

# IN THE BEST INTERESTS OF THE GAME: THE AUTHORITY OF THE COMMISSIONER OF MAJOR LEAGUE BASEBALL

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## I. INTRODUCTION

It was 1920 and the future of professional baseball was uncertain. Eight Chicago White Sox players lay accused of fixing the outcome of the 1919 World Series, including one of the game's best players, "Shoeless" Joe Jackson.<sup>2</sup> The Federal League<sup>3</sup> kept the

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2. HAROLD SEYMOUR, *BASEBALL: THE GOLDEN AGE* 294 (1971). The Cincinnati Reds defeated Chicago, soon branded as the "Black Sox," five games to three in the 1919 best-of-nine series. Although the beloved (and posthumously glorified) "Shoeless" Joe Jackson was said to have been involved in the scheme to purposefully allow the Reds to win the World Series

rival National League in the midst of complex antitrust litigation, based on the claim that the new Federal League dissolved because of the National League's illegal monopolistic activities.<sup>4</sup> Violence in the game was on the rise. Baseball's team owners had enough. They decided to hire a commissioner to help restore order to a game which appeared to be careening out of control. They found former judge Kenesaw Mountain Landis and gave him the authority to act in the best interests of baseball. And so it began.

This article examines the "best interests" power granted to each commissioner of Major League Baseball from Landis to Fay Vincent. This study will attempt to place in context the past, present and future of baseball, with particular emphasis on the most recent changes to the "best interests" authority.

## II. THE "BEST INTERESTS" POWER OF THE COMMISSIONER

### A. *The Ruling Monarch: Kenesaw Mountain Landis*

For their first commissioner, baseball owners turned to a weathered jurist named Kenesaw Mountain Landis.<sup>5</sup> A 54-year old, crafty and oft-feared federal district court judge, Landis had made himself known throughout the country. Baseball owners knew Landis as the presiding judge in *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs*,<sup>6</sup> where he gave the National League and Federal League a chance to negotiate and settle their antitrust dispute.<sup>7</sup> Others knew Landis as the gutsy

title, Jackson hit .375 in the eight games, had a series-leading 12 hits, and connected for the series' only home run. JOHN THORN AND PETE PALMER, *TOTAL BASEBALL* 129 (1989).

3. The Federal League was created by a group of entrepreneurs in 1913. The Federal League began in six cities, making no pretensions to major league status and respecting the contracts of major league players. However, after expanding the league to eight teams and posing more competition for baseball interest in major league cities, contract disputes erupted between the Federal League and the two existing major leagues over some of the game's top players, such as future Hall-of-Famer Walter Johnson. The resulting contract suits between the leagues led to the demise of the rival league. MIKE SHATZKIN, ED., *THE BALL-PLAYERS* 326 (1990).

4. *Id.* The lawsuit was filed in January, 1915 and defined much of the remaining days of the Federal League's existence. *Id.*

5. SEYMOUR, *supra* note, 2 at 194. Organized Baseball previously had been governed by a National Commission, comprised of two league presidents and one owner representative. But the Commission was powerless to act in most every instance and baseball owners scrapped the plan in favor of a single ruling monarch. *Id.*

6. 259 U.S. 200 (1922).

7. Richard B. Allen, *Lawyers, Law and Baseball*, 64 ABA JOURNAL 1530, 1531-32 (Oct. 1978). The two leagues were able to come to an agreement -- all except for the National

trust-buster who fined industrial giant Standard Oil nearly \$30 million.<sup>8</sup> Powerful and feared, Landis seemed to be the perfect choice to solve the problems within professional baseball.<sup>9</sup>

In November 1920, baseball owners announced that Landis was their choice as baseball's first commissioner. A committee of owners promptly was established to set forth the powers of the office.<sup>10</sup> Owners quickly realized that Landis would not tolerate any attempt to narrow the breadth of his authority. When one meeting produced a recommendation that Landis' powers be restricted, the judge refused to accept the job.<sup>11</sup> When owners eventually agreed to delete any restrictive provisions from the charter, Landis and the league clubs signed the National Agreement.<sup>12</sup> This document continues to stand as a testament to, and as a guardian of, the authority of the commissioner of Major League Baseball.

The commissioner's primary source of power within the National Agreement comes from Article I, section 2, now referred to as the "best interests" clause.<sup>13</sup> The provision has undergone only mini-

League's franchise in Baltimore, which refused to accept the settlement. The resulting suit by the Federal League against the Baltimore team resulted in Justice Oliver Wendell Holmes' famous Federal Baseball decision which forms the basis for Major League Baseball's anti-trust exemption. *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs*, 259 U.S. 200 (1922).

8. *U.S. v. Standard Oil Company of Indiana*, 155 F. 305 (N.D. Ill. 1907), *rev.* 164 F. 376, *cert.denied*, 212 U.S. 579. The fine was overturned on appeal and the penalty was never paid. Nevertheless, Landis received nationwide acclaim. SEYMOUR, *supra* note 2, at 369.

9. SEYMOUR, *supra* note 2, at 369. One writer with New York's *Daily Mirror* wrote that Landis' "manner of handling witnesses, lawyers and reporters was more arbitrary than the behavior of any jurist I have ever seen." *Id.*

10. *Charles O. Finley, Co., Inc. v. Kuhn*, 569 F.2d 527, 532 (1978).

11. *Id.* at 532. Landis later said that he understood that the owners wanted "an authority . . . outside of your own business, and that a part of that authority would be a control over whatever and whoever had to do with baseball." *Id.*

12. The National Agreement is also referred to as the Major League Agreement. When Ban Johnson attempted to change the wording of the powers given to Landis under the National Agreement so as to dilute his authority, the judge quickly retorted that the owners leave the powers as they were or find themselves a new commissioner. "You have told the world that my powers are to be absolute," Landis told the owners. "I wouldn't take this job for all the gold in the world unless I knew my hands were to be free." The owners decided to comply and the commissioner's authority remained secure. SEYMOUR, *supra* note 2, at 322.

13. Originally, Article I, section 2 stated:

The functions of the Commissioner are 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 a 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.

*Id.*

mal changes since its official inception on January 12, 1921. Notwithstanding, those seemingly minor alterations to semantics and grammar drastically alter the breadth of the commissioner's authority.<sup>14</sup>

Under the National Agreement, signed by Landis and the game's team executives, the owners agreed to remain bound by the decisions of the commissioner, thereby waiving their rights to challenge the validity of his rulings in court.<sup>15</sup> This was exactly the authority that Landis desired. In addition, he received a hefty salary and job security with a seven-year contract at \$42,500 per year. In the face of broad based criticism from politicians and the American Bar Association, Landis, with the consent of the owners, kept his position as federal court judge.<sup>16</sup>

With his tyrannical authority securely in place, Landis immediately took to the task for which he was employed. In a sweeping display of the power of his office, Landis unceremoniously banned all eight players accused of participation in the Chicago "Black Sox" gambling scheme. Even after the ballplayers were acquitted by a home-town jury in Chicago,<sup>17</sup> Landis refused to permit them back into baseball, citing his governing authority to act in the game's best interests.<sup>18</sup>

In the years that followed, Landis ruled with an iron fist. He

14. *Kuhn*, 569 F.2d at 532, 533, note 11. This provision was amended in 1964 to change the words "detrimental to the best interests of the national game of baseball" to "not in the best interests of the national game of baseball." *Id.*

15. *Id.* at 533. Article VII, section 2 provided:

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 said right of recourse to the courts as would otherwise have existed in their favor.

*Id.*

16. SEYMOUR, *supra* note 2, at 373. The ABA expressed "unqualified condemnation" of Landis' actions and found his holding of the two positions simultaneously to be "derogatory to the dignity of the bench." *Id.* Landis later relinquished his bench seat on his own terms, after holding both jobs for 15 months. *Id.* at 372.

17. *Id.* at 329. It took the jury just a few hours on the evening of August 2, 1921 to acquit the seven players and two gamblers on trial for throwing the World Series games. When the jury announced its decision, a scene of "wildest confusion" erupted in the courtroom: "spectators cheered, and hats and papers were tossed in the air; and the jurors carried the players around on their shoulders." *Id.*

18. TURKIN, HY AND THOMPSON, S.C., THE OFFICIAL ENCYCLOPEDIA OF BASEBALL 431 (1951). In a stinging statement, Landis laid down the law:

Regardless of the verdict of the juries, no player that throws a ball game; no player that undertakes or promises to throw a ball game; no player that sits in conference with a bunch of crooked players and gamblers where the ways and means of throwing games are planned and discussed and does not promptly tell his club about it, will ever play professional baseball.

