

# THE RACIAL RE-INTEGRATION OF MAJOR LEAGUE BASEBALL: A BUSINESS RATHER THAN MORAL DECISION; WHY MOTIVE MATTERS

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## I. INTRODUCTION

The African-American press reacted with jubilation to Brooklyn Dodger president and general manager Branch Rickey’s<sup>1</sup> signing of African American Jackie Robinson to a minor league baseball contract in 1945.<sup>2</sup> “[B]lack newspapers placed the Robinson story on the front page,

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Baseball had been integrated in the middle to late nineteenth century, with players like the Walker brothers playing for “major” league teams. Much of this changed after the “civil rights cases” made it acceptable for individuals, other than the state to discriminate in places of public accommodation. See James Devine, *The Past as Moral Guide to the Present: The Parallel Between Martin Luther King, Jr.’s Elements of a Nonviolent Civil Rights Campaign and Jackie Robinson’s Entry onto the Brooklyn Dodgers*, 3 VILL. SPORTS & ENT. L.J. 489, 503-507 (1996).

1. Branch Rickey became president and general manager of the Dodgers in 1942. ARTHUR MANN, *BRANCH RICKEY* 212 (Houghton Mifflin 1957).

2. See ARTHUR ASHE, *A HARD ROAD TO GLORY: BASEBALL* 78 (Amistad 1993).

hailed the breakthrough in their editorials, and devoted a substantial proportion of their papers to the event."<sup>3</sup> Branch Rickey was called "the 'John Brown of baseball,'" for his conduct.<sup>4</sup> Robinson himself well understood the moral underpinnings of his signing: "I will not forget that I am representative of a whole race of people who are pulling for me," he reportedly told an African American sportswriter.<sup>5</sup> Others were concerned for Robinson. "He will be haunted by the expectations of his race," reportedly wrote an African American columnist.<sup>6</sup> Another apparently wrote that Robinson "has the hopes, aspirations and ambitions of thirteen million black Americans heaped upon his broad, sturdy shoulders."<sup>7</sup> When he played his first game for the Brooklyn Dodgers, the African American media saw the event in historic terms: "Triumph of whole race seen in Jackie's debut in major league ball," was the headline in the *Boston Chronicle*.<sup>8</sup> As author Arthur Ashe saw the events surrounding Robinson's signing: "[A] sixty-four-year-old major league owner had enough courage to do the morally correct thing: grant a human being his rightful chance to succeed or fail. Nothing more; nothing less."<sup>9</sup> In short, "[t]he credit for banishing Jim Crow from baseball belongs solely to Branch Rickey."<sup>10</sup>

The White press also saw morality in the decision to bring Robinson into organized baseball. The Montreal *Gazette* reportedly published a cartoon of Rickey holding a copy of Abraham Lincoln's Emancipation Proclamation while looking up at a picture of Lincoln and asking aloud: "Wonder how I'd look in a stovepipe hat?"<sup>11</sup> Other papers and columnists also drew comparisons between Rickey and Lincoln.<sup>12</sup>

White players were also caught up in the reintegration of baseball as a moral issue. Soon to be Robinson's Brooklyn Dodger teammate, southern Dixie Walker, indicated he was not worried about Robinson's sign-

3. JULES TYGIEL, *BASEBALL'S GREAT EXPERIMENT: JACKIE ROBINSON AND HIS LEGACY* (Oxford University Press 1983). Robinson joined boxer Joe Louis as the most popular African American hero.

4. MARK RIBOWSKY, *A COMPLETE HISTORY OF THE NEGRO LEAGUES 1884-1955* 280 (Birch Lane Press 1995).

5. *Id.*

6. *Id.*

7. TYGIEL, *supra* note 3, at 75

8. *Id.* at 178.

9. ASHE, *supra* note 2, at 78.

10. TYGIEL, *supra* note 3, at 207.

11. *Id.* at 74-75.

12. *Id.* Rickey also received support from the American Communist press, support "that must . . . have sent special chills down his spine." DAVID FALKNER, *GREAT TIME COMING* 118 (Simon & Shuster 1995).

ing “[a]s long as he isn’t with the Dodgers.” Hall of Famer Rogers Hornsby added that racially mixed baseball teams simply would not work out.<sup>13</sup>

History is thus long on the moral aspect of Robinson’s signing, but what if that signing was not as much about morality as has been suggested? It has been alleged that “[t]he invisible barrier that had kept blacks from playing organized baseball had been a moral issue for Rickey right from the start,”<sup>14</sup> but what if Rickey’s decision to reintegrate baseball was not so much driven by moral impulse but was instead shrewd business judgment. What then?

Why would motive matter, and what effect would Rickey’s motives have on other owners who decided to field African American players later in the 1950’s? Noted author Donn Rogosin, in his book *Invisible Men*, for example, questions Rickey’s motives, but nonetheless says: “Of course, once the decision to send Robinson to Montreal was made, Rickey, in the main, received (and deserved) nothing but credit.”<sup>15</sup> Because this analysis views motive by the result, however, it misses the import that motive plays, even today, in the long term health of organized baseball.<sup>16</sup>

If business rather than moral concerns actually motivated Branch Rickey, and other owners who followed his integration lead in the 1950’s, then the moral imperative of reintegration could later dissipate if the business necessity of initial on-the-field reintegration also dissipated. And dissipation appears to be what is happening today. In 1997, as organized baseball celebrated the fiftieth anniversary of Jackie Robinson’s first season with the Brooklyn Dodgers, the Dodgers had no African Americans in their starting lineup “for the first time since Robinson’s debut.”<sup>17</sup> In fact, in 1997, a smaller percentage of African Americans athletes played in the

13. TYGIEL, *supra* note 3, at 77.

14. STANLEY COHEN, *DODGERS: THE FIRST 100 YEARS* 77 (Birch Lane Press 1990). “Rickey had opposed discrimination since the turn of the century. . . . Rickey hated the system, and racism in baseball embarrassed him.” PETER GOLENBOCK, *BUMS* 122-23 (G.P. Putnam’s Sons 1984).

15. DONN ROGOSIN, *INVISIBLE MEN* 214 (Kodansha Int’l 1995) (1983). Rogosin does note the tremendous financial benefit to the Dodgers of having Robinson. “Not only did whites remain loyal for the most part, but the Dodgers received a spontaneous, deep, and passionate embrace from all sectors of black society.” *Id.*

16. The comparisons between what Rickey and Robinson did in the 1940’s with what Martin Luther King and others did in the 1960’s remains strong. See generally James Devine, *The Past as Moral Guide to the Present: The Parallel Between Martin Luther King, Jr.’s Elements of a Nonviolent Civil Rights Campaign and Jackie Robinson’s Entry onto the Brooklyn Dodgers*, 3 *VILL. SPORTS & ENT. L. J.* 489 (1996). Those comparisons are not the issue. Rather, the issue here is the motivation behind the decisions leading to those events.

17. See Ken Rosenthal, *50 Years Later, Baseball Still has Miles and Miles to Go*, *BALT. SUN*, Apr. 16, 1997, available at 1997 WL 5510751.

major leagues than in 1959, when Pumpsie Green's entry onto the Boston Red Sox meant every team in baseball had been reintegrated.<sup>18</sup> At the same time, a higher percentage of African Americans played in both the National Basketball Association and the National Football League than in major league baseball.<sup>19</sup> When Jackie Robinson stepped onto the field for the Brooklyn Dodgers in 1947, no African Americans had controlling ownership in any major league baseball team.<sup>20</sup> By the fortieth anniversary of that event, it was alleged that African Americans lacked the "necessaries" to be field managers, and on the fiftieth anniversary of that event, there were still no African Americans "with a controlling ownership interest in any of the nation's professional sports."<sup>21</sup> As reportedly pointed out by Hall of Fame slugger Reggie Jackson, Jackie "Robinson would be 'enormously disappointed' by [baseball's] lack of progress in appointing minorities to decision-making positions."<sup>22</sup>

To fully understand that Branch Rickey, and the owners who followed in his footsteps, had strong financial rather than moral motives for reintegrating organized baseball requires a study of much of the history of the game. First, an understanding of early minor league baseball is necessary, including the various draft provisions and option agreements that developed both formally and informally among major and minor league teams. Second, it must be understood how minor league teams' financial survival depended on selling their players to the highest major league bidder while major league owners sought to pay only a token amount to the minor league team for drafting a player. Next, it is important to understand the impact of the first baseball commissioner, Judge Kenesaw Mountain Landis and his attitudes about monopolistic conduct of major and minor league owners. It then becomes necessary to understand the dramatic

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18. *Id.* See also TYGIEL, *supra* note 3, at 329-32. (describing Pumpsie Green's entry onto the Red Sox). At one point in 1996, the Philadelphia Phillies had no African American players on their 25-man roster. Kenneth L. Shropshire, *Jackie Robinson's Legacy*, EMERGE, Apr. 30, 1997, available at 1997 WL 11609302.

19. See Shropshire, *supra* note 18. 82% of the National Basketball Association players are African American, 67% of the National Football League players are African American, and 17% of Major League Baseball players are African American, a figure that has held largely constant during the 1990's. *Id.*

20. *Id.*

21. *Id.*

22. Rosenthal, *supra* note 17. This sentiment was echoed by current player Gary Sheffield, who indicated that Jackie Robinson would not be pleased at baseball's progress: "'Not even close,' Sheffield said. 'He had a much bigger picture than one man playing to change the direction of the sport. He envisioned black people as owners and general managers. He envisioned them in positions of authority, and it just hasn't happened.'" Craig Branes, *Sheffield: Jackie's Dream Incomplete*, FT. LAUDERDALE SUN-SENTINEL, Apr. 16, 1997, available at 1997 WL 3097941.

change in major league/minor league relationships brought about by Branch Rickey during his executive tenure with the St. Louis Cardinals. Under Rickey's model, major league teams for the first time exercised vertical control over players from the moment they entered the lowest level of minor league baseball until they reached the major league team or were sold. This control was effected through major league club ownership of numerous minor league teams. The Rickey system offended Commissioner Landis' sense of monopoly, and the two battled over the issue throughout the 1930's.<sup>23</sup> After Commissioner Landis disciplined Rickey by making a number of Cardinal minor league players free agents, it becomes more understandable why Rickey would look outside organized baseball for a ready source of playing talent, namely the Negro Leagues.<sup>24</sup> Proof that Rickey and other owners used the Negro Leagues as an unlimited draft pool rests in the amounts of money major league owners paid to Negro League teams to purchase their players.

Once major league baseball owner's strong financial incentive to purchase Negro League players is understood, then a return to the morality question is in order. If the decision to reintegrate was motivated by financial rather than moral concerns, major league baseball today is left without a strong moral component. Thus, when organized baseball attempts to discipline players such as John Rocker, or executives like Marge Schott or Al Campanis, the results are inconsistent. Similarly, when the major leagues attempt to increase minority hiring, there is no consistent motivating policy behind the effort.

## II. THE "MINOR" LEAGUES AND THE DRAFT

Unlike the modern concept of minor league teams as wholly-owned subsidiaries of major league teams, the original "minor" leagues of the late 1800s were independent leagues, existing where no National League team was located.<sup>25</sup> These leagues and their teams were likewise not "minor."

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23. NEIL J. SULLIVAN, *THE MINORS*, 103-04 (St. Martin's Press 1990).

24. *Id.* at 112.

25. At the time, of course, there was no American League. One author notes the rapid spread of baseball throughout the country following the Civil War. "No part of the country failed to develop professional leagues with loyal followings." SULLIVAN, *supra* note 23, at 24. Use of the term "minor" leagues recognizes the prominence of the National League as the only "major" league. *Id.* Because there was neither formal nor informal organization of these teams or leagues, Sullivan thinks the more appropriate term to be "non-League" teams. *Id.* This recognizes the National League as the source of measurement but also recognizes the absence of structure within baseball generally. *Id.* at 23-24.

At the time of the formation of the National League, at least 30 independent teams existed in 15 states and in Canada. DAVID PIETRUSZA, *MAJOR LEAGUES* 47-48 (McFarland & Co. 1991). These

The American Association, for example, came into existence in 1881 and competed with the National League for players.<sup>26</sup> At the end of the 1882 season, relations between the leagues were such that the American Association winning Cincinnati Reds played the National League winning Chicago White Stockings in an abbreviated "world series," with each team winning one game.<sup>27</sup>

Although they retained their independent status, the "minor" leagues became truly minor between the 1891 and 1892 seasons, as a result of two events. First, in the fall of 1891, American Association teams in St. Louis, Baltimore, Washington and Louisville were merged into an expanded 12-team National League.<sup>28</sup> National League owners purchased the remaining

independent teams played games against National League teams, in 1877 winning more of those games than their rivals. *Id.* Following an 1877 meeting called by the secretary of the St. Louis Red Stockings to which 10 clubs responded, a loose association was formed in which members paid \$10 a year and an additional \$15 per year if they wanted to compete for the league championship. *Id.* Players in this International Association were named to the same all star teams as were National League players. *Id.* at 48.

26. See *Allegheny Base Ball Club v. Bennett*, 14 F. 257 (W.D. Pa. 1882). See also James Devine, *Baseball's Labor Wars in Historical Context: The 1919 Chicago White Sox as a Case-Study in Owner-Player Relations*, 5 MARQ. SPORTS L.J. 1, 14-18. (1994).

27. PIETRUSZA, *supra* note 25, at 77. To prevent further "labor wars," and the resulting increase in player salaries that competitive bidding produced, see Devine, *supra* note 26, the National League joined with the American Association and a newly reformed Northwestern League in a tripartite agreement in 1883 in which each league agreed to operate independently but still respect the "reserve" rights of each other league's teams. PIETRUSZA, *supra* note 25, at 78. Under the agreement, when a player was prevented from playing for a club in any one of the participating associations, because of expulsion, blacklisting or suspension, notice of that fact was sent to the secretaries of the other associations. *Id.* Thereafter, no team in any of the participating associations would either play or play against that player. *Id.* While the 1883 tri-partite agreement produced stability for baseball owners, it produced enforced slavery for baseball players who were unable to seek competitive bids for their services in organized baseball. *Id.* When the National League sought to impose a \$2,000 salary cap in 1885, the players reacted by forming their own league. *Id.* at 99. For a more complete history of the Players' League, see *id.* at 99-126. From an owner's perspective, the Players' League can be studied in *Base Ball: America's National Game*. ALBERT G. SPALDING, *BASE BALL: AMERICA'S NATIONAL GAME* 169-188 (Samm Coombs & Bob West eds., 1991). The resulting "war" produced a lack of respect for player reserve clauses. *Id.* at 179. ("No general ever planned campaign or conserved his forces with more painstaking care than did the commanders of the League and Brotherhood warriors. It was announced at the beginning that it was to be a fight to the death, and it was carried to a finish along these lines.") Spalding was part of the National League's "War Committee." See PIETRUSZA, *supra* note 25, at 108. The resulting desertions from American Association clubs sounded the deathknell for the league. There was some talk of a merger between the American Association and the Players' League, but that did not materialize. *Id.* at 111-12. The American Association was not as financially stable as the National League and could not therefore match salary offers by the Players' League. See CHARLES ALEXANDER, *OUR GAME*, 60 (Henry Holt & Co. 1991). When the Players' League collapsed in the fall of 1890, so did the American Association. Devine, *supra* note 26, at 26-27.

28. ALEXANDER, *supra* note 27, at 62.

Association teams for an aggregate of \$135,000.<sup>29</sup> Second, on March 1, 1892, this reconstituted National League, the “major” league, refused to recognize the right of other leagues to “reserve” players.<sup>30</sup> As a result, the “minor” leagues lost their right to prevent players from moving from the minors to the major league.<sup>31</sup> To preserve their league structure instead, the “minors” accepted classification into “A” and “B” divisions.<sup>32</sup> Within those divisions, teams were allowed to “reserve” their own players except that National League teams were allowed to “draft” players from “A” division teams by paying the minor league team \$1,000.<sup>33</sup> This draft fee was paid even though the drafted players’ actual market value might be much higher.<sup>34</sup> Teams classified in the “A” division could “draft” players from “B” division teams by paying the “B” division team \$500.<sup>35</sup> Because these “A” and “B” division teams were subject to this draft, and because the draft price was less than the actual market value of the drafted players, these teams and leagues thus became “minor,” that is, subservient to major league control.

As originally adopted, the National League was permitted to draft only two players from any one “A” division team a year,<sup>36</sup> but this classi-

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29. See *id.* See also PIETRUSZA, *supra* note 25, at 128. The remaining teams were in Boston, Philadelphia, Columbus, Milwaukee and Chicago. ALEXANDER, *supra* note 27, at 62.

30. ALEXANDER, *supra* note 27, at 62.

31. *Id.* at 62-63. Before this agreement, the National League, founded in 1875, had recognized other “major” leagues.

The “reserve” rule first surfaced in 1879 as a method for curtailing owners from attempting to out-spend each other on players. Devine, *supra* note 26, at 13. Under the rule, each team was permitted to protect a certain number of players. PIETRUSZA, *supra* note 25, at 43. No other team would attempt to negotiate with these players without permission and all teams agreed not to play teams fielding players “reserved” by other teams. *Id.* The number of players that could be “reserved” started at five, increased to eleven at the time of the tri-partite agreement among the National and Northwestern Leagues and the American Association, and eventually encompassed the entire team after the American League came into existence. *Id.* at 79, 179-180.

When the National League refused to recognize the “reserve” rights of teams in other leagues, the players in those leagues immediately became eligible to be raided by National League clubs. See ALEXANDER, *supra* note 27, at 62-63. The players in these leagues, then, were not the equals of those in the National League.

32. ALEXANDER, *supra* note 27, at 62-63.

33. *Id.* at 63.

34. See *id.*

35. *Id.* at 63. Noted baseball historian Harold Seymour suggests that the price paid by a National League team to draft a player from Class “A” teams was \$750. HAROLD SEYMOUR, *BASEBALL: THE GOLDEN AGE*, 405 (NY, Oxford Press 1971). Seymour also sets “draft” prices for lower minor leagues: “C” and “D” clubs at \$300 and \$200, respectively. *Id.* at 184.

36. SEYMOUR, *supra* note 35, at 184. This agreement “effectively precluded [minor league] teams from developing and keeping their best players. To the contrary, once a player was ready to contribute to the club that had refined his game,” a National League team would seize the player at a fee considerably below market value. SULLIVAN, *supra* note 23, at 9.

fication system nonetheless created an ongoing tension between "major" and "minor" league clubs.<sup>37</sup> The draft was good for major league owners who wanted to purchase talent from minor league clubs for the least amount of money. On the other side, a reserve rule that permitted clubs at all levels to protect their own players was good for minor league owners who wanted to keep players they developed and sell those players for their market value and add the profit to their own clubs.

The tension created by the major/minor league relationship continued into the twentieth century. The 1903 agreement consolidating the National and American Leagues into one major league baseball enterprise also recognized the existence of a new minor league structure and authorized negotiation of a "National Agreement" governing all of baseball.<sup>38</sup> This agreement furthered the minor league's "minor" status. Instead of limiting the American and National League draft to two players per "A" classification minor league team, the 1903 agreement authorized unlimited drafting of minor league players.<sup>39</sup> The agreement, of course, was a disaster for the minor leagues, whose teams were then subjected to unlimited raiding by

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The impact of the draft was similar to that of the reserve rule. *See id.* Both the "reserve" rule and the "draft" created players who were worth less than their true market value. The two rules differed, however, because they operated on different constituencies. *See id.* While the "reserve" rule prevented a player from shopping his talents to other teams, the draft operated on non-National League teams by forcing those teams to accept less than market value for a player who had been developed to the major league talent level by those "B" and "A"-classified teams." *Id.* at 9-10.

37. SEYMOUR, *supra* note 35, at 405 (noting that agreements such as that entered into in 1892 did not satisfy either the major or the minor leagues).

38. *See* PIETRUSZA, *supra* note 25, at 179-181. When the American League sought to sign National League players, the National League abrogated its agreement with the minor leagues and commenced unlimited raiding of minor league rosters in an effort to field baseball-ready teams. *Id.* at 166. This, in turn, caused the minor leagues to organize. *Id.* In 1901, the Western Association, the Eastern League, Western League, Pacific Northwest League, Three I League, New England League, New York State League, Connecticut League, North Carolina League, Southern League and California Leagues all entered into an agreement forming the National Association of Professional Baseball Leagues. *Id.* This agreement restored the reserve rights among member teams and also imposed a salary structure to the leagues. *See* SULLIVAN, *supra* note 23, at 44. The American and National League presidents were authorized to appoint committee members to a group that would produce the National Agreement. PIETRUSZA, *supra* note 25, at 180-81. In addition, the group was authorized to "invite President P.T. Powers of the National Association of Professional Baseball Leagues to confer with them in the formulating of said National Agreement." *Id.* at 181. When the American League sought to sign National League players, the National League abrogated its agreement with the minor leagues and commenced unlimited raiding of minor league rosters in an effort to field baseball-ready teams.

