BASEBALL'S ANTITRUST EXEMPTION: THE PITCH GETS CLOSER AND CLOSER

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I. INTRODUCTION

A recent United States District Court decision in the District of Pennsylvania has attempted to narrow professional baseball's antitrust exemption.[2] This exemption, an oft criticized, legally murky and perhaps intellectually dishonest hodgepodge of jurisprudence, has given the sport a unique position in the pantheon of American business practices.

This article will outline the history of baseball's antitrust exemption, by analyzing the various United States Supreme Court cases which gave rise to the decision, revisiting Congress' alternation of inaction and "saber rattling" to end the exemption, and by

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2. Piazza v. Major League Baseball, 831 F. Supp. 420 (E.D. Pa. 1993).

making some predictions regarding the exemption's future standing as a curious thorn in America's pastime. Also examined will be the recent court decision which may spell the beginning of the end for the sport's cherished exemption position.

II. THE HISTORY OF BASEBALL'S ANTITRUST EXEMPTION

Any analysis of baseball's position as the sole American business exempt from antitrust scrutiny must begin with an analysis of the background of antitrust itself. The definition of what constitutes antitrust is found in Sections One and Two of the Sherman Antitrust Act.[3]

Professional baseball's flirtation with its antitrust exemption began when another league attempted to compete with it. In 1914, the Federal League, which had started as a minor league, tried to sign a number of American and National League players, with the hope of expanding its operation throughout the eastern part of the country. This resulted in salary escalation until January 1915, when the Federal League sued Major League Baseball, alleging that the existing leagues denied access to its players.[4]

In November of that year, the two leagues settled their differences, and a number of Federal League owners received compensation. In addition, some owners, including Philip Wrigley of Chicago, became owners in the American and National Leagues.

Despite this resolution, the end result was not satisfactory for the owners of the Federal League's Baltimore franchise. Its owners rejected the settlement proposal and instead filed a lawsuit charging that American and National League owners' actions violated

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3. 15 U.S.C. § 2 (West Supp. 1992). Sections One and Two contain the following provisions:

> Every contract, combination in the form of a trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.
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> Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

Id.

4. For a detailed explanation of this history, see Classen, *Three Strikes and You're Out: An Investigation of Professional Baseball's Antitrust Exemption*, 21 AKRON L. REV. 369 (1988).

the Sherman Antitrust Act.[5]

In what may have been a precursor of the somewhat maddening history of baseball's antitrust exemption, the Baltimore team owners won at the trial level.[6] The American and National League owners appealed, and the Court of Appeals for the District of Columbia reversed.[7] The appellate decision further held that the game itself, which the court noted takes place on only one field in only one place, was therefore local in nature, and not purely interstate activity, and therefore was not an action which would be covered by the Sherman Antitrust Act.[8]

The Baltimore owners appealed, and the United States Supreme Court, in the seminal decision of *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*, upheld the decision.[9] Justice Oliver Wendell Holmes, writing for the majority, observed that the "business is the giving of exhibitions of baseball, which are purely state affairs."[10] Judge Holmes' opinion held that the fact that the teams traveled between states to various games was only incidental to the games themselves, and therefore could not be considered interstate commerce, and therefore was not covered by the Sherman Antitrust Act.[11] *Federal Baseball Club* did not reach the issue of the applicability of the sport's reserve clause to the Antitrust Act. This issue would haunt relations between the players and owners for a number of years, until its abolition in the mid 1970's.

The next challenge to baseball's applicability to the Sherman Antitrust Act involved baseball's reserve clause. In *Gardella v. Chandler*,[12] Danny Gardella, a New York Giants outfielder, had

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5. National League of Professional Baseball Clubs, et al. v. Federal Baseball Club of Baltimore, Inc, 269 F. 681 (D.C. App. 1920).

6. *Id.*

7. *Id.* The Court of Appeals noted that:

> The players . . . travel from place to place in interstate commerce, but they are not the game . . . which is local in its beginning and its end . . . . The fact that the (owners) produce baseball games as a source of profit, large or small, cannot change the character of the games. They are still sport, not trade.

Id. at 684-85.

8. Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs, et al, 259 U.S. 200, 208-09 (D.C. 1922). Justice Holmes stated: "But the fact that in order to give exhibitions the Leagues must induce free persons to cross state lines and must arrange and pay for their doing so is not enough to change the character of the business." *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. 79 F. Supp. 260 (S.D.N.Y. 1948), *rev'd* 172 F. 2d 402 (2d Cir. 1949). He filed suit after Major League Baseball decided to ban him, and he alleged that the banishment violated federal antitrust laws. *Id.*

Gardella lost in the United States District Court for the Southern District of New York, where the decision cited *Federal Baseball* as controlling, and dismissed his lawsuit. *Id.*

been banned from Major League Baseball for five years after he played in the Renegade Mexican League. The United States Court of Appeals for the Second Circuit held that professional baseball, with teams travelling across state lines for games that are broadcast between states on radio and television, was in fact involved in interstate commerce, and therefore subject to the federal antitrust laws.[13]

While the Appellate Court decision in *Gardella* seems logical and reasonable, the issues the case raised never again surfaced, except perhaps in the minds of various Congressmen as they attempted to schedule public hearings to discuss the exemption. Unfortunately, Gardella's case was settled, therefore the fight never reached the United States Supreme Court in that case.

Despite these turn of events, it was not long before the United States Supreme Court was faced with the issue again, in *Toolson v. New York Yankees*.[14]

Toolson, a New York Yankees pitcher, had taken the independent step of refusing a reassignment by the team to the minor leagues. In reaction, the Yankees released the pitcher, which had the effect of preventing him from playing for any other team. Toolson filed suit, and argued that, following the apparent logic of the Appellate Court in *Gardella*, his release was a violation of antitrust laws. He further contended that the sport was subject both to the Clayton and Sherman Antitrust Act because of radio and television broadcasts and advertising on an interstate basis, thereby constituting interstate commerce covered by the two Acts.[15]

The United States Supreme Court did not accept his rationale. While not specifically reexamining its reasoning in the *Federal Baseball* decision, the Court held that since professional baseball had been allowed to conduct its business for about 30 years without antitrust scrutiny, any such application of the antitrust laws to the sport should result from Congressional legislation, and not from a United States Supreme Court decision.[16]

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13. *Gardella*, 172 F.2d at 407, 411-12.

14. 346 U.S. 356 (1953).

15. 101 F. Supp. 93, 94 (S.D. Cal. 1951) *cert. granted*, 345 U.S. 963 (1953).

16. *Toolson*, 346 U.S. at 357. It was a number of years before the Court would again review the exemption. In 1972, St. Louis Cardinals' outfielder Curt Flood was traded, allegedly against his will, to the Philadelphia Phillies. Flood refused to report to his new team and instead brought suit alleging the trade violated both his constitutional rights and federal antitrust laws. Flood sought an injunction against the trade, which would allow him to negotiate for his services with other teams. His petition was denied by the United States District Court for the Southern District in New York. Flood v. Kuhn, 316 F. Supp. 271, 285 (S.D.N.Y. 1970), *cert. granted*, 404 U.S. 880 (1971). Flood appealed to the United States Court of Appeals, Second Circuit, which, based upon *Federal Baseball* and *Toolson*, upheld the lower

Boxing was the first sport other than baseball that endured antitrust scrutiny. In *United States v. International Boxing Club*,[17] the Court held that the club had monopolized television rights to boxing exhibitions.[18] The Court found that this was a restraint of trade in violation of antitrust laws. Interestingly, the defendant club asked the Court to extend baseball's antitrust exemption to boxing, however the Court refused to do so.[19] In its decision, the Court held that the sport of boxing constituted interstate commerce, and distinguished its prior decision in *Federal Baseball* which held that only professional baseball was not a form of interstate commerce and was therefore, not subject to federal antitrust laws.[20]

The United States Supreme Court was able to expound upon its baseball antitrust exemption when it examined the applicability of those laws to professional football. In *Radovich v. National Football League*,[21] the Court again upheld the baseball exemption. In *Radovich*, a professional football player alleged that he was blacklisted by the National Football League after he refused to play for

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court decision. Flood v. Kuhn, 443 F.2d 264, 268 (2nd Cir. 1971), *cert granted,* 404 U.S. 880 (1971).

The United States Supreme Court upheld the Court of Appeals decision, on the legal theory of *stare decisis*, and again indicated that any removal or modification of the judicially created exemption should come from Congress. In addition, the court also held that baseball was exempt from *state* antitrust laws. *See Flood,* 443 F.2d at 284-85. Justice Blackmun stated:

> We adhere once again to *Federal Baseball* and *Toolson* and to their application to professional baseball. We adhere also to *International Boxing* and *Radovich* and to their respective applications to professional boxing and professional football. If there is any inconsistency or illogice in all this, it is an inconsistency and illogic of long standing that is to be remedied by the Congress and not by this Court.

Id.

The *Flood* case was the final time that the United States Supreme Court would wrestle with the antitrust exemption issue as it pertained to baseball. Despite that, the Court compounded its error by ruling that virtually all other professional sports *are* subject to the antitrust laws.

17. 348 U.S. 236 (1955).