*Id.*

banned Phillies player Eugene Paulette for merely a suspicious association with gamblers, even though the player consistently denied ever placing a single wager.<sup>19</sup> The commissioner blacklisted and banned Ray Fisher, who had left the league to take a job as a coach with the University of Michigan.<sup>20</sup>

Landis even suspended Babe Ruth for 40 days in 1922. Upon the owners' declaration and Landis' approval, barnstorming<sup>21</sup> was forbidden for all baseball players. Ruth however ignored Landis' edict and was forced to sit out.<sup>22</sup>

Landis also used his best interests authority to unilaterally alter the game's playing rules, instituting a number of rule changes just prior to the 1941 World Series. First, he attacked delay tactics by limiting the number of players who could meet on the mound while contemplating a pitching change, as well as the number of trips each manager could take to the mound. The commissioner also ruled that manager tirades against players or umpires would not be tolerated in the World Series.<sup>23</sup>

Landis was equally as forceful with the very same owners who had empowered him. In 1943, Landis invoked his best interests power to ban Phillies owner Bill Cox from baseball after finding that Cox had wagered on baseball games.<sup>24</sup>

Landis even attempted to dismantle baseball's "farm system."<sup>25</sup>

19. SEYMOUR, *supra* note 2, at 373.

20. *Id.* at 373. When Fisher tried to return to baseball after his college coaching days were over, he found that he was no longer welcome to return to the league, perhaps for giving Major League Baseball a bad image in skipping to a different job. *Id.*

21. Barnstorming is participating in a series of nation-wide self-promotion tours meant to showcase their talents.

22. See SEYMOUR, *supra* note 2, at 392. The decision nearly brought Landis down with the fans almost as fast as he had been risen up by the owners. As the Baseball Encyclopedia of 1951 noted: "Babe's immeasurable popularity caused the public to grumble over the drastic decree; but the complaints were tinged with a growing respect for this inflexible disciple of law and order." TURKIN, HY AND THOMPSON, *supra* note 18, at 431. The fact that inclement weather forced the abandonment of the tour shortly after its inception did not appease Landis who, by then, had declared that "this case resolves itself into a question of who is the biggest man in baseball, the Commissioner or the player who makes the most home runs." SEYMOUR *supra* note 2, at 392.

23. SEYMOUR, *supra* note 2, at 392. Especially mentioned was Leo Durocher, the Brooklyn Dodgers manager. *Id.*

24. RICHARD GOLDSTEIN SPARTAN SEASONS: HOW BASEBALL SURVIVED THE SECOND WORLD WAR 74 (1980). It did not matter to Landis that Cox only had bet on his own team to win. Simply the fact that he participated in gambling on baseball was enough to incur Landis' wrath. *Id.*

25. A relatively new creation developed in baseball's early years and perfected by later owners such as Branch Rickey, the farm system was created as a byproduct of Major League teams' ownership of many minor league clubs. Major League Baseball teams would be able to develop, or "farm," their own talented players on their own minor league squads. As they played for teams with Major League affiliations, these players therefore could be "hidden" from the annual baseball draft, a process designed to prevent powerful, independent minor

Using the farm system, teams were able to "hide" their players by shifting them between the Major League team and minor league affiliates, creating new contracts and preventing the players from becoming eligible for the draft. In response, Landis periodically would go on tirades during which he would declare eighty or ninety of such players free agents, regardless of what the owners wanted.<sup>26</sup> The farm system could never work as the owners may have wished so long as Landis continued to release players from their contracts.

Few owners made the mistake of questioning Landis. However, one owner, Phil Ball of the St. Louis Cardinals, made the ill-fated error of challenging Landis' authority in federal court. In *Milwaukee American Association v. Landis*,<sup>27</sup> the Milwaukee American Association brought a suit in 1931 against Commissioner Landis. The dispute centered around a promising young outfielder named Fred Bennett. Bennett had been acquired by minor league Tulsa and subsequently had been moved around between major league St. Louis, and minor league teams in Milwaukee and Wichita Falls. In September 1929, after being acquired by Wichita Falls, Bennett was sold outright to St. Louis for \$5,000, despite a \$10,000 offer from Pittsburgh. In April 1930, while holding the outright rights to Bennett, St. Louis sent him to Milwaukee, reserving an option on him.<sup>28</sup>

Almost immediately after Bennett's transfer to Milwaukee, Landis began an investigation into the Bennett contract transfers. Major League rules required that any player who was to be sent down to the minors first had to be placed on "waivers," thus permitting all other clubs the opportunity to sign him. An exception was created for players new to a franchise: a team which had purchased a player outright could send him to a minor league club without placing him on waivers within the first two years of that transfer.<sup>29</sup>

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league teams from continuously retaining the best players and preventing their rise to the majors.

26. ROBERT W. CREAMER, *BASEBALL IN '41: A CELEBRATION OF THE BEST BASEBALL SEASON EVER - IN THE YEAR AMERICA WENT TO WAR 39-40*, 205 (1991).

27. 49 F.2d 298, 299-300 (N.D.Ill. 1931).

28. *Id.*

29. *Id.* at 300, 301. Under the Major League-Minor League rules, the waiver rules provided as follows:

The contract of a player signed as a free agent or acquired from a Minor League Club otherwise than by selection, may be assigned to a Minor League Club, under approved optional agreement, within two years . . . without giving opportunity to the other fifteen Major League clubs to take such contract through the regular waiver channels; provided that no such player may be assigned outright, or right of

In his investigation, Landis found that Ball had full ownership interests in the St. Louis, Tulsa, and Wichita Falls clubs and a half ownership interest in the Milwaukee franchise. While this multi-franchise ownership did not violate Major League rules, Landis determined that Ball's "secret control" of all four teams was a means by which Ball could achieve covert and illegal ends. Landis found that Ball's ownership of all four teams allowed him to sell Bennett back and forth between all of his teams, keeping a new two-year period intact, avoiding having to place Bennett on waivers and protecting the player from all other teams.<sup>30</sup>

Furious at this covert activity, Landis ordered that Milwaukee send Bennett back to St. Louis, and that the St. Louis franchise be required to place the player with the major league team for one more year, transfer him outright to another club not owned by Ball, or release him from his contract. Ball argued that Landis was powerless to act in this manner and brought suit against the commissioner.

On April 21, 1931, Judge Walter C. Lindley in the federal district court for the Northern District of Illinois ruled that Landis possessed the broad authority to act as he wished in settling disputes and remedying inequitable activities within the league. The court determined that baseball owners intended "to make the commissioner an arbiter" and "to vest in the commissioner jurisdiction to prevent any conduct destructive" to the game.<sup>31</sup> The court then found that Landis' ruling to nullify the St. Louis-Milwaukee transaction was fully within his capacity as an arbitrator and would not be overturned by the courts.<sup>32</sup>

Landis' powers to remedy any situation which he felt to be detrimental to the game therefore were upheld. Landis, and the commissioner's job itself, had found a newly delineated authority that could not easily be altered.

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recall cancelled, unless waivers shall have been asked and granted; and provided, further, that such player shall not, in either case, have been in active service in either or both Major Leagues an aggregate of two full championship seasons, or been transferred under optional assignment by a Major League Club two or more seasons.

*Id.* at 301.

30. *Id.* at 300, 302.

31. *Id.* at 301-02.

32. *Landis*, 49 F.2d at 301-02. The court stated: "No sanely managed corporation would have deliberately refused to sell [Bennett] for \$10,000 when the highest competing offer was \$5,000, unless bidden so to by its master, inspired by a purpose other than the best interests of the corporation." *Id.*

*B. Life After Landis: Albert B. "Happy" Chandler*

When Kenesaw Mountain Landis died on November 25, 1944, baseball owners spotted their chance to redefine the office of the commissioner with a more malleable monarch to lead the game. After a five-month quest for a successor, baseball executives finally agreed on a popular and pleasant politician from Kentucky, named Albert B. "Happy" Chandler. A Harvard graduate, a former governor and senator in the Bluegrass State and a fan of the game, Chandler was well-suited for the job. Chandler was described as Landis' opposite image.<sup>33</sup>

Chandler entered the job believing that he would be permitted to wield the same degree of power as did Landis.<sup>34</sup> However, the scope of the commissioner's authority already had been narrowed by baseball owners the previous year, making it seem at least at first glance, that Chandler might have a tougher time governing the game than did Landis.

First, the baseball owners amended Article VII, section 2 of the Major League Agreement, deleting the provision under which they waived their rights to challenge the commissioner's actions and decisions in court.<sup>35</sup> Second, they added a provision which stated that no owner-promulgated rule could be voided by the Commissioner as being detrimental to the game.<sup>36</sup>

But even with these new changes in place, and much to the owners' chagrin, the ambitious Chandler was not deterred from stepping into the middle of controversy and at least trying to take control.<sup>37</sup> In April, 1947, in one of the most explosive actions of

33. BOWIE KUHN, *HARDBALL: THE EDUCATION OF A BASEBALL COMMISSIONER* 25 (1987). Later-commissioner Bowie Kuhn described Chandler to be "as warm spirited as Landis was crusty; as homespun as Landis was profane . . . as voluble as Landis was terse; as kindly as Landis was pugnacious." *Id.*

34. TURKIN, HY & THOMPSON, *supra* note 18, at 76. "It never occurred to me that it would be anything less," he said upon his appointment. "I can't go in there standing in the shadows of Judge Landis and not have the authority to do a good job." *Id.*

35. *Kuhn*, 569 F.2d at 534. The change served to alter the last part of the section. Oddly enough, although it may appear to have posed a contradiction, owners agreed to retain the first provision of the section in which owners agreed to be bound by the commissioner's decisions." *Id.* at 534, note 15.

36. *Id.* at 534. The new Article I, section 3 read:  
No Major League Rule or other joint action of the two Major Leagues, and no action or procedure taken in compliance with any such Major League Rule or joint action of the two Major League Rule or joint action of the two Major Leagues shall be considered or construed to be detrimental to Baseball."