39. SULLIVAN, *supra* note 23, at 39. The agreement also banned the "farming" of players. Unlimited drafting was theoretically designed for "the promotion and welfare of ball players as a class by developing and perfecting them in their profession and enabling them to secure adequate compensation for expertness." SEYMOUR, *supra* note 35, at 182. As Seymour points out, however, this philosophy was in stark contrast to the reserve rule which was designed to accomplish exactly the opposite. *Id.*



the major leagues. This rule was scaled back in 1906 by a variation of the turn of the century provision. Under the 1906 version, only one player per year, not the previous two, could be drafted from a Class A team.<sup>40</sup>

Tension between the major and minor leagues over draft policies continued through the balance of the first two decades of the century.<sup>41</sup> At one point, American League president Ban Johnson reported that the major leagues would eliminate the minor league's National Association.<sup>42</sup> Finally, in 1919, the National Association forced the issue, withdrawing from the National Agreement. This eliminated all drafting of minor league players by major league teams.<sup>43</sup>

Shortly following the 1921 election of Judge Kenesaw Mountain Landis as major league baseball's first unitary commissioner,<sup>44</sup> a new national agreement addressed the minor league draft issue.<sup>45</sup> Under new provisions, only one player per year could be drafted from any AA or A minor league club, but unlimited players could be drafted from other teams.<sup>46</sup> Draft prices were raised to \$1,000 for class D players, \$2,000 for class C players, \$3,000 for class B players, \$4,000 for class A players and \$5,000 for class AA players.<sup>47</sup> The minor leagues were primarily concerned with a provision that allowed any minor league to opt out of this drafting scheme provided the league's teams agreed not to draft players from other

40. SEYMOUR, *supra* note 35, at 184.

41. In 1907, internal strife threatened the minor leagues. SULLIVAN, *supra* note 23, at 58. The American Association and Eastern League attempted to rewrite the A-D classification system but were voted down. After threatening to withdraw from the National Association, these two leagues, along with the Pacific Coast League, which had come into existence in 1903, were raised to a new AA classification. *Id.* Major league teams were forced to pay more for drafting players from these three leagues. *See id.* The most serious threat to minor league existence in the early twentieth century was the Federal League, which classified itself a major league in 1914. *See* PIETRUSZA, *supra* note 25, at 212. Like its predecessors, the Federal League sought to sign major league players to its rosters, thereby legitimating its claim to major league status. *See, e.g.* Devine, *supra* note 26, at 41-50. The signing of major league players again caused the raiding of minor league clubs to the extent that one report indicates some 115 minor league players breached the National Association's reserve rule to sign Federal League contracts. ALEXANDER, *supra* note 27, at 103. Of the forty different minor leagues which started the 1913 season, only 23 completed the 1915 season. *Id.* This decline continued through World War I, with fewer leagues starting and finishing each year through 1918. *See* SEYMOUR, *supra* note 35, at 401. In 1918, 9 leagues started the season, but only one league finished. ALEXANDER, *supra* note 27, at 111.

42. SEYMOUR, *supra* note 35, at 406.

43. *See id.* at 406-407. The National Association had previously issued an ultimatum to the major leagues, demanding that the draft be limited to players on Class A teams only and that compensation be increased to \$7,500 per player. SULLIVAN, *supra* note 23, at 63.

44. SULLIVAN, *supra* note 23, at 64.

45. *Id.* at 64-65.

46. *Id.* at 65.

47. SEYMOUR, *supra* note 35, at 406.

leagues.<sup>48</sup> As a result of this provision, all three Class AA leagues, the American Association, the International League, and the Pacific Coast League, opted out.<sup>49</sup> This agreement enabled independent minor league teams, like the Baltimore Orioles, to prosper.<sup>50</sup>

This 1921 agreement ended in 1927 and there was no National Agreement for the next four years.<sup>51</sup> In 1931, the draft was restored,<sup>52</sup> but again, only to a limited extent. Under the 1931 agreement, only one player per minor league team could be drafted per year.<sup>53</sup> Further, no player could be drafted from an AA or A minor league team unless the player had at least four or three years of minor league experience, respectively.<sup>54</sup> Finally, this agreement again increased draft prices to \$7,500 for AA players, \$6,000 for A players, \$4,000 for B players, \$2,500 for C players and \$2,000 for D players.<sup>55</sup>

By 1954, the Pacific Coast League (PCL) sought Major League status.<sup>56</sup> As a result, it was placed into a new "open" minor league classification.<sup>57</sup> Major league teams had to pay \$15,000 to draft players from the PCL.<sup>58</sup> In addition, because of the increasing national population, another additional minor league classification was added. If the minor league had a composite population of 3 million potential fans or more, the league was classified as a AAA league.<sup>59</sup> For a major league club to draft

48. See *id.* at 406-07; SULLIVAN, *supra* note 23, at 64-65. There were additional provisions affecting the rights of teams to option players to lower leagues. SEYMOUR, *supra* note 35, at 71-92.

49. SULLIVAN, *supra* note 23, at 65. As did the Class A Western Association and the Class B Three-I League. *Id.* This agreement was amended in 1923 to add what was referred to as the "modified draft." SEYMOUR, *supra* note 35, at 407. Under this agreement, major league teams could send players to the minor leagues which had opted out of the draft, provided the major leagues could draft certain minor league players. *Id.* All of the draft-exempt leagues agreed to this modification except the International League, which did not agree to this plan until 1924. *Id.* at 409.

50. See SULLIVAN, *supra* note 23, at 71-92.

51. *Id.* at 91-92.

52. *Id.* In 1923, there was some movement as the minors agreed to changes in the option rule. See SEYMOUR, *supra* note 35, at 409.

53. SEYMOUR, *supra* note 35, at 409.

54. *Id.*

55. *Id.* at 409. There were further changes in option rules as well.

56. See PAUL M. GREGORY, *THE BASEBALL PLAYER: AN ECONOMIC STUDY* 170 (Public Affairs Press 1956).

57. See *id.* at 170, 176.

58. See *id.* at 176. Draft prices moved up to \$25,000, regardless of league, by 1959. See HY TURKIN & S.C. THOMPSON, *THE OFFICIAL ENCYCLOPEDIA OF BASEBALL*, 535 (Second Rev. ed. 1959) (unless the player was a first year minor league player, at which point the draft price was \$15,000.)

59. TURKIN & THOMPSON, *supra* note 58, at 535. At the time, the "open" classification required a league composite population of 10,000,000, AA required a composite population of 1,750,000; A required a league composite population of 1,000,000; B required a population of 250,000; C required a population of 150,000, and D and E required population composites of at least

AAA players cost \$10,000 per player.<sup>60</sup> Prices for the 1954 draft of AA players remained, however, at \$7,500.<sup>61</sup>

As a result of the "draft," then, major league teams were able to elevate the status of some minor league players at prices below market value. The independent minor leagues, however, were able to maintain their status by selling non-drafted players at market rates.

### III. THE MINOR LEAGUES AND "OPTION" AGREEMENTS

In addition to outright purchase of a player, either at market price or through the draft, baseball players could move between major and minor league teams by use of "option" agreements.<sup>62</sup> An "option" agreement or provision regarding a particular player differed from a "draft" provision regarding that same player.<sup>63</sup> Under the "draft" rules, players were moved up the ladder from lower minor league teams to higher ones and from higher minor league teams to the major leagues.<sup>64</sup> "Option" provisions permitted major league teams to send players down the ladder to minor league teams subject to later recall.<sup>65</sup> "Option" provisions thus assisted the major league team's "reserve" rule by providing a place for the team to assign players not a part of the major league team's roster.<sup>66</sup>

"Option" provisions assisted major league teams, but the provisions did not necessarily help minor league teams.<sup>67</sup> Optioned players were likely to be ones not capable of assisting the major league team. As a result, the minor league rosters "could thus become cluttered with the [major league's] marginal players, reducing the opportunity for other players to develop."<sup>68</sup>

"Option" agreements could be both formal and informal. Under some informal agreements, a player was optioned to a minor league team as part of common effort by owners at both the major and minor league level. In the early part of the twentieth century, agreements with just such a common purpose began to surface.

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150,000. Simon Rottenberg, *The Baseball Players' Labor Market*, 44 J. POL. ECON. 242, 243 (1956).

60. GREGORY, *supra* note 56, at 176.

61. *Id.* at 176. Draft prices for players in A minor leagues was \$6,000, from B leagues, \$4,000, from C leagues, \$2,500, and from D leagues, \$2,000. *Id.* The restriction against the drafting of more than one player from any minor league club above the B level continued. *Id.*

62. See SULLIVAN, *supra* note 23, at 9-10; GREGORY, *supra* note 56, at 170-72.

63. See SULLIVAN, *supra* note 23, at 9-10

64. See SULLIVAN, *supra* note 23, at 9; GREGORY, *supra* note 56, at 175.

65. SULLIVAN, *supra* note 23, at 9.

66. *Id.*

67. GREGORY, *supra* note 56, at 170-71.

68. SULLIVAN, *supra* note 23, at 9-10.

John T. Brush, for example, owned both the Cincinnati major league franchise and the minor league Indianapolis Western League franchise.<sup>69</sup> As the owner of Cincinnati, a major league team, Brush could draft players from minor league teams, including other Western League teams.<sup>70</sup> After so doing, he could then contract with the Indianapolis team and option Cincinnati players to Indianapolis subject to recall by Cincinnati.<sup>71</sup> Brush was thus able to further both his major league team and his minor league team at the expense of other minor league teams in the same league.<sup>72</sup> Brush was not alone. Similar types of agreements existed between Brooklyn of the major leagues and Baltimore of the minor leagues and between Chicago of the major leagues and both Milwaukee and New Orleans of the minor leagues.<sup>73</sup>

With such agreements, owners obviously could exercise much greater control over both players and the game itself, perhaps justifying use of the term "magnates," a term to which many owners apparently aspired.<sup>74</sup>

69. *Id.* at 29. The Western League, in the 1890s, was made up of teams in Indianapolis, Sioux City, Detroit, Toledo, Kansas City, Milwaukee, Minneapolis, and Grand Rapids. PIETRUSZA, *supra* note 25, at 145. This league would eventually change its name and become the American League in 1903. *See id.* at 145-82.

Brush later became the owner of the New York Giants. SULLIVAN, *supra* note 23, at 36.

70. SULLIVAN, *supra* note 23, at 29.

71. *Id.* Similar problems arose in dealing with the draft. Baseball historian Harold Seymour notes that a minor league owner trying to prevent a club's best players from being drafted would sell those players to a major league club, which would hold them until the draft period was over. SEYMOUR, *supra* note 35, at 183. In exchange, the major league club would receive its pick of the best of the minor league club's players the next year. *Id.* Similarly, big league clubs often drafted heavily, only to prevent other clubs from drafting promising players, only to return them to the minor league club the next spring, unless the players could be sold at a profit. *Id.*

72. *See* SULLIVAN, *supra* note 23, at 29.

73. SEYMOUR, *supra* note 35, at 183-84.

74. ALEXANDER, *supra* note 27, at 70 (reporting that owners like to see themselves referred to by this term in the media). While these owners evidently saw this term as a positive factor, others, including National League co-founder Albert Spalding, *see* PIETRUSZA, *supra* note 25, at 27-30, saw the term in distinctly negative terms. SPALDING, *supra* note 27, at 191. Many owners, claimed Spalding, were involved in baseball only out of greed. "They were absolutely devoid of sentiment, cared nothing for the integrity or perpetuity of the game . . . . With these men it was simply a mercenary question of dollars and cents. Everything must yield to the one consideration of inordinate greed." *Id.* at 191-92. Spalding's primary fear was of "Freedmanism," a concept named after New York Giants owner Andrew Freedman. *Id.* Freedman was, by most accounts, a most unpleasant man with considerable ties to New York's "Tammany Hall." PIETRUSZA, *supra* note 25, at 168-75; BENJAMIN G. RADER, *BASEBALL: A HISTORY OF AMERICA'S GAME* 74-76 (University of Ill. Press 1992); SEYMOUR, *supra* note 35, at 54. Freedman believed that teams from the largest cities had to be successful for the baseball enterprise to be a success. RADER, *supra*, at 75. He thus proposed syndicate ownership with both preferred and common stock: preferred stock would pay a 7% dividend, all of which belonged to the League and common stock would pay the eight teams in the league according to their population. *See* SPALDING, *supra* note 27, at 195. The percentages were as follows: Freedman's New York team would get 30%; Cincinnati, 12%; St. Louis, 12%; Boston, 12%; Philadelphia,

During the same era when owner Brush and other baseball “magnates” were shuffling players between major and minor league cities,<sup>75</sup> Congress enacted the Sherman Act, designed “to protect trade and commerce against unlawful restraints and monopolies.”<sup>76</sup> The “trust” problem “was regarded as an integral part” of the leading political questions of the day and the popular press consistently published articles and editorials against such business forms.<sup>77</sup> It was perhaps such concern about the public perception of trusts that caused Albert Spalding to tell National League owners who were considering the possibility of a baseball trust ownership arrangement called “Freedmanism” in 1901: “The eyes of this Nation are upon you, and somehow or other the people have an idea that you are a band of conspirators, talking nothing but gate receipts.”<sup>78</sup>

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10%; Chicago, 10%; Pittsburgh, 8%, and Brooklyn, 6%. The league would be organized as the National League Baseball Trust. ALEXANDER, *supra* note 27, at 79. One of Freedman’s principal allies in the move to create a baseball syndicate was John T. Brush, the Cincinnati owner who owned both major and minor league teams and optioned players between them. *See id.* For a complete history of the parliamentary wranglings whereby Albert Spalding defeated “Freedmanism,” at least from Spalding’s perspective. *See* SPALDING, *supra* note 27, at 191-211.

75. SULLIVAN, *supra* note 23, at 27-29. Sullivan makes it clear that this activity took place during the 1890’s.

76. Sherman Act, 26 Stat. 209 (1890) (current version 15 U.S.C. § 1 (2000)). Section 1 provides in pertinent part:

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations is hereby declared to be illegal. Any person guilty of participating in such a conspiracy could be found guilty of a misdemeanor and fined up to \$5,000 or imprisoned for up to one year, or both.

*Id.* at ch. 647 § 1 (current version 15 U.S.C. § 1).

77. *See* William L. Letwin, *Congress and the Sherman Antitrust Law: 1887-1890*, 23 U. CHI. L. REV. 221, 224-25 (1956). Articles about trusts were published during every day of February, 1888, except one, in the *New York Times*. *Id.* at 224. Additionally, the *Times* printed articles about Congressional hearings regarding trusts on 22 dates from February–July, 1888. *Id.* The *Chicago Tribune* also printed some 23 trust stories during the first week in February, 1888. Finally, some 31 other United States newspapers are reported as having printed trust stories. *Id.*

Political parties were opposed to trusts almost as soon as it was invented by a Standard Oil Company lawyer. *Id.* at 222, 247. Splinter parties such as the Union Labor Party were soon followed by the Democrats and later, the Republicans, in their opposition to trusts. *Id.* at 247-48.

78. SPALDING, *supra* note 27, at 201. Spalding reports that “[t]he press of the whole country had gone into a discussion of the subject” of the baseball trust. *Id.* at 205. Four teams voted for N.E. Young as president of the National League. *Id.* Presumably, these were the four “trust” clubs, *id.*, which had met at Freedman’s home in New Jersey in August 1901—New York, Boston, Cincinnati, and St. Louis. *See id.* at 194. Cincinnati, and its owner John Brush, were close allies with Freedman. *See* ALEXANDER, *supra* note 27, at 79. Not surprisingly, those four clubs would control 66% of the resulting National League Trust. *See* SPALDING, *supra* note 27, at 195. The remaining four teams reportedly voted for Spalding, in a debate that continued for some twenty-five ballots, after which the representatives of the trust clubs left the meeting. Thereafter, on the twenty-sixth ballots, the remaining four clubs unanimously elected Spalding as National League president. *Id.* at 206. Even Spalding recognized that any power he might have as the choice of a non-majority of clubs was extremely limited. *Id.* at 210-11. Before being enjoined to continue, Spalding was, however, able to

It seems likely that Spalding's view against owners' "conspiracy" was instrumental in new rules affecting players that were made a part of the 1903 National Agreement.<sup>79</sup> Under this agreement, a \$500 fine could be levied against any club that reportedly became "a party to a conspiracy to prevent a player from advancing in his profession, or in any way of abusing the privilege of selection."<sup>80</sup> This rule was designed to prevent informal agreements between major and minor league clubs, but it failed to do so because owners continually found ways to work around the new provision.<sup>81</sup> In 1905, the rule was amended to attempt to prevent improper option agreements.<sup>82</sup> All major league clubs and all clubs in higher minor leagues now had to be given an opportunity to claim a player before the player was sent to a lower minor league.<sup>83</sup>

Similar provisions were designed to prevent multiple ownership, particularly between major and minor league clubs. A provision of the 1903 National Agreement banned farm systems altogether and implicitly banned ownership of a minor league team by a major league team.<sup>84</sup> To work around this rule, major league owners then developed "working" relationships with friendly minor league teams, so that major league teams like John Brush's 1905 Giants could send players to a minor league team in return for preferential treatment of players who remained with the minor league team at the end of the season.<sup>85</sup> Other owners conceived a plan whereby a player would not be sent to a friendly minor league team but instead would be sold to the minor league team, with the major league team

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embarrass Freedman enough so that Freedman did not appear to publicly debate what Spalding called "the baseball situation." *Id.* at 208-210. After Freedman and John McGraw transferred stock in the Baltimore American League club to Freedman, McGraw was released from his managerial position in Baltimore and signed to manage Freedman's Giants. *See* ALEXANDER, *supra* note 27, at 81. Freedman then took control of the Baltimore club and released a number of players who signed both with Freedman's Giants and Brush's Cincinnati team. *Id.* Thereafter, Brush purchased Freedman's interest in the Giants and Freedman was out of baseball. *Id.* at 81-82. Brush's interest in the Cincinnati club was sold to local politicians. *See* PIETRUSZA, *supra* note 25, at 175.

The National League was without a president in 1902, but elected the secretary of the Pittsburgh team, "Harry" Pulliam, as president for the 1903 season. *See* ALEXANDER, *supra* note 27, at 79, 82.

79. This National Agreement resulted in the American League joining the National League as the "major" leagues. *See* PIETRUSZA, *supra* note 25, at 179-80.

80. *See* SEYMOUR, *supra* note 35, at 183.

81. *See id.*

82. *Id.* at 185.

83. *See id.* This rule was added to the National Agreement in 1912. A further extension made the rule applicable throughout the minor leagues in 1914. *See id.* at 185.