18. *Id.* The Court held that there was a cause of action in the Government's complaint which alleged:

> that the defendants are engaged in the business of promoting professional championship boxing contests on a multistate basis and selling rights to televise, broadcast and film such contests for interstate transmission; that their reciepts from the sale of television, radio and motion picture rights represent over 25% of their total revenue and in some instances exceed the revenue from the sale of admission tickets; and that the defendants have restrained and monopolized trade and commerece through a conspiracy to exclude competition in their line of business.

Id.

19. *Id.* The Court stated that a boxing match is "a local affair" however, this fact alone was not enough to support barring the application of the Sherman Antitrust Act. *Id.* at 241.

20. *Id.*

21. 352 U.S. 445, *reh'g denied*, 353 U.S. 931 (1957).

the team that drafted him out of college. Radovich's theory was that the draft was a conspiracy by the League to monopolize interstate commerce within its boundaries.

The United States Supreme Court, in reviewing his cause of action, held that Radovich had a legitimate claim, and noted in its decision that antitrust laws are applicable to professional football. In addition, in perhaps its own version of "mea culpa," the Court opined that baseball's antitrust exemption made no sense, but that the exemption could only be removed by Congress.[22]

Vast efforts have gone into the development and organization of baseball since that decision, and enormous capital has been invested in relying on its permanence. Congress has chosen to make no change. All this, combined with the flood of litigation that would follow its repudiation, the harassment that would ensue, and the retroactive effect of such a decision, lead the Court to the practical result that it should sustain the unequivocal line of authority reaching over many years.[23]

So, what does this all mean? The rationale for the Court's decision to uphold baseball's antitrust exemption was the doctrine of *stare decisis*.[24] But, was the Supreme Court ducking the antitrust exemption issue, or was it on strong ground by indicating that it was bound by its prior decisions in *Federal Baseball* and *Toolson*?

As appealingly simple as the *stare decisis* rule may be, it is not as absolute as these decisions appear to make it. It has long been held that prior decisions, which are later found to be legally unsound, may be modified or overruled within the discretion of a court, based upon circumstances in a new case.[25]

Indeed, two dissenting opinions in *Flood* tried to bring that to the majority's attention.[26] Moreover, Justice Douglas, who voted

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22. *Radovich*, 352 U.S. at 450. The Court reasoned that in *Toolson*, they "continued to hold the umbrella over baseball that was placed there some 31 years earlier by *Federal Baseball*." The court acted in this way because it concluded that more harm would be done in overruling *Federal Baseball* than in upholding a ruling which at best was of dubious validity. *Id.*

23. *Id.* at 450-51. *See* Berger, *After the Strikes: A Reexamination of Professional Baseball's Exemption From the Antitrust Laws*, 45 U. PITT. L. REV. 209 (1983)(discussing the ramifications of this decision).

24. Horne v. Moody, 146 S.W. 2d 505, 509 (Tex. Civ. App. 1940). The basis for this rule is that when a court sets forth a decision or interpretation of law, or a holding in a case, subsequent court decisions based upon that rule of law must follow it, and apply it to all future cases where the facts are essentially the same. Classen, *supra*, note 4, at 21 n.118.

25. *Id.* at 21-22.

26. Justice Douglas wrote in his dissent that:

> The Court's decision in *Federal Baseball* . . . is a derelict in the stream of the law that we, its creator, should remove . . . . In 1922, the court had a narrow, parochial view of commerce . . . . There can be no doubt that were we considering the ques-

with the majority to uphold baseball's antitrust exemption in *Toolson*, wrote that "I have lived to regret it (the *Toolson* majority decision), and I would now correct what I believe to be its fundamental error."[27] Justice Marshall, in his *Flood* dissent, appeared to have the same reservations regarding the exemption.[28]

Despite these logical attempts to "wake up" the Court, and perhaps Congress, baseball's antitrust exemption has never been lifted. With Congressional inaction as a backstop, there are a number of observations which can be made regarding the growth of Major League Baseball since those early Supreme Court decisions, and the solidification of them which followed.

III. MAJOR LEAGUE BASEBALL AND THE ANTITRUST EXEMPTION

Major League Baseball owners are frequently described as operating like a "cartel." Many baseball observers believe that the owners function in such a way as to limit competition, which increases the economic profits of each member.

Major League Baseball, unlike many other professional sports, allows its teams to negotiate local television contracts, and furthermore allows the owners, in the local markets, to keep the entire proceeds from those contracts, without sharing them with other teams and owners. The results of this have been the "large market versus small market" differential which has dogged the labor negotiations and internal economic strife within the sport for a number of years. This is the argument that is most often heard during the annual free agent frenzy. When smaller market teams, such as those in Milwaukee and Kansas City, complain that the larger market teams, like New York, Chicago, and the Los Angeles area clubs, have more money from local broadcast revenues to outbid the

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tion of baseball for the first time upon a clean slate, we would hold it to be subject to federal antitrust regulation. The unbroken silence of Congress should not prevent us from correcting our own mistakes.