*Id.*

37. *Scorecard*, *SPORTS ILLUSTRATED*, Nov. 16, 1964, at 3. *Sports Illustrated* later commented that the confidence and power exuded by Landis "scarcely diminished when Chandler succeeded him, even though the owners, who had chafed under Landis' dictatorial reign, gave



his reign, Chandler suspended Dodgers manager Leo Durocher for the entire 1947 season for conduct which the commissioner deemed to be detrimental to baseball.<sup>38</sup> It quickly had become clear that although the owners may have changed the Major League Agreement, the best interests clause remained in full effect. Without a change in the actual wording of the best interests clause itself, it appeared that the authority vested in that provision, and upheld in *Milwaukee American Assn.*, would stand.

Chandler's apparent stronghold on baseball hardly impeded legal challenges to the office's authority. One legal challenge came from a player who had been disciplined by the commissioner for jumping to the rival Mexican League. When the new upstart league began in 1946, it signed 16 Major League players and quickly appeared to pose a threat to Major League Baseball's entertainment monopoly. Chandler responded by announcing that the Major League players who had signed on with the Mexican League had violated the "reserve clause" in their contracts and therefore, were all suspended from Major League Baseball.<sup>39</sup> The reserve clause was a provision in each player's contract which allowed the current club to re-sign the player to the same terms as the original contract, including the reserve clause itself. Therefore, a team could effectively keep a player for the duration of his career.<sup>40</sup>

One of these blacklisted players was New York Giants outfielder Danny Gardella.<sup>41</sup> After one season with the Giants, Gardella

themselves the power to overrule the commissioner." *Id.*

38. TURKIN, HY & THOMPSON, *supra* note 18, at 79. When asked whether he would appeal the suspension of his team's manager, Dodgers owner Branch Rickey slyly replied, "To whom? Mr. Chandler is the commissioner." *Id.*

39. Allen, *supra* note 7, at 1533.

40. The reserve clause also may be explained as a provision whereby a player, "in signing a contract for the ensuing season or seasons agrees not to sign a contract with or play for any club at the expiration of the period of the contract, other than with or for the club or its assignee, which employs him." *Gardella v. Chandler*, 79 F. Supp. 260, 261 (S.D.N.Y. 1948).

The text of the reserve clause, as found in the league's Standard Player Contract, is as follows:

RENEWAL. 10 (A) On or before February 1st (or if a Sunday, then the next preceding business day) of the year next following the last playing season covered by this contract, the Club may tender to the Player a contract for the term of that year by mailing the same to the Player at his address following his signature hereto, or if none be given, then at his last address or record with the club. If prior to the March 1 next succeeding said February 1, the Player and the Club have not agreed upon the terms of such contract, then on or before 10 days after said March 1, the Club shall have the right by written notice to the Player at said address to renew this contract for the period of one year on the same terms, except that the amount payable to the Player shall be such as the Club shall fix in said notice; provided, however, that said amount, if fixed by a Major League Club, shall be an amount payable at a rate of not less than 75% of the rate stipulated for the preceding year.

*Id.* at 437-38.

41. MIKE SHATZKIN, ED., *THE BALLPLAYERS* 376 (1990). The New York native was a

jumped to the Mexican League for a \$10,000 paycheck. Like the other players who found new homes in Mexico, Gardella was suspended by Chandler for breaching the reserve clause. The suspended players argued that the reserve clause violated federal antitrust laws and that Chandler therefore was not permitted to rely on the illegal provision as a basis for his decision to ban the jumping players.<sup>42</sup>

The federal district court for the Southern District of New York granted Chandler's motion to dismiss Gardella's suit on July 13, 1948, ruling that the Supreme Court decision in *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs*,<sup>43</sup> was controlling.<sup>44</sup> In *Federal Baseball*, Justice Oliver Wendell Holmes authored a now famous terse opinion in which he stated, for the majority, that Major League Baseball was exempt from the Sherman Antitrust Act because it was not involved in interstate commerce.<sup>45</sup> The *Gardella* court admitted that the advent of interstate radio and television transmission of the games may suggest that baseball now may be involved in interstate commerce. But district court Judge Henry W. Goddard nevertheless maintained the court's subordination to the will of the Supreme Court and denied Gardella's claim.<sup>46</sup>

Surprisingly, the Second Circuit Court of Appeals reversed the district court's decision on February 9, 1949, granting Gardella the opportunity to proceed with his case.<sup>47</sup> Judges Frank and Hand found that *Federal Baseball* was distinguishable in this instance since there were significant interstate interests.<sup>48</sup> According to

shipyard worker when he joined the mid-World War II Giants in 1944. He hit 18 home runs in 1945, and then refused to accept the Giants' \$4,500 contract offer for the following year. *Id.*

42. *Id.*

43. 259 U.S. 200 (1922).

44. *Gardella v. Chandler*, 79 F. Supp. at 263.

45. *Federal Baseball*, 259 U.S. at 200. According to Holmes, the travel of players between states was merely, "incidental" to the business of professional baseball and did not, in itself, constitute interstate commerce. *Id.* at 203. "To repeat the illustrations given by the Court below," Holmes wrote, "a firm of lawyers sending out a member to argue a case, or the Chautauqua lecture bureau sending out lecturers, does not engage in such [interstate] commerce because the lawyer or lecturer goes to another State." *Id.* at 204.

46. *Gardella*, 79 F. Supp. at 260.

47. *Gardella v. Chandler*, 172 F.2d 402 (2d Cir. 1949). Circuit Judge Harrie B. Chase dissented, seeing *Federal Baseball* as controlling authority, writing that "our duty as a subordinate court is to follow the Federal Baseball case." *Id.* at 405.

48. *Id.* at 410. As Judge Frank wrote, "Here, the defendants have lucratively contracted for the interstate communication, by radio and television, of the playings of the games." *Id.* Frank wrote that the interstate communication caused "the games themselves . . . so to speak, [to be] played interstate as well as intrastate." *Id.* at 411. See ROBERT C. BERRY AND GLENN M. WONG, LAW AND BUSINESS OF THE SPORTS INDUSTRIES 96 (1986).

the court, Major League Baseball should be held subject to federal antitrust laws, and Gardella's suit was remanded back to the district court for a new trial.<sup>49</sup>

While the case was pending in the courts, Gardella further put pressure on baseball by joining St. Louis Cardinals' players Fred Martin and Max Lanier in seeking an injunction against Chandler, to force the commissioner to revoke the Mexican League suspensions.<sup>50</sup> The players' request for a restraining order was denied.<sup>51</sup> But, rather than permit the suit to continue and risk losing its antitrust immunity, Major League Baseball settled the case. The blacklist was lifted, Gardella reportedly got \$29,000 from the league and all of the players were reinstated.<sup>52</sup>

Despite the Mexican League crisis, Chandler generally was considered a players' commissioner. He put the players' pension fund on sound footing and usually tried to protect the players' best interests. Chandler essentially proved to be exactly what the owners did not want -- an iron-willed, mostly pro-players commissioner who wanted owners to be less stubborn to avoid later confrontation, and who was not afraid to flex his authoritative muscles.<sup>53</sup>

Faced with yet another unmanipulable leader, the owners moved to rid themselves of their second commissioner by refusing to re-elect him.<sup>54</sup> Later, Chandler insisted that the move was the product of a minority of owners who sandbagged him even in the face of a majority of owners who supported him.<sup>55</sup> Chandler was repudiated again at the owners' March, 1951 meetings, and he stepped down later that year.<sup>56</sup>

49. *Id.* Judge Frank also took the opportunity to offer his view on the reserve clause. In dicta, he suggested that the reserve clause "results in something resembling peonage of the baseball player," that it is "virtual slavery" and that it "possesses characteristics shockingly repugnant to the moral principles of the country." *Id.* at 409-410.

50. Allen, *supra* note 7, at 1534.

51. *Id.*

52. SHATZKIN, *supra* note 41, at 376-77. As for Gardella: his career in Major League Baseball went further by exactly one hitless at-bat. He played in just one game following his suit against baseball's commissioner, failing to get a hit in his only at-bat with St. Louis in 1950. THORN & PALMER, *supra* note 2, at 1123.

Later, attempting to maintain an air of authority, Chandler tried to put a positive spin on the reinstatement by saying, "Gardella sued us, and then Martin and Lanier sued us. I was under some pressure from the club owners and lawyers to put the fellows back. But I would not do it until the court said I did not have to." Allen, *supra* note 7, at 1534.