84. *See* SEYMOUR, *supra* note 35, at 186. "Farming" as it existed at the time was the practice of storing players otherwise capable of playing at the major league level with a friendly or controlled minor league team. *Id.*

85. *Id.*

retaining an option to repurchase the player at a later date.<sup>86</sup> To discourage this practice, owners in 1907 prevented a player from being “optioned” more than once and, in 1908, owners added a requirement obligating the major league team to pay at least \$300 to repurchase the formerly optioned player.<sup>87</sup> In 1911, a further restriction prevented teams from optioning more than eight players at any one time, a number that was eventually raised to fifteen players at the insistence of Yankee’s owner Jacob Ruppert.<sup>88</sup>

Some clubs simply ignored the rules and actually purchased minor league teams. Brooklyn’s Charles Ebbetts, for example, purchased the Newark team of the International League, and the Cleveland team took over Toledo of the American Association.<sup>89</sup> As a result, those two clubs controlled at least 60 players each, while the three smallest teams in the major leagues controlled only half of that number “an imbalance that boded ill for player advancement as well as for competition.”<sup>90</sup>

To correct this imbalance, two further moves were made. First, the 1912 National Agreement restricted all teams to controlling a total of 35 players, except that each team could have only 25 players on their roster from May 15–August 20.<sup>91</sup> Second, the National Commission, by internal memo, banned major league ownership of minor league teams.<sup>92</sup>

While not saying so directly, members of the National Commission must have known that major league baseball’s reserve rules, particularly as abused by owners through their various farming, option and waiver provisions, were likely to run afoul of either the antitrust laws or common law monopoly provisions.<sup>93</sup>

86. *Id.*

87. *Id.*

88. See SEYMOUR, *supra* note 35, at 186. This last practice was adopted in response to a minor league threat to not accept any optioned players, a practice baseball’s National Commission overruled in 1912. *Id.*

Minor league teams also engaged in option practices. *Id.* at 187. A club at the AAA level, for example, to avoid having that player drafted into the major leagues, could option that player to a friendly A level club and then repurchase the player after the major league draft. *Id.*

89. See *id.*

90. See *id.* at 186-87.

91. See *id.* at 187.

92. See SEYMOUR, *supra* note 35, at 187. The National Commission reportedly called such ownership “antagonistic of the rights of other major league clubs to recruit their teams and preventive of the promotion of players.” *Id.*

93. At least one author argues that the framers of the Sherman Act believed they were “simply ‘federalizing’ the common law of of trade restraints, making the common law more effective by creating a forum with jurisdiction over monopolies or cartels that operated in more than a single state.” HERBERT HOVENKAMP, FEDERAL ANTITRUST POLICY §2.1 52 (West 1994). Hovenkamp points out that one important difference between the common and statutory law was that under the common

The major leagues were formally introduced to both when Hal Chase left Chicago of the American League to play for Buffalo of the Federal League.<sup>94</sup> In Chicago's lawsuit against Chase seeking injunctive relief to prevent him from playing for Buffalo, the trial court first granted Chicago a temporary injunction.<sup>95</sup> The published decision involved Chase's motion to dissolve that temporary injunction.<sup>96</sup> After first finding that the standard players' contract between Chase and Chicago lacked mutuality of both obligation and remedy so as to render Chase's covenant not to play for another team unenforceable,<sup>97</sup> the court turned to the enforceability of the contract under either the federal antitrust laws or common law of monopoly.<sup>98</sup>

The court recognized that the combination of the National Agreement, the players' contract and the National Association rules was a monopoly "ingeniously devised," but was unable to find that the "business of baseball for profit" was a business in interstate commerce for purposes of the Sherman Act.<sup>99</sup>

As to whether organized baseball was a common law monopoly, however, the court reached a different result. Organized baseball involved some 40 leagues as well as the services of 10,000 players and because the player contracts, the National Agreement and the Rules of the National Commission completely controlled the services of these players, as well as

law, contracts in restraint in trade were unenforceable in a suit by the offending party only, rather than being affirmatively illegal as they were under the statute. *Id.* See also *Am. League Baseball Club v. Chase*, 86 Misc. 441 (N.Y. Sup. Ct. 1914).

94. See Devine, *supra* note 26, at 44-48, for a more complete history of the events surrounding this lawsuit.

95. See *Chase*, 86 Misc. at 442.

96. See *id.*

97. See *id.* at 455. Under his agreement, Chase had agreed "to perform for no other party during the period of this contract . . ." *Id.* at 447. See *Chase*, 86 Misc. at 445-456 for the series of agreements among major league teams and between teams and players, as well as the rules of the American and National Leagues, all of which compromised the "reserve rule" at the time of *American League Baseball Club v. Chase*.

98. See *id.* at 458. While this discussion seems like *dicta* in deciding whether to enforce the negative covenant of Chase's baseball contract, the court points out that the discussion is necessary in determining whether Chicago had the "clean hands" necessary to have standing in the court of equity. *Id.* at 466.

99. See *Chase*, 86 Misc. at 459. Chase argued that players are bought and sold among teams in the several states, but the court did not find that players were commodities. *Id.* at 459-60. The court used as its definition of commodity: "That which is useful; anything that is useful or serviceable; particularly an article of merchandise; anything movable that is a subject of trade or of acquisition." *Id.* at 459. The court found that the reserve rule did not deal with the players as "commodities or articles of merchandise, but with their services as retained or transferred by contract." *Id.* at 460. Baseball, as an amusement, a sport, a game, was thus not interstate commerce subject to Congressional regulation. See *id.*



their “exchange, draft, reduction, discharge, and blacklisting.”<sup>100</sup> The court thus found that organized baseball was “as complete a monopoly of the baseball business for profit as any monopoly can be made.”<sup>101</sup> The court accordingly found that a rule that would prevent Chase from jumping from the American League to the Federal League would violate his right to labor as a property right, his right to contract as a property right and was an illegal “combination to restrain [or] control the exercise of a profession or calling.”<sup>102</sup>

Baseball’s National Agreements continued to show concern for the monopolistic aspects of option agreements.

Following the minor leagues’ withdrawal from the National Agreement in 1919 and the signing of a new National Agreement in 1921, the minor leagues agreed to allow each major league team to option up to eight players to the minors.<sup>103</sup>

By edict in 1922, new baseball Commissioner Landis unilaterally increased the number of players who could be optioned from a major league team to 15.<sup>104</sup> The minor leagues, however, revolted, claiming Landis had reneged on the eight-player limit of the 1921 Agreement. The Pacific Coast League split on whether to secede from organized baseball, and other leagues attempted to modify the rule so they would not have to accept optioned players if those players were subject to later draft, a proposal rejected by the major leagues.<sup>105</sup>

Matters were clarified by the 1931 National Agreement, which specifically permitted teams to option 15 players to the minors.<sup>106</sup>

100. *Id.*

101. *Id.* at 460.

102. *Id.* at 461. *Chase* was just one of a series of cases in which organized baseball had not been permitted to enforce the negative covenant in contracts with players. Other cases include, in chronological order: *Allegheny Baseball Club v. Bennett*, 14 F. 257 (W.D. Pa. 1882); *Metro. Exhibition Co. v. Ewing*, 42 F. 198 (S.D.N.Y. 1890); *Metro. Exhibition Co. v. Ward*, 9 N.Y.S. 779 (N.Y. Sup. Ct. 1890); *Philadelphia Baseball Club, Ltd. v. Hallman*, 8 Pa. Ct. Rep. 57 (1890); *Brooklyn Baseball Club v. McGuire*, 116 F. 782 (E.D. Pa. 1902); *American Base Ball & Athletic Exhibition Co. v. Harper*, 54 Cent. L.J. 449 (St. Louis Cir. Ct., 1902). A Pennsylvania trial court had also refused to enjoin Hall of Fame player Napoleon Lajoie from changing teams, but was reversed on appeal because of the unique nature of Lajoie’s multi-year contract. *See Philadelphia Ball Club v. Lajoie*, 51 A. 973 (Pa. 1902).

103. *See SEYMOUR, supra* note 35, at 406. In addition to the rights of major league clubs to option 8 players, minor league teams were also granted limited option rights. *Id.* AA clubs were allowed to option 6 players; A clubs were allowed to option 5 players; B clubs were allowed to option 4 players, and C clubs were allowed to option 3 players. *Id.*

104. *Id.* at 408.

105. *Id.* at 408-409. Commissioner Landis originally defended his actions by claiming that there had been no specific agreement on the exact number of players who could be optioned by major league teams to the minors. *Id.* at 408.

106. *See id.* at 409. In addition players could be sent to the minors on option a maximum of

In his biography of Branch Rickey, author Arthur Mann points out the problem created for the major leagues by these option provisions.<sup>107</sup> Under the major league agreement, teams were entitled to reserve title to forty players.<sup>108</sup> Between June 15 and August 31 of each year, however, major league teams could carry only twenty-five players on their roster.<sup>109</sup> As to at least eight of the remaining 15 players, the major league club was entitled to option the player to a minor league club reserving "a right of recall, exercisable on or before September 15th next ensuing. . . ."<sup>110</sup> This arrangement, of course, left the club with seven additional players who could be reserved, but for whom there was no place on either the major league roster or on club option to the minor leagues.

By the middle 1920's, major league draft and option provisions left neither the major nor minor leagues fully satisfied. Major league owners were entitled to control more players than they could keep either on their major league roster or on option to a friendly minor league team. Additionally, major league owners could actually draft only a limited number of minor league players, and then only from a few leagues. Any other minor league players who looked ready to make an impact in the majors had to be purchased from the minor league team at market rates. Minor league owners were forced to take up to 15 players from a friendly major league team, players who might just clog their rosters and who might interrupt any team chemistry that might have developed. Finally, those minor league teams subject to the draft might lose a budding superstar for the draft minimum.

#### IV. COMMISSIONER LANDIS AND MINOR LEAGUE OWNERSHIP

Before becoming baseball's first unitary Commissioner, Kenesaw Mountain Landis was a Chicago lawyer.<sup>111</sup> Landis was named to the Fed-

three times, instead of the prior two. *Id.*

107. See generally MANN, *supra* note 1.

108. MANN, *supra* note 1, at 115.

109. *Id.*

110. *Id.* This language comes from the 1921 agreement. *Id.*

The issue of what to do with the remaining 7 players (of the 40) the club was permitted to own and not keep on the major league roster was not resolved until 1931.

111. J.G. TAYLOR SPINK, JUDGE LANDIS AND TWENTY-FIVE YEARS OF BASEBALL 1, 8 (Thomas Y. Crowell Co. 1947). Born in 1866, Landis' father, Dr. Abraham Landis, had been a Union surgeon during the Civil War. While working as a surgeon in Georgia's Battle of Kenesaw Mountain, the elder Landis was struck in the leg by a ricocheting cannon ball. *Id.* at 1. The leg had to be amputated. *Id.* For reasons that are not clear, Dr. Landis eliminated one of the "n's" when naming his sixth of seven children. *Id.* Not much of a student, Kenesaw Landis dropped out of high school short of graduation and proceeded through a series of jobs until he learned shorthand and became a court reporter. *Id.* at 6-7. Taking down what was said in trial piqued Landis' interest in the law

eral District Court bench by President Theodore Roosevelt in 1905, in part because he and his family shared Roosevelt's antagonism toward trusts and industrial monopolies.<sup>112</sup>

The written decisions by Judge Landis reflect his strong antitrust position, consistently finding against large business interests.<sup>113</sup> Before his in-

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enough to cause him to obtain his high school degree at night, whereupon he enrolled in the Y.M.C.A. law school of Cincinnati, eventually graduating from the Union Law School in Chicago. *Id.* at 7-8. When Grover Cleveland was elected President, he named Walter Gresham as Secretary of State. *Id.* at 11. Gresham had been Abraham Landis' commanding officer during the Civil War. *Id.* With his shorthand and legal skills, the fact that two of his brothers were members of the United States Congress, and his father's friendship with Secretary Gresham, Landis was a natural for the position of secretary to Secretary of State Gresham, a position he held for two years until Gresham died. *See id.* at 3, 10-11. He then returned to Chicago to resume the practice of law. *Id.* at 12. He also became involved in politics, managing the unsuccessful Illinois gubernatorial campaign of Frank Lowden. *Id.* at 15.

112. *Id.* at 16. Apparently, this judicial position was first offered to defeated Republican gubernatorial candidate Frank Lowden, who declined and recommended Landis. *See* SEYMOUR, *supra* note 35. Landis' biographer Spink makes it clear, however, that it was the shared beliefs of Landis, his brothers in Congress, Lowden, and Roosevelt on the issue of "big stick" trust-busting that prompted Roosevelt to make the appointment. *See* SPINK, *supra* note 111, at 16.

113. In *Interstate Commerce Commission v. Reichmann*, 145 F. 235 (N.D. Ill., 1906), Judge Landis considered the monopolistic aspects of the Interstate Commerce Act. Under the "Elkins Act," 32 Stat. 847, 49 U.S.C.A. §41 (law of February 19, 1903), it was illegal for any person or entity to give or receive "any rebate, concession, or discrimination" for the transportation of property in interstate commerce at rates less than those published in filed tariffs. In an investigation of owners of private railroad cars used, but not owned, by common carriers, a vice president of an Illinois corporation which owned some 9,000 railroad cars refused to answer a question about whether he provided rebates to shippers. *Reichmann*, 145 F. at 236. The vice president claimed that the private car company only supplied cars to common carriers and was not shipping those cars in commerce regardless of what the common carrier might do with them. *See id.* at 236-37. Judge Landis assumed that if the vice president had answered, the answer would have revealed payments to the shipper. *See id.* at 237. He then framed the questions to be decided as whether the statute prohibited the conduct and whether Congress had the power to forbid a private car company from paying a shipper a sum of money after the shipper had already paid the published tariff to a common carrier? The issue was whether such a payment would put the shipper in a more favorable position than those paying the published tariff. *See id.* at 237.

In detailing the history of the statute, Judge Landis pointed to some common carriers that had received preferential treatment in interstate commerce under the former law and found the purpose of the act to be the need for "absolute uniformity throughout the domain of interstate transportation." *Id.* at 239. Judge Landis found that the original Interstate Commerce Act failed to eliminate "round-about methods" for evading the law. *See id.* at 239. As a result, provisions like the Elkins Act were adopted "to put a stop, once [and] for all, to transportation favors." *See id.* at 240. Thus viewed, it was clear that the Interstate Commerce Commission could compel an answer from the witness and Judge Landis so ordered. *See id.* at 242.

Judge Landis again considered the effect of the Elkins Act on private car companies. *United States v. Chicago & Alton R. Co.*, 148 F. 646 (N.D. Ill., 1906), *aff'd*, 156 F. 558 (7th Cir. 1907), *aff'd*, 212 U.S. 563, 29 S.Ct. 689, 53 L.Ed. 653 (1909). The Schwarzschild & Sulzberger Company was a Kansas City, Kansas packing plant which owned railroad tracks leading from the plant to tracks owned by the Belt Railway Company, an interstate carrier. Belt's tracks ultimately connected to the tracks of Chicago & Alton, another interstate carrier. Chicago & Alton collected from

volvement with the Federal Baseball League's suit against major league baseball, Judge Landis' most well-known business related case involved the federal criminal prosecution of Standard Oil Company of Indiana.<sup>114</sup>

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Schwarzschild the full amount of the published tariff and paid Belt the amount of its published switching fee. Chicago & Alton then paid Schwarzschild a \$1 per car fee, ostensibly for the use of Schwarzschild's private railroad tracks. Chicago & Alton was indicted for making this payment to Schwarzschild. *See id.* at 646-47. On Chicago & Alton's motion to dismiss at the close of the government's case, Chicago & Alton argued that it was paying Schwarzschild only for the use of its track; that the payment was not therefore a rebate prohibited under the Elkins Act. Judge Landis, however, saw the question as whether the shipper Schwarzschild was paying a shipping rate lower than that published by the common carriers Belt and Chicago & Alton. *See id.* at 647. As Judge Landis noted in his opinion, "[t]o State this question is to answer it." *See id.* He refused to dismiss.

In 1913, Judge Landis considered the monopolistic aspects of a railroad reorganization. Investment Registry, Ltd. v. Chicago & Milwaukee Elec. R. Co., 206 F. 488 (N.D. Ill.), *aff'd*, 212 F. 594 (7th Cir. 1913). The Chicago & Milwaukee R. Cos. were two separate corporations, one in Wisconsin and one in Illinois. *Investment Registry*, 206 F. at 490. Each company owned a railroad system that ended at the other's borders; each issued bonds to cover construction indebtedness; each set of bonds were secured by mortgages on the railroad's property; and each failed to make payment on the mortgaged debt. *See id.* at 490. Approximately \$14 million worth of bonds had been issued by the two corporations, but, upon foreclosure sale, a reorganization into whose coffers had been deposited about 95% of the bonds under foreclosure was the low bidder for the mortgaged lands at \$1.6 million in Wisconsin and \$1.65 million in Illinois. *Id.* An Illinois bondholder who had not deposited their 12 bonds with the Reorganization Committee objected to confirmation of the Illinois foreclosure sale. *See id.* at 490.

Judge Landis found that at least one other interested group had shown interest in the property and this interest already owned some of the adjoining railroads. These interests, however, were purchased by a syndicate of Canadian "individuals, banks and other financial institutions," which ultimately merged into the Reorganization Committee. *See id.* at 491. The effect was to eliminate any competition at the judicial sale, although the Reorganization Committee argued that the Canadian group's purchase "was merely a coming together of bondholders for harmonious co-operation." *Id.* at 492.

Judge Landis noted that the law forbade any agreements that removed from the public the freedom to bid at a judicial sale. *See id.* He then noted that upon completion of the judicial sale of the two corporations to the Reorganization Committee, that Committee would form a new corporation which would immediately be authorized to issue mortgage bonds totalling over \$20 million and stock totalling \$6 million. *See id.* at 494. Judge Landis found that another sale was necessary. *See id.*

Judge Landis succinctly stated his view of business restraints in *United States v. Associated Bill Posters*, 235 F. 540 (N.D. Ill. 1916), *app. dismissed*, 258 U.S. 633, 42 S.Ct. 316, 66 L.Ed. 802 (1922). Associated Bill Posters owned billboards in thousands of United States cities. The purpose of the organization was "to control the business of national poster advertising throughout the country." To do that, the association fixed prices and limited billboard displays of billboard advertising. *See Associated Bill Posters*, 235 F. at 541. Over evidence that the billboard business had generally improved during the defendant's control, Judge Landis wrote: "[T]he whole spirit and policy of our law is opposed to agreements among persons and corporations designated to exclude other persons from legitimate commerce." *Id.* at 541-42.

114. *See United States v. Standard Oil Co. of Ind.*, 155 F. 305 (N.D. Ill., 1907), *rev'd.*, 164 F. 376 (7th Cir. 1908), *cert. denied*, 212 U.S. 579, 29 S.Ct. 689, 53 L. Ed. 659 (1909). Judge Landis had previously refused to dismiss the indictment. *See United States v. Standard Oil Co.*, 148 F. 719 (N.D. Ill., 1907). The case itself was another "Elkins Act" matter involving allegations of rebates from interstate shippers to Standard Oil. *See* 155 F. at 306.

As finally submitted to the jury, Standard Oil was charged with shipping 1,462 cars of oil over the Chicago & Alton Railway at less than the published tariff rates.<sup>115</sup> When the jury found the defendant guilty on all counts,<sup>116</sup> it fell to the court to assess punishment.<sup>117</sup>

In determining a sentence, Judge Landis viewed the real defendant to be any company "holding" the outstanding stock of the defendant Standard

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115. An additional 441 counts of the indictment had been withdrawn. See 155 F. at 306. The Chicago and Alton's published tariff rate was between 18 and 19 ½ cents per hundred pounds of oil. The defendant only paid 6 cents per 100 pounds of oil. See *id.* at 307. Each count was based on one car load of oil. See *Standard Oil v. United States*, 164 F. 376, 378 (7th Cir. 1908).

The traffic manager for the defendant had applied to a freight agent of the Chicago and Alton for a rate on oil in each year and had received a letter from the Chicago and Alton Railroad indicating that the rate for the defendant would be between 6 and 7 ½ cents. *Standard Oil Co. of Ind.*, 155 F. 305, 308. Nothing that the traffic manager received indicated that these rates had been filed with the Interstate Commerce Commission. See 155 F. at 308. That fact was evidently a problem. While the defendant argued that it acted under an "honest belief" that the lower rate was in effect, see *id.*, the statute itself made it a misdemeanor for the defendant to accept a lower rate than was published in filed tariffs. During the trial, when the defendant attempted to introduce this evidence, the court asked defense counsel if the traffic clerk had been misled. After a conference between the defense counsel and the traffic manager, the lawyer represented to the court that the traffic manager "assumed" the railroad had filed the 6 to 7 1/2 cent rates. When the traffic manager was called to the witness stand, however, he indicated that he has asked the rate clerk on three different occasions if the rate had been filed. *Id.* Judge Landis found this testimony curious. "If the traffic manager merely assumed the rate had been filed, of course he did not on three occasions specifically ask whether [the rate] had been filed." *Id.* at 315. Because he disbelieved this testimony, Judge Landis specifically instructed the jury to give "very careful scrutiny" to the testimony of both the rate clerk and the traffic manager. Judge Landis noted that the jury was not required "to accept an obviously improbably thing as true . . ." *Id.*

The defendant also made several Constitutional arguments. First, it was argued that the Elkins Act and portions of the Interstate Commerce Act were unconstitutional because they deprived the defendant of making private agreements with carriers in deprivation of the defendant's rights to life, liberty and property. See *id.* at 309. Judge Landis dismissed this argument indicating there was no law to support the proposition, particularly since the railroad was created for the public welfare; a "public functionary" as he called it. See *id.* Second, when carriers are authorized to publish rates which then become effective upon publication, the carriers become legislators, in violation of Congress' legislative power under Article I, section 1 of the Constitution. See *id.* Judge Landis answered that the United States Supreme Court had already ruled against this proposition, although he cited no cases in support. See *id.* Finally, the defendant argued the rate laws allowed the Interstate Commerce Commission the authority to approve or disapprove of rates and denied to carriers the right to have those issues decided by a court. See *id.* Again, Judge Landis rejected the argument, indicating that the courts could ultimately still hear claims of reasonableness. See *id.*

In addition, the defendant also argued that the Constitution's commerce power did not authorize Congress to make the conduct in question criminal and that this transaction should not be covered because most of the shipping took place within the State of Illinois, not in Interstate Commerce. See *id.* at 310. Judge Landis again rejected these claims indicating that the law was "settled" that Congress had the power to require uniformity in rates, by what ever power it chose, and that the "interstate" nature of the transaction was the ultimate desination of the oil (from Indiana to St. Louis), rather than the fact that the charge involved only Illinois. See *id.*

116. *Standard Oil Co. of Ind.*, 155 F. at 306.

