co. v. Kuhn* was the seminal case defining the Commissioner's powers under the "best interests" clause.¹³¹ This case addressed two important issues.¹³² The first issue was whether or not the Commissioner was contractually authorized to negate player assignments which he found to be "not in the best interests of baseball" and provided that the assignment was neither a moral turpitude nor a violation of a Major League Rule.¹³³ The second issue was whether the provision in the Major League Agreement which required the parties to forego access to the judicial system to resolve disputes was valid and enforceable.¹³⁴

In 1976, Oakland Athletics owner Charles O. Finley challenged Commissioner Bowie Kuhn's authority to disapprove the sale of Joe Rudi and Rollie Fingers to the Boston Red Sox and Vida Blue to the New York Yankees on the grounds that the sales were "inconsistent with the best interests of baseball, the integrity of the game and the maintenance of public confidence in it."¹³⁵ Finley asserted that the Commissioner could only invoke the "best interests" clause of the Agreement in situations involving rule violations or moral turpitude.¹³⁶

In determining the authority and power of the Commissioner,

130. 569 F.2d 527 (7th Cir. 1977), *cert. denied*, 439 U.S. 876 (1978).

131. Durney, *supra* note 3, at 601.

132. *Id.* at 530.

133. *Id.*

134. *Id.*

135. *Id.* at 531.

136. *Charles O. Finley & Co. v. Kuhn*, 569 F.2d 527, 535 (7th Cir. 1978), *cert. denied*, 439 U.S. 876 (1978). For examples of moral turpitude, see Ross Newhan, *Reds Owner Schott Barred 1 Year, Fined for Race Slurs*, L.A. TIMES, Feb. 4, 1993, at A1 (discussing Schott's one year ban from baseball for making racial slurs); Bob Broeg, *Thou Shall Not Allow Rose into the Hall*, N.Y. TIMES, Apr. 7, 1991, § 8, at 9 (discussing the lifetime suspension of Rose from baseball for allegedly betting on horse racing and baseball games); Tom Verducci, *Steinbrenner's Out; Commissioner Forces Him to Yield Yankee Helm*, NEWSDAY, July 31, 1990, at 3 (stating that Commissioner Vincent and Yankee owner Steinbrenner agreed that Steinbrenner would not be allowed to participate in day-to-day activities of the Yankees or enter Yankee Stadium without permission for 32 months after Steinbrenner paid forty thousand dollars to Howard Spira, a gambler, for information Steinbrenner planned to use against Dave Winfield, a former Yankee player).

the United States Court of Appeals for the Seventh Circuit considered the circumstances creating the office of the Commissioner, the language of the Major League Agreement, the changes and amendments to the Agreement, and the various interpretations of this document throughout its existence.¹³⁷ Based on this history, the court ruled that "the Commissioner has the authority to determine whether any act, transaction, or practice is 'not in the best interests of baseball,' . . . whether or not the act, transaction or practice complies with the Major League Rules or involves moral turpitude."¹³⁸ The court rejected Finley's plea that the Commissioner acted arbitrarily, and as a result, the court's decision enhanced and solidified the powers of the Commissioner.¹³⁹

As for the second issue, the court ruled that the waiver of recourse to the courts clause was valid and enforceable.¹⁴⁰ The court rejected claims that the clause was invalid as against public policy because "informed parties, freely contracting, may waive their recourse to the court,"¹⁴¹ and the court showed deference to the Commissioner's position and the intra-governmental structure of MLB. The court acknowledged that narrow exceptions did exist for judicial intervention such as: "(1) where the rules, regulations or judgments of the association are in contravention to the laws of the land or in disregard of the charter or bylaws of the association, (2) where the association has failed to follow the basic rudiments of due process of law, and (3) where the association avoids the requirements of arbitration under the United States Arbitration Act."¹⁴² Assuming that the Commissioner adheres to these constraints, his power seemed to be absolute and beyond judicial intervention.

This case demonstrated the great judicial deference given to the Commissioner's decision-making power in the modern era,¹⁴³ and it sent a message to the judicial system not to intervene in the deci-

137. *Finley*, 569 F.2d at 532.

138. *Id.* at 535.

139. *Id.* at 535-36.

140. *Id.* at 543.

141. *Charles O. Finley & Co. v Kuhn*, 569 F.2d 527, 544 (7th Cir. 1978), *cert. denied*, 439 U.S. 876 (1978).

142. *Id.*

143. *Durney*, *supra* note 3, at 601.

sion-making process of MLB unless extraordinary circumstances existed.¹⁴⁴

2. Atlanta Nat'l League Baseball Club v. Kuhn¹⁴⁵

The case of *Atlanta Nat'l League Baseball Club v. Kuhn* demonstrated the second major judicial challenge to the Commissioner's powers, namely his interpretation of what constituted an act "not in the best interests of baseball." The issue in this case was whether Commissioner Kuhn abused his power when he suspended a baseball owner for one year and deprived that team of its first-round choice in the free agent draft for acts the Commissioner deemed "not in the best interests of baseball."

In December 1976, Commissioner Kuhn suspended Atlanta Braves owner Ted Turner for the 1977 season and prohibited the Braves from exercising their first-round draft choice in the June 1977 amateur free agent draft.¹⁴⁶ Commissioner Kuhn suspended Turner because the owner had violated several warnings given to owners concerning their discussions with free agents.¹⁴⁷ Commissioner Kuhn had previously issued a warning to owners which stated that indirect contacts with free agents were prohibited.¹⁴⁸ This included "public comments which would indicate an interest in signing any such player."¹⁴⁹ After Commissioner Kuhn gave his warning, Turner reportedly said that "he would do anything to get Gary Matthews and that he would go as high as he had to."¹⁵⁰ Although Turner admitted making such comments, he claimed that they were made in jest and that he did not have any direct or indirect contact with Matthews.¹⁵¹ Commissioner Kuhn ruled that

144. MARTIN J. GREENBURG, 1 SPORTS LAW PRACTICE 1042-43 (1993).

145. 432 F. Supp. 1213 (N.D. Ga. 1977).