53. SHATZKIN, *supra* note 41, at 176.

54. Joseph M. Sheehan, *Frick Elected Commissioner of Baseball for Seven Years*, N.Y. TIMES, Sept. 21, 1951 at A22. In December 1950, baseball owners voted against re-electing Chandler. They fell three votes short of the required three-fourths necessary to vote Chandler in for a second term. *Id.*

55. KUHN, *supra* note 33, at 26.

56. Sheehan, *supra* note 54.

### C. A Changing of the Guard: Ford Frick

With the old guard gone, the owners finally found a more manipulable figure than the frustrating Chandler or the untamable Landis.<sup>57</sup> Ford Frick, a former teacher, sportswriter and president of the National League was named as the third commissioner of baseball on September 20, 1951 and was given a seven-year contract at \$65,000 per year.<sup>58</sup> A well-liked, well-respected, and easy-going administrator, Frick seemed to be the easy choice for the job and the best person through which owners could pull back on the commissioner's reigns. However, when he accepted the job, Frick appeared to be under the mistaken impression, as was Chandler before him, that he would be given the sweeping authority which Landis enjoyed.<sup>59</sup>

Perhaps the most important issue of his tenure, and the one which defined Frick's diminished authority, was the movement of the Milwaukee Braves franchise to Atlanta. For months, Atlantans called for the Braves to relocate to Georgia in time for the start of the 1965 season, but the Milwaukee faithfuls resisted. Finally, after a meeting with league owners, National League president Warren Giles, using language traditionally reserved for the commissioner, announced that the *owners* had determined that "it was in the best future interests of baseball" to delay the Braves' relocation for one year and allow the team to move to Atlanta beginning with the 1966 season.<sup>60</sup> Frick had little say in the entire matter.<sup>61</sup>

When Frick retired following the 1965 season, the issue of the commissioner's authority was uncertain once again. Sensing Frick's upcoming retirement, baseball owners took the opportunity in 1964 to make cosmetic changes to the commissioner's authority in an apparent effort to better their public relations image. These alterations consisted of three amendments to the Major League Agreement.

57. SHATZKIN, *supra* note 41, at 364.

58. See Sheehan, *supra* note 54.

59. SHATZKIN, *supra* note 41, at 364. In reality, Frick's greatest display of authority was when he made the controversial decision to place an asterisk alongside Roger Maris' single season record of 61 homers: Babe Ruth had hit 60 homers in a 154-game season, while Maris hit one more home run in a season eight games longer. *Id.* The owners would allow him that task, reserving the greater issues for themselves. *Id.*

60. *League Refuses To Allow Braves To Move Till '66*, N.Y. TIMES, Nov. 8, 1964, at A23.

61. SHATZKIN, *supra* note 41, at 364. In fact, in more than a decade as commissioner, Frick had little say in any matter. He was well-respected by baseball executives and genuinely appreciated throughout Major League Baseball. But, he generally existed more as a figure-head and eventually viewed himself as the guardian of baseball's integrity, as a resourceful administrator and as a gentle guide, preventing the owners from heading toward self-destruction rather than as the game's lone powerful monarch. *Id.*

First, the owners removed the 1944 change to Article VII, section 2, instead agreeing to be bound by the commissioner's decision and waiving all judicial review of his decisions.<sup>62</sup> Second, the owners removed the 1944 amendment to Article VII, section 2 which had prevented the commissioner from finding any act or practice of the owners to be detrimental to baseball.<sup>63</sup> Finally, and perhaps most significantly for future administrations, the owners altered the actual language of the "best interests" clause, replacing the term "detrimental to the best interests of the national game of Baseball" to "not in the best interests of the national game of Baseball."<sup>64</sup> Where previous commissioners were required to find that an action had some affirmative "detrimental" effect on baseball before being permitted to respond, the new commissioner now needed only to demonstrate that an action had a subjective effect of not being in the game's best interests.<sup>65</sup> The change appeared to greatly expand the authority vested in the game's highest executive.<sup>66</sup>

#### D. *The General: William D. Eckert*

In a surprise move, baseball owners chose as the fourth commissioner, William D. Eckert, a retired army general with no baseball experience and little knowledge of the problems existing within baseball.<sup>67</sup>

While the selection of Eckert may have seemed to be a good idea at the time, it turned out to be a public relations nightmare for baseball. The owners thought that they had a readily manipulable conduit in the commissioner's office. But in reality, Eckert was so powerless that the owners' efforts to manipulate him were fruitless. In labor relations, Eckert remained almost invisible. While the commissioner was given the responsibility for hearing all labor grievances between owners and players, Eckert heard only two

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62. *Kuhn*, 569 F.2d at 534.

63. *Id.*

64. *Id.*

65. *Id.* at 533, note 11.

66. *Id.* But the question remained, would these changes have any bite? *Sports Illustrated* called the amendment a "gesture of restoring full power to the commissioner's office" while posturing that a strong figure would need to be put into place in order to wield that power for the betterment of the game. The question as *Sports Illustrated* posed it, was whether the owners were going to "make the gesture an honest one or a fake." *Id.*

67. *Retired General Replaces Frick as Commissioner of Baseball*, N.Y. TIMES, Nov. 18, 1965, at A24. Baseball owners gave Eckert a seven-year contract at \$65,000 per year, the same salary that Frick received. *Id.*

The choice of Eckert came as a shock to many, particularly considering that the candidates for the job reportedly included notably qualified individuals such as Baltimore Orioles president Lee MacPhail and American League president Joe Cronin. *Id.*

grievances, one decided for the players and one for the owners.<sup>68</sup> And when decision-making opportunities arose in the areas of franchise movement and expansion, Eckert was similarly absent from the proceedings. In 1967, baseball owners decided to move the Kansas City Athletics to Oakland and to expand the American League to 12 teams.<sup>69</sup> Less than eight months later, owners decided to expand further, adding franchises in Montreal and San Diego. Eckert stood by, touching the issues merely tangentially, essentially out of respect for procedure, rather than in any substantive manner.<sup>70</sup>

### *E. A New Era of Authority: Bowie Kuhn*

The search for a new commissioner in 1969 left owners deadlocked. The National League wanted San Francisco Giants vice president Charles "Chub" Feeney, while American League executives voted for New York Yankees president Michael Burke.<sup>71</sup> Hopelessly tied, owners decided against both choices and opted for a third man, Major League Baseball legal counsel Bowie Kuhn.<sup>72</sup>

Almost immediately, Kuhn took an independent tact as commissioner. After quickly disassociating himself from the Players Relations Committee, the owners' bargaining arm in labor negotiations, for which he acted as legal counsel,<sup>73</sup> Kuhn found himself at the head of a league which appeared to be destined for a players' strike. However, Kuhn alone managed to get the owners and players to the bargaining table for serious negotiations. Soon, a new collective bargaining agreement was reached, and Kuhn had weathered his

68. Glenn M. Wong, *A Survey of Grievance Arbitration Cases in Major League Baseball*, 41 ARB. 42, 44 (1986).

69. Leonard Koppett, *American League Approves Shift of Athletics to Oakland*, N.Y. TIMES, Oct. 19, 1967 at A22.

70. Joseph Durso, *National League Adds Montreal and San Diego*, N.Y. TIMES, May 28, 1968 at A22. Though Eckert was forced to resign on December 6, 1968, Major League Baseball was required to stick with him for nearly six months more as owners again searched for a new commissioner. This time, after the Eckert disaster, owners wanted someone who could bring to the game the public relations strength of Frick without the inquisitor's fist of Landis. *Id.*

71. Leonard Koppett, *Bowie Kuhn, Wall St. Lawyer, Named Commissioner*, N.Y. TIMES, Feb. 5, 1969 at A20.

72. *Id.* After graduating from the University of Virginia Law School in 1950, Kuhn joined the New York law firm of Willkie, Farr & Gallagher, which had been the National League's legal counsel since 1936. *Id.* Quickly, Kuhn became active in many of the game's legal affairs, including franchise movement, collective bargaining and pension plan adjustment. He seemed to be the right person at the right time for baseball: a wise attorney who could help guide the league through its ever-growing legal complexities. *Id.*

73. *Id.* As baseball's attorney, Kuhn also acted as the bargaining representative for the Player Relations Committee (PRC) in collective bargaining issues. *Id.*

first storm.<sup>74</sup>

Kuhn was commended for his swift action. Not since Landis had a commissioner been forced to deal with such a pressing problem so soon after taking office. But not every decision that Kuhn would make would go as smoothly and be as widely appreciated. And two owners, Charles Finley and Ted Turner, would assure that Kuhn's job would not be an easy one.

One legal challenge came from Charles Finley, the flamboyant owner of the Oakland Athletics. Finley's Athletics captured three consecutive World Series titles from 1972-1974 and were the perennial powerhouse of the American League.<sup>75</sup> The onset of free agency and rising player salaries all but assured that Finley would be incapable of re-signing all of his top players as they approached the final years of their respective contracts. Finley responded by quickly attempting to dismantle his squad and to get the best possible value for it in return.<sup>76</sup>

Kuhn sprang into action, nullifying the sales of various players. According to Kuhn, no rules of procedure were broken, but Finley's actions nevertheless were "inconsistent with the best interests of baseball."<sup>77</sup> Of course, there had been permissible player sales in past years, the commissioner reasoned, but no such transaction rose to the stature of Finley's three-player deal, involving so many star players and so much money.<sup>78</sup> Kuhn said that the sales further had the effect of muddying an already confused reserve clause system and effectively turned the league's competitive balance on its ear.<sup>79</sup> But perhaps most importantly to Kuhn, the transactions had a negative effect on the league's image.<sup>80</sup>

The decision to void the player sales was greeted with a storm of criticism from Finley as well as from the players' union.<sup>81</sup> Fin-

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74. THORN & PALMER, *supra* note 2, at 188-196.