117. *Id.* at 315.

Oil Company of Indiana.<sup>118</sup> As a result, Landis caused subpoenas to be issued against the principal officers of both the Standard Oil Company of Indiana and the Standard Oil Company of New Jersey so as to assess the extent of any holdings of Standard of Indiana by Standard Oil of New Jersey.<sup>119</sup> Landis also sought information concerning the outstanding stock, net earnings and dividends of both companies during the three years covered by the indictments upon which the guilty verdicts were predicated.<sup>120</sup>

After some procedural wrangling,<sup>121</sup> the president and secretary of Standard Oil of New Jersey did appear in Judge Landis' court and testified that a substantial portion of the stock of the Standard Oil Company of Indiana was held "by individuals for the stockholders of the Standard Oil Company of New Jersey."<sup>122</sup> Landis also learned that the outstanding capital stock of Standard Oil Company of New Jersey was valued at \$100 million, that in the three years covered by the indictment, the dividends for the company increased 40% and the annual earnings for the corporation were \$200 million.<sup>123</sup>

Because Landis found the existence of Standard Oil Company of Indiana to be a nominal one on behalf of the non-defendant Standard Oil Company of New Jersey, and because the offense committed was one that would produce increased dividends for the latter corporation, Landis imposed the maximum fine of \$20,000 for each of the 1,462 counts of the indictment, for a total fine of \$29,240,000.<sup>124</sup> Judge Landis meted out this

118. *Id.* at 316.

119. *Id.*

120. *Standard Oil Co. of Ind.*, 155 F. at 316. See 26 Stat. 210, §5 which permitted the court to summon any parties from any district if the court determined that the ends of the Act so required. At the time, President of Standard Oil of New Jersey was John D. Rockefeller, who was compelled to go to Chicago to testify in Judge Landis' court. ELIOT ASINOF, EIGHT MEN OUT 224 (Henry Holt & Co. 1987).

121. *Standard Oil Co. of Ind.*, 155 F. at 316-17 (N.D. Ill., 1907). After issuing subpoenas for the president and secretary of Standard Oil of New Jersey, Landis was asked to recall those subpoenas, under the theory that one other person possessed the information requested by Landis and would be a better witness. *Id.* at 316. Counsel for Standard Oil could not, however, guarantee that this potential witness would not refuse to answer Landis' questions "on the advice of counsel." *Id.* at 317. As a result, Landis refused to recall the subpoenas believing that if there was to be a refusal to answer, it should come not from a low level officer, but from one of the principal corporate officers of Standard Oil of New Jersey. *Id.*

122. *Id.* at 317.

123. *Id.* In fact, while Standard Oil Company of Indiana was capitalized at \$1 million, all but four \$100 shares were owned by what the court referred to as the "Standard Oil Trust." *Id.* That trust is discussed in *Standard Oil Co. v. U.S.*, 221 U.S. 1 (1911) in which Standard Oil Co. of New Jersey was enjoined from exercising control over some 37 subsidiary companies and the subsidiary companies were enjoined from allowing Standard Oil Co. of New Jersey to control them by voting their stock obtained as a result of the illegal combination. See *id.*

124. *Id.* at 320-21.

sentence despite the evidence that the total value of the actual defendant, Standard Oil Company of Indiana, was \$1 million.<sup>125</sup> Standard Oil argued that fining the defendant on each of the 1,462 counts amounted to a constitutionally impermissible fine, but Judge Landis took a dim view of big business misconduct: “[F]or the law to take from one of its corporate creatures as a penalty for the commission of a dividend producing crime less than one-third of its net revenues accrued during the period of violation falls far short of the imposition of an excessive fine.”<sup>126</sup>

Though reversed on appeal,<sup>127</sup> the \$29 million fine imposed on Standard Oil made Judge Landis “nationally known.”<sup>128</sup>

Like most, Judge Landis’ introduction to baseball came as a youngster. The National League started when Landis was ten years old and there is evidence that he played baseball from an early age and that he rooted for the Chicago National League team during his youth delivering papers.<sup>129</sup> When he returned to practice law in Chicago following his appointment as secretary to the Secretary of State in Washington, attorney Landis’ principal recreation was watching the Chicago Cubs.<sup>130</sup>

As a judge, Landis’ introduction to baseball law came in January, 1915, when the Federal League<sup>131</sup> sued the National and American Leagues, all sixteen of the club presidents and the members of baseball’s ruling National Commission, alleging violations of the Sherman Act.<sup>132</sup>

125. *Standard Oil Co. of Ind.*, 155 F. at 317, 319.

126. *Id.* at 320.

127. *Standard Oil Co. v. United States*, 164 F. 376 (7th Cir. 1908), *cert. denied*, 212 U.S. 579 (1909). The court of appeals found that Judge Landis should have allowed the jury decide whether Standard Oil knew it was receiving a concession in the tariff rates. *Id.* at 379, 384. The court of appeals also found that the offense charged was the acceptance of a concession, not the number of cars shipped at the conceded rate. *Id.* 385-86. Finally, the court of appeals found that Judge Landis had abused his discretion in including the earnings of Standard Oil Co. of New Jersey as part of the Standard Oil Co. of Indiana, for whom, the court found, the record disclosed nothing that suggested its assets were greater than \$1 million. *Id.* at 386-89.

128. ASINOF, *supra* note 120.

129. SPINK, *supra* note 111, at 5. While in Washington, Landis attended games of the Washington team, most of which started late in the afternoon to give government workers an opportunity to attend. *Id.* at 12-13.

130. *Id.* at 15. “‘Can’t we get a postponement of this case until tomorrow?’” Landis reportedly told an adversary attorney: “‘Brownie is pitching against Matty, and I just can’t miss that.’” *Id.* The Cubs were then being managed by 1999 Hall of Famer Frank Selee and Judge Landis was undoubtedly referring to pitching duels between the Cubs future Hall of Famer Mordecai “Three Fingers” Brown and the New York Giants future Hall of Famer Christy Matthewson. *See id.* According to Spink, Landis was a “rabid Cub fan.” *Id.* at 29.

Even as a judge, however, Landis reportedly refused free passes from both the White Sox, the Cubs, and the Federal League Chicago Whales, instead paying his own admission. *Id.* at 36.

131. For a history of the Federal League and its relationship to the American and National Leagues, *see* Devine, *supra* note 26, at 41-50; PIETRUSZA, *supra* note 25, at 209-52.

132. SPINK, *supra* note 111, at 29.

There seems little question but that the Federal League filed the case in Chicago because of Judge Landis' reputation as a "trustbuster."<sup>133</sup> Judge Landis was reportedly asked:

to declare the National Agreement, under which the system known as Organized Baseball operates, illegal and [was] asked to dissolve the alleged combination maintained under that agreement, to declare acts of the National Commission . . . void, declare all contracts made under the Agreement of no effect, order Organized Baseball to dismiss all suits they have instituted against contract jumpers, and to restrain them from instituting any more such suits.<sup>134</sup>

Proceeding "as soon as may be," as required by the antitrust law,<sup>135</sup> Judge Landis scheduled hearings on the Federal League's request for injunctive relief just 15 days after the suit was filed, fueling speculation that he would decide the case quickly.<sup>136</sup> At the hearings, which began on January 20, Landis heard from, either in person or by affidavit, the very players he was known to revere—former Cubs like Mordecai Brown and Joe Tinker, who were then managing in the Federal League.<sup>137</sup> Both testified to the unfairness of the treatment they had received in the American and National League.<sup>138</sup>

Judge Landis also showed the Federal League leaders that he was first and foremost a baseball fan. At one point during the four days of testimony, Judge Landis reportedly asked the Federal League of their intentions: "The time has come when I should ask you gentlemen just what you want me to do in issuing this injunction. Do you want me to stop the teams from going on spring training trips? Do you want me to break up the clubs or what do you want me to do?"<sup>139</sup> At another point in the hearing, Judge Landis sounded quite different from the nationally recognized trustbuster, reportedly telling the lawyers: "Both sides must understand that any blows at the thing called baseball would be regarded by this court as a blow to a national institution."<sup>140</sup>

Contrary to earlier reports when the hearing started, Judge Landis did not decide the case before the teams went to spring training for 1915.<sup>141</sup>

133. See PIETRUSZA, *supra* note 25, at 235; SPINK, *supra* note 111, at 29.

134. SPINK, *supra* note 111, at 29-30.

135. 26 Stat. 209, §4 (1890).

136. SPINK, *supra* note 111, at 33.

137. *Id.* at 34.

138. *Id.* at 33-34.

139. *Id.* at 34. The lawyer for the Federal League claimed that the purpose of the suit was to bring a number of different lawsuits, such as in *Chase*, together into one court. *Id.*

140. SPINK, *supra* note 111, at 35.

141. See *id.* at 37.



Additionally, while the entire history of Judge Landis' judicial rulings suggested a decision in favor of the Federal League, and while legal pundits indicated that a delay certainly meant Judge Landis believed he had jurisdiction over the suit, the 1915 season came and went without decision in the matter.<sup>142</sup> Without a decision, the parties settled their differences in December.<sup>143</sup> Before any settlement could be finalized, however, the par-

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142. *Id.* At least once during the summer, rumor surfaced that Landis was ready to decide the case, but when reporters asked him about it, "he merely looked the other way and said nothing." *Id.* At the conclusion of the season, the Boston Red Sox played the Philadelphia Phillies in the World Series, a series won by Boston 4-1. DAVID NEFT & RICHARD COHEN, *THE SPORTS ENCYCLOPEDIA: BASEBALL*, 75. The Chicago Whales with a record of 86-66 and a winning percentage of .566, beat the St. Louis Federal League team (87-67 and a winning percentage of .565) by .001. *See id.* at 70. Calls by Chicago politicians to allow the Whales into the world series, which would have allowed Judge Landis an opportunity to witness the event, went unanswered and there is no evidence that Landis was asked to consider any motions to assist the Whales. *See SPINK supra* note 111. The Federal League awarded medals to the victorious Whales' team members, reportedly declaring them "Champions of the World." SEYMOUR, *supra* note 35, at 222.

The lawsuit by the Federal League against organized baseball had followed a fall, 1914 meeting between baseball National Commission chair Garry Hermann, president of the Cincinnati National League team, and Charles Weeghman, owner of the Chicago Federal League team, in which possible peace between the league was discussed and apparently rejected. *See id.* at 10, 216, 219. Following the hearings, discussions of a peace between the leagues were held. *Id.* at 230. American League president Ban Johnson met with St. Louis Federal League owner Phil Ball on at least two occasions during the 1915 season. *Id.* During the World Series, members of baseball's National Commission met with Federal Committee League leaders, talks which continued into December. *Id.* at 230-31.

143. Just before the National League's annual meeting, on December 13, Federal League representatives met with representatives of the National League. PIETRUSZA, *supra* note 25, at 247-48. Evidently, terms of a peace were arranged at that time and thereafter, representatives of the parties were sent to advise the American League leaders prior to their annual meeting in Chicago. SPINK, *supra* note 111, at 38-39. Even though American League president Ban Johnson was opposed, *see id.*, an American League committee went to New York to join the peace negotiations. *See PIETRUSZA, supra* note 25, at 248. Representatives of the minor league National Association, the International League and the American Association were also present for the discussions which were held in two sessions on December 17. *Id.* at 248-49. Under the terms of the agreement, the Chicago Federal League owner was permitted to purchase the Chicago Cubs which would thereafter play its games in the Federal League team's old ballpark (now Wrigley Field). *Id.* In addition, the St. Louis Federal League owner was permitted to purchase the St. Louis Browns. *Id.* Under the agreement, the players of both the Chicago Federal League team and the Cubs were combined into one team, as were the players of the two St. Louis teams. *Id.* Most Federal League owners received cash payments, the American and National leagues received the rights to several Federal League stadiums and all players were permitted to play in the major leagues. *See id.* The Baltimore Federal League club was offered \$50,000 to settle the matter, but refused that amount. Both Buffalo and Kansas City, teams that were bankrupt even before the demise of the Federal League, received nothing. SEYMOUR, *supra* note 35, at 232.

Federal League players, other than those on the Chicago and St. Louis Federal League teams, all had their contracts turned over to one owner, who brokered the players back to major league team, thereby enabling the league to recoup some of its losses. Players not sold to major league teams were returned to their original major league team or made free agents. *Id.* at 232-33.

ties were concerned about how Judge Landis would react to settlement.<sup>144</sup> The attorney for the National League in the litigation before Judge Landis reportedly told other owners: ““This particular court is very jealous of its prerogatives and has decided notions on what ought to be done.””<sup>145</sup> The lawyer reminded owners that the Federal League suit charged major league baseball with conducting a criminal conspiracy and that the proposed settlement was one that allowed the Federal League to join that very conspiracy.<sup>146</sup> Perhaps reflecting on Judge Landis’ known history in dealing with antitrust matters, the lawyer reportedly told the owners about the proposed settlement: ““It is the most absurd proposition I ever heard of.””<sup>147</sup>

The settlement apparently did not seem absurd to Judge Landis, however. Despite his strong public record against monopolies, Judge Landis accepted the settlement and dismissed the Federal League’s lawsuit without comment.<sup>148</sup> Privately, however, Judge Landis confided that he had intentionally failed to rule on the matter because he believed the parties would settle.<sup>149</sup> It seemed clear that Judge Landis refused to decide “because he did not wish to render an adverse verdict against Organized Baseball and its system of contracts.”<sup>150</sup> In light of the New York court’s finding in *American League Baseball Club v. Chase*,<sup>151</sup> this conclusion seemed perfectly logical.<sup>152</sup>

The consequence of Judge Landis’ decision not to decide was “that it thrust Landis forcibly on the baseball stage.”<sup>153</sup> Because owners all had to appear at the hearings, they had the chance to observe this “ardent baseball fan”<sup>154</sup> in action as a jurist. Because fans, players, and writers were interested in the outcome, they were all interested observers of his leadership ability.<sup>155</sup> After it was reported that several Chicago White Sox players deliberately lost the 1919 World Series to Cincinnati and it appeared that baseball needed a total administrative revision,<sup>156</sup> Judge Landis, who was

144. See SEYMOUR, *supra* note 35, at 231.

145. *Id.*

146. *Id.*

147. *Id.*

148. SPINK, *supra* note 111, at 39.

149. *Id.*

150. *Id.*

151. 86 Misc 441 (N.Y. Sup. Ct. 1914).

152. See SPINK, *supra* note 111, at 39. This is certainly what Landis’ biographer concludes. *Id.*

153. *Id.*

154. See ALEXANDER, *supra* note 27, at 104.

155. SPINK, *supra* note 111, at 39.

156. See ASINOF, *supra* note 120. Much is written on the 1919 Chicago Black Sox. *Id.* The Black Sox have their own home page at <http://www.chicagohs.org/history/blacksox.html>. The most

perceived as having saved baseball,<sup>157</sup> was viewed as adding much-needed dignity to baseball administration.<sup>158</sup> Undoubtedly, his knowledge of the Federal Baseball lawsuit was also a part of the reason he was chosen as Commissioner.<sup>159</sup>

#### V. BRANCH RICKEY'S MINOR LEAGUES

Concern among baseball owners over the financial wherewithall of "large market" versus "small market" clubs, a topic of significant recent discussion, is not a recent phenomenon. These concerns came to the forefront following the virtual elimination of the minor league draft in 1921. From 1921 through 1946, the five major league teams located in the two largest population bases, New York and Chicago, won 30 of 52 possible pennants.<sup>160</sup> The fact was that these population centers had more potential fans to attract and could thus generate more revenue for their teams.<sup>161</sup> The virtual elimination of the minor league draft forced major league teams who wanted to purchase talent from minor league teams to pay competitive prices.<sup>162</sup> Instead of the prior "draft" price of \$7,500 for a AA league player, the New York Giants paid \$75,000 for outfielder Jimmy

well-known of the Black Sox, "Shoeless" Joe Jackson, also has his own web page, *Shoeless Joe Jackson's Virtual Hall of Fame*, at <http://www.blackbetsy.com>.

The facts surrounding the alleged fix of the 1919 World Series did not become public knowledge until late in the 1920 baseball season. See Devine, *supra* note 26, at 67, n. 351. In September, 1920, a Chicago grand jury considered the possible fixing of a Chicago Cubs game during the 1920 season. Newspaper reports of that grand jury activity caused the grand jury to expand its inquiry into the 1919 World Series. *Id.* As members of the Black Sox began to confess to involvement, fans became angry at the potential dirtiness of the game and baseball owners went into a panic. "The multimillion-dollar structure of organized baseball was on the verge of tottering." ASINOF, *supra* note 120, at 198. The New York times reportedly wrote: "Professional baseball is in a bad way. . . ." It seemed obvious that a new organizational structure was needed. *Id.* at 198-200.

157. SPINK, *supra* note 111, at 39.

158. ASINOF, *supra* note 120, at 224.

159. See JOHN HELYAR, *LORDS OF THE REALM* 8-9 (Villard Books 1994). Landis became Commissioner in 1920. Owners returned to him in part because of his favorable (in their eyes) handling of the Federal League matter. For a discussion of Landis' powers, see SPINK, *supra* note 111, at 71-73. See also *Milwaukee Am. Ass'n v. Landis*, 49 F.2d 298, 299 (N.D. Ill. 1931).

160. RADER, *supra* note 74, at 126. The New York teams were the Brooklyn Dodgers and the New York Giants in the National League and the New York Yankees in the American League. *Id.* The Chicago teams were the Cubs in the National League and the White Stockings in the American League. *Id.* These two cities accounted for two-thirds of the population served by major league baseball. *Id.*

161. *Id.* at 127. Owners had traditionally shared gate revenue 50/50 with visiting teams. That sharing, however, was limited to the base ticket price. *Id.* Any money generated by tickets over the base price, such as reserve and box seats, went to the home team. While the average visiting team in 1892 received about 40% of the gate receipts, the average 1929 team received only about 21% because of the increase in these special seating arrangements. *Id.*

162. *Id.* at 132.

O'Connell from the San Francisco Seals.<sup>163</sup> Similarly, the New York Yankees paid \$50,000 each for three minor leaguers, Earl Combs, Mark Koenig and Tony Lazzeri.<sup>164</sup>

Branch Rickey became President of the small-market St. Louis Cardinals in 1917.<sup>165</sup> What he became leader of, however, was a financially

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163. *Id.* at 134. O'Connell represents the business problems associated with such purchases. He played 64 games in the outfield and 8 games at first base for the Giants in 1923. He then played 29 games in the outfield and 1 game at second base for the Giants in 1924 before being declared ineligible for life by the commissioner. His entire career consisted of 356 at bats in 139 games. He produced 96 hits, 8 home runs and 57 runs batted in for the \$75,000 purchase price. NEFT & COHEN, *supra* note 142, at 138, 142, 242.

O'Connell's suspension came on the eve of the 1924 World Series, after he admitted attempting to bribe a Philadelphia Phillies shortstop. O'Connell claimed that a number of other Giants had knowledge of the bribe, including Giant stars Frank Frisch, Ross Youngs and George Kelly. Only O'Connell and Giant coach Alvin Dolan, however, were suspended. ALEXANDER, *supra* note 27, at 142-43.