146. *Id.* at 1217.

147. *Id.* at 1216. The Commissioner gave three major warnings. *Id.* On August 27, 1976, the Commissioner warned Major League clubs not to engage in sending press reports speculating on the increase in salaries of free agents. *Id.* Any violation would constitute tampering under Rule 3(g) of the Major League Rules. *Id.* The second warning came on September 28, 1976, and prohibited both direct and indirect dealings with free agents. *Id.* A third warning came on October 5, 1976, and it emphasized that the tampering rule would be enforced by penalties ranging from fines to suspension of individuals involved. *Id.*

148. *Id.*

149. *Id.*

150. *Id.* at 1217. Matthews was an outfielder with the Giants who was completing his option year in 1976. *Id.* at 1216.

151. *Id.*

Turner's acts conflicted with the collective bargaining agreement and the warnings concerning dealings with free agents and were "not in the best interests of baseball."¹⁵²

Turner challenged Commissioner Kuhn's ruling in the United States District Court for the District of Georgia, claiming that Commissioner Kuhn abused his discretion. The court agreed with Commissioner Kuhn's decision in part and reversed in part.¹⁵³ The court upheld Turner's suspension based on the wording of the Major League Agreement which read, in part, "[j]udicial review of every sanction imposed by the Commissioner would produce an unworkable system that the Major League Agreement endeavors to prevent,"¹⁵⁴ but the court found that denying the Braves its first round draft choice was "simply not among the penalties authorized for the offense of acting against the best interests of the game."¹⁵⁵ The court concluded that the punitive measures available to the Commissioner included a reprimand,¹⁵⁶ deprivation of a club's representation at joint meetings,¹⁵⁷ suspension or removal of an officer or employee of a league or club,¹⁵⁸ temporary or permanent ineligibility of a player,¹⁵⁹ and a fine.¹⁶⁰ Even though Commissioner Kuhn's decision depriving Atlanta of its first round draft choice exceeded authorized sanctions,¹⁶¹ the court's judgment in affirming Commissioner Kuhn's power to suspend an owner from the game once again demonstrated the great deference and respect the judicial system had for the powers of the Baseball Commissioner.

3. Chicago Nat'l League Ball Club v. Vincent¹⁶²

Chicago Nat'l League Ball Club v. Vincent represents the latest challenge on the scope of the Commissioner's powers and casts doubt upon seventy years of precedent. The issue in this case was

152. *Id.*

153. *Id.* at 1226.

154. *Id.* at 1221.

155. *Atlanta Nat'l League Baseball Club v. Kuhn*, 432 F. Supp. 1213, 1221 (N.D. Ga. 1977).

156. *Id.* at 1226.

157. *Id.*

158. *Id.*

159. *Id.*

160. *Atlanta Nat'l League Baseball Club v. Kuhn*, 432 F. Supp. 1213, 1226 (N.D. Ga. 1977).

161. *Id.*

162. No. 92C 4398 (N.D. Ill. 1992).

whether Commissioner Vincent could utilize his "best interests" of baseball power to supersede provisions set forth in the National League Constitution.¹⁶³

In early 1992, after the National League owners voted to admit two new expansion clubs, the Colorado Rockies and the Florida Marlins, into the National League, the owners discussed a proposal for realignment.¹⁶⁴ This proposal had the St. Louis Cardinals and the Cubs moving to the Western Division, and the Braves and the Reds moving to the Eastern Division.¹⁶⁵ Despite the Cubs' objections to this proposal of realignment, National League club owners voted ten to two in favor of realignment.¹⁶⁶ However, the proposal was still defeated pursuant to the National League Constitution provision requiring the consent of the transferring team, in this case, the Cubs.¹⁶⁷ On April 6, 1992, the National League clubs held a special meeting to discuss whether the National League should seek the assistance of the Commissioner to help decide the issue of realignment.¹⁶⁸ The vote of the twelve National League teams was split evenly.¹⁶⁹

163. *Id.*

164. Joel Bierig, *Magic Regained and Lost; '91 Sports Inscription: Unpredictability Was Charming, Uncertainty was Alarming*, THE SPORTING NEWS, Jan. 6, 1992, § S, at 3.

165. Joe Strauss, *Florida, Colorado Join NL; Rockies to Use State Name*, ATL. J. & CONST., July 6, 1991, § D, at 1.

166. Joe Strauss, *Baseball Braves, Reds to Remain in West As Cubs Veto NL Realignment*, ATL. J. & CONST., March 5, 1992, § E, at 7.

167. *Id.* The National League is governed by the National League Constitution which includes provisions addressing rules on membership, finances, offices, appeals, committees, club owner meetings, the National League Championship series, player contracts, misconduct, umpires, gate receipts, and divisional alignments. Before 1968, the National League Constitution provided that all National League teams would play each other in an equal amount of games and compete for a single championship. National League Constitution, art. I, § 9.4. In 1968, the National League amended § 9.4 to provide for two divisions. National League Constitution, art. I, § 9.4 (amended 1968). The Eastern Division included the Chicago Cubs, Montreal Expos, New York Mets, Philadelphia Phillies, Pittsburgh Pirates, and St. Louis Cardinals, while the Western Division included the Atlanta Braves, Cincinnati Reds, Houston Astros, Los Angeles Dodgers, San Diego Padres, and San Francisco Giants. *Id.* The National League also amended § 9.4 to require the unanimous consent of all teams in order to realign the divisions. *Id.* In 1982, the National League once again amended § 9.4 by altering the voting requirements for realignment. National League Constitution, art. I, § 9.4 (amended 1982). In order to realign the divisions, three-fourths of the National League teams and the team(s) being realigned must consent to the realignment. *Id.*

168. Sam Carchidi, *NL Could Undergo Face Lift in Baseball's "Best Interest"*, N.Y. TIMES, June 7, 1992, at G4.

169. *Id.* Atlanta, Montreal, Pittsburgh, San Diego, and San Francisco favored Commissioner Vincent's intervention. *Id.* Cincinnati, Los Angeles, New York, Philadelphia, and St. Louis opposed Commissioner Vincent's intervention. *Id.* Houston and Chicago were not pres-