75. Joseph Durso, *Kuhn Voids Player Sales; Finley Threatens to Sue*, N.Y. TIMES, June 19, 1976 at A22.

76. *Id.* First, the Athletics owners traded away outfielder Reggie Jackson and pitcher Ken Holtzman to Baltimore in a move that was questioned but accepted throughout the league. But then in 1976, Finley sold pitcher Vida Blue to the New York Yankees for \$1.5 million and offered outfielder Joe Rudi and pitcher Rollie Finders to the Boston Red Sox for \$1.0 million each. *Id.*

77. *Id.*

78. *Id.*

79. *Id.* "Shorn of much of its finest talent in exchange for cash," Kuhn said, "the Oakland club, which had been a divisional champion for the last five years, has little chance to compete effectively in its division." *Id.*

80. Durso, *supra* note 75. Kuhn stated, "Nor can I persuade myself, that the spectacle of the Yankees and the Red Sox buying contracts of star players in the prime of their careers for cash sums totalling \$3.5 million is anything but devastating to baseball's reputation for integrity and to public confidence in the game." *Id.*

81. *Id.* The executive director of the Major League Baseball Players Association, Marvin

ley responded by suing the commissioner, claiming that Kuhn was powerless to nullify the transactions. The resulting ruling of the Seventh Circuit expanded the powers of the commissioner in a way that perhaps no other decision ever had, and to a degree to which Finley certainly never could have anticipated.

On March 17, 1977, following a bench trial before the United States District Court for the Northern District of Illinois, Judge Frank J. McGarr ruled that Kuhn acted within the discretion of the "best interests" powers afforded to him under the Major League Agreement.<sup>82</sup> The Seventh Circuit U. S. Court of Appeals followed with a ruling on April 7, 1978 affirming Judge McGarr's decision and putting Kuhn's authority on solid footing.<sup>83</sup> Writing for the Seventh Circuit, Judge Robert A. Sprecher stated that baseball owners intended to authorize the commissioner to hold nearly unfettered control over the game. Most persuasive, the court noted, was the degree of power given to the commissioner by the drafters of the Major League Agreement, baseball's owners themselves. According to Judge Sprecher, when owners wanted to give the commissioner expansive powers, they knew how to accomplish the task and did so by incorporating the "best interests" clause into the Agreement.<sup>84</sup> The Major League Agreement, complete with the expanded powers added in 1964, gave the commissioner a much wider breadth of authority than did the 1944 Agreement. According to the Seventh Circuit, baseball owners had no one to blame but themselves.<sup>85</sup>

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Miller, joined in the criticism of the decision of the commissioner. *Id.* Miller told *The New York Times* that the commissioner had "single-handedly plunged baseball into the biggest mess it has ever seen." *Id.* Some owners, however, actually expressed approval of the actions. Said Walter O'Malley of the Los Angeles Dodgers, "The rich teams would have all the players and the poor teams would have none without such action." *Id.* Others however, were not as supportive. Said St. Louis Cardinals owner August A. Busch, Jr., "If I were Mr. Finley, I'd be up in arms. It's his money." *Id.*

But Kuhn stood his ground, later writing, "As far as I am concerned, I was the paterfamilias of the game and I could step in wherever I thought appropriate." KUHN, *supra* note 33, at 131.

82. See *Kuhn*, 569 F.2d at 527-28.

83. *Id.*

84. *Id.* at 537. And, the court stated, "when professional baseball intended to place limitations upon the Commissioner's powers, it knew how to do so." In fact, it did so during the 20-year period from 1944 to 1964. *Id.*

85. *Id.* The Seventh Circuit also gave weight to the trial testimony of Major League owners regarding their understanding of the degree of the commissioner's authority. Although the three judge appeals court was unanimous in its decision that Kuhn acted within the powers granted to him by the Major League Agreement, it was divided over the issue of the use of this testimony. Judges Thomas E. Fairchild and Philip W. Tone concurred in separate opinions, by stating that they would have excluded the use of this testimony. As Tone commented, the "uncommunicated intent of a party to a contract is not admissible on the



The appeals court unanimously held that in light of the history of the powers of the commissioner and the 1964 changes to the Major League Agreement, Kuhn was fully authorized to act as he did.<sup>86</sup> In the end, Kuhn stood tall, his authority over baseball set in place. He was ready for another legal challenge.

This second legal challenge came when the owner of the Atlanta Braves, Ted Turner, filed suit. The action, *Atlanta National League Baseball Club Inc. v. Kuhn*,<sup>87</sup> arose from an alleged violation of baseball's free agent "tampering" rules.

Prior to 1976, players essentially were bound to their clubs by the reserve clause.<sup>88</sup> In 1976, baseball players won the right to free agency when independent arbitrator Peter Seitz ruled that the reserve clause was illegal and that players must be permitted to negotiate freely with any team at the expiration of their respective contracts.<sup>89</sup> With the potential for massive player movement on the horizon, owners and players agreed to a free agency "negotiation draft" for the 1976 off-season as part of a new collective bargaining agreement. Under this system, each team was permitted to draft the rights to negotiate with the league's available free agents, with no player being permitted to be drafted by more than 12 teams.<sup>90</sup> Thereafter, only those teams that drafted a player's negotiation rights were permitted to enter into contract talks with the player.<sup>91</sup> However, in order to give the original club the opportunity to attempt to retain its players, the draft rules provided that only a potential free agent's current club was permitted to negotiate with the player in the time period from the end of the season until three days before the draft.<sup>92</sup> No other team was permitted to

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issue of the meaning of the contract." *Id.* at 546.

86. *Id.* at 539. "Any other conclusion," the court wrote, "would involve the courts in not only interpreting often complex rules of baseball to determine if they were violated but also . . . the intent of the [baseball] code, an even more complicated and subjective task." *Id.*, quoting *Milwaukee American Assn. v. Landis*, 49 F.2d 298 (N.D. Ill. 1931).

87. 432 F. Supp. 1213, 1215 (N.D. Ga. 1977).

88. See *supra* note 40 for an explanation of the reserve clause.

89. Actually, the decision came as a result of a 2-1 vote of a tripartite panel commissioned to hear such cases. The panel consisted of one player representative, one management representative and one independent party. Predictably, in this landmark decision, granting free agency to Andy Messersmith and Dave McNally, as with many such cases, the players' and owners' representatives split the vote, leaving the independent party left to decide the case. THORN & PALMER, *supra* note 2, at 630. See *In Re The Twelve Clubs Comprising National League of Professional Baseball Clubs and Twelve Clubs Comprising American League of Professional Baseball Clubs, Los Angeles and Montreal Clubs and Major League Baseball Players Association*, Grievance Nos. 75-27 and 75-23, *aff'd* *Kansas City Royals Baseball Corp. v. Major League Baseball Players Association*, 532 F.2d 615 (8th Cir. 1976).

90. *Atlanta National League Baseball Club, Inc. v. Kuhn*, 432 F. Supp. 1213, 1215 (N.D. Ga. 1977).

91. *Id.* at 1215.

92. *Id.*

comment on the player or otherwise "tamper" with the current club's ability to sign the player during this "quiet period."<sup>93</sup> In the months surrounding the draft, Kuhn released a total of six directives to baseball owners, clarifying these rules and specifically outlining potential discipline for violations of the tampering rules.<sup>94</sup>

For Ted Turner, the ultimate prize in this 1976 free agency game was Gary Matthews, an aggressive young outfielder who had won the 1973 National League Rookie of the Year award and who was entering the free agency market at the end of his season with the San Francisco Giants.<sup>95</sup> It was obvious that Turner desperately wanted to sign Matthews. In fact, Kuhn already had fined the Braves \$10,000 for communicating with Matthews during the quiet period. Then, on October 20, 1976, Turner made the mistake of telling Giants owner Robert Lurie, in the presence of the media, that he would do anything to sign Matthews and that he would offer the player as large of a contract as was required in order to accomplish the task.<sup>96</sup> Lurie filed a complaint with Kuhn five days later, claiming that Turner had violated the no-tampering rule.<sup>97</sup> On December 30, after an investigation by the commissioner, Kuhn announced that Turner's statements were "in clear violation" of the no-tampering rules and that Turner acted outside of the league's best interests.<sup>98</sup> Therefore, Kuhn suspended Turner from baseball for one year and withheld the Braves' first-round draft choice in the 1977 amateur player entry draft. Turner and the Braves later responded by filing suit against Kuhn.<sup>99</sup>

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93. *Id.*

94. *Id.* at 1216. The directives offered explanations and advice to the owners. One memo cautioned "all concerned that if they are in doubt concerning the propriety of any particular conduct, the preferable course would be to avoid it." *Id.*

95. SHATZKIN, *supra* note 41, at 683.

96. *Atlanta National League Baseball Club*, 432 F. Supp. at 1216-17. On October 5, 1976, the commissioner found that then executive vice-president of the Braves, John Alevizos, had committed two violations of the tampering rules with regard to contract with Matthews. Kuhn fined the team \$5,000 for each violation. Kuhn said that he considered suspending Alevizos, but the Braves already had fired him. *Id.*

97. *Id.* at 1217. Turner's comments were reported by a few San Francisco newspapers. *Id.*

98. *Id.*

99. *Id.* at 1218. On March 8, 1977, Turner and the Braves filed suit against Kuhn, claiming that the commissioner had overstepped his authority in three primary ways: (1) in issuing the six directives, (2) in deciding the case and concluding that Turner had violated the directives, and (3) in suspending Turner from baseball and denying the Braves a first-round selection in the amateur player entry draft. *Id.*

Kuhn decided to affect the Braves' future draft position rather than their current one, as it appeared pointless since the current draft had already been completed. The team already had selected the negotiation rights to Matthews on November 4, and signed a contract with him on November 17. *Id.* at 1217.