The Giants also spent \$100,000 on pitcher Jack Bentley, purchasing him in 1922 from Baltimore. RADER, *supra* note 74, at 150. Bentley had previously played in the majors with Washington from 1913-1916. NEFT & COHEN, *supra* note 142, at 250. Bentley paid immediate dividends for the Giants, going 13-8 in 1923 and 16-5 in 1924. *Id.* at 138, 142. He finished with a lifetime record of 46-34 with the Giants from 1923-25 and again from 1926-27 and with Philadelphia in 1926. *Id.* at 250. He was also an exceptional batter, with a lifetime average of .291 with 170 hits in 584 plate appearances. *Id.* at 230.

164. RADER, *supra* note 74, at 134. The Yankees appear to have invested wisely as two of these players, Combs and Lazzeri, went on to Hall of Fame careers. See NEFT & COHEN, *supra* note 142, at 628-29.

165. MANN, *supra* note 1, at 87-89; SEYMOUR, *supra* note 35, at 412-13. Rickey had an undistinguished career as a major league player, batting .239 in 119 major league games with the St. Louis and New York American League teams from 1905-1907. He had a total of 9 doubles, 6 triples, and 3 home runs among his 82 hits (in 343 plate appearances). NEFT & COHEN, *supra* note 142, at 105. He played most of his games as a catcher, but also played some outfielder and 1 game at first base. *Id.* at 29, 33, 37. He was apparently forced out as a player when his arm went bad, whereupon he enrolled at the law school at the University of Michigan, where he also coached the baseball team. SEYMOUR, *supra* note 35, at 411-12. He engaged in the private practice of law in Idaho for only a brief period in 1911, but his firm did not fair well financially and Rickey returned to coach baseball at Michigan. *Id.* Offered the job of running a Kansas City minor league baseball team by St. Louis Browns owner Robert Hedges, Rickey declined, but later accepted an offer to be an assistant with the Browns in 1913, while still coaching at Michigan. *Id.* Rickey became manager of the Browns later the same year and continued in that position through 1915. *Id.* When the Browns ownership changed hands in 1915, Rickey was replaced as manager, but continued with the club until his move to the Cardinals. SEYMOUR, *supra* note 35, at 411-412.

At the time Rickey became president of the Cardinals, the club was in a substantial ownership shakeup. *Id.* at 412. Mrs. Helene Britton, known as "the matron magnate," was selling her interest for \$350,000 which was being purchased by shareholders. *Id.* Upon being named president, agreed to purchase 200 shares of the Cardinals for \$5,000. MANN, *supra* note 1, at 90.

Rickey's leaving of the Browns was not without incident. See *id.* at 87-91. Initially, Rickey claimed he had permission from Brown's owner Phil Ball to discuss the Cardinal's offer. *Id.* After the offer was made, however, Ball was apparently convinced by American League President Ban Johnson not to allow Rickey to leave. *Id.* The matter was settled after Ball sought an injunction against Rickey leaving the Browns, by a consent decree that enjoined Rickey from leaving his

troubled franchise.<sup>166</sup> While the club, under Miller Huggins, had finished third in the National League in 1917, it would plunge to last in 1918, and next to last the following year.<sup>167</sup> In fact, the team had to use the same uniforms for two years in a row,<sup>168</sup> and Rickey sometimes ran the club with no salary.<sup>169</sup> When Sam Breadon purchased a 72% interest in the Cardinals, Rickey lost his job as president, but continued as vice-president.<sup>170</sup> He also became the Cardinals' field manager in 1919, a position he would hold until 48 games into the 1925 season.<sup>171</sup>

Branch Rickey foresaw the large market/small market financial problem at about the same time as the elimination of the National Agreement in 1919. In that year, Rickey apparently claimed that the Cardinals had existing debt of \$175,000.<sup>172</sup> In that same year, however, Rickey saw Jess Haines pitch for the Kansas City minor league team.<sup>173</sup> Rickey's eye for talent suggested that Haines would be an excellent addition to the St. Louis roster.<sup>174</sup> Unfortunately, the Cardinals were unable to "draft" Haines, and Kansas City wanted \$10,000 cash for their star.<sup>175</sup> Although the Cardinals signed twelve promissory notes enabling them to make the purchase,<sup>176</sup> new St. Louis President Sam Breadon balked at the idea of paying this much money for one player and Rickey knew he had to find an alternative method of obtaining needed baseball talent.<sup>177</sup> During this period, Rickey developed the belief that correct player development required ongoing training from the time that player entered baseball until the player reached the major leagues or was sold by the team.<sup>178</sup> Initially, Rickey relied on

Brown's employment for one day. *Id.* See also SEYMOUR, *supra* note 35, at 413.

166. See SEYMOUR, *supra* note 35, at 413-14.

167. NEFT & COHEN, *supra* note 142, at 82, 87, 91.

168. SEYMOUR, *supra* note 35, at 414.

169. MANN, *supra* note 1, at 107. Rickey had already borrowed money from his parents to purchase stock in the Cardinals. *Id.* at 91.

170. SEYMOUR, *supra* note 35, at 413.

171. SULLIVAN, *supra* note 23, at 96. See also NEFT & COHEN, *supra* note 142, at 146. When Rickey was discharged as manager, he sold his Cardinal stock to owner Breadon and new manager Rogers Hornsby, reportedly for \$250,000. SEYMOUR, *supra* note 35, at 413.

172. SEYMOUR, *supra* note 35, at 414.

173. MANN, *supra* note 1, at 107.

174. *Id.* at 107-08.

175. *Id.* at 107. The draft price at the time would have been \$1,000.

176. *Id.* at 108. Mann quotes Rickey as saying: "The list of endorsers made those twelve notes [the number needed to secure the purchase price] look like the Declaration of Independence." *Id.* at 107-08. Haines was a worthwhile addition to the team, however. He pitched for the Cardinals from 1920-1937 and amassing a won-loss record of 210-158. He was elected to the Hall of Fame by the Committee on Veterans in 1970. NEFT & COHEN, *supra* note 142, at 255, 628. Haines was the last player the Cardinals would purchase for twenty-five years. MANN, *supra* note 1, at 108.

177. See SULLIVAN, *supra* note 23, at 97.

178. See MANN, *supra* note 1, at 109-110 (explaining Rickey's purchase of interest in several

his extensive contacts and friendships within the minor leagues to facilitate player development,<sup>179</sup> but after he almost lost the rights to Hall of Fame infielder Jim Bottomley,<sup>180</sup> Rickey began to purchase legally binding ownership interests in minor league teams. In 1919, on behalf of the Cardinals, he purchased a one-half ownership interest in Fort Smith of the Class C Western Association.<sup>181</sup> Between 1919 and the late 1920's, Rickey and the Cardinals purchased ownership interests in Syracuse of the International League, Houston of the Texas League, Sioux City of the Western League, Danville of the Three I League, and Columbus of the American Association.<sup>182</sup> By 1940, the Cardinals would own or control some 32 minor league teams and control over 600 players.<sup>183</sup>

In addition to producing baseball talent to be used on the parent Cardinal team, Rickey's farm system also paid handsome financial dividends to the team.<sup>184</sup> With the Rickey farm system in place, the Cardinals won the National League pennant in 1926, 1928, 1930, 1931, 1934 and 1942 and

minor league teams). Stated in slightly less flattering terms: "Rickey's idea was to sign raw young players for little or nothing, assign them to the Cardinals' farms in the low minors, and carefully scout, grade and advance them." ALEXANDER, *supra* note 27, at 147. Alexander also points out that Rickey was not the first to develop the idea of a "farm" system. *See id.* at 146-47.

179. *See id.* at 110.

180. *Id.* at 99, 105-06. Rickey had first seen "Sunny Jim" Bottomley at a Cardinals try-out camp in St. Louis in 1919. *Id.* Bottomley evidently possessed the kind of interest in baseball that Rickey sought from his future players. *See id.* at 106. Bottomley was apparently not signed to a Cardinal contract because he next turns up in 1921 at Syracuse of the International League. *See* SULLIVAN, *supra* note 23, at 97-98. Rickey had invested Cardinal funds in a 50% interest in the Syracuse team. *Id.* Apparently, that ownership interest included no right to purchase players from the Syracuse roster, because when Rickey sought to buy Bottomley to bring him to the Cardinals, Syracuse owner E.C. Landgraf resisted, citing Bottomley's appeal to other major league teams. *See id.* Rickey ultimately succeeded in the Bottomley purchase, and also purchased Landgraf's half-interest in the Syracuse team. *Id.* at 98. Bottomley played for the Cardinals from 1922-1932, then for Cincinnati from 1933-1935 and for the Browns in 1937. NEFT & COHEN, *supra* note 142, at 231. He also managed the Reds in 1936-37. *Id.* He compiled a lifetime batting average of .310 with 2313 hits and 219 home runs. He was elected to the Hall of Fame by the Committee on Veterans in 1974. *Id.* at 629.

181. MANN, *supra* note 1, at 109

182. ALEXANDER, *supra* note 27, at 147; MANN, *supra* note 1, at 110-111; SULLIVAN, *supra* note 23 at 99. The Syracuse team was moved to Rochester in 1928. *See* SULLIVAN, *supra* note 23. at 99.

183. SULLIVAN, *supra* note 28, at 99-100. The Cardinals also had working agreements with eight additional minor league teams. *Id.* at 99. Seymour lists the numbers a little differently. He claims that the Cardinals owned only 15 minor league teams and controlled the rest, amounting to some 700 players and an investment of over \$2 million. SEYMOUR, *supra* note 35, at 45. The Cardinals owned or controlled three AA teams, one A division team, four B league teams, four C league teams and twenty D league teams, including at least one club in every D league. *Id.* The larger number of D league teams attests to Rickey's desire to sign young players with raw talent and assign them to the lowest league possible. *Cf.* ALEXANDER, *supra* note 27, at 147.

184. SULLIVAN, *supra* note 23, at 98-101.

won the World Series in 1926, 1934 and 1942.<sup>185</sup> During the same period, the previously financially-strapped Cardinal major-minor league empire would sell almost \$2 million in baseball players to other major league teams.<sup>186</sup> So vast was the Cardinal minor league empire that at one point in 1938, all of the teams in the Class D Nebraska State League were under the Cardinal's control.<sup>187</sup> With this type of monopolistic structure, it was inevitable that Branch Rickey's vision of a minor-league farm system would clash with Commissioner Landis' view of baseball structure and business monopolies.

## VI. RICKEY AND LANDIS TANGLE OVER THE MINORS

At the top of Branch Rickey's minor league empire was Syracuse, an International League team that was the last stop for most players before they moved up to the major league Cardinals.<sup>188</sup> By 1927, the Syracuse team had improved its on-the-field play to the point where it won its first International League pennant since 1897.<sup>189</sup>

In the other minor league towns in which he owned or controlled franchises, Rickey used some of the profits from the Cardinals to finance new stadium construction.<sup>190</sup> In Syracuse, however, Rickey did not build a new stadium. Instead, he accepted an even better business proposition from Rochester, which already had a new stadium located in a wealthy neigh-

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185. *Id.* at 101.

186. ALEXANDER, *supra* note 27, at 147. At the same time, the Cardinals evidently purchased no players from other teams. *See id.* At some point during this period, there were at least 65 players playing in the major leagues who had started in the Cardinal farm system. *See* SEYMOUR, *supra* note 35, at 416.

187. SULLIVAN, *supra* note 23, at 111. Seymour reports a similar working arrangement with the Arkansas State League. SEYMOUR, *supra* note 35, at 415. Rickey kept track of his minor league empire by use of a large blackboard in his office in which he listed subsidiary teams and, under the teams, the names of the managers and then players by position. MANN, *supra* note 1, at 144. Rickey's biographer writes that Rickey knew the name of every ballplayer controlled by the Cardinals at all levels of the minor leagues. *Id.*

188. *Id.* at 104. The AA International League was one of the high minor leagues.

189. *Id.* at 105.

190. MANN, *supra* note 1, at 151. By this time, minor league relationships had made the Cardinals a financially strong business entity. When the Cardinals won their second National League pennant in three years in 1928, the three year profit for the club was reportedly more than \$1 million. *Id.* In 1927 alone, the Cardinals drew a record 750,000 to the games of the major league club. *Id.* In addition, owner Sam Breadon retired \$30,000 worth of common stock in the Cardinals, reducing his capitalization in the club to \$320,000. *Id.* at 149. At the same time, he reported assets of more than \$847,000 and liabilities of slightly less than \$111,000. *Id.* The Cardinals reported a net operating profit for the year of \$235,000. *Id.* In 1928, the Cardinals recorded another attendance record and a profit in excess of \$500,000. *Id.* at 151. With the club's profit, Rickey built baseball stadiums and acquired land for his teams, adding these amounts to the net worth of the corporation. *Id.* at 150. Stadiums in Buffalo and Danville, Illinois attest to this business philosophy. *Id.*

borhood.<sup>191</sup> Despite winning an International League championship in Syracuse, the Cardinals moved their AA franchise to Rochester for the 1928 season.<sup>192</sup> Rochester paid off on the investment, winning the International League crown four straight years from 1928 through 1931.<sup>193</sup>

The Cardinals minor league shift from Syracuse to Rochester must have offended Commissioner Landis, who was a strong supporter of local ownership of minor league teams.<sup>194</sup> Local ownership, under Landis' theory, would apparently lead to more movement of good players up the ladder toward the majors<sup>195</sup> because good players could be drafted or sold to major league teams to make money for the minor league team. Outside ownership ruined local interest under Landis' theory and inevitably led to the major league club's assuming the financial burdens of the minor league club.<sup>196</sup> This, in turn created greater economic disparity between minor league clubs operated independently and those operated by a major league club.<sup>197</sup>

The monopolistic nature of major league ownership of minor league teams must also have entered into Commissioner Landis' thinking. As a result of the *Federal Baseball* suit in which he was the judge, Landis knew that baseball already enjoyed a "horizontal" monopoly, that is while the teams in organized baseball competed with each other on the field, they did not compete with each other in the production of the product known as

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191. SULLIVAN, *supra* note 23, at 105. The stadium in Syracuse was wood and in need of repair.

192. MANN, *supra* note 1, at 150. According to Rickey's biographer, Arthur Mann, Rickey first bought the existing Rochester team, then sold the Syracuse team to help finance the purchase and moved the assets of the Syracuse team (the players and managers) to Rochester. *Id.* According to minor league historian Sullivan, the move was a more simple transfer. See SULLIVAN, *supra* note 28, at 105. Sullivan, however, makes it clear that the decision was a business one made without regard for Syracuse, "the minor league town." See *id.*

193. SULLIVAN, *supra* note 23, at 105. Coupled with the death of Baltimore minor league mogul Jack Dunn in 1928, Rochester became the dominant minor league team. See *id.* at 106. By the conclusion of the Syracuse/Rochester move, however, the Cardinals "conservatively" owned \$1 million in minor league stadiums and real estate together with contracts on major and minor league players valued at over \$1 million more. *Id.*

194. SEYMOUR, *supra* note 35, at 417. Rickey's method of minor league operation was partially in place when Landis became commissioner. In 1921, shortly after assuming the commissioner's position, Landis attempted to eliminate agreements between unrelated major league teams and minor league teams whereby players would be held by the minor league team for the major league team. See *id.* at 418. When the major league team owned the minor league team, however, there was no need for such an agreement. See *id.* Landis originally thought the farm system would die out, but, by 1928 had found that it would not. See *id.* at 417.

195. See SEYMOUR, *supra* note 35, at 418. Landis was of the view that non-local control of minor league teams hindered the upward movement of players—probably because of the ability of the major league team to hide otherwise major-league capable players on a minor league team. See *id.*

196. *Id.* at 417.

197. *Id.* at 417-18.



major league baseball.<sup>198</sup> When major league teams also controlled minor league teams, the horizontal monopoly was expanded into a vertical monopoly. When minor league teams were controlled by their major league owners, the minor league teams were limited in selling their talent to buyers approved by the major league team, a hallmark of the vertical restraint.<sup>199</sup> It simply cannot be coincidence that the judge known for his vehement opposition to monopolies set his commissioner's sights on minor league ownership by major league teams.

As a result, by 1928, Commissioner Landis started taking greater interest in the operation of the minor leagues, particularly in minor-league teams owned or operated by major league teams.<sup>200</sup> At a joint meeting of the American and National League, Landis reportedly asked each team, for the purpose of "intelligent administration of the code of rules," to divulge the minor league teams controlled by them.<sup>201</sup> Commissioner Landis learned that only Boston, Chicago, New York and Washington of the American League and New York and Philadelphia of the National League had no ownership interest in any minor league teams.<sup>202</sup> The ten remain-

198. See HERBERT HOVENKAMP, *supra* note 93, at 443.

199. *Id.* at 393. "Another important vertical nonprice restraint is the customer restriction, which limits the classes of buyers with whom a distributor or other reseller may deal." *Id.*

200. See MANN, *supra* note 1, at 152.

201. *Id.* at 152. Among the American League teams, Cleveland owned Frederick and had a working arrangement with Terre Haute; Detroit owned Evansville and Fort Smith and had a working arrangement with Hanover; Philadelphia had an ownership interest in Portland; and while St. Louis had no ownership interest in any other team, its owner had an ownership interest in Tulsa and Muskogee. *Id.* at 152-53. Among the National League teams, Boston owned Providence; Brooklyn owned Macon; Chicago owned Reading and acknowledged that its owner, Philip Wrigley owned Los Angeles but indicated there was no working relationship between the two teams; Cincinnati owned Columbus and Peoria; Pittsburgh owned Columbia and Salisbury; and Rickey's Cardinals owned Rochester, Houston, Danville, Dayton, and Topeka. *Id.* The Cardinals indicated possible interest in two additional clubs, Waynesboro and Loral, *see id.* at 153, and Seymour reports that by the end of 1928, the Cardinals did procure an ownership interest in two additional teams. SEYMOUR, *supra* note 35, at 417.

202. See MANN, *supra* note 1, at 152-53. Of those five teams, the New York Yankees indicated they expected to have an interest in a minor league team. *Id.* at 153. It was clear that the Yankees had seen the benefit of a farm system. See SULLIVAN, *supra* note 23, at 107. The Yankees would go on to purchase the Newark team in 1931. RONALD A. MAYER, *THE 1937 NEWARK BEARS: A BASEBALL LEGEND 9* (Rutgers Univ. Press 1994). Yankee owner Jacob Ruppert had seen what Rickey had done with the Cardinals relationship with AAA Rochester and sought similar results with Newark. SULLIVAN, *supra* note 28 at 108. It is interesting to note the ongoing "large" market/"small" market distinction among the teams with ownership interests in minor league teams. It was Rickey's view that teams like his St. Louis Cardinals would not be able to afford to purchase minor league players outright. *Id.* at 109-110. It appears that other teams like the Cardinals agreed. *See id.* Virtually all of the "small" market teams, with the possible exception of Washington, owned minor league teams, while only Brooklyn and the Chicago Cubs of the 5 teams in New York and Chicago owned such teams. MANN, *supra* note 1, at 152-53.

ing teams, however, owned a combined total of eighteen minor league teams, either directly or through the major league team's owner. In addition, major league teams had working relationships with two other teams.<sup>203</sup> Clearly, Commissioner Landis was unhappy with the extent of major league involvement in such ownership,<sup>204</sup> and following his discovery<sup>205</sup> the Commissioner began to monitor more closely the minor league activity of major league teams.<sup>206</sup> At the 1929 winter baseball meetings in Chattanooga, Landis reportedly lashed out at "the octopus of common ownership (of major and minor league teams) and the people responsible for it."<sup>207</sup> Sam Breadon, president of the Cardinals, vigorously defended the concept of common ownership of major and minor league teams, reading telegrams from five minor league teams owned by the Cardinals, all of whom were happy with Cardinal ownership.<sup>208</sup> Breadon then reportedly told the Commissioner: "You've gone out of your way to hurt my business."<sup>209</sup> To this, Landis accused Breadon and Rickey of being the troublemakers because they were "robbing small-town America of its precious heritage of independent minor league baseball," and then reportedly said: "You are both guilty of raping the minors."<sup>210</sup>

203. MANN, *supra* note 1, at 152-53; SEYMOUR, *supra* note 35, at 417.

204. MANN, *supra* note 1, at 153. When St. Louis Browns owner, Phil Ball, indicated that he had lost \$27,000 through his ownership interest in Tulsa and \$17,000 through his ownership interest in Muskogee, Commissioner Landis reportedly responded: "I should say to you that my regret is that the losses were not about fourteen times that much." *Id.*

205. The word is used in quotations by Rickey biographer Mann, apparently to show Mann's disbelief in the notion. See MANN, *supra* note 1, at 151.