On May 29, 1992, Commissioner Vincent distributed a memorandum to the National League clubs which stated that the National League has had extensive discussions over the issue of realignment and suggested that club owners submit their views to him on whether or not he should intervene.¹⁷⁰ On June 8, 1992, William White, President of the National League, responded to Commissioner Vincent's memorandum by stating that "[t]hroughout baseball's history, intimate business decisions, such as with whom to play and upon what basic terms, have always been left to the leagues."¹⁷¹

Despite White's response, Commissioner Vincent unilaterally issued a decision entitled *Decision on National League Realignment and Sharing of Gate Receipts* on July 6, 1992.¹⁷² The decision implemented the proposal to send the Cubs and Cardinals to the Western Division, and the Braves and the Reds to the Eastern Division.¹⁷³ The justification for the decision was two-fold. First, the decision stated that travel would be made easier and less costly since teams closer in distance would be in the same division.¹⁷⁴ Second, it stated that more games would be played during prime time due to realignment, regardless of the scheduling format ultimately adopted by the National League.¹⁷⁵ In making his decision,

ent, but Houston would have voted in favor of intervention and Chicago would have opposed intervention. *Id.*

170. *Id.* at G22.

171. Mark Bradley, *Vincent Rights a Wrong by Sending Braves East*, ATL. J. & CONST., July 7, 1992, § E, at 1.

172. Murray Chass, *NL Realignment Plan Dropped; More Signs of Owners Plans to Reduce Commissioner's Role*, HOUS. CHRON., Sept. 25, 1992, at 1.

173. *Id.*

174. *Id.* In September 1993, the owners of MLB gathered and voted 27-1 to divide each league into three geographical divisions — Eastern, Central, and Western. Jerome Holtzman, *Owners Vote to Realign*, CHI. TRIB., Sept. 10, 1993, § 4, at 1. "The purpose of the change is two-fold: to provide an extra week of pennant playoffs and to keep more teams alive in the final two months of the season when spectator interest sometimes wanes." *Id.* Under the new plan, the American League will tentatively have the Baltimore Orioles, Boston Red Sox, Detroit Tigers, New York Yankees, and Toronto Blue Jays in the Eastern Division; the Chicago White Sox, Cleveland Indians, Kansas City Royals, Milwaukee Brewers, and Minnesota Twins in the Central Division; and the California Angels, Oakland Athletics, Seattle Mariners, and the Texas Rangers in the Western Division. *Id.* The National League will tentatively have the Atlanta Braves, Florida Marlins, Montreal Expos, New York Mets, and Philadelphia Phillies in the Eastern Division; the Chicago Cubs, Cincinnati Reds, Houston Astros, and Pittsburgh Pirates in the Central Division; and the Colorado Rockies, Los Angeles Dodgers, San Diego Padres, and San Francisco Giants in the Western Division. *Id.* George W. Bush, General Partner of the Texas Rangers, was the only owner to oppose, stating that he wanted baseball to maintain its purity. *Id.*

175. *Id.*

Commissioner Vincent relied on Article I, Section 2 of the Major League Agreement,¹⁷⁶ and argued that "realignment is in the best interest of Baseball, and that the best interests of the game have not been served in this instance by the National League's stringent voting requirements, which thwarts the preferences of the great majority of National League clubs."¹⁷⁷

On July 7, 1992, the Cubs brought an action in the United States District Court for the Northern District of Illinois for declaratory and injunctive relief against Commissioner Vincent's realignment order as well as an emergency motion for a preliminary injunction.¹⁷⁸ On July 23, 1992, the court granted the Cubs' motion for a preliminary injunction.¹⁷⁹ Judge Conlon of the Northern District of Illinois ruled that Commissioner Vincent violated the Major League Agreement by ordering the transfer despite the fact that the National League Constitution clearly required the approval of the Cubs.¹⁸⁰ Judge Conlon stated that "[u]nder Illinois rules for construing contracts, it is clear that the broad authority granted the Commissioner is not as boundless as he suggests."¹⁸¹ The court further stated that the Cubs had demonstrated irreparable injury and that there was no adequate remedy at law.¹⁸² After balancing the harm to the Cubs and the public interest, the court concluded that "[t]he Chicago Cubs have satisfied the requirements for issuance of a preliminary injunction."¹⁸³ The court order also

176. *Id.*

177. *Id.*

178. *Id.*

179. *Chicago Nat'l League Ball Club v. Vincent*, No. 92C 4398, (N.D. Ill. 1992).

180. *Id.*

181. *Id.* at 11. The Court noted that"

[given] the language of Article I its common sense and ordinary meaning, the Commissioner's authority, to investigate 'acts,' 'transactions,' and 'practices' and determine and take preventive, remedial, or punitive action does not encompass restructuring the divisions of the National League. There has been no conduct (or misconduct) for the Commissioner to investigate, punish or remedy under Article I. *Chicago Nat'l League Ball Club v. Vincent*, No. 92C 4398, 11 (N.D. Ill. 1992).

182. *Id.* at 16.