Less than three months after the suit was filed, on May 19, 1977, the federal district court in Atlanta held that all of Kuhn's actions comported with the commissioner's authority under the Major League Agreement, except for the deprivation of the Braves' first round draft choice.<sup>100</sup>

However, the district court held that Kuhn's decision to deny the Braves a first round selection in the amateur draft was outside of the commissioner's best interests authority, finding that such a measure was a "punitive" one, rather than a preventive or remedial one. The commissioner's power to hand down such punitive measures, authorized under Article I, section 2(b) of the Major League Agreement, was limited by Article I, section 3, which specifically enumerated five punitive measures which the commissioner was permitted to take, including suspension of a team executive and banning of a player from baseball.<sup>101</sup> According to the court, the

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100. *Id.* at 1213. First, federal district court Judge Newell Edenfield found that Kuhn had the authority to clarify the draft rules and outline potential punishments through his directives. Article I, section 2(b) of the Major League Agreement expressly states that the commissioner shall have the authority to "determine, after investigation, what preventive, remedial or punitive action is appropriate in the premises." *Id.* at 1219. Edenfield considered Kuhn's directives to be "preventive" measures, well within the commissioner's specifically enumerated powers. The court reasoned further that "since the commissioner has the authority to sanction the conduct that he concludes is detrimental to baseball, he must also have the authority to issue advance notice as to what acts will constitute forbidden conduct." *Id.* at 1220-21.

Second, the court found that Kuhn's power to rule on the Turner case similarly was within his best interests authority under Article I, section 2 of the Major League Agreement. According to Edenfield, Kuhn's decision should not be altered by the judiciary so long as it concerned the best interests of baseball and was not the result of bias or ill will. *Id.* at 1219.

Third, Edenfield found that Kuhn's decision to suspend Turner also was within his authority. The court dismissed Turner's argument that Kuhn abused his discretion, finding simply that "Turner was warned of the suspension . . . the contract specifically authorized it, and he got it." *Id.* at 1223. The decision to suspend Turner actually was the result of a mutual decision between Turner and Kuhn, as a sort of settlement of their dispute. As the court noted, "Turner . . . asked for it . . . and he got it," yet he still decided to complain in a lawsuit. *Id.* at 1223.

The court further refused to circumvent Article VII, section 2, the controlling Major League Agreement provision in which owners agreed to be bound by the discipline imposed by the commissioner. Edenfield wrote, "[j]udicial review of every sanction imposed by the Commissioner would produce an unworkable system that the Major League Agreement endeavors to prevent." *Id.* at 1223.

101. Article I, section 3 of the Major League Agreement stated as follows:

In the case of conduct by Major Leagues, Major League Clubs, officers, employees or players which is deemed by the Commissioner not to be in the best interests of baseball, action by the Commissioner for each offense may include any one or more of the following: (a) a reprimand; (b) deprivation of a Major League Club representation in joint meetings; (c) suspension or removal of any officer or employee of a Major League or a Major League Club; (d) temporary or permanent ineligibility of a player; and (e) a fine, not to exceed Five Thousand Dollars (\$5,000) in the case of a Major League Club and not to exceed Five Hundred Dollars (\$500) in the case of any officer, employee or player.

contract maxim "--*Expressio unius est exclusio alterius*,"-- the expression of one is to the exclusion of the rest, was particularly applicable. If baseball owners intended to include the denial of a draft choice among the punitive measures permitted within the commissioner's authority, they would have done so in the Major League Agreement.<sup>102</sup> Kuhn's authority survived again.

Kuhn's best interests authority also reached to labor relations, where Kuhn traditionally remained on the sidelines. In 1976, when owners and players appeared to be light years away from a new collective bargaining agreement, baseball owners took the drastic step of closing spring training camps to the players, locking them out of their places of employment.<sup>103</sup> Major League Baseball appeared to be on the verge of a long work stoppage. But, Kuhn intervened on March 18, ordering that the training camps be reopened and that the players return to work.<sup>104</sup> Although talks towards a new agreement did not speed up as many anticipated, the games continued and baseball avoided a work stoppage in the 1976 season.<sup>105</sup>

Needless to say, Kuhn found detractors and critics along the way, particularly with the allies of the influential Finley and Turner. Towards the end of Kuhn's reign in the early 1980's, there rose calls for "restructuring" throughout baseball. Team magnates now said that they wanted a corporate CEO with the serious business skills to help guide them through the fiscal complexities of modern-day baseball.<sup>106</sup> In 1983, baseball owners refused to re-elect Kuhn to the commissioner's post.<sup>107</sup> In September, 1984, Kuhn stepped down after more than a decade as baseball's top executive, leaving his indelible mark on the office of the commissioner.<sup>108</sup>

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*Id.* at 1223.

Edenfield wrote, "denial of a draft choice is simply not among the penalties authorized for this offense." *Id.*

102. *Id.* at 1225-26.

103. Murray Chass, *New Baseball Contract Limits Reserve System*, N.Y. TIMES, July 13, 1976 at A22.

104. *Id.*

105. *Id.*

106. THORN & PALMER, *supra* note 2, at 659.

107. *Id.* Only eight of 15 National League owners voted in favor of Kuhn's re-election, and Kuhn fell short of the required 75% vote in each league necessary for re-election. *The Commissioners*, CHICAGO TRIBUNE, Sept. 8, 1992, at Sports 6.

108. *Id.*

### F. *The Olympian: Peter V. Ueberroth*

In Kuhn's place, baseball owners plucked Peter V. Ueberroth, fresh off of his success as head of the 1984 Los Angeles Olympic Organizing Committee, and gave him a five-year contract beginning in October, 1984.<sup>109</sup> Ueberroth made it clear to owners that he would accept the position only if baseball owners approved three changes: increasing the maximum fine imposable by the commissioner from \$50,000 to \$250,000, bringing both league presidents under the auspices and control of the commissioner,<sup>110</sup> and permitting a commissioner to be re-elected by a simple majority of baseball owners rather than by three-fourths of the vote.<sup>111</sup> To the surprise of almost no one, Ueberroth got the changes which he demanded. However, the alterations actually did little to actually change the powers given to baseball's chief executive.<sup>112</sup>

Nevertheless, the Olympic administrator did not allow his still significant best interests powers to go to waste. When it appeared that an umpires' strike would interfere with the 1984 National League playoffs, Ueberroth intervened into negotiations between the umpires' union and the owners, ruling that the owners must give the umpires a new labor contract. Baseball umpires received a contract just prior to the start of the 1984 World Series.<sup>113</sup>

Ueberroth similarly stepped in when labor relations between the owners and the players boiled over in 1985 and the players walked out in the middle of the season.<sup>114</sup> A potentially lengthy work stoppage was averted when Ueberroth intervened in the negotiations and assisted in a swift resolution of the strike and an end to a short two-day player walkout.<sup>115</sup>

Finally, Ueberroth stepped into the middle of a major problem involving two television superstations, WGN in Chicago and TBS in Atlanta. The flagship television stations for the Chicago Cubs and Atlanta Braves had expanded their horizons through cable television and were being seen in many other cities, encroaching upon other teams' television audiences. Ueberroth intervened yet again

109. THORN & PALMER, *supra* note 2, at 659.

110. PETER UEBERROTH, WITH RICHARD LEVIN, AND AMY QUINN, *MADE IN AMERICA: HIS OWN STORY* 217-218 (1985).

111. THORN & PALMER, *supra* note 2, at 659.

112. UEBERROTH, ET AL, *supra* note 110, at 218. In his 1985 book, *Made in America*, Ueberroth wrote, "everybody assumed the commissioner's position had been substantially strengthened. That wasn't true. The changes were more window dressing than substance." *Id.*

113. *Id.* at 372-73.

114. *Id.* at 378. The strike surrounded the issue of salary arbitration eligibility. The new collective bargaining agreement resulted in a raise in arbitration eligibility by one year. See THORN & PALMER, *supra* note 2, at 46.