206. See *id.* at 151-52. Because the 1921 National Agreement did not ban either farming or optioning players to minor league teams, Landis had little recourse within baseball law to do anything about Rickey's activity. Additionally, Landis was convinced by other owners, such as Pittsburgh's Barney Dreyfuss and Detroit's Frank Navin that major league teams would not be able to afford to finance minor league teams and that Rickey's approach would ultimately prove financially unmanageable. See SEYMOUR, *supra* note 35, at 417. By the meeting in 1928, however, both Detroit and Pittsburgh had become converts and both controlled minor league teams. See *id.* at 419. Dreyfuss, for example saw the need to own minor league teams so he could place players not quite ready for the Pittsburgh club out at option. *Id.* at 419. Compare Branch Rickey's reason for creating a minor league system as a place to put players at option, and the mathematics of this system, *supra* Part V.

207. MANN, *supra* note 1, at 154. Mann considered this a "Pearl Harbor type of attack" on Rickey's farm system. *Id.*

208. *Id.* at 154. The minor league teams "were assured of financial support and good teams made up of players which major-league teams found for them and placed with them without scouting expense to them." *Id.*

209. SULLIVAN, *supra* note 23 at 110 (quoting from MURRAY POLNER, BRANCH RICKEY 113 (Signet Press 1982)).

210. *Id.* Landis did have to concede that at the Chattanooga meeting, nine out of the ten independent minor league teams in attendance were "begging" to be taken over by a major league team. MANN, *supra* note 1, at 154; SEYMOUR, *supra* note 35, at 419.

At least one baseball executive thought that Rickey's type of farm system would not last.

Following this meeting, Judge Landis treated major league teams that owned interests in minor league teams in the same fashion that characterized his judicial dealings with business monopolies. He began a series of affirmative actions to “interpret” baseball rules in a way that would rein in the vertical restraints posed by major-league/minor-league agreements.<sup>211</sup>

First, in February, 1930, Judge Landis voided the sale of Gus Mancuso from the major-league Cardinals to minor-league Rochester.<sup>212</sup> Under major league rules, no player could be optioned to a minor league team for more than two consecutive seasons.<sup>213</sup> Mancuso had been optioned to Minneapolis one year and Rochester the next.<sup>214</sup> Because of the control that St. Louis had over the Rochester team, the Commissioner apparently looked through the outright sale of Mancuso from the Cardinals to Rochester and found, instead, a third, and impermissible option.<sup>215</sup> Rickey reportedly said the Commissioner’s decision had “no basis in fact in baseball law. It is simply an edict!”<sup>216</sup>

The legality of this “edict” was upheld the next year in *Milwaukee American Ass’n v. Landis*.<sup>217</sup> Fred Bennett was signed by the St. Louis Browns in 1924 and was assigned, by way of option, to a minor league team in Muskogee.<sup>218</sup> By July, 1926, Bennett was under contract with Lit-

New American League president Ernest Barnard issued a press statement reportedly indicating that “[t]he major-minor league farm system will run its course.” SPINK, *supra* note 111, at 195.

211. SEYMOUR, *supra* note 35, at 420.

212. MANN, *supra* note 1, at 155.

213. *Id.*

214. *Id.*

215. See MANN, *supra* note 1, at 155. The Commissioner’s office called the ability of the Cardinals to keep a player in perpetual bondage by assignment between its major and minor league franchises a “chain gang.” *Id.*

216. *Id.* at 155-56. According to Rickey’s argument, because Mancuso was sold to Rochester, he was subject to being selected by any of the other major league teams through the draft and could be required by St. Louis only in the same fashion. *Id.* While Rickey conceded the Commissioner’s authority to interpret baseball rules, “he is not empowered to interpret a rule that does not exist.” *Id.* at 156. Ultimately, Mancuso was acquired by the New York Giants where he played from 1933-1938. NEFT & COHEN, *supra* note 142. He later played for Chicago, Brooklyn, St. Louis, New York and Philadelphia in the National League in a career that ended in 1945. He accumulated 1194 hits in 4505 at bats in 1460 games. *Id.* at 240.

The same year, Landis also cracked down on teams “covering up” players—that is not listing players on the reserve list of one of the teams in its organization. Judge Landis first found that Rick Ferrell was not a part of any minor league team’s “reserve list” and then made the Detroit Tiger prospect a free agent. SPINK, *supra* note 111, at 195. Ferrell played from 1929-1947 for St. Louis, Washington and Boston in the American League, batting .281 in 1884 games. NEFT & COHEN, *supra* note 142, at 234. Judge Landis made similar free agents of ten other players from the St. Louis Browns, Cleveland Indians, Washington Senators, and minor league teams in Milwaukee, Indianapolis, Birmingham, and Columbia, South Carolina. SPINK, *supra* note 111, at 195-96.

217. 49 F.2d 298 (N.D. Ill. 1931).

218. SPINK, *supra* note 111, at 198.

tle Rock and was assigned to Tulsa in the Class A league.<sup>219</sup> He played for Tulsa for the 1926 and 1927 seasons, and in April, 1928 was assigned to the major league St. Louis Browns.<sup>220</sup> Bennett was optioned back to Tulsa in May, 1928 and this option contract was approved by Commissioner Landis.<sup>221</sup> Also in May, 1928, St. Louis requested waivers on Bennett and when he was not claimed by any other team, St. Louis waived its reserve rights to him.<sup>222</sup> Bennett then signed a contract with Tulsa.<sup>223</sup> In September, 1928, Tulsa assigned this contract to Milwaukee, a Class AA minor league team.<sup>224</sup> Milwaukee ultimately asked waivers of the teams in its league on Bennett and when he was not claimed by any team, Milwaukee assigned its contract with him to Wichita Falls, a Class A team.<sup>225</sup> In September, 1929, Wichita Falls was offered \$10,000 for Bennett from the Pittsburgh Pirates but told the Pirates that it had already entered into negotiations with the St. Louis Browns for the sale of Bennett.<sup>226</sup> The Browns purchased Bennett in September, 1929 for \$5,000.<sup>227</sup> Bennett again signed with the Browns for the 1930 season.<sup>228</sup> In April, 1930, the Browns optioned Bennett to Milwaukee, but Commissioner Landis did not approve of this arrangement.<sup>229</sup> The Commissioner had started an investigation of Phil Ball, the Browns' owner, in an attempt to learn of his other baseball holdings.<sup>230</sup> The investigation revealed that during the period covered by Bennett's movements, Ball owned, in addition to St. Louis, the Tulsa and Wichita Falls teams and at least 50% of the Milwaukee team.<sup>231</sup> As he had done with the Cardinal's Mancuso, Commissioner Landis ruled that because Bennett was essentially controlled by the same owner throughout the period, he could not again be optioned by the Browns.<sup>232</sup>

In denying an injunction to prohibit the Commissioner's conduct, the court ruled both in favor of and against Landis' position regarding com-

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219. Milwaukee Am. Ass'n v. Landis, 49 F.2d 298, 299 (N.D.Ill. 1931).

220. *Id.*

221. *Id.*

222. *Id.* at 300.

223. 49 F.2d 298, 300.

224. *Id.*

225. *Id.*

226. *Id.*

227. 49 F.2d 298, 299-300.

228. *Id.* at 300. He had first been offered on waivers, but when both the New York Yankees and the Pittsburgh Pirates tried to claim him from the waiver list, the Browns withdrew its request for waivers. *See id.*

229. *Id.* at 300.

230. *Id.* at 300.

231. 49 F.2d 298, 300. Ball became the sole owner of the Milwaukee team in January, 1929. *Id.*

232. *Id.*

mon ownership.<sup>233</sup> First, the court struck a blow to Landis' campaign against common ownership, acknowledging that "there is nothing in the [baseball] rules to prohibit an individual owning control of a Major League club from like-wise owning control of Minor League clubs."<sup>234</sup> Ultimately, however, the court ruled in favor of Landis' actions, primarily because no one else, including Bennett,<sup>235</sup> knew of Ball's control of all the teams involved during the period that Bennett was moved from club to club. As a result, the Commissioner's finding of a violation of the spirit of the baseball rules was upheld as consistent with Landis' broad powers to determine what conduct was "detrimental to baseball," and to declare appropriate "preventative, remedial or punitive action" to take in response.<sup>236</sup>

Following the *Bennett* ruling, Commissioner Landis evidently realized he could not prevent major league/minor league agreements.<sup>237</sup> In fact, the major league owners, in 1931, had permitted unlimited working agreements with minor league teams.<sup>238</sup> Landis could, however, control unfair player movements within an organization.<sup>239</sup> This led Commissioner Landis back to Rickey's Cardinals. By 1938, Rickey's farm system was at its height.<sup>240</sup> Commissioner Landis investigated the internal operation of the Cardinal franchise and, in what became known as the "Cedar Rapids Case," the Commissioner learned that Rickey maintained a serious conflict

233. *Id.* at 302, 304; *See SULLIVAN, supra* note 23, at 111.

234. *Id.* at 302. The permission for multiple ownership is subject to the waiver rule so that no one individual can "control indefinitely a player acquired" totally "independent of other clubs." *Id.*

235. *Landis*, 49 F.2d at 300. Bennett intervened in the action seeking to have the Commissioner's decision to make him a free agent upheld. *See id.* at 299.

236. *See id.* at 302. For a discussion of the powers of the Commissioner under the National Agreements, *see id.* at 299. These agreements, according to the court, "disclose a clear intent . . . to endow the commissioner with all the attributes of a benevolent but absolute despot and all the disciplinary powers of the proverbial pater familias." *Id.* These powers were so great that, so long as the decisions by the Commissioner were "made in good faith, upon evidence," they would be "absolutely binding." *Id.* at 302. The court noted that the major league owners were so confident in Judge Landis that these powers were designed to exist only as long as he was commissioner. *Id.*

Owner Ball was furious with the court's decision and vowed a fight to the Supreme Court. SPINK, *supra* note 111, at 200. Commissioner Landis was apparently equally furious about being hauled into court in light of the omnipotence he enjoyed under the baseball agreements. *Id.* Landis called a meeting of owners following the decision and wanted to know if they would permit Ball to continue this fight in light of the power they had conferred in the Commissioner. *Id.* Ball was eventually convinced to drop his appeal, in part because he did not want to be viewed as being as stubborn as Judge Landis. *Id.*

237. SULLIVAN, *supra* note 23, at 111.

238. ALEXANDER, *supra* note 27, at 163.

239. *See SULLIVAN, supra* note 23, at 111.

240. *See Id.* Rickey even set up try-out camps for free agents high school graduates and other non-organized baseball leagues. *Id.* For an interesting example of how one of these leagues supplied the Cardinals organization with Dizzy Dean, *see MANN, supra* note 1, at 158-164.

of interest in dealing with teams in the minor league Three-I league.<sup>241</sup> The Cardinals owned the Danville club in the Three-I League, but then entered into an agreement whereby the Cardinals could purchase any player from Springfield of the same league for \$2,500.<sup>242</sup> Because the Cardinals could thus remove talent from Springfield, the Cardinals controlled the ability of Springfield to be competitive against Danville. As a result, "Springfield's opportunities to improve its team to compete against Danville and other teams had been seriously limited."<sup>243</sup> Rickey maintained to his owner that his actions involving both Danville and Springfield were within the minor league rules, but acknowledged to Commissioner Landis that if Danville and Springfield were in contention for the league pennant and the only way either could obtain players was on option from St. Louis, St. Louis had the power to disable the Springfield club thereby allowing its own Danville team to win the pennant.<sup>244</sup>

At this point, the moralist Branch Rickey had created a "serious problem" for the farm system.<sup>245</sup> "The Cardinals' ownership of several clubs in the same league was such a blatant violation of competitive integrity that" it made hollow any of Rickey's prior claims about the benefit of his farm system.<sup>246</sup> Commissioner Landis apparently agreed with this sentiment and, in an "unprecedented" move, made as many as 74 Cardinal minor league players free agents,<sup>247</sup> thereby freeing them from any contractual

241. SULLIVAN, *supra* note 23, at 112.

242. *Id.*

243. SULLIVAN, *supra* note 28, at 112. Landis asked Rickey directly if this purchase provision was in the agreement between the Cardinals and Springfield:

Landis asked: "This is in this [agreement], isn't it?"

Rickey: "Yes, that is in there."

Landis: "Big as a house, isn't it."

Rickey: "It is not big as a house."

Landis: "I think it is as big as the universe. This is just as important in the Three-I League as it would be in the National or American Leagues."

*Id.*

The "Three-I" League was so-named because of its teams in Illinois, Iowa and Indiana. Cato Bass, *James Herman "Maggie" McGee, baseball player, paper industry worker*, THE ATLANTA CONSTITUTION, Feb. 25, 1998, at C6. In the late 1950's, however, the league expanded to include at least two teams in Wisconsin. Cliff Christl, *Homespun League Fostered Big-Time Dreams Series: Baseball Wisconsin Style*, THE MILWAUKEE JOURNAL SENTINEL, June 14, 1998, at 1.

244. SPINK, *supra* note 111, at 232-35.

245. SULLIVAN, *supra* note 23, at 114.

246. *Id.*

247. *Id.* at 112. This number probably comes from Rickey's biographer. MANN, *supra* note 1, at 208. Mann calls the group "low-classification players," but acknowledges that one of them, Pete Reiser, would later become National League batting champion. *Id.* Charles Alexander indicates that Landis made free agents of ninety-one players under contract with the Cardinal organization, see ALEXANDER, *supra* note 27, at 164.

ties to the Cardinal organization.<sup>248</sup>

Branch Rickey urged Cardinal owner Sam Breadon to take Commissioner Landis to court over the free agency declared by the Commissioner, but Breadon saw the matter as threatening "his entire baseball structure," and refused to go to court against the Commissioner.<sup>249</sup> The loss of \$200,000 worth of baseball talent, however, set in motion a rift between Breadon and Rickey that led to Rickey's departure from the Cardinals at the conclusion of his contract in 1941.<sup>250</sup>

## VII. BRANCH RICKEY AND THE RACIAL REINTEGRATION OF MAJOR LEAGUE BASEBALL

According to his biographer, "Branch Rickey began a new life in 1942 . . . by taking over the Brooklyn Dodgers as president and general manager."<sup>251</sup> He was undoubtedly a smarter major league executive, following his dealings with both the Cardinals farm system and Commissioner Landis. In fact, what would Branch Rickey have known as he assumed leadership of the Dodgers?

First, Rickey would have known that the Dodgers could draft only one minor league player per minor league team per year, and then, as to AA and A players, only if the player had three years of minor league experience.<sup>252</sup>

Second, Rickey knew that he could option only fifteen players as-

Landis also fined several minor league teams for their participation, with the Cardinals, in such a practice. SULLIVAN, *supra* note 23, at 112. Landis fined Sacramento of the Pacific Coast League and Cedar Rapids of the Western League each \$588 and fined the Western Association Springfield team \$1,000. *Id.* The players that were made free agents were permitted to negotiate with any club, including their present club, provided they were not transferred to either the Cardinals or the Cedar Rapids minor league team for three years. SPINK, *supra* note 111, at 233.

248. ALEXANDER, *supra* note 27, at 164. The Cardinals were not the only team to run afoul of Commissioner Landis' reexamination of major league team/minor league teams relationship. *Id.* Two years after making free agents of Cardinal minor leaguers, Landis would similarly make free agents of one hundred players signed to the Detroit Tigers organization. *Id.* Landis' biographer sets the number of freed players at 91, but also indicates that 15 other players were ordered to receive cash payments from the major league team. SPINK, *supra* note 111, at 237. The damage to the Detroit team was estimated at some \$500,000. *Id.*

249. MANN, *supra* note 1, at 208.

250. *Id.* at 208-211. Breadon did, however, defend Rickey's actions in communications with the Commissioner. SPINK, *supra* note 111, at 236.

251. MANN, *supra* note 1, at 212.

252. The draft provisions obviously significantly helped teams like the New York Yankees, who were able to pay in excess of \$35,000 on the open market for players like Joe DiMaggio. The Yankees signed DiMaggio for \$35,000 plus five players in 1934 from the Pacific Coast League's San Francisco Seals. See James R. Devine, *The Legacy of Albert Spalding, The Holdouts of Ty Cobb, Joe DiMaggio, and Sandy Koufax/Don Drysdale, and the 1994-95 Strike: Baseball's Labor Disputes are as Linear as the Game*, 31 AKRON L. REV. 1, 14 (1997).

signed to the Dodger roster to the minor leagues and further, could option those players only three times.

Third, Rickey knew that while it was permissible to have unlimited working arrangements with minor league teams, Commissioner Landis was all too willing to review any such arrangement because of his views on monopolization in baseball.

Fourth, Rickey knew that virtually anything Rickey did would be reviewed by Landis with some skepticism. Indeed "[t]here was . . . a school of thought that believed the Commissioner had been out to get Rickey . . . listed for years in his bad boy book."<sup>253</sup>

Fifth, Rickey knew that baseball was likely to face difficulties recruiting players following the onset of World War II.<sup>254</sup> On January 15, 1942, in response to a letter from Commissioner Landis, baseball was given the go ahead by President Roosevelt to operate during the War.<sup>255</sup> That fact, however, did not make the war years easy ones for major league teams. By the time the 1942 season started, several minor leagues, "including the strong Texas League, decided to suspend operations 'for the duration'" of the war.<sup>256</sup> By the end of 1944, only ten minor leagues would remain in operation.<sup>257</sup> In both the major and minor leagues, play was substandard.<sup>258</sup> The fact was, ballplayers were simply less available from tradi-

253. SPINK, *supra* note 111, at 237.

254. See ALEXANDER, *supra* note 27, at 187-89.

255. *Id.* at 188. During World War I, play also continued except during 1918 when the season was cut short because of the War. See SEYMOUR, *supra* note 35, at 235-53.

During the off-seasons of World War II, some players performed work in the private sector in "essential occupations," so as to be draft exempt. ALEXANDER, *supra* note 27, at 188. In 1943, the head of the War Manpower Commission ruled that when players left these positions to attend spring training, they lost their draft exemption. *Id.* For an excellent chronicle of baseball and World War II, see BILL GILBERT, *THEY ALSO SERVED: BASEBALL AND THE HOME FRONT, 1941-1945* (Crown 1992).

256. ALEXANDER, *supra* note 27, at 188.

257. *Id.*

258. *Id.* During the War, teams used players whose physical infirmities kept them out of the service, but did not prevent them from playing baseball. Players like Lou Boudreau, who had heel spurs, "Junior" Stephens, who suffered from allergies, and Hal Newhouser, with a heart murmur, were all coveted, as were players like Stan Musial, who claimed so many dependents that he was initially free from service. *Id.* at 191. Three of these four are in the Hall of Fame. Lou Boudreau batted .295 in 1646 major league games from 1938-1952 with Cleveland and the Boston Red Sox. He also managed Cleveland from 1942-1950, the Red Sox in 1951 and 1952, the Kansas City A's from 1955-57 and the Chicago Cubs in 1960. He was elected to the Hall of Fame by the baseball writers in 1970. NEFT & COHEN, *supra* note 142, at 231, 628. Vern "Junior" Stephens batted .286 in 1720 major league games from 1941-1955 playing for the St. Louis Browns, Boston Red Sox, Chicago White Sox and Baltimore Orioles. *Id.* at 333. Hal Newhouser pitched for Detroit from 1939-1953 and then for Cleveland in 1954-55 compiling a record of 207-150 with 1796 strikeouts and an earned run average of 3.05. He was elected to the Hall of Fame by the Veterans Committee in 1992. *Id.* at 341, 629. Stan Musial played for the St. Louis Cardinals from 1941-1963, amassing 3,630 hits in 3,026



tional sources during the war effort.<sup>259</sup>

Additional matters about the Dodger franchise became clear to Rickey as he assumed his new position. When he took over the team, Rickey knew or would soon learn that his Dodger team was advancing in age.<sup>260</sup> In fact, the 1942 Dodgers had far more players over the age of 30 than did Rickey's former team the Cardinals.<sup>261</sup> The youthful Cardinals erased an August 10½ game Dodger lead to win the 1942 National League pennant over the second place Dodgers.<sup>262</sup> What Rickey saw was "a dismal future for the Dodgers."<sup>263</sup> His older team would be even further past its prime when the war ended.<sup>264</sup>

The challenge for Rickey, then, was to come up with young baseball talent that the Dodgers could afford, talent that would not be cut loose by Landis as Rickey's Cardinals' Cedar Rapids Players had been, and that would not be decimated by the United States' need for combat soldiers.