See Flood, 443 F.2d at 286.

27. *Flood*, 443 F.2d at 286, n. 1.

28. *Id.* at 292-93. Justice Marshall wrote that:

> Baseball players cannot be denied the benefits of competition merely because club owners view other economic interests as being more important, unless Congress says so . . . . Had the court been consistent and treated all sports in the same way baseball was treated, Congress might have been concerned enough to take action. But the Court was inconsistent . . . .
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> (T)he court may have read too much into this legislative inaction (after *Toolson*) . . . . We do not lightly overrule our prior constructions of federal statutes, but when our errors deny substantial federal rights, like the right to compete freely and effectively to the best of one's ability as guaranteed by the antitrust laws, we must admit our error and correct it. We have done so before and we should do so again here.

Id.

smaller market teams for players' services.

Another example of baseball owners' motives involves the frequent threats to move teams from one locale to another if the team's demands for new or better playing facilities, tax breaks and/or more and better parking revenues are not met. Many times, owners obtain a number of economic concessions, including favorable lease terms and other economic arrangements with local governmental authorities and agencies. This ultimately leads to tax payer funding, stadiums and renovations, so that the locale does not fade the economic and social upheaval caused by a franchise moving elsewhere.

In addition, in a somewhat "one-two punch" from the antitrust exemption, baseball owners are permitted to negotiate local broadcast contracts without fear of federal scrutiny, because, with the exemption in its collective back pocket, Major League Baseball is not a part of the sport's Broadcasting Act of 1961, which exempted all professional sport leagues from antitrust observation if they market their games collectively.[29] With its exemption, baseball is shielded from this law, enabling its owners to negotiate individually at the local level, which creates a hodgepodge of local broadcasting contracts, both in duration and amount.

Since the courts have not acted, there are only two other groups, the players and Congress, which could collectively or individually bring about a change in baseball's antitrust exemption. However, there has been little, if any, reaction on their part to end the exemption.

Any interest the players may have had in ending the exemption, which had played a strong part in not allowing them to move freely from team to team, ended as the result of a 1976 decision by Arbitrator Richard Seitz.

That year, pitchers Dave McNally and Andy Messersmith filed grievances for release from their respective contracts, arguing that they were "free agents" because they had played through the one year renewal period for their contracts, which had then expired. The grievances were sent to private arbitration, and Arbitrator Seitz held that since there was no express contractual relationship between the team and the player, players could not be reserved to one team. Therefore, they were free to offer their services to other clubs when their specific contract term ended.

This creation of "free agency" meant that players, for the first time, were not bound to one team for the duration of their profes-

29. 15 U.S.C. §1291 (1982).

sional careers unless they were traded. Furthermore, free agency was the main reason that players' salaries have skyrocketed in the past few decades. At present, the average salary for a Major League Baseball player is over $1 million per year. With little financial incentive to do so, the players have no reason to challenge the antitrust exemption.

Congress, on the other hand, has been given an "open door" by the Supreme Court on a number of occasions, as detailed above, to bring a halt to the exemption. However, Congress, for various reasons, has never done so. In fact, since World War II, members of Congress have introduced numerous bills to repeal the exemption. However, none of them have made it out of committee for a formal vote. In 1976, the House of Representatives appointed a Select Committee on Professional Sports to study the antitrust exemption issue. It recommended repeal, but the issue died.

Why doesn't Congress act? Historically, there are a number of reasons. As seen in recent years, the issue only rears its head when there are rumors of existing franchise sales that may result in relocation. For example, a 1981 bill to repeal the exemption resulted from a rejection by American League owners of an application to buy the Chicago White Sox.[30] One year later, another bill regarding antitrust protection for professional sports leagues was introduced, apparently as the result of an attempt to reverse the move of the Oakland Raiders football team to Los Angeles.[31]

Recently, the somewhat staggering failure of St. Petersburg, Florida to attract either the San Francisco Giants, the Houston Astros, the Seattle Mariners, or the Chicago White Sox, coupled with the Major League Baseball Expansion Committee's decision to award new National League franchises to Miami and Denver rather than St. Petersburg, fanned another Congressional discussion.

It is a curious battle. On one side there are the ego driven, powerful members of Congress, while, on the other side, there are the ego driven, powerful owners of professional baseball teams.