115. *Id.* at 378.

when other Major League teams complained, invoking his best interests powers and bringing both sides to the bargaining table. After typical Ueberroth-style efficient negotiations, the league and the stations reached a compromise.<sup>116</sup>

Though very efficient as commissioner, Ueberroth was not always in the owners' good graces. Often criticized as slow to change with the times, the owners may not have been quite prepared for Ueberroth's savvy and forceful business sense.<sup>117</sup> Instead of being railroaded out of the position, the sixth commissioner of baseball chose to resign from his post, leaving the job after the end of the 1988 season.<sup>118</sup>

### G. *The Renaissance Commissioner: A. Bartlett Giamatti*

With the bottom-line administrator out of the way, baseball owners found a man whom they believed to be more pleasing to the traditionalist in every baseball fan, A. Bartlett Giamatti. A former president of Yale University and the National League, a devoted Red Sox supporter and a renaissance baseball fan, Giamatti was selected as the next commissioner of Major League Baseball in August, 1988. Hired to help revive baseball's traditional image after the flash of the former Olympic Games guru, the former National League president epitomized the solid negotiator and resourceful administrator that baseball needed and wanted.<sup>119</sup> However, soon after taking office, Giamatti found himself embroiled in the most controversial issue since the Black Sox scandal 70 years earlier, the Pete Rose<sup>120</sup> gambling affair. The manner in which Giamatti handled the Rose matter defined the commissioner's view on his authority and paved the way for the future of baseball's top

116. *Id.* at 373. As Ueberroth wrote in *Made in America*, "the superstations [got] the blessing of the teams to continue broadcasting; and the teams [got] a cut of the superstations' broadcast revenues." *Id.*

117. THORN & PALMER, *supra* note 2, at 660. Ueberroth made owners uneasy in the amount of change that he advocated. He wanted to institute more stringent drug testing policies, to assure that owners divest themselves of any ties to gambling entities such as race tracks, and to force owners to hire more minorities to front-office positions. *Id.*

118. *Id.*

119. PETE ROSE AND ROGER KAHN, *PETE ROSE: MY STORY* 229 (1989). One writer has said that Giamatti's ability to cozy up to people was unmatched: "To be stroked by Bart Giamatti was to know a master's touch." *Id.*

120. Statistically, there may be no greater hitter in Major League Baseball history than Peter Edward Rose. He is the all-time leader in hits, at-bats, and games played. He won two World Series championships with the Cincinnati Reds in 1975 and 1976, and one with the Philadelphia Phillies in 1980. THORN & PALMER, *supra* note 2, at 190-205.

Nicknamed "Charlie Hustle" for his rugged and spirited play, Rose was iconoclasted throughout baseball. In 1989, he was manager of the Cincinnati Reds and appeared to be on the precipice of baseball immortality. *Id.*

executive.

In early 1989, upon rumors and tips to the Commissioner's office, Giamatti ordered an investigation of Rose's alleged gambling habits and a determination of whether the Reds manager had ever wagered on Major League Baseball games. In an eight-volume report, covering thousands of pages of betting slips, cancelled checks and correspondence, Giamatti's chief investigator, John Dowd, reported to the commissioner that it was his opinion that Rose indeed had wagered on Major League Baseball games, including Reds' games while he was manager of the Cincinnati franchise.<sup>121</sup>

On May 11, 1989, Giamatti informed Rose that he intended to conduct his own investigation pursuant to his "best interests" authority and that he would hold a hearing on the issue at which time Rose would be given the opportunity to be heard in his defense.<sup>122</sup> Had the commissioner banished baseball's greatest hero without a hearing, the certain resulting firestorm of criticism from baseball executives, players and fans would have harmed Giamatti and depleted the power and legitimacy of the office of the commissioner.<sup>123</sup>

On May 14, Robert Pitcarin, Jr., Rose's attorney, demanded that Giamatti remove himself from the case. Pitcarin contended that the commissioner had prejudged Rose as guilty of wagering on baseball. However, Giamatti refused, arguing that such a withdrawal would be inconsistent with the unique authority and responsibilities conferred upon the Commissioner of Baseball.<sup>124</sup> A hearing was set by Major League Baseball for June 26.

On June 19, one week before the hearing was to be held, Rose's attorneys decided to challenge the commissioner in court, filing suit in the Court of Common Pleas of Hamilton County, Ohio. They demanded an injunction restraining Giamatti from holding the hearing. The resulting court proceedings before Hamilton County Judge Norbert A. Nadel began on June 22, with Dowd testifying that evidence showed that Rose had bet on Major League Baseball games, including Reds games, during the 1985, 1986 and 1987 seasons.<sup>125</sup> On June 25, after three days of testimony in which nei-

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121. Jill Lieber and Craig Neff, *The Case Against Pete Rose*, SPORTS ILLUSTRATED, July 3, 1989, at 10.

122. JAMES RESTON, JR., COLLISION AT HOME PLATE: THE LIVES OF PETE ROSE AND BART GIAMATTI, 293 (1991). The Major League Agreement did not require Giamatti to grant Rose such procedural due process protections. In fact, past commissioners often took unilateral action without affording such a notice and hearing. *Id.*

123. *Id.*

124. *Id.* at 294.

125. *From the First Meeting in February to the Ultimate Penalty in August*, N.Y. TIMES, Aug. 25, 1989, at A23.

ther Rose nor Giamatti appeared, Nadel granted Rose's petition for an injunction blocking any hearing by Major League Baseball until July 6.<sup>126</sup> Nadel said that Giamatti had "prejudged Peter Edward Rose" and ruled that holding a hearing the next day in front of Giamatti would be "futile and illusory and the outcome a foregone conclusion."<sup>127</sup>

The commissioner had struck out. Rose supporters cheered the decision as a win over baseball's newest despot. The commissioner's office shrugged off the ruling as an empty home town victory. Either way, the decision served to force baseball to take notice that the top executive in the game might not have the unfettered control originally placed with Judge Landis nearly three quarters of century before.

With his temporary restraining order in place, Rose continued onward with his suit against Giamatti, challenging the commissioner's authority to act in any manner on the issue.<sup>128</sup> Over the next six weeks, it became clear that neither party was going to win this battle. Regardless of the outcome, both men would face both approving crowds and furious lynch mobs. Wanting to avoid the public confrontation which was certain to result, Giamatti and Rose came to an agreement which ended the dispute. On August 23, 1989, Giamatti banned Rose forever, though the player was permitted to apply for reinstatement in one year and no mention of actual wagering on baseball was contained in the text of the agreement.<sup>129</sup> Under the compromise, Rose withdrew his lawsuits against Giamatti.

With the odyssey completed, the two fighters went back to their corners. Rose went on cable television just hours after being banned from baseball, promoting the sale of his bats, baseballs and

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126. Lieber & Neff, *supra* note 121, at 10.

127. *Id.*

128. *Id.* For the next month and a half, the suit shifted legal forums: Rose wanted the case to be heard in the friendly confines of state court, while Giamatti wanted the lawsuit heard in a federal forum. On July 3, Giamatti was successful in removing the case to the federal district court in Cincinnati, which promptly transferred the case to the federal district court in Columbus, Ohio because of the extensive pretrial publicity. On July 31, federal district judge John D. Holschuh refused to grant Rose's motion to remand the case back to state court and Rose immediately filed an appeal. A week later, Giamatti responded by setting a new date for his hearing, August 17, the same day that the Sixth Circuit Court of Appeals was scheduled to decide whether Rose would be permitted to appeal Holschuh's July 31st ruling. RESTON, *supra* note 122, at 304.

129. *Id.* at 307. Rose's request for reinstatement was denied the following year. And although Rose's baseball betting was not formally addressed in the text of the agreement, Giamatti admitted in a press conference that "I am confronted by the factual record of Mr. Dowd. On the basis of that, yes, I have concluded he bet on baseball." *Id.*



uniforms on the Cable Value Network.<sup>130</sup> Giamatti went back to his Massachusetts home on Martha's Vineyard in an effort to escape from the media hype and recuperate from the Rose affair. In less than a week, baseball's commissioner was dead, surrendering to a massive heart attack on September 1, 1989 at the age of 51.<sup>131</sup>

#### H. *The Stubborn Realist: Francis "Fay" Vincent*

In a move which grew as a product of necessity as much as a result of shock, baseball owners quickly elevated Giamatti's assistant into the commissioner's job. Francis "Fay" Vincent, an attorney and Giamatti's deputy commissioner, assumed the role of the new head of baseball as the league began its 1989 off-season.<sup>132</sup> Given the opportunity to reconsider, perhaps owners might not have vaulted the independent-minded Vincent into the game's top job. In the years which followed, Vincent grabbed hold of the authority of the office and refused to let go. In the end, it took the owners themselves to oust Vincent from baseball.<sup>133</sup>

Vincent's most vocal expression of his authority came in his unilateral decision to realign the National League. National League owners had proposed that the Senior Circuit be realigned with the National League East's Chicago Cubs and St. Louis Cardinals moving to the Western Division and the National League West's Atlanta Braves and Cincinnati Reds going to the Eastern Division. Vocal objections to the plan resonated from Cubs management, and although the plan was voted up by a 10-2 vote in favor of realignment, it nevertheless failed to pass in accordance with Major League rules because one of the transferring clubs, the Cubs, voted

130. *Photograph caption*, N.Y. TIMES, Aug. 25, 1989, at A22.