At the time Branch Rickey came to the Dodgers in 1942, the team was owned by three different groups.<sup>265</sup> Two shareholders each owned 25% of the team and a 50% share was owned by the heirs of Charles Ebbets and controlled by the Brooklyn Trust Company.<sup>266</sup> Charles McLaughlin was president of Brooklyn Trust and controlled Dodger policy.<sup>267</sup> At the behest

games for a career .331 batting average. He was the Baseball Writers Association of American MVP in the National League in 1943, 1946, and 1948. He was elected to the Hall of Fame in 1969 by the baseball writers. *Id.* at 331, 628, 661. Musial lost his dependent deferment and entered military service in 1945, ALEXANDER, *supra* note 27, at 191, and missed the entire 1945 baseball season. NEFT & COHEN, *supra* note 142, at 628.

During the War, major league teams also used both aging veterans and teenage players, including 15-year-old Joe Nuxhall to fill out their rosters. and some physically challenged players, such as Pete Gray who lost one arm in a childhood accident and Bert Shepard, who returned from the War in 1945 after having a leg amputated in a German prison camp and pitched during one season with Washington. ALEXANDER, *supra* note 27, at 191-92.

259. ALEXANDER, *supra* note 27, at 190-92.

260. *See* MANN, *supra* note 1, at 213.

261. NEFT & COHEN, *supra* note 142, at 214 (listing the ages of the players on both teams).

262. *Id.* at 212. The Cardinals finished the season at 106-48 while the Dodgers finished at 104-50. *Id.* at 214. The Cardinals went 43-8 over their last 51 games surpassing the Dodgers on September 13. *Id.* at 212.

263. MANN, *supra* note 1, at 213.

264. COHEN, *supra* note 14, at 79. Many of these players, thought Rickey, were "finished as big leaguers." MANN, *supra* note 1, at 213.

265. MANN, *supra* note 1, at 212.

266. *Id.*

267. *Id.* at 212. The two 25% shareholders were Ed and Steve McKeever. *See id.* The McKeeveres were building contractors who built Ebbets Field, the Brooklyn home of the Dodgers. COHEN, *supra* note 14 at 15. In 1944, 75% of the teams shares were sold, 1/3 each to John Smith, president of Pfizer Chemical Co., Rickey, and team attorney Walter O'Malley. *Id.* at 79. Walter O'Malley would take control from the Smith and Rickey and become president of the team on October 26, 1950. *Id.* The Dodgers would remain in the O'Malley family until March, 1998, when the

of Rickey, McLaughlin called a meeting of the Board of Directors of the Dodgers, at which Rickey presented his assessment of the club, and a proposal to advance the team.<sup>268</sup>

Rickey proposed to do for the Dodgers exactly what he had done with the St. Louis Cardinals—scout younger players, including fifteen- and sixteen-year-olds and sign them to Dodger contracts.<sup>269</sup> While other teams acknowledged that the war would ravage them, Rickey proposed signing more scouts,<sup>270</sup> and expanding the Dodger farm system.<sup>271</sup> “We are going to beat the bushes, and we will take whatever comes out,” Rickey reportedly told his owner. Beating those bushes and signing more players to minor league contracts obviously meant the possibility of incurring the wrath of Commissioner Landis. Perhaps as a result, beating the bushes for Rickey meant tapping into what Rickey saw was the vast reservoir of baseball talent—the Negro Leagues,<sup>272</sup> leagues that were outside the control of organized baseball’s commissioner Landis. Rickey made clear that his scouting plans “‘might include a Negro player or two.’”<sup>273</sup>

The response by Dodger management was positive, but not because of the moral justness of Rickey’s plan.<sup>274</sup> “‘If you’re doing this to help the ball club, go ahead,’ [McLaughlin reportedly] said, ‘But if you’re doing it for the emancipation of the Negro, then forget it.’”<sup>275</sup> The support of Dodger management led, of course, to at least one meeting between Jackie Robinson and Rickey in Brooklyn in August, 1945<sup>276</sup> and to the public signing of Robinson to a Dodger contract on October 23, 1945 in Montreal.<sup>277</sup>

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team, along with Dodger Stadium and Dodgertown in Florida were sold to Rupert Murdoch and Fox Broadcasting for \$311 million. See Robert Kuwada, *O’Malley Heading for Exit*, THE ORANGE COUNTY REGISTER, Oct. 30, 1998, at D1.

268. MANN, *supra* note 1, at 213.

269. *Id.*

270. *Id.*; COHEN, *supra* note 14, at 79.

271. FALKNER, *supra* note 12, at 104.

272. Rickey is quoted as saying: “‘The greatest untapped reservoir of raw material in the history of the game is the black race! The Negroes will make us winners for years to come.’” TYGIEL, *supra* note 3, at 52; RIBOWSKY, *supra* note 4, at 267.

273. FALKNER, *supra* note 12, at 104; MANN, *supra* note 1, at 213.

274. See COHEN, *supra* note 14, at 79.

275. *Id.* Rickey’s grandson, Branch Rickey III reportedly supported this version in Conrad Brunner, *Integrity Incarnate: Branch Rickey III remembers when his grandfather teamed with Jackie Robinson to give America’s pastime a brighter future*, THE INDIANAPOLIS STAR, Apr 16, 1997, at C1. Other sources agree that Rickey’s plans to expand Dodger farm system operations, including the signing of African American players, met with the approval of the financial backers of the team. FALKNER, *supra* note 12, at 104; MANN, *supra* note 1, at 214-215.

276. COHEN, *supra* note 14, at 80; MANN, *supra* note 1, at 220; FALKNER, *supra* note 12, at 106.

277. MANN, *supra* note 1, at 224. The actual details of Robinson’s signing with the Dodgers and the trials he experienced as the first African American in twentieth century baseball are superbly de-

## VIII. BUSINESS V. MORAL DECISION

Despite the obvious business nature of the relationship between Branch Rickey and Brooklyn Dodger management regarding the signing of Jackie Robinson, the moral aspect of the decision remained in the forefront of much of the discussion following Robinson's racial reintegration of major league baseball.<sup>278</sup> Rickey, who was viewed as a villain by many whites,<sup>279</sup> assisted in promoting the public belief that the decision was a moral one.

One story concerning Branch Rickey's decision to search for African American baseball players attributes his reasoning to an experience he had while coaching the Ohio Wesleyan University baseball team in 1904.<sup>280</sup> The team, with its African American catcher, Charlie Thomas, traveled to South Bend, Indiana and were scheduled to stay in the Oliver Hotel.<sup>281</sup> The hotel clerk would not, however, allow Thomas to register, apparently because of his color.<sup>282</sup> While waiting to determine whether lodging could be secured for Thomas at the Y.M.C.A., Rickey was able to convince the clerk to allow Thomas to wait in Rickey's room.<sup>283</sup> When Rickey concluded his conversation with the clerk and went to his room, he reportedly found Thomas rubbing one hand over the other: "'Black skin . . .' he murmured in a half sob. 'Black skin . . . Oh, if I could only make 'em white!'"<sup>284</sup>

It is from this story of the racial reintegration of baseball that Rickey "became a saint in the eyes of blacks."<sup>285</sup> "That scene haunted me for many years, . . . and I vowed that I would always do whatever I could to see that other Americans did not have to face the bitter humiliation that

tailed in Falkner's *Great Time Coming*. FALKNER, *supra* note 12 ; TYGIEL, *supra* note 3.

278. Robinson was immediately successful. In his first game for Montreal, Robinson went 4-5, with a home run, 2 stolen bases and 4 runs batted in. FALKNER, *supra* note 12, at 135. By the end of the International League season, Robinson was the league's MVP, batting a league leading .349. He was second in the league in stolen bases, tied for the league lead in runs scored and had the best fielding average for second basemen in the league. He also became a favorite of Montreal fans. *Id.* at 138. His complete statistics for the year are contained in ASHE, *supra* note 2, at 194.

279. Godfrey Sperling, *As We Honor Robinson, Let's Salute Rickey, Too*, CHRISTIAN SCIENCE MONITOR, Apr. 29, 1997.

280. See COHEN, *supra* note 14, at 77.

281. *Id.*

282. *Id.*

283. *Id.*

284. See, e.g., COHEN, *supra* note 14, at 88; FALKNER, *supra* note 12 ; GOLENBOCK, *supra* note 14, at 123-24; MANN, *supra* note 1, at 216; JACKIE ROBINSON, I NEVER HAD IT MADE 26-27 (Ecco Press 1995); TYGIEL, *supra* note 3, at 51-52.

285. ROGOSIN, *supra* note 15, at 205.

was heaped upon Charles Thomas.”<sup>286</sup>

In yet another Branch Rickey story, Rickey and his wife were getting out of their car at New York’s Polo Grounds in 1940 when Rickey was asked for his autograph by an African American youngster.<sup>287</sup> While Rickey signed, the young man asked Rickey whether African Americans would ever play major league baseball.<sup>288</sup> “Rickey put his arm around the boy and began walking with him up Eighth Avenue. Rickey told [the youngster], ‘Young man, one of these days you are going to see it happen.’”<sup>289</sup>

It is these stories that join together Rickey and Jackie Robinson in American folklore,<sup>290</sup> and from which Rickey is portrayed as equal to the nickname “Mahatma” that his “moral rigidity and certainty had earned him.”<sup>291</sup>

A recent biography of Jackie Robinson indicates that “Rickey saw a chance to intervene in the moral history of the nation, as Lincoln had done.”<sup>292</sup> Rickey’s decision to sign Jackie Robinson is called courageous and “the morally correct thing; [to] grant a human being his rightful chance to succeed or fail. Nothing more; nothing less.” Rickey himself reportedly referred to the moral element of his decision: “I couldn’t face my God much longer knowing that His black creatures are held separate and distinct from His white creatures in the game that has given me all I own.”<sup>293</sup> His partnership with Jackie Robinson became known as the “Great” or “Noble Experiment,”<sup>294</sup> and is said to be the “moral apex of [baseball’s] history.”<sup>295</sup> Following the Charlie Thomas incident, Rickey was said to be “a man on a mission. He knew it was a lonely mission and one whose completion could not be hastened.”<sup>296</sup>

In a 1948 speech at Wilberforce University in Ohio, Rickey again

286. ARNOLD RAMPERSAD, *Jackie Robinson* 122 (Alfred A. Knopf 1997).

287. GOLENBOCK, *supra* note 14, at 124.

288. *Id.*

289. *Id.*

290. FALKNER, *supra* note 12, at 106.

291. ROGOSIN, *supra* note 15, at 205.

292. RAMPERSAD, *supra* note 286, at 122.

293. RIBOWSKY, *supra* note 4, at 267; ROGOSIN, *supra* note 15, at 205.

294. This reference undoubtedly refers to author Jules Tygiel’s book with a similar name. *See* TYGIEL, *supra* note 3. Robinson himself reportedly saw himself as “some sort of guinea pig,” but vowed “to be the best guinea pig that ever lived.” He also knew the stakes of his experiment to be very high: “I will not forget that I am representative of a whole race of people who are pulling for me.” RIBOWSKY, *supra* note 4, at 279-280.

295. SULLIVAN, *supra* note 23, at 112.

296. COHEN, *supra* note 14, at 78-79.

raised the moral issue.<sup>297</sup> He reportedly told his audience that a pre-Robinson-signing report unanimously adopted by the other major league owners criticized his signing of Robinson.<sup>298</sup> He then indicated that copies of the report had been collected, implying a cover-up of the owners' actions.<sup>299</sup> After this speech, many owners denied the existence of such a report.<sup>300</sup> This, of course, only added fuel to the public belief that keeping African Americans from the major leagues was at the center of owner concern.<sup>301</sup> Today, popular literature implies that this report dealt with the moral issue: "A secret report on the prospects for integrated baseball was supposedly written by a steering committee in 1946. The committee . . . [urged] other committee members not to admit blacks."<sup>302</sup> According to these reports, "[h]owever well intentioned, the use of Negro players would hazard all the physical properties of baseball."<sup>303</sup>

Later, new baseball commissioner A.B. "Happy" Chandler attempted to solidify the notion that this report was a moral condemnation of African American signings. First, he apparently claimed that the meeting of major league owners took place in 1947, a likely error, but then reportedly stated: "I don't remember whether they voted specifically against Robinson or blacks in general," but Chandler did recall that Rickey was the lone dissenter. "You wouldn't believe some of the things those owners said at that meeting. One of 'em flat out said if we let Robinson play, they'd burn down the Polo Grounds the first time the Dodgers came in there for a series."<sup>304</sup>

The fact is that this raising of the apparent moral conscience of the business of organized baseball is simply misplaced. While recent biographies are long on their comparisons between Abraham Lincoln and Branch Rickey, claiming for instance that Rickey's intervention on behalf of Charlie Thomas "begged comparison to another, lodged in American lore,

297. TYGIEL, *supra* note 3, at 80.

298. *Id.*

299. *Id.*

300. *Id.* at 81.

301. TYGIEL, *supra* note 3, at 80-81.

302. ASHE, *supra* note 2, at 41. Ashe also mentions the vote was 15-1, with Rickey standing alone in favor of his actions. Rogosin calls the document "a secret report on baseball integration." ROGOSIN, *supra* note 15, at 200.

303. TYGIEL, *supra* note 3, at 80. Virtually the same quotation is repeated in Falkner's *Great Time Coming*. FALKNER, *supra* note 12, at 146. The moral question is restated in Cohen's *Dodgers: The First 100 Years*. Cohen spoke of critics of Rickey's plan: "It was the heart of their argument that blacks did not possess the athletic ability to play organized baseball." COHEN *supra* note 14, at 80.

304. FALKNER, *supra* note 12, at 147. It is unclear whether the "they" would would burn down the Polo Grounds were African American fans or players or White fans or players—or the owners themselves. The quote is repeated in *Baseball's Great Experiment*. TYGIEL, *supra* note 3, at 81.

about Abe Lincoln going down the Mississippi and seeing slavery, and vowing to see it end one day,"<sup>305</sup> these comparisons serve as red herring distractions from reality.

As one author has pointed out, "Rickey was an unlikely [re-]integrator of the game. . . . [H]is interest in Negro baseball was minor at best."<sup>306</sup> Additionally, while Rickey's religious leanings were well known,<sup>307</sup> so were his tight-fisted ways.<sup>308</sup> His early biographies suggest that Rickey was not concerned with the "social consequences" of his actions,<sup>309</sup> and the historical record supports this belief. Charlie Thomas, for example, thought Rickey's account of the happenings at the Ohio hotel "exaggerated."<sup>310</sup> Rickey's own children thought the story was one for their dinner table, but certainly not truthful.<sup>311</sup>

It is also true that Rickey's motives had been previously questioned. First, in 1945, when Rickey announced formation of the United States League, an all Black league formed by African American and white business leaders, Rickey was severely criticized in both the African American

305. RAMPERSAD, *supra* note 286, at 122.

306. ROGOSIN, *supra* note 15, at 206. Rogosin points out that in the long history of Negro League baseball, "there is not one story that depicts Branch Rickey as taking a real interest. . ." *Id.* In fact, Sportsmen's Park was the only park in major league baseball that had an enforced Jim Crow area. *See id.*

307. Rickey was raised in "a pious Methodist" tradition in Ohio. TYGIEL, *supra* note 3, at 48. From his days as a rookie catcher with the Cincinnati Reds, Rickey did not attend baseball parks on Sunday. MANN, *supra* note 1, at 34-36. He garnered religious nicknames, such as "Deacon" and "the Mahatma." TYGIEL, *supra* note 3, at 48-49.

308. Sportswriter Tom Meany, in giving Rickey the "Mahatma" nickname reportedly indicated that Rickey was "a combination of God, your father, and Tamany Hall leader." TYGIEL, *supra* note 3, at 49. Jimmy Powers of the New York *Daily News*, however, reportedly nicknamed Rickey "El Cheapo" because of his tight-fistedness. FALKNER, *supra* note 12, at 103. Former Dodger manager and recent Hall of Fame inductee Tommy Lasorda, after signing a contract with Rickey, was asked by Rickey to keep the details confidential. "You don't have to worry about me, Mr. Rickey," Lasorda told him. "I won't tell anybody. I'm just as ashamed of it as you are." Hall of Famer Ralph Kiner, who played for Rickey in Pittsburgh has indicated that "Rickey's penurious ways helped lead to the formation of the player's union." Kevin Sherrington, *Ahead of the Game: Branch Rickey Earned Stamp of Greatness Even Before He Integrated the Major Leagues*, THE DALLAS MORNING NEWS, Apr. 15, 1997.

309. MANN, *supra* note 1, at 216. Mann indicates that Rickey's "firm beliefs about the equality of man . . . were never a factor in his decision." *Id.* at 216-17. More recent biographies suggest Mann's statements disguise the real mores of the decision. "Although Rickey and his publicists . . . would assert that pragmatism—the desire to win games and to profit from these victories – and not the ideal of social justice played the central role . . . , Rickey's thinking clearly went beyond pragmatism." RAMPERSAD, *supra* note 286, at 122.

310. FALKNER, *supra* note 12, at 105.

311. *Id.* Arthur Mann sent Thomas a copy of his book on Rickey, *see* MANN, *supra* note 1, and received a Christmas card reply indicating that reporters had probably exaggerated upon what actually happened. FALKNER, *supra* note 12, at 105.

and white press.<sup>312</sup> Rickey's view of the Negro leagues was no secret, as he reportedly referred to them as being "in the zone of a racket," and not legitimate businesses.<sup>313</sup> Because the teams in the United States League were going to include names like the "Brown Dodgers" and the "Brown Bombers," Rickey was again criticized: "'We have enough 'black' this and 'brown' that . . . and we don't need any more.'" <sup>314</sup> Far from being those of a moral savior, Rickey's motives in creating a new Negro League were almost certainly financial, based on Brooklyn's need to rent Dodger owned Ebbets Field. After the Negro League Eagles left Brooklyn for Newark, New Jersey, the Dodgers did not have income from a Negro League team playing in Ebbets field. The rival New York Giants and New York Yankees both had Negro League revenue from their ballparks.<sup>315</sup>

In fact, as one commentator noted at the time, apparently without understanding the financial significance, when Branch Rickey formed the United States League, a league designed to rival the Negro League, his alleged motive to make the United States League a part of organized baseball appeared to be an attempt to corner the market on Negro League players if racial integration of the major leagues actually took place.<sup>316</sup>

Similarly any claim by either Branch Rickey or Commissioner Chandler, following the signing—and playing—of Jackie Robinson, that the report to which both referred dealt with the moral issue of integration alone is simply revisionist history. While most copies of the report were in fact collected, one remained. Commissioner Chandler retained his copy and later donated it to the library of the University of Kentucky.<sup>317</sup>

On its face, this report does not support a finding that its centerpiece is organized baseball's view of racial reintegration. The report is instead a

312. RIBOWSKI, *supra* note 4, at 270.

313. *Id.*

314. *Id.*

315. ROGOSIN, *supra* note 15, at 208-209. It was estimated that the Yankees and the Giants received 10-20% of the gate revenue of some twenty to thirty thousand fans attending Negro League games held in the Giants' Polo Grounds and the Yankees' Yankee Stadium. *Id.* at 209. Rogosin also speculates that the similarities in personalities between Rickey and Jackie Robinson would have made Robinson an ideal manager for Rickey's Negro League team. *See id.* Rogosin also reports that Robinson's roommate, Hilton Smith, reported that after his meeting with Rickey, Robinson told Smith that Rickey wanted Robinson to manage the Black Dodgers. *Id.* at 210.

316. *Id.* at 207-208. Rogosin points out that the conventional reason for Rickey starting the United States League—that of keeping his actual scouting of Negro League players a secret—does not make sense particularly because much of Rickey's scouting was of Latin American players. *Id.* at 208. Compare with MANN, *supra* note 1. One of the suggested reasons for the United States' League's failure was that it got no support from organized baseball owners because of fear that Rickey would then control the vast talent of Negro players "at their source." ROGOSIN, *supra* note 15, at 208.