The official position of Major League Baseball on the subject of the antitrust exemption is that it leads to franchise stability, because it allows the owners to make their own decisions on franchise movement, or lack thereof, without the pressure of an antitrust lawsuit.[32] Ironically, the most recent example of this theory is the

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30. H.R. 3287, 97th Cong., 1st Sess. (1981).

31. H.R. 6467, 97th Cong., 2d Sess. (1982). The Senate version of this bill was S.2784, 97th Cong., 2d Sess. (1982).

32. *See* Comments of Bud Selig Before the Senate Subcommittee (Winter 1992), and, more recently, *see*, Griffith, *Good Reason for Baseball's Antitrust Exemption*, N.Y. TIMES, Jan. 17, 1993, at Section 8, Page 9.

posturing and positioning that led to the Giants' decision in the winter of 1993 to remain in San Francisco.[33]

In a somewhat novel twist on the issue, Bud Selig, the Chief Executive Officer of the Milwaukee Brewers, the current Chair of the Major League Baseball Executive Council, and the sport's de facto acting Commissioner, recently told a Senate Subcommittee[34] that the application of antitrust laws has been the cause of many problems for the sport. These problems include franchise instability that exist in other professional sports.[35]

Mr. Selig is not alone in his thoughts. Recently, Clark C. Griffith, a former owner of the Minnesota Twins, made many of the same arguments in a letter to the New York Times.[36] Whether or not the reader agrees with Griffith's opinions probably will be based on where the reader lives. It is axiomatic that sports fans in the St. Petersburg area of Florida probably will not follow his logic.

In addition, franchise relocations have been cataclysmic to the sociological aspect of professional sports. Any fan who knows his baseball, or perhaps more importantly, urban history, can discuss the social upheaval created by the move of the New York Giants and Brooklyn Dodgers to California in the late 1950's.[37] Further, there has been a longing in Washington, D.C. created by the loss of the Senators, who moved to Texas, and were reborn as the Rangers.

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33. The legal jousting over that decision, as well as Major League Baseball's intervention in the Giants' possible move to St. Petersburg, will be discussed below.

34. *See generally supra* note 32.

35. This is maddeningly ironic, coming from the very man who bought the Seattle Pilots team, and moved them to Milwaukee in 1970.

36. Griffith, *supra* note 32, at Section 8, Page 9. In it, Griffith wrote that:

> Baseball's exemption from antitrust is reasonable . . . because cities, states and millions of fans benefit from the fact that baseball can regulate itself and prevent franchise moves such as the abandonment of Baltimore, St. Louis and Oakland by teams in the National Football League . . . . Baseball's exemption from the Sherman Act protects the cities that currently have teams . . . which results in franchise stability . . . . With no exemption, the (San Francisco) Giants would be in St. Petersburg today.

Id.

Griffith put an interesting spin on the issue, by stating that:

> The central issue today is whether baseball acts like a monopolist and, if so, is the behavior unreasonable; this would be the only justification for removing its antitrust exemption . . . . The exemption from antitrust regulation . . . is only a shield. Baseball does not use this exemption as a sword. The industry is in turmoil today and should be allowed to retain the small shield that allows self regulation, which is the basis upon which it will correct its own problems in due time.

Id.

37. Note, *Injunctive Relief for Trademark Infringement Is Not Available When Likelihood or Confusion Does Not Exist As to the Source of the goods or Services or When An entity Abandons a Trademark - Major League Baseball Properties, Inc. v. Sed Non Olet Denarius, Ltd.*, 817 F. Supp. 1103 (S.D.N.Y. 1993), 4 SETON HALL J. OF SPORT L. 205 (1994).

So, a ridiculously placed, augmented and cemented exemption remains. Can anything be done about it? Can it be eradicated, or perhaps narrowed, in any way? The answer is a resounding "yes," and the path again leads towards St. Petersburg, Florida.

IV. THE *PIAZZA* DECISION

Last year, two Pennsylvania residents, Vincent M. Piazza and Vincent N. Tirendi, attempted to organize a limited partnership to purchase the San Francisco Giants, and move the team from California to St. Petersburg, Florida.[38] On August 6, 1992, the investors executed a letter of intent with Robert Lurie, the owner of the San Francisco Giants, to purchase the team for $115 million.[39] On August 28, 1992, the partnership entered into an agreement with the city of St. Petersburg for management and use of the Florida Sun Coast Dome to house the team.