183. *Id.* Judge Conlon stated that the court has utilized a "sliding scale" approach to determine whether injunctive relief was proper. *Id.* at 14. This approach allows the plaintiff to show less irreparable harm if it can show a high likelihood of prevailing on the merits. *Id.* at 15. Judge Conlon determined that the Cubs were likely to prevail on the merits of the case and given the irreparable harm of losing decades-old rivalries against the Eastern Division and the problems involved with reversing the division transfer, the Cubs had satisfied the requirements of a preliminary injunction. *Id.*

concluded that the Cubs were likely to succeed on the merits.¹⁸⁴

Although Commissioner Vincent appealed the injunction,¹⁸⁵ he eventually succumbed to the owners' pressure and decided to resign.¹⁸⁶ While the court ultimately vacated the decision,¹⁸⁷ the *Chicago Nat'l League Ball Club v. Vincent* decision represented the first time a Commissioner's interpretation of the "best interests" clause was not explicitly upheld.¹⁸⁸ This case left three questions unanswered: (1) who would be the next Commissioner, (2) what would be his powers after this case, and (3) would the owners even maintain the Commissioner position as it had been for the last seventy years or restructure it.¹⁸⁹

IV. THE BASEBALL OWNERS' PROPOSAL

Commissioner Vincent's resignation letter advising the owners to put the game above their interests was directed mostly at the owners who called for his resignation.¹⁹⁰ The primary leaders of this movement were Jerry Reinsdorf, co-owner of the Chicago White Sox; Allan "Bud" Selig owner of the Milwaukee Brewers; Peter O'Malley, owner of the Los Angeles Dodgers; and Stanton Cook, owner of the Chicago Cubs.¹⁹¹

Shortly after Vincent's resignation, the Executive Council of Major League Baseball appointed Selig Chairman of the Council.¹⁹² Two league presidents and four owners from each league

184. *Id.* at 15.

185. Matt O'Connor, *Realignment Dropped, Cubs End Suit*, CHI. TRIB., Sept. 25, 1992, § 4, at 3.

186. Bob Verdi, *Baseball's Forecast: Quite Cloudy*, CHI. TRIB., Sept. 8, 1992, § 4, at 1.

187. O'Connor, *supra* note 185.

188. *Id.*

189. *Id.* at 6. In his resignation letter, Commissioner Vincent elaborated on his belief of what the role of the Commissioner and the owners should entail. *Id.* He stated that the Commissioner should be an impartial decision-maker without political repercussions, maintain a higher duty than just being an owner's puppet, maintain the integrity of the game, and temper owner decisions predicated on self-interests. *Id.* Finally, the Commissioner must be strong and a person of experience and stature in the community. *Id.* Most importantly, Commissioner Vincent stated that the "owners have a duty to take into consideration that they own a part of America's pastime-in trust. This trust sometimes requires putting self-interests second." *Id.*

190. *Id.*

191. *Id.*

192. *Brewers' Selig Gains Powers of Commissioner*, ATL. J. & CONST., Sept. 9, 1992, D1. The Executive Council is the supreme body in baseball when the Commissioner's position is vacant. Jerome Holtzman, *Selig Could Shed That "Interim" Title*, CHI. TRIB., § 4, at 1. The Executive Council can suspend and/or fine individuals who offend the integrity of the game.

comprised the Executive Council.¹⁹³ The owners gave Selig the authority to act as the Commissioner on a temporary basis.¹⁹⁴ Although the owners organized their own search committee to find a new Commissioner, Selig conceded that the search could be delayed until the owners decide how to structure the office.¹⁹⁵ Selig promised that the next Commissioner "will have the same strong powers to protect the integrity of the game, but restructuring will be on the business aspects."¹⁹⁶ Selig hopes his stint as Acting Commissioner will be short, but a close friend to Selig and the Brewer organization said, "[D]on't be surprised if Bud rides this thing for a year under the guise of looking for the right person."¹⁹⁷

One group of owners wants to restructure the highest office in baseball so that it would operate like a chief executive officer position of a corporation.¹⁹⁸ This new position would be void of the Commissioner's traditional "best interests" powers.¹⁹⁹ The Commissioner would be unable to act without the approval of the owners.²⁰⁰ This "corporate chairman" or "chief executive" would be

Id. Ordinarily, this body functions principally as an advisory board for the Commissioner. *Id.* On September 9, 1992, the Executive Council unanimously elected Selig as chairman/commissioner. Marty Noble, *Owners Put Selig in Power*, *NEWSDAY*, Sept. 10, 1992, at 159. The process of how the Executive Council elected Selig is unclear because the Major League Agreement provides no mechanism for the election of the Chairman of the Council. *Id.* The Major League Agreement establishes the Commissioner as the permanent Chairman of the Executive Council, but it does not say that the Chairman of the Council necessarily has to be the Commissioner. *Id.*

193. Ross Newhan, *Selig Gets Commissioner Power*, *L.A. TIMES*, Sept. 10, 1992, C1. The Executive Council of major league Baseball consists of American League President Dr. Bobby Brown, National League President William White, Jackie Autry of the California Angels, Bill Bartholomay of the Atlanta Braves, Stanton Cook of the Chicago Cubs, Bud Kuhlman of the St. Louis Cardinals, Allan Selig of the Milwaukee Brewers, Carl Pohlad of the Minnesota Twins, and Tom Werner of the San Diego Padres. Ex Officio members include Doug Danforth of the Pittsburgh Pirates and Haywood Sullivan of the Boston Red Sox.

194. Staff and wire reports, *Brewers' Selig Gains Powers of Commissioner*, *ATL. J. & CONST.*, Sept. 9, 1992, D1.

195. Newhan, *supra* note 193.

196. Dodd, *supra* note 7, at 2C.

197. Newhan, *supra* note 193.

198. *Id.* Writer Steve Jacobson noted that:

[t]he owners say they would reorganize along the lines of a business with an executive board and a board of directors and a chief executive officer. They'd pledge to abide by majority vote. And that's the end of it-until the majority wants something one important owner really doesn't want.

Steve Jacobson, *Reinsdorf Emerges As Heaviest Hitter*, *NEWSDAY*, Sept. 6, 1992, at 6.

199. Newhan, *supra* note 193.

200. *Id.*

responsible to a board of directors comprised of the twenty-eight owners.²⁰¹

Eddie Einhorn, co-owner of the White Sox, stated, "[t]he business of baseball has changed immensely. You have to separate the two; you can not put the two together." This is an opinion shared by many of the owners.²⁰² Reinsdorf, the other co-owner of the White Sox, stated that:

[w]e would announce him as the CEO of the owners, not the players or the umpires. The players don't need a commissioner to protect them. Once we establish his job is to run the business [for] the owners, not the players, umpires, or fans, then that would give power to [management]. I don't know any business that has a CEO who would do anything he wants irrespective of the board of directors. Apparently, the commissioner believes he has such powers.²⁰³

Mr. Reinsdorf, who also co-owns the Chicago Bulls of the National Basketball Association (NBA), as well as other owners, advocate a system similar to the NBA model where the Commissioner is more accountable to owners and does not have the benefit of a sweeping "best interests" clause.²⁰⁴

201. Chass, *supra* note 8.

202. Hal Bodley, *The Last of His Kind; Restructure of the Office Inevitable*, USA TODAY, Sept. 8, 1992, 1C.

203. Joe Strauss, *Baseball Notes*, ATL. J. & CONST., Aug. 23, 1992, E9.

204. *Brewers' Selig Gains Powers of Commissioner*, *supra* note 192. Although the other sports' governing structures have not been scrutinized in the same manner as baseball's governing structure, the way the commissioners of other sports govern may influence the new governmental structure of baseball.

On February 1, 1984, the NBA named David Stern its Commissioner. Kent McDill, *NBA on All-Time High*, UPI, Feb. 8, 1985. Commissioner Stern entered the NBA when it portrayed an image of a league of overpaid, under-achieving, and, mostly intoxicated players. *Id.* Commissioner Stern quickly revitalized the league by adopting profit-sharing, a drug policy, and a salary cap with the players. *Id.* Commissioner Stern also had the luxury of having three of the greatest players in the sport playing during his tenure. Ervin "Magic" Johnson and Larry Bird helped to elevate basketball to the forefront of the sport world, and, of course, Michael Jordan carried the NBA to the next level. Fred Lief, *Another in a Series of Year-End Sports Stories: Year in Review*, SPORTS NEWS, Dec. 29, 1992, at 3. More importantly, Commissioner Stern saved the NBA by working closely and harmoniously with Larry Fleischer, the Director of the National Basketball Players' Association, to agree on the innovative salary cap program. David Cunningham, *Baseball Storm Clouds Swirl, "Its Going to Be Absolute Financial Ruin and Chaos," Autry says*, TOR. STAR, Oct. 23, 1992, B1. *But see* Sam Smith, *Healthy NBA Soon May Need a Doctor*, CHI. TRIB., Nov. 5, 1992, § 4, at 1 (stating that because basketball is enjoying tremendous financial success, the players, who cooperated with the owners in the early 1980s to revitalize the League, may want to renegotiate their collective bargaining agreement contract when it expires after the 1993-94 season). Commissioner Stern is accountable to the owners but has jurisdiction over disputes involving two or more teams. *Id.* The Commissioner also has the authority to make decisions

V. ANALYSIS

Adopting a governing structure for MLB will not only solve the major problems that baseball faces today, but it will also allow baseball to cope more successfully with any future problems. With this stable structure to anchor baseball, the sport will be able to spread its deep, powerful tradition to future generations and justify its claim as America's past-time. In order to determine what type of structure will be most effective for MLB, it is first necessary to determine what attributes will make the structure successful. Second, four plausible solutions will be reviewed and then applied to various problems that have confronted baseball. Finally, this article will conclude that the structure introduced in this paper will be the most effective.

A. *The Requirements for an Effective Solution*

If baseball owners look to the past, they will be able to recognize that three characteristics are needed for an effective governing body of baseball. First, the new governing body must be indepen-

in the best interests of the game whenever a matter is not covered in the bylaws of the League's Constitution. *Id.* The NBA Constitution also has a clause allowing the "Commissioner [to] have power to suspend for a definite period or impose a fine not exceeding \$1,000.00, or inflict both such suspension and fine upon any person who, in his opinion, shall have been guilty of conduct prejudicial or detrimental to the Association." National Basketball Association Constitution, § 35(e). As a result, the NBA Constitution does restrict the Commissioner as to when he may act and with how much power.

Paul Tagliabue is the current NFL Commissioner. *Duties of Major Sports' Top Men*, USA TODAY, Sept. 9, 1992, C3. His powers and duties include protecting the integrity of the game by resolving disputes within the league and imposing disciplinary measures for conduct "detrimental to the league." *Id.* The NFL Charter specifically states the punishment its commissioner may impose. NFL Constitution and Bylaws, § 8.13(b). If none of the punishments adequately address a certain case, the Commissioner must seek the approval of an executive committee to deviate from the punishments allowed by the Charter. *Id.* Unlike baseball, the NFL Charter does not have a clause permitting the Commissioner to take unilateral action in the "best interests" of the game. *Id.*

Although the NHL is restructuring its governing body, it did choose Gary Bettman, formerly the NBA's Senior Vice President and General Counsel, to be the first Commissioner of the League. In August 1993, the National Hockey League Players' Association (NHLPA) filed a suit against Commissioner Bettman challenging his right to arbitrate disputes involving free agents. *NHL Union Challenges Rulings on Free Agents*, BERGEN RECORD, Aug. 19, 1993, at F7. The NHLPA asserted that the Commissioner had an inherent bias in reversing the rulings regarding the San Jose Sharks' free agent signings of Edmonton Oiler forward Craig Simpson and Washington Capital left wing Kelly Miller, and both cases should have been handled by an arbitrator. *Id.* The suit was filed in the United States District Court for the Southern District of New York. *Id.*

dent of baseball affairs so that it can fairly assess issues without any temptations toward partiality. This will ensure that the game is being run honestly and for the interests of all parties associated with the game. Second, the new system must allow for greater due process rights. Due process will not only benefit someone before the Commissioner, but it will allow the governing body to have access to more information. Without greater information, decisions will be made at the whim of the governing body without realizing their full impact. This could only lead to discouragement on both sides and potential litigation. Finally, some structural guidelines must exist for when a Commissioner can intervene and what punitive powers he has. Without a clear understanding of the Commissioner's role, parties are unclear when certain conduct warrants his intervention. Also, if there is a vague standard as to when a Commissioner can intervene and how he can punish wrongdoers, then intervention will be based solely on the personal characteristics of the person and how he interprets the role.

B. Various Solutions

This section will discuss four plausible solutions for the restructuring of the baseball government. The first two solutions consist of structures that have existed, the third solution consists of the owners' plan for baseball, and the final solution consists of a different structure developed by the author and will be referred to as the Independent Baseball Rulings Committee (IBRC) proposal. Since the first three solutions were discussed in detail previously, they will only be cursorily reviewed here. Afterwards, the IBRC proposal will be fully developed.

1. The National Commission/Executive Council

Owners formed the National Commission in 1903 in order to facilitate the joining of two separate leagues, the American League and the National League.²⁰⁵ The National Commission consisted of a three individuals intimate with the dealings of baseball.²⁰⁶ The National Commission consisted of the President of both the American League and the National Leagues, and a third individual

205. See *supra* note 36-52 and accompanying text (discussing the need for a governmental structure to administer the new league).

206. *Id.*

whom they chose.²⁰⁷ The President of the Reds, Garry Herrmann, was chosen to complete the three-man Commission.²⁰⁸ Having a government comprised of individuals intimate with baseball affairs undoubtedly created conflict, and the owners dismantled the National Commission in 1920.²⁰⁹ The demise of the National Commission was due, in large part, to two main reasons. First, a conflict of interest problem developed when the Chairman of the National Commission had to make decisions concerning baseball affairs that impacted his team.²¹⁰ For example, during the Black Sox Scandal, the owner of the White Sox, Charles Comiskey, was not able to address his concerns to anyone on the Commission that the 1919 World Series was fixed.²¹¹ Comiskey did not have a good relationship with the American League President, Ban Johnson,²¹² so he had no intention of discussing the matter with him. Herrmann, the elected Chairman of the Commission, did not believe Comiskey because Herrmann was also President of the Reds, the White Sox opponent in the World Series, and Herrmann believed his team was winning fairly.²¹³ As a result, Comiskey turned to the National League President with an American League concern.²¹⁴ If Comiskey had been able to go to the National Commission without worrying about his relationship with any of the members, perhaps the scandal may have been averted.²¹⁵ The second main reason for the downfall of the National Commission stemmed from the relationships among the three-member body. The Chairman of the National Commission and the American League President were very close friends, and the other owners believed that this relationship affected and influenced the decision-making powers of the Chairman.²¹⁶

207. *Id.*

208. *Id.*

209. *See supra* notes 61-66 and accompanying text (discussing the conflicts that arose over the rights to four players and the Black Sox scandal).

210. *See supra* note 54 and accompanying text.

211. *Id.*

212. *See supra* note 53 and accompanying text (noting that the Johnson-Comiskey break occurred after Johnson voted against Comiskey in the Jack Quinn case).

213. *See supra* note 54 and accompanying text.

214. *See supra* notes 54-66 and accompanying text.

215. *Id.*

216. *See supra* note 53 (noting that in the George Sisler case, Barney Dreyfuss, the owner of the Pittsburgh Pirates who lost the case, claimed that the Chairman of the Commission, George Herrmann, and the American League President, Ban Johnson, were close friends and a conflict of interest existed).

The Executive Council is the current day version of the National Commission, and it governs MLB when the Commissioner's position is vacated. The Executive Council is similar to the National Commission for three reasons. First, the American League and the National League Presidents are two members of the Executive Council.²¹⁷ Second, all the members of the Executive Council are intimate with the dealings of baseball.²¹⁸ Finally, in September 1992, the Executive Council selected Selig, one of the owners to run MLB when the owners ousted Commissioner Vincent, which was similar to when the National Council elected Herrmann of the Reds to run baseball.²¹⁹

2. The Commissioner

The club owners formed a new structure in 1920 and unanimously elected Judge Landis as the first Commissioner.²²⁰ The Commissioner would be an individual independent from the intimate dealings of baseball.²²¹ He would have the ability to intervene and decide any baseball issue with virtually unreviewable authority.²²² The ability to act within the "best interests" clause epitomized the amount of discretion the Commissioner was entitled to and this discretion manifested itself in the court decisions that spanned over seventy years.²²³ Commissioner Landis was allowed "all the attributes of a benevolent but absolute despot,"²²⁴ and Commissioner Kuhn was allowed to decide whether any act was not in the "best interests" of the game.²²⁵ The great judicial deference that was allotted to the Commissioner eventually ended when Commissioner Vincent's decision to realign the divisions of the National League was held to be outside the scope of the Commissioner's pow-

217. See *supra* notes 193-204 and accompanying text (discussing the structure and powers of the Executive Council).

218. *Id.*

219. *Id.*

220. See *supra* note 74 and accompanying text (discussing why the owners chose Judge Landis).

221. See *supra* notes 68-72 and accompanying text (discussing Albert D. Lasker's plan which was adopted in 1920 and lasted for over seventy years).

222. *Id.*

223. See *supra* notes 130-89 and accompanying text (discussing three cases that reaffirmed the extensive scope of the Commissioner's position).

224. *Milwaukee American Ass'n v. Landis*, 49 F.2d 298 (N.D. Ill. 1931).

225. *Charles O. Finley & Co. v. Kuhn*, 569 F.2d 527 (7th Cir. 1978), *cert. denied*, 439 U.S. 876 (1978).

ers.²²⁶ A power struggle developed and the position of the Commissioner as it was known no longer exists.²²⁷ Adopting the same structure will not be affective to solve baseball's problems. For seventy years, the Commissioner was given a virtual mandate to govern baseball. He was given a broad spectrum of power to govern the game effectively, but the recent *Chicago Nat'l League Baseball Club* decision curtailed this power and pierced a hole in the shield of the Commissioner. This latest case has decreased the Commissioner's power to the extent that maintaining this structure will not work. The next Commissioner will be uncertain in making decisions because he will not know if he is acting within the scope of his powers. The Commissioner's decisions would be questioned more often and litigation would increase due to the recent precedent. The Commissioner will never have the vast powers he once did.

Despite this decrease of power, this structure suffered from two additional problems. First, several defects existed in this structure in that it did not provide guidance to those subject to the Commissioner's powers for when the Commissioner may intervene in a dispute.²²⁸ Often, a Commissioner's decision to intervene was based on his personality and his interpretation of the "best interests" clause and not some structured guideline.²²⁹ This structure also suffered from allowing one individual to have complete power to make decisions which went unchecked.²³⁰ The Commissioner served in investigative, prosecutorial, and adjudicative roles and this concentration of power in one individual was deleterious to the system.

Second, the Commissioner was not immune from the pressures of alienated owners which could lead to the Commissioner's resignation.²³¹ In order to be effective, a Commissioner must be able to make decisions without facing any recriminations. Based on the most recent case restricting the Commissioner's powers and the two problems that were already inherent in this structure, this struc-

226. See *supra* notes 162-89 and accompanying text (discussing that Commissioner Vincent acted beyond the scope of his position).

227. *Id.*

228. *Id.*

229. *Id.*

230. *Id.*

231. See *supra* note 186 and accompanying text (stating that Commissioner Vincent resigned due to the pressure from the owners).

ture will not be effective.

3. The Owners' Proposal

Currently, a committee of owners is working on restructuring baseball's hierarchy, and it appears that they are planning to turn the Commissioner's role into a chief executive officer responsible to a board of directors comprised of the twenty-eight club owners.²³² Although the owners contend that the powers the Commissioner will not be altered, the Commissioner's "best interests of baseball" powers will be diluted.²³³ If the person who the owners choose to implement their new structure wants to decide any issue that may affect the finances of the owners, this person would need authority from the owners.²³⁴ Reinsdorf, co-owner of the White Sox, summed up the owners goals when he stated that the new Commissioner would "run the business [for] the owners, not the players, umpires, or fans."²³⁵

4. The Independent Baseball Rulings Proposal

This article proposes a five-person board to manage the game of baseball. This board would consist of one main Commissioner and four Deputy Commissioners who would serve under this position.

In order to select a Commissioner, club owners and the players association would nominate individuals independent of baseball. The Antitrust Subcommittee of the Senate Judiciary Committee would then conduct hearings to select the most appropriate candidate that would represent the various interests of baseball.²³⁶ This process would serve two functions. First, by allowing the Senate Judiciary Committee to choose the Commissioner as opposed to the owners, the public will have confidence that the Commissioner will

232. See *supra* notes 190-204 and accompanying text. Since the owners are still in the preliminary steps of determining the scope and powers that their Commissioner will have, it is difficult to detail their plan.

233. *Id.*

234. *Id.*

235. See *supra* note 203 and accompanying text.

236. See *supra* note 7. This subcommittee is concerned with baseball's antitrust exemption and has held hearings to determine the future of this exemption. *Id.* Since baseball is facing \$3.5 billion in lawsuits concerning this antitrust issue and, with the possibility of treble damages, it would be in the best interest of baseball to allow an outside body choose the Commissioner, especially if that outside body has the power to eliminate baseball's antitrust exemption. *Id.*

act in the best interests of baseball. Second, the antitrust exemption that baseball covets will remain intact since the Senate Judiciary Committee will be satisfied that the owners would not have complete control of every facet of the game. The Commissioner will then serve a six-year renewable term and only the Senate Judiciary Committee will have the power to impeach the person if the need arises. The duties of the new Commissioner will include acting as the public relations agent for the sport and supervising issues that are brought before any of the Deputy Commissioners.

Next, this Commissioner will select four independent Deputy Commissioners. Each Deputy Commissioner will have some in-depth knowledge or expertise in his respective position and will be responsible for a certain aspect of the game. The four areas of baseball for which a Deputy Commissioner would govern include: (1) integrity concerns, (2) expansion and realignment issues, (3) labor problems, and (4) financial concerns. This five-person board will intervene in all issues that concern the integrity of the game, expansion, and realignment of baseball. In labor and financial concerns, the board will only intervene when less than three-fourths of the clubs agree on a particular issue.²³⁷ If a case satisfies the standard for intervention, then the Deputy Commissioner of the issue will collect evidence needed in making a decision. Each of the Deputy Commissioners has the power to recommend any type of monetary fine and/or suspension from the game. The Deputy Commissioner will then take the information and his recommendation to the other Deputy Commissioners who will vote on the issue. If the Deputy Commissioners' vote ends in a tie, the Commissioner will have the tie-breaking vote.

This proposal calls for a more structured government which delineates when the Commissioner can intervene. This proposal also expands the decision making process by allowing input from more people and greater due process. The next section will apply these four solutions to two hypothetical problems which baseball faces or may face in the future.

237. This plan does not want to exclude owners completely from dealing with issues, but it does not want owners to have total control over all issues.

C. Assessing the Viability of the Four Plausible Solutions

1. Hypothetical #1

The owner of a team suspects that the manager of his team and several of his lower-paid players are tied to a gambling syndicate. These individuals are jealous of some of the outrageous salaries their fellow players earn, so they decided to sell their services to certain gamblers. This owner is neither liked nor respected in baseball and is treated as an outcast. Because this issue concerns the integrity of the game, public confidence can easily be lost if a scandal develops.

a. *The National Commission/Executive Council*

It is difficult to discern whether a system similar to the National Commission/Executive Council would be able to solve such a concern. Essentially, if this owner does not get along with the other baseball people who run the game, it may take a long time before his case is heard. In fact, it was a similar gambling scandal, the Black Sox Scandal, that led to the demise of the National Commission.²³⁸

b. *The Commissioner*

The Commissioner probably would have suspended the manager and the players. Initially, Commissioner Landis was given full power to deal with any individual who compromised the integrity of the sport and would have suspended the individuals immediately.²³⁹ Succeeding Commissioners perpetuated this view on gambling.²⁴⁰

238. See *supra* notes 53-60 and accompanying text (showing that the differences between Charles Comiskey, owner of the White Sox, and Ban Johnson, American League President, and Garry Herrmann, President of the National Commission and owner of the Cincinnati Reds, which was the White Sox opponent in the World Series, delayed the investigation of the gambling accusations by Comiskey); see also *supra* note 7 (showing the delay of the Executive Council of Major League Baseball on acting on the Marge Schott incident).