317. *See Devine, supra* note 16, at 524.

document prepared by a joint committee of both leagues concerning "all matters of Major League interest."<sup>318</sup> Its foreword begins: "Baseball, as a game, provides pleasure and relaxation to millions who see it played and to countless millions who follow it" through newspapers and on radio.<sup>319</sup> The report recognizes the possibility that fans would soon see the game on television or in movie theaters, and then goes on: "Professional Baseball, however, is more than a game. It is Big Business—a one hundred million dollar industry," which compared favorably to movies in providing the public with an inexpensive entertainment product.<sup>320</sup>

The report itself is in multiple parts. The introduction indicates how committee members were chosen,<sup>321</sup> and is followed by a Foreword which, in two pages, discusses a number of structural problems facing the baseball enterprise.<sup>322</sup> Race is not mentioned among those problems.<sup>323</sup> The report then lists and summarizes six problem areas considered by the committee and upon which the committee made recommendations. The report itself was twenty-five single-spaced pages, with pages 3 through 25 containing what the report calls "Recommendations" regarding each of the six areas mentioned. Such "Recommendations" really amounted to a discussion of the problems facing baseball in each of these areas, followed, in

318. *Report of Major League Steering Committee for Submission to the National and American Leagues at their Meeting in Chicago* (27 August, 1946) (obtained on request from University of Kentucky Library) [hereinafter *Report*]. This is almost certainly the report referenced by other sources. Its title page indicates a desire for secrecy. At the bottom of the title page, the report has the notation "No. \_\_\_\_\_" indicating room for a number. Under that is the notation: "Delivered to \_\_\_\_\_" On the "delivered to" line is the apparent signature of Commissioner Chandler. *Id.*

319. *Id.*

320. *Report, supra* note 318, at 1.

321. On July 8, 1946, both the American and National Leagues, meeting in Boston, separately adopted a resolution creating a committee consisting of two club owners and the League president. In the National League, owners Breadon and Wrigley, of the Cardinals and Cubs were selected, along with National League president Ford Frick. In the American League, owners Yawkey and McPhail of the Red Sox and Yankees were chosen, along with President Harridge. The resolution authorized counsel to be employed and required that a report be forwarded to each league no later than August 15, 1946. *Report, supra* note 318, at 1.

322. *Id.*

323. *See Report, supra* note 318, at 1-2. The Forward compares the entities in organized baseball to motion picture studios, noting that a studio like Metro-Goldwyn-Mayer owns and operates its own studios, makes its own films, and distributes those films as it chooses to do. Other studios are true competitors of MGM. In baseball, the report notes, teams like the Tigers may own their own stadium and does control its own finances and accounting, the league, made up of the other teams, tells Detroit who and when to play its games. While baseball has grown, the report notes, its operations have "been run in the most haphazard way imaginable." *Id.* at 2. The concluding paragraph of the Forward points to the problems faced including "attack as an illegal monopoly." "At no time in the history of professional baseball has there been greater need for intelligent management and procedures to determine the common ends" of the game itself. *Id.* Issues of race are not mentioned anywhere in the Forward. *Id.* at 1-2.



most cases by recommendations.<sup>324</sup> A discussion of issues relating to "Organization," that is "machinery for efficient over-all administration" of the game;<sup>325</sup> is contained on pages 3-9 inclusive and contains multiple suggestions for specific changes in the Major League Agreement.<sup>326</sup> This section is followed by a discussion about the Legality of Structure, which takes place on pages 9-12<sup>327</sup> and which discusses efforts to prevent baseball from being declared an illegal monopoly under the antitrust laws, as well as interference by leagues outside baseball's organized structure.<sup>328</sup> Pages 12-16 discuss Player Relationships and recommend specific changes in Player contracts,<sup>329</sup> primarily to prevent unionization of the players.<sup>330</sup> Public Relations Problems, those designed to protect "against injurious and unfair" public attacks<sup>331</sup> are discussed on page 17,. The report notes the lack of any meaningful public relations activities by organized baseball.<sup>332</sup> Operational Problems, including including scheduling, admission price and first-year bonus problems;<sup>333</sup> begin on page 20 and continue through page 24, making specific recommendations in areas such as bonus payments.<sup>334</sup>

The Race Question.<sup>335</sup> is contained on pages 18, 19 and part of page

324. See Report, *supra* note 318.

325. See Report, *supra* note 318, at 3. Organization included rules changes and enforcement and the relationship between the major and minor leagues. *Id.*

326. *Id.* at 3-9.

327. *Id.* at 10-12. Interestingly enough, it was the conclusion of counsel for both leagues that the then-existing reserve rule could not withstand scrutiny by an equity court "to prevent a player from playing elsewhere, or to prevent outsiders from inducing a player to breach his contract." Undoubtedly, counsel's opinion was based in part on *American League Baseball Club of Chicago v. Chase*, 149 N.Y.S. 6 (N.Y. App. Div. 1914).

328. Report, *supra* note 354 at 3. In February, 1946, the owner of the Mexican League had begun, following the signing of New York Giants player Danny Gardella, to raid organized baseball. PIETRUSZA, *supra* note 25, at 263.

329. Report, *supra* note 318, at 12-16. The Report refers to Murphy's attempt to organize the players, and notes that Murphy probably would have been successful if he had started at the Minor League level. *Id.* at 12.

330. *Id.* at 3. In 1946, a former National Labor Relations Lawyer, Robert Murphy, had unsuccessfully attempted to form the American Baseball Guild. MARVIN MILLER, A WHOLE DIFFERENT BALL GAME 6 (Fireside 1991).

331. Report, *supra* note 318, at 3.

332. *Id.* at 17. "Without any policy for public relations, . . . baseball has been content to depend upon" the goodwill of sportswriters and statements by owners which did not necessarily represent the collective judgment of all owners. *Id.*

333. *Id.* at 3.

334. *Id.* at 20-24.

335. Report, *supra* note 318, at 3. As the report was organized, this question actually fell before Operational Problems. It is placed last here only to show that the other sections predominated within the overall structure of the report.

20,<sup>336</sup> and the reality is that the drafters' motivation cannot be gleaned from examining the language of the document itself. The message itself is simply mixed.

On one hand, there is a decidedly business aspect to this section of the report. When read in context with the non-race sections of the report, it can easily be argued that the authors were motivated by only business concerns. First, acknowledging that baseball appeals to all racial groups, the Report immediately recognizes that African Americans have taken "great interest in baseball and [always have been] among the most loyal supporters of Professional Baseball."<sup>337</sup> The report then indicates that the people of America are primarily interested in an athlete's athletic prowess, rather than the color of the athlete's skin.<sup>338</sup>

The beginning of the next paragraph then relates the preceding to baseball's business interests.<sup>339</sup> "Baseball will jeopardize its leadership in professional sport if it fails to give full appreciation to the fact that the Negro fan and the Negro player are part and parcel of the game."<sup>340</sup>

Baseball, according to this report "is a private business enterprise. It has to depend on profits for its existence, just like any other business."<sup>341</sup> The Report points to the fact that Negro League teams rent playing space from major league ballparks, with the result that major league teams earn needed revenue from these rentals.<sup>342</sup> "The Yankee organization, for instance, nets nearly \$100,000 a year from rentals and concessions in connection with Negro league games at the Yankee Stadium in New York" and from minor league stadiums controlled by the Yankees.<sup>343</sup> Major

336. *Id.* at 18-20.

337. *Id.*

338. *Report, supra* note 318, at 18.

The history of American sport has been enriched by the performance of great Negro athletes who have attained the mythical All-American team in football; who have won world championships in boxing; and who have helped carry America to track and field victory in the Olympic games. Fifty-four professional Negro baseball players served with the Armed Forces in this war – one player was killed and several wounded in combat

*Id.*

Jackie Robinson's older brother Mack, finished second to Jesse Owens in the 1936 Olympic Games in Berlin, games in which Owens won four gold medals. FALKNER, *supra* note 12, at 35-36. Mack Robinson apparently believed that he, not Owens, should have won the 200. *Id.*

339. *Id.*

340. *Report, supra* note 318, at 18.

341. *Id.* at 18. As noted, baseball had been integrated prior to the Civil Rights Cases. It was only at that point that baseball, as well as other enterprises, became truly private for the purpose of permissive racial discrimination.

342. *Id.*

343. *Report, supra* note 318, at 19. Specifically mentioned were Yankee-controlled stadiums in Newark, Kansas City, and Norfolk. *Id.*

league owners, then, did not want to give up the revenue they were already receiving from the ongoing existence of the Negro leagues.<sup>344</sup> “Club owners in the major leagues are reluctant to give up revenues amounting to hundreds of thousands of dollars every year. They naturally want the Negro leagues to continue.”<sup>345</sup> At this point, the Report deals with two different financial issues. First, the Report recognizes the business interests of Negro League owners in writing that baseball “is a business in which Negroes, as well as Whites, have substantial investments in parks, franchises, and players contracts.”<sup>346</sup> The report points out that major league owners could not sign players who were under contract to Negro League teams and notes that “[t]his is not racial discrimination. It’s simply respecting the contractual relationships” within the Negro Leagues.<sup>347</sup> Second, the Report also purports concern for the financial status of white owners in the event of reintegration.<sup>348</sup> Referring directly to Jackie Robinson, the Report notes that attendance of African American fans had increased in all venues in which Robinson performed.<sup>349</sup> “The percentage of Negro attendance at some games at Newark and Baltimore was in excess of 50%.”<sup>350</sup> This obviously concerned the committee members writing the report: “A situation might be presented, if Negroes participate in Major League games, in which the preponderance of Negro attendance in parks such as the Yankee Stadium, the Polo Grounds and Comiskey Park could conceivably threaten the value of the Major League franchises owned by these Clubs.”<sup>351</sup>

In historical hindsight, it is easy to dismiss these latter statements particularly as racially motivated. Racial motivation is certainly evident in light of the paragraph which follows, one that appears steeped in racially discriminatory justifications for then-existing practice.<sup>352</sup> It notes that the major league player needs more than “natural ability.”<sup>353</sup> He must possess the technique, the co-ordination, the competitive aptitude, and the discipline, which is usually acquired only after years of training in the minor

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344. *Id.*

345. *Report, supra* note 318, at 19-20.

346. *Id.* at 18. Both the Negro Leagues and the National and American Leagues had grown while they remained separate. *Id.* Because the Negro Leagues were separate, there was no “reserve” rule prohibition against signing Negro League players. *Id.*

347. *Id.* at 20.

348. *Id.* at 18.

349. *Report, supra* note 318, at 18-19.

350. *Id.* at 18.

351. *Id.* The three baseball parks mentioned were in baseball two largest cities, Yankee Stadium and the Polo Grounds in New York and Comiskey Park in Chicago. *Id.*

352. *See id.* at 19.

353. *Report, supra* note 318, at 19.

leagues.”<sup>354</sup> The Report then notes that most major leaguers average seven years of minor league experience and then apparently takes direct aim at Negro League baseball: “The young Negro player never has had a good chance in baseball.”<sup>355</sup> The paragraph concludes attempting to justify history’s discriminatory practice by quoting Sam Lacy, an influential African American sports reporter:<sup>356</sup> “I am reluctant to say that we haven’t a single man in the ranks of colored baseball who could step into the major league uniform and disport himself after the fashion of a big leaguer.”<sup>357</sup>

The report also takes exception to those who would criticize the racially discriminatory nature of organized baseball.<sup>358</sup> It seems likely that it is this portion of the report to which people like Rickey in his 1948 Wilberforce speech and Commissioner Chandler later made reference. The Report refers to “social-minded drum-beaters” that have conducted negative campaigns attempting to force organized baseball to reintegrate.<sup>359</sup> It claims that these people or groups “charge that baseball is flying a Jim Crow flag at its masthead.”<sup>360</sup> The report then indicates that these critics “are simply talking through their individual or collective hats.”<sup>361</sup>

The report also appears sympathetic to both Negro League Baseball, its owners and supporters. It notes that some 400 players are “under contract to the 24 clubs in 4 Negro leagues,” and notes that Negro league baseball is a \$2 million business.<sup>362</sup> “If the major leagues . . . raid these

354. *Id.*

355. *Id.* No mention is made of the fact that Organized Baseball had been closed to these players. *Id.*

356. Lacy was a sports reporter for the African American newspaper in Baltimore. Curtis Bunn, *Majors Still Not Truly Open to Blacks—Troubling Numbers: The Percentage of Black Players Continues to Decline as the Sport Faces Diminished Opportunities in Black Communities*, THE ATLANTA CONSTITUTION, June 8, 1997. Lacy was also a tireless crusader in the movement to integrate baseball. TYGIEL, *supra* note 3, at 41-42. Lacy’s name is also spelled “Lacey” in some locations. It is spelled here as it appears in *Baseball’s Great Experiment and Invisible Men*. See TYGIEL, *supra* note 3; ROGOSIN, *supra* note 15, at 89.

357. *Report, supra* note 318, at 19: ““There are some among our league players who might possibly excel in the matter of hitting or fielding or base-running. But for the most part, the fellows who could hold their own in more than one of these phases of the game, are few and far between—perhaps nil.”” *Id.*

358. *See id.* at 18.

359. *Id.*

360. *Id.*

361. *Report, supra* note 318, at 18. The Report similarly rejects the view that “racial discrimination is the basic reason for failure of the major leagues to give employment to Negroes.” *Id.*

362. *Id.* at 19.

One club, the Kansas City Monarchs, drew over 300,000 people to its home and road games in 1944 and 1945. Over 50,000 people paid \$72,000 to witness the East-West game at the White Sox Stadium in Chicago. A Negro league game established the all-time attendance record at Griffith Stadium in Washington.

*Id.*

leagues and take their best players—the Negro leagues will eventually fold up—the investments of their club owners will be wiped out—and a lot of professional Negro players will lose their jobs.”<sup>363</sup>

Contrary to some historical records, the Report does not criticize Branch Rickey for his signing of Jackie Robinson.<sup>364</sup> It notes that actions like those of Rickey “may exert tremendous pressures upon the whole structure of Professional Baseball, and could” lower the value of some of its franchises.<sup>365</sup> But the report then indicates that the “Committee does not desire to question the motives of any organization or individual who is sincerely opposed to segregation or who believes that such a policy is detrimental” to organized baseball.<sup>366</sup>

Concluding, the Report does not make any recommendations regarding African Americans and baseball, but simply summarizes its mixed message. The report notes that the issue of race and baseball “is an overall problem which virtually affects each and everyone of us—and that effort should be made to arrive at a fair and just solution—compatible with good business judgment and the principles of good sportsmanship.”<sup>367</sup>

On the basis, then, of the mixed message the Report provides on the issue of race, is there a way to determine whether, when it finally decided to reintegrate in the post-Jackie Robinson years, organized baseball’s motivation was business or moral? The historical record, coupled with baseball’s history, gives us the answer.

#### IX. THE PLAYERS AND THEIR COST TO ORGANIZED BASEBALL TEAMS<sup>368</sup>

While it has been alleged that major league baseball teams “stripped

363. *Id.* at 19. This was a very prophetic statement. Without the best African American players, “the Negro Leagues collapsed almost immediately.” RIBOWSKY, *supra* note 4, at 296. At least one author notes that African Americans also thereby gave up “any chance of black people ever having say-so in how pro baseball is run.” Jason Whitlock, *Celebration Distorts Story of Robinson*, THE KANSAS CITY STAR, Apr. 16, 1997, available at 1997 WL 3010655.

364. See TYGIEL, *supra* note 3, at 80. Rickey was also seen “as the real villain among the millions of white baseball fans who were enraged over blacks getting to play ‘their’ big-league game.” Godfrey Sperling, *As We Honor Robinson, Let’s Salute Rickey, Too*, CHRISTIAN SCIENCE MONITOR, Apr. 29, 1997, available at 1997 WL 2800808.

365. *Report*, *supra* note 318, at 20.

366. *Id.* This almost reads like an admission that baseball is racially discriminatory.

367. *Id.*

368. The term “Organized Baseball,” was defined in Seymour’s *Baseball: The Golden Age*, as being the professional baseball structure existing after 1900 dominated by two major leagues and a host of minor leagues organized by classification. SEYMOUR, *supra* note 35, at 6. These leagues made up a “vertically integrated combine” regulated by internal agreements between and among them. Use of the term “Organized Baseball,” is not intended to suggest that the Negro Leagues were not organized.

the black teams of their best players and didn't pay the [Negro American League] or the [Negro National League] owners a dime,"<sup>369</sup> the actually available data tends to suggest otherwise. Indeed, it is not the lack of compensation that provides interest today, but instead the amount of the compensation paid to the Negro League team.

By 1954, Major League owners had to pay \$15,000 to draft a player from the Pacific Coast League, \$10,000 to draft a player from a AAA league, and \$7,500 to draft a player from a AA league, \$6,000 from a B league and \$4,000 from a class C league.<sup>370</sup> In addition, a major league club could draft only one player for that price from any of these leagues.<sup>371</sup> For any other player, a major league team would have to pay the market price.

The Negro Leagues, however, were not a part of organized baseball.<sup>372</sup> Particularly following the election of Judge Landis, it seemed clear that neither Negro League teams nor individual players would join organized baseball.<sup>373</sup> Because they were not part of organized baseball, however, the Negro Leagues were not part of the National Agreement and were thus not subject to the draft and option limitations imposed on members. As a result, once racial reintegration started following the signing of Jackie Robinson, and particularly in light of the Major League position that it did not want to tamper with contracts between the Negro Leagues and its players, it would be logical to assume that Major League teams would pay compensation to Negro League teams in the same fashion as the Majors had done in the heyday of the Minor Leagues when journeyman players like pitcher Jack Brantley and second baseman Max Bishop brought their minor league owner \$72,500 and \$25,000, respectively.<sup>374</sup>

369. PATRICIA C. MCKISSACK & FREDRICK MCKISSACK, JR., *BLACK DIAMOND: THE STORY OF THE NEGRO BASEBALL LEAGUES* 142 (Scholastic, Inc. 1994).

370. See *supra* notes 56-61 and accompanying text.

371. See GREGORY, *supra* note 56, at 75.

372. The impetus for segregation within the private enterprise of organized may have been the *Civil Rights Cases*, 109 U.S. 3 (1883). See Devine, *supra* note 16, at 506-508. Author Mark Ribowsky starts his account of Negro League Baseball with 1884, the year following the *Cases*. See RIBOWSKY, *supra* note 4.

At various times in their history, the Negro Leagues attempted to ready themselves in the event entire league teams were asked to join the major leagues. "We have to be ready when the time comes," Negro League pioneer Andrew "Rube" Foster once reportedly told other league owners. ASHE, *supra* note 2, at 24.

373. See ASHE, *supra* note 2, at 23. To assure that there was no intermingling of the major leagues with the Negro Leagues, Landis at one point banned major league players from playing "in bush league games in the offseason." RIBOWSKY, *supra* note 4, at 98.

374. SULLIVAN, *supra* note 23, at 80, 82. These sales took place in 1921 and 1924, respectively. *Id.* It would therefore be logical to believe that prices for similarly ranked Negro League players would actually be higher.

The fact is that Negro League players did not attract anywhere near the compensation that non-draft-eligible minor league players attracted. The following is a list of Negro League players who moved from the Negro Leagues to the Major or high Minor Leagues from 1945–1952, the period of reintegration of major league baseball. Also listed are the organized baseball team that purchased the former Negro League player and the compensation paid to the Negro League team for that purchase.

PLAYER	NEGRO LEAGUE TEAM	COST OF PURCHASE (YEAR)	MAJOR/MINOR LEAGUE TEAM
Jackie Robinson	Kansas City	\$0 (1945)	Brooklyn (NL) <sup>375</sup>

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Bentley pitched from 1913-1916 with Washington, then from 1923-25 with the New York Giants, 1926 with the Philadelphia Phillies and returned to the Giants for the end of the 1926 and 1927 seasons. NEFT & COHEN *supra* note 142, at 250. He had a career record of 46-34 in 138 games, with 9 saves. *Id.*

Bishop, an infielder, played from 1924-1933 with the Philadelphia A's, then 1934 and 1935 with the Boston Red Sox. *Id.* He amassed 1216 hits in 1338 games for a lifetime .271 batting average. *Id.* at 231.

375. MCKISSACK & MCKISSACK, *supra* note 369, at 148. The Monarchs did not have written contracts with any of its players. *Id.* When Major League teams began to talk to these ballplayers, Negro League owners did not want to prevent players from moving to the major leagues and therefore did not complain about receiving no compensation. *Id.* Robinson's story is magnificently chronicled in Tygiel's *Baseball's Great Experiment: Jackie Robinson and his Legacy*. See TYGIEL, *supra