On September 4, 1992, the partnership submitted an application to Major League Baseball to purchase the team and move it to Florida. On that same day, the Chair of Major League Baseball's Ownership Committee, Ed D. Kuhlmann, directed Lurie to consider other offers to purchase the team, even though Lurie had signed an exclusive agreement with the partnership. Five days later, Bill White, then President of the National League, invited George Shinn, a North Carolina resident, to submit a bid to buy the team, and, presumably, keep it in San Francisco. Other investors, located in California, then made an offer, $15 million less than the partnership's offer to buy the team and keep it in San Francisco. On November 10, 1992, Major League Baseball formally rejected the partnership's offer to buy and relocate the team.

The partners then brought suit, alleging among its many claims of federal and state law violations, that Major League Baseball's actions in denying its application violated sections One and Two of the Sherman Antitrust Act. They claimed that Major League Baseball had monopolized the market for teams, and had placed direct and indirect restraints on the purchase, sale, transfer, relocation of and competition for such teams. They also alleged that these actions unlawfully restrained and impeded the partnership's opportunities to engage in the business of baseball. The defendant, Major League Baseball, denied the allegations, and argued that the sport's

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38. Ironically, Vincent Piazza is the father of Los Angeles Dodgers catcher Mike Piazza, the 1993 National League Rookie of the Year, who is helping to continue the Dodgers' stronghold on southern California, and continue the hue and cry of Brooklynites for a long lost team and time.

39. *Id.*

antitrust exemption precluded a federal claim from Major League Baseball's alleged actions, citing the prior Supreme Court decisions on the antitrust exemption issue.

In deciding on these issues, presiding in the United States District Court for the Eastern District of Pennsylvania, Judge John J. Padova ruled in *Piazza v. Major League Baseball, Inc.*,[40] that baseball's antitrust exemption is limited to the sport's reserve system, which is one particular aspect of the game, and not to the "business of baseball" generally.[41]

Judge Padova, in articulating his decision, observed that all three baseball antitrust cases, starting with *Federal Baseball Club,* continuing through *Toolson*, and ending with *Flood*, specifically sought relief from what the judge called the "alleged anti-competitive impact of what is known as the 'reserve clause' in the yearly contracts of players in the National and American Leagues."[42] In addition, he rejected Major League Baseball's claims that the above cases address the broader issue of the sport in general terms, and are not restricted simply to the reserve clause.

After restricting the parameters of the seminal baseball cases, Judge Padova then rejected baseball's argument that the court was bound by the concept of *stare decisis* in upholding the entire exemption.[43] Specifically, Judge Padova indicated that the *Flood* case had already eroded much of that claim.[44] Judge Padova's examination and analysis of baseball's antitrust exemption has but one basis, that all three Supreme Court baseball cases are factually based upon, and therefore their decisions are limited to baseball's reserve clause.

It is not clear from Judge Padova's opinion exactly what part of these cases gave him the idea that they are focused simply on the reserve clause.[45] While the *Federal Baseball* decision does not

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40. 831 F. Supp. 420 (E.D. Pa. 1993)
41. *Id.* at 435.
42. *Id.* at 434.
43. *Id.*
44. *Id.* at 435-36.
45. *Piazza*, 831 F. Supp. at 434. However, he framed the issue as:
> The reserve clause bound a player to either enter a new contract with the same team in the succeeding year of the player's contract, or be considered ineligible by the National and American League to serve any baseball club. Because of this restrictive provision, the Federal League and its constituent clubs were unable to obtain players who had contracts with the National and American Leagues, the effect of which, as found by the jury, was to damage Federal Baseball.

Id.(citations omitted).

specifically spell out that the reserve clause was at issue in that matter, it appears that Judge Padova's observations of the circumstances leading to the lawsuit are accurate.[46]

Actually, the *Federal Baseball* decision does not really discuss much of the actual effects of the League's action on the players, whose rights are the only ones presumably reserved. However, at the very end of the opinion, Justice Holmes writes: "If we are right, the plaintiff's business is to be described in the same way and the *restrictions by contract that prevented the plaintiff from getting players to break their bargains* and the other conduct charged against the defendants were not an interference with commerce among the states."[47] Judge Padova's *Piazza* decision places great emphasis on Justice Holmes's theory, and assumes that this describes a reserve clause, which bound each player to his team, unless he was traded or retired.[48]

Curiously, the reserve clause is also not mentioned, either directly or indirectly, in the *Toolson* majority opinion, a terse, less than twenty line, *per curiam* decision. Ironically, the subject rears its head in the dissenting opinion of Justice Burton, which was joined by Justice Reed.[49]

The *Flood* decision, however, was positive proof that the reserve clause was indeed the focal point of the exemption decisions, pointing out in strident language that enabled Judge Padova to draw out the distinction that Major League Baseball was not willing to contemplate. There can be no argument that *Flood* is a reserve clause case, given that the outfielder specifically sought to challenge the

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46. *Federal Baseball*, 269 F. at 207. Moreover, in explaining the facts of that case, Justice Holmes, who wrote the majority opinion, noted that the lawsuit alleged that:

> the defendants destroyed the Federal League by buying up some of the constituent clubs, and in one way or another inducing all those clubs except the plaintiff to leave their League, and that the three persons connected with the Federal League and named as defendants, one of them being the President of the League, took part in the conspiracy.

Id.

47. *Id.* at 209., (emphasis added).

48. *Piazza*, 831 F. Supp. at 434-38.

49. *Toolson*, 346 U.S. at 361. Justice Burton discussed the issue as follows:

> The plaintiffs here allege that they are professional baseball players who have been damaged by enforcement of the standard "reserve clause" in their contracts pursuant to nationwide agreements among the defendants. In effect, they charge in violation of the Sherman Act, organized baseball, through its illegal monopoly and unreasonable restraints of trade, exploits the players who attract the profits for the benefits of the clubs and leagues . . . . Plaintiffs allege that because of illegal and inequitable agreements of interstate scope between organized baseball and the Mexican League binding each to respect the other's "reserve clauses," they have lost the services of and contract rights to certain baseball players.

Id.

clause in his contract that required him to report to another team to which he was traded without his permission or consultation. This act was, at that time, sanctioned by the reserve clause in his contract.[50]

In the preamble to his majority opinion, Justice Blackmun framed the issue as pointing to the reserve clause, writing that "For the third time in fifty years, the Court is asked specifically to rule that professional baseball's reserve clause is within the reach of the federal antitrust laws."[51]

Justice Blackmun also wrote in his opinion that "[B]aseball was left alone to develop for that period (when *Federal Baseball* and *Toolson* were decided) upon the understanding that the *reserve system was not subject to existing antitrust laws.*"[52]

The *Flood* decision also indicated that *Toolson* was a "narrow application of the rule of *stare decisis*," which provides the cornerstone of Judge Padova's decision in *Piazza*.[53] Despite that, Justice Blackmun affirmed those two earlier rulings, adding that "there is merit inconsistency even though some might claim that beneath that consistency is a layer of inconsistency."[54]

Judge Padova seized upon the apparent inconsistency. Rejecting Major League Baseball's opinion that the antitrust exemption applied to the "business of baseball" generally, Judge Padova indicated that, while the *Federal Baseball* and *Toolson* decisions may have expanded the legal discussion beyond the issue of the reserve clause, Justice Blackmun's majority opinion in *Flood* took away any and all precedential value of those two cases, except for the subject of the reserve clause.[55]

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50. *Flood*, 443 F.2d at 265.

51. *Id.* at 258. In reaching his opinion, Justice Blackmun noted that:

> Professional baseball is a business, and it is engaged in interstate commerce . . . . With its reserve system enjoying exemption from the federal antitrust laws, baseball is, in a very distinct sense, an exception and an anomaly. *Federal Baseball* and *Toolson* have become an aberration confined to baseball . . . Even though others might regard this as "unrealistic, inconsistent, or illogical," the aberration is an established one . . . heretofore deemed *fully entitled to the benefit of stare decisis.*

Id. at 282., (emphasis added).

52. *Id.* at 273., (emphasis added).

53. *Piazza*, 831 F. Supp. at 436.

54. *Id.* at 283.

55. *Piazza*, 831 F. Supp. at 436. Commenting on this, Judge Padova wrote that:

> Although *Federal Baseball* involved the reserve clause, that decision was based upon the proposition that the business of exhibiting baseball games, as opposed to the business of moving players and their equipment, was not interstate commerce, and thus not subject to the Sherman Act. *Toolson*, also a reserve clause case, spoke in terms of the "business of baseball" enjoying the exemption.

Id. at 435-36.

Despite his reliance upon the *Flood* decision, Judge Padova had some pointed criticisms of it. He indicated that Justice Blackmun's majority decision, simply stating that "professional baseball is a business . . . engaged in interstate commerce," reversed the field, by "entirely undercutting the precedential value of the reasoning of *Federal Baseball*, and further made it clear that the *Federal Baseball* exemption, upheld by the court in *Toolson*, was limited to the reserve clause."[56]

Not surprisingly, Major League Baseball did not buy into this reasoning. It interpreted *Flood* somewhat differently, and relied primarily on the holding of the United States Court of Appeals for the Seventh Circuit decision of *Charles O. Finley & Co. v. Kuhn*,[57] for a somewhat different evaluation of *Flood*.

The *Finley* case resulted from a "fire sale" by Oakland Athletics owner Finley. Believing that he was running out of money to run his franchise, and perhaps foreseeing the skyrocketing salaries upon the advent of free agency, Finley attempted to sell outfielder Joe Rudi, and pitchers Rollie Fingers and Vida Blue to the Boston Red Sox and the New York Yankees. Baseball Commissioner Bowie Kuhn disapproved of the sales, and ordered the players returned to the Athletics.

Finley, never a friend of Kuhn, sued under the theory that Kuhn's action violated antitrust laws. The District Court held that the Commissioner was exempt from the antitrust laws, and Finley appealed, on the theory that baseball's antitrust exemption applied only to the reserve clause system.[58]

Judge Padova rejected the Seventh Circuit's *Flood* interpretation in his *Piazza* decision. He noted that only a single paragraph of the *Finley* decision substantively discussed the application of the antitrust exemption in the *Flood* case. Moreover, he noted that there were two other references to the reserve clause in the *Flood* decision that were not mentioned by the Seventh Circuit.[59]

Judge Padova found that those two missing references were crucial to the *Flood* reasoning and decision. First, according to Judge Padova, those references indicated that the Supreme Court read both *Federal Baseball* and *Toolson* as reserve clause cases. In

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56. *Id.* at 436.

57. 569 F.2d 527 (7th Cir. 1978).

58. *Finley*, 569 F.2d at 541. The Seventh Circuit ruled against him, stating that:

> Despite the two references in the *Flood* case to the reserve system, it appears clear from the entire opinions in the three baseball cases (*Federal Baseball*, *Toolson* and *Flood*) . . . that the Supreme Court intended to exempt the business of baseball, not any particular facet of that business, from the federal antitrust laws.

Id.

59. *Piazza*, 831 F. Supp. at 437.

addition, he noted that it showed that the Supreme Court continued to follow those first two decisions in *Flood* because Congress continued to express no intention of subjecting the reserve clause to antitrust scrutiny.[60]

The *Piazza* decision, however, turns on Judge Padova's narrow application and interpretation of the doctrine of *stare decisis* to the case. In the opinion, he notes that the doctrine "simply permits no other way to read *Flood* than as confining the precedential value of *Federal Baseball* and *Toolson* to the precise facts there involved."[61] In an academic exercise in dissecting the meaning of *stare decisis* in American law, Judge Padova noted that *stare decisis* requires the court to follow both the *reasoning* and the *result* of a case, and *not* just the result itself. Based upon this, he noted that, "The Supreme Court is free to change the standard or result from one of its earlier cases when it finds it to be unsound in principle (or) unworkable in practice."[62]

Therefore, Judge Padova reasoned that the lower courts were bound by the rule of *Federal Baseball* and *Toolson*. The rule states that the business of baseball is not interstate commerce and thus not within the realm of the Sherman Antitrust Act, as well as the result of those decisions, namely that baseball's reserve system is exempt from antitrust laws.[63]

Judge Padova went even further. He noted that, in *Flood*, the Supreme Court invalidated the rule of *Federal Baseball* and *Toolson*, namely that baseball is a business involved in interstate commerce. Therefore, he indicated that there is no rule from those two cases that binds lower court, by the doctrine of *stare decisis*.[64]

In addition, Judge Padova wrote that "The only aspect of *Federal Baseball* and *Toolson* that remains to be followed is the result or disposition based upon the facts there involved, which the court in *Flood* determined to be the exemption of the reserve system from the antitrust laws."[65]

As a result of the above analysis, Judge Padova concluded that the antitrust exemption created by the *Federal Baseball* decision, which was never overturned, is limited to baseball's reserve system. He noted that the parties in *Piazza* had agreed that the reserve system was not an issue in that case. Therefore rejected Major

60. *Id.*
61. *Id.* at 437.
62. *Id.* at 438.
63. *Id.*
64. *Piazza*, 831 F. Supp. at 438.
65. *Id.*

League Baseball's argument that it was exempt from antitrust liability in that case.[66]

V. CONCLUSION

Where do we go from here? While Judge Padova's decision appears to open the door for further narrowing, if not elimination, of the absurd exemption, it may well be that the courts, at all levels, will still await Congressional action. Recently, public hearings were held under the auspices of Senator Howard Metzenbaum, D-Ohio, who has long been a critic of both the antitrust exemption and Major League Baseball's way of life. Rather than create any meaningful discussion, these public hearings deteriorated into public acrimony between Senator Metzenbaum and acting Commissioner Selig over baseball's abject failure to appoint a new commissioner and get its affairs in order. However, expansion may well loom on the horizon, and if the past is any guide, Congressional "saber rattling" will again rear its ugly head when the losing states, cities and other communities digest baseball's expansion plans.

66. *Id.*