239. See *supra* notes 109-28 and accompanying text (discussing the impact Judge Landis had on cleaning up the game).

240. See *supra* note 136 (describing the harsh penalties given to Pete Rose and George Steinbrenner for their involvement with gamblers).

c. The Owners' Proposal

The owners' proposal of having a chief executive officer type of Commissioner would have probably suspended the manager and the players. Although the owners want to change the business aspects of this position, apparently they still perceive a need for a strong individual to maintain the integrity of the game. As a result, the manager and the players would probably have been suspended.

d. The Independent Baseball Rulings Committee Proposal

The IBRC proposal would deal with this issue effectively because it allows for Commissioner intervention in all questions of integrity. In this system, the Deputy Commissioner in charge of all integrity issues will hear evidence and testimony from both sides, the owner as well as the accused individuals. Upon reviewing the testimony, this Deputy Commissioner will bring his findings as well as a recommendation to the other three Deputy Commissioners and the Commissioner. The four Deputy Commissioners will then vote to determine the outcome of the individuals. The Commissioner will vote only if a tie needs to be broken. If the owner's allegations are supported, the manager and the players will be suspended.

2. Hypothetical #2

The collective bargaining agreement between the owners and the players provides an option for either side to reopen the contract for negotiations. Some of the owners want to reopen this agreement to regain some of the bargaining power over the players, while some of the other owners do not want to reopen negotiations because they are afraid of the money they might lose if negotiations fail and a lockout occurs. The owners voted on this issue, and the result was fifteen to thirteen for reopening negotiations.

a. The National Commission/Executive Council

The National Commission may have intervened in this situation if it thought that the wealthier owners were trying to secure their power at the expense of the smaller owners. The National Commission implemented two main rules to enforce various regulations for the American League and the National League.²⁴¹ These two

241. See *supra* notes 41-46 and accompanying text (discussing the role of the reserve

rules, the reserve clause and the territorial rights clause, were implemented mainly to prevent the wealthier owners from taking advantage of their wealth by driving out the poorer owners.²⁴² Arguably, if the National Commission determined that the wealthy owners were using their wealth to increase the bargaining power over the players at the expense of the poorer owners, then the National Commission may intervene.

b. The Commissioner

Depending on the Commissioner, he may intervene if the negotiations were not successful and end any lockout that the owners might have threatened to use. In fact, Commissioner Vincent's intervention in the 1990 negotiations was one of the reasons the owners did not want him in office when the next set of negotiations would take place.²⁴³ The owners felt that Commissioner Vincent weakened their position and, as a result, the owners did not want Commissioner Vincent to continue as the Commissioner, or, at the very least, the owners did not want him to have the same powers to intervene.²⁴⁴ Depending on who the person was and what he believed his role was, the Commissioner may or may not intervene in labor negotiations between the owners and the players.

c. The Owners' Proposal

Since this is more of a financial issue rather than an integrity issue, the owners' chief executive officer would probably act according to the owners' demands. This is the type of Commissioner that Reinsdorf and some of the other owners want so that the owners would be able to use their bargaining power without worrying about the possible intervention of a Commissioner.²⁴⁵ In this proposal, the Commissioner would step aside and let the owners deal with the problem, or perhaps serve as a management negotiator, i.e., a lackey.

clause and the territorial rights clause).

242. *Id.*

243. *See supra* note 2 (discussing the reasons for ousting Commissioner Vincent).

244. *Id.*

245. *See supra* notes 232-35 and accompanying text (discussing the owners' proposed role of the new Commissioner).

d. The Independent Baseball Rulings Committee Proposal

According to the IBRC proposal, the Commissioner and the Deputy Commissioners would intervene in this situation because, although it is a labor problem, the requirement for three-fourths of the owners to vote on one side was not met. The Deputy Commissioner who deals with labor concerns would listen to both the players' and the owners' arguments and develop a recommendation for the other Deputy Commissioners to vote. The Commissioner would vote only if a tie needs to be broken.

This proposal in dealing with labor negotiations is better than the previous structure and the owners' proposal in several ways. First, it provides guidance for when the Commissioner may intervene in labor negotiations, whereas the previous structure had no guidance for when the Commissioner may intervene in labor negotiations. Under the previous structure, the standard was determined by the person who occupied the office at the time. Second, this proposal is better than the previous Commissioner structure because the Commissioner is immune from owner pressures, whereas if the Commissioner in the old structure did intervene against the owners, the Commissioner was subject to their wrath.

The IBRC proposal also improves upon the owners' proposal because, unlike the Commissioner under the owners' proposal, the Commissioner in the IBRC proposal would act with the interests of both the owners and the players to bring an end to any long strikes or lockouts.

VI. CONCLUSION

It is very apparent that baseball is facing difficult times, and it needs a strong leader or structure to deal with these difficult times. Many problems exist with the possible alternatives that are being considered to solve the problems confronting baseball. The National Commission suffered from having baseball men run the game, the old Commissioner structure suffered from vesting too much authority in one individual, and the owners' proposal places too much control in their hands. Therefore, the old National Commission structure, the old Commissioner structure, and the owners' proposal should not be adopted.

As a result of the problems that exist with the previous structures, the IBRC proposal developed in this article should be adopted. The IBRC proposal remedies the problems existing in the other

structures. Unlike the National Commission, the IBRC proposal is comprised of individuals who are independent from baseball. Their votes would not be influenced and conflicts of interest would not be a concern in certain issues. Also, the IBRC proposal improves on the old Commissioner position by establishing procedures for when the Commissioner may intervene on baseball issues. This proposal also gives an opportunity for everyone to be heard before a judgment is rendered. Also, the Commissioner in the IBRC proposal is immune from the pressures of the owners because the owners cannot force his resignation. Finally, the IBRC proposal is more effective than the owners' proposal because individuals who are independent from the game will make the decisions and everyone will have the opportunity to be heard. As a result, the IBRC proposal is the best structure to deal with the problems that face baseball because it is the only structure that deals with all of the parties' interests fairly.