131. Jerome Holtzman, *Giamatti, Scholar and Baseball Chief, Dies at 51*, N.Y. TIMES, Sept. 2, 1989, at A1.

132. Jerome Holtzman, *Vincent Quits, May Be Last Baseball Czar*, CHICAGO TRIBUNE, Sept. 8, 1992, at 1. Vincent also was a very successful businessman. Prior to his career in Major League Baseball, he held board seats on a number of corporations and held the posts of chief executive officer of Columbia Pictures and executive vice-president of the Coca-Cola Company. *Id.*

133. Jerome Holtzman, *A Commissioner's Demise: Fay Vincent's Downfall*, CHICAGO TRIBUNE, Sept. 8, 1992 at 1. In his three years as baseball's chief executive, Vincent readily threw his weight around as he saw fit in the best interests of the game. He intervened into labor relations in 1990 to stop an owner lockout of the players. He even intervened in a fee dispute between the leagues, when American League and National League officials were unable to decide on a division of expansion fees paid by the two new National League expansion teams, the Colorado Rockies and the Florida Marlins. Vincent stepped in and ruled that the American League should receive approximately one-quarter of the fees in return for providing players for the expansion draft. Jerome Holtzman, *Owners Gathering a Show of Force*, CHICAGO TRIBUNE, Sept. 3, 1992 at 1.

against the plan.<sup>134</sup> At an obvious impasse, Vincent stepped into the fray and released a report on July 6, 1992, unilaterally realigning the league according to the National League plan, pursuant to his best interests powers.<sup>135</sup>

Furious at the commissioner's move, the Cubs brought suit in the federal district court of Illinois, seeking an injunction which would put an end to Vincent's plan. In *Chicago National League Ball Club v. Vincent*,<sup>136</sup> federal district court Judge Suzanne B. Conlon granted the injunction. The result was a conclusion that Vincent's best interests authority was far from absolute.<sup>137</sup> The commissioner had lost again, first with Rose and now with the Cubs. It again appeared that the modern commissioner of baseball did not enjoy the same power given to Judge Landis 75 years earlier.

Now weakened by the court decision, Vincent was under increasing pressure from owners to resign.<sup>138</sup> Finally, he conceded. Vincent withdrew his realignment plan and stepped down from the commissionership on September 7, 1992.<sup>139</sup> The Cubs case went out with Vincent as the now irrelevant injunction was withdrawn and vacated by the court on September 24.<sup>140</sup>

Vincent may have been the owners' least tolerable commissioner in years: a tough, fair and single-minded administrator who unfortunately possessed neither Ueberroth's public relations savvy nor Landis' abilities to intimidate owners into compliance.<sup>141</sup>

Following Vincent's resignation, the owners seized control themselves, replacing Vincent with their own "Executive Council," led by Milwaukee Brewers owner, president and CEO Allan "Bud" Selig.<sup>142</sup> For over a year, this committee ran Major League Baseball

134. Holtzman, *supra* note 132, at 1.

135. *Id.*

136. Case no. 92-C-4398 (N.D. Ill. 1992).

137. *Id.*

138. Holtzman, *supra* note 132, at 1. In an extremely rare move, baseball owners met in a special meeting on September 3, 1992 to discuss the state of the commissionership. The meeting produced an 18-9-1 vote in favor of demanding that Vincent resign from his post. *Id.*

139. *Id.*

140. *Chicago National League Ball Club v. Vincent*, Case no. 92-C-4398 (N.D. Ill. 1992).

141. *The Quotes*, CHICAGO TRIBUNE, Sept. 8, 1992, at Sports 6. Montreal Expos infielder Tom Foley expressed the consensus of many of those in baseball. "The owners got what they wanted," Foley said. "Fay was a very fair commissioner, maybe that was his downfall." *Id.*

142. Holtzman, *supra* note 133 at 1. The Executive Council consisted of American League president Bobby Brown, National League president Bill White and eight team owners: Jackie Autry, California Angels; Bill Bartholomy, Atlanta Braves; Douglas Danforth, Pittsburgh Pirates; Eli Jacobs, Baltimore Orioles; Fred Kuhlmann, St. Louis Cardinals; Carl Pohlad, Minnesota Twins; Haywood Sullivan, Boston Red Sox; and Tom Werner, San Diego Padres. *Id.*

executive operations with Selig as the game's quasi-commissioner. Selig essentially has acted as the game's top executive, despite his consistent deflection of any suggestion that he is a quasi-commissioner. It was during this time that owners made yet another change in the Major League Agreement. This change will affect the manner in which future commissioners will be able to conduct business and take action in the "best interests" of baseball.

### III. CONCLUSION

At their owners' meetings in January, 1994, baseball executives again made a number of crucial amendments to the Major League Agreement. First, they altered the "best interests" clause to provide that the next commissioner will have the authority to act in the best interests of baseball in issues which concern "public confidence and integrity."<sup>143</sup> This change was accompanied by another alteration in the Agreement in which baseball owners essentially agreed to reserve for themselves the authority to deal with issues which concern virtually all of the important business aspects of Major League Baseball.<sup>144</sup> Therefore, business issues over which previous commissioners had "best interests" authority, such as labor relations, television contracts, expansion of new franchises and transfer of existing ones, now appear to be outside of the commissioner's authority.<sup>145</sup>

Baseball owners argue that the change is not a major alteration

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143. OPENING REMARKS OF ALLAN H. SELIG, PRESIDENT OF THE MILWAUKEE BREWERS, BEFORE THE U.S. SENATE SUBCOMMITTEE ON ANTITRUST, MONOPOLIES AND BUSINESS RIGHTS, Mar. 21, 1994 at 2.

144. STATEMENT OF DONALD M. FEHR, EXECUTIVE DIRECTOR OF THE MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION, BEFORE THE U.S. SENATE SUBCOMMITTEE ON ANTITRUST, MONOPOLIES AND BUSINESS RIGHTS, Mar. 21, 1994 at 2.

145. *Id.* The commissioner's powers in labor relations have been further muddled by the owners' decision to give the commissioner the responsibility of sitting as the owners' bargaining agent in collective bargaining with the players, rather than as a neutral presence as in previous administrations. *Id.*

As MLBPA executive director Donald Fehr explained to the U.S. Senate Subcommittee on Antitrust, Monopolies & Business Rights on March 21, 1994, the new language essentially provides that the commissioner's best interests powers no longer extend "to anything the clubs can vote on jointly as the Major Leagues, or individually as the American or National League. Thus, virtually all significant joint business decisions the owners make . . . are now clearly outside of the Commissioner's authority." *Id.*

According to one of the chief critics of the changes, former U.S. Senator Howard Metzenbaum (D-OH), the next commissioner will be all but powerless to act when the business of baseball is at issue. OPENING STATEMENT OF SEN. HOWARD M. METZENBAUM, CHAIRMAN OF THE U.S. SENATE SUBCOMMITTEE ON ANTITRUST, MONOPOLIES AND BUSINESS RIGHTS.

Senator Metzenbaum also stated, "It seems to me, that all that is left for the commissioner is a high salary . . . there is not much authority in the office any longer." *Id.*

of the commissioner's powers but rather just a clarification of them.<sup>146</sup> But, the language of the new powers may pose more confusion than ever before. Surely, the new changes permit the next commissioner to act in instances involving issues such as gambling, where issues of public confidence or integrity arguably are involved.<sup>147</sup> To this degree, the authority given to commissioners from Landis to Vincent, indeed may have been extended and clarified.<sup>148</sup>

However, there are many other issues over which past commissioners have justifiably presided, which do not involve public confidence or integrity in the game and which will now be out of the reach of future chief executives of Baseball. It is doubtful whether, under the current Major League Agreement, Landis would have been permitted to attempt to dismantle the farm system or attack the scheming Phil Ball; or whether Kuhn could lay down the law on free agency tampering; or whether Ueberroth could enter the super-stations fracas; or whether Vincent could even propose league realignment.

Another major area of authority that has been removed from the commissioner's best interests authority entirely is the commissioner's ability to act unilaterally for the game's best interests where labor relations are involved. The 1994 changes take the commissioner entirely away from the role of outside labor influence and into the role as the owners' flagbearer. The next commissioner will be responsible for carrying the owners' agenda to the negotiating table in collective bargaining with the Players' Association.<sup>149</sup>

The change represents a major departure from the positions of

146. SELIG OPENING REMARKS, at 2. At the March Senate subcommittee hearing, Selig said, "We eliminated any ambiguity and made it crystal clear that except for the area of collective bargaining, the commissioner has absolute authority to act in the best interests of the game on any matter, whether business or otherwise, that involves integrity or public confidence." *Id.*

147. Past commissioners acted on gambling issues: Landis in the Black Sox affair, Chandler in the Durocher suspension and Giamatti in the Rose banning. And, in fact, as baseball's history has taught, there are a number of instances where business, legal or player-related decisions also affect the public confidence or integrity of the game and therefore will remain within the authority of the commissioner.

148. *Id.* at 2. An examination of the actions and accompanying justifications of previous commissioners may reveal that the "public confidence or integrity" clause may provide a broader range of authority than may appear at first glance." For example, Landis banned Babe Ruth in 1921 because he thought that the post-season "barnstorming" tours were detrimental to baseball's image. Landis also made a number of rule changes prior to the 1941 World Series, justifying them as a means by which to clean up the league's boisterous tenor and rough image. Bowie Kuhn negated Finely's three-player deal, arguing that the transaction would be "devastating to baseball's reputation for integrity and public confidence in the game." *Id.*

149. SELIG OPENING REMARKS, *supra*, note 143 at 2.

past commissioners who were able to use their best interests powers to intervene where boiling-over negotiations appeared to be on the verge of spilling over to the detriment of the league. Kuhn intervened to reopen spring training camps and avoid a strike. Ueberroth stepped into disputes between owners and both the umpires' union and the MLBPA. Vincent ended a player lockout in 1990. No longer will a commissioner be permitted to act in this manner. As far as labor relations are concerned, the commissioner's best interests powers have all but vanished.

Eight commissioners have come and gone. Eight executives have brought a wealth of precedence to the office of baseball's highest post. Now, the commissionership enters the ninth inning. And all of Major League Baseball waits for the next swings to be taken in one of baseball's most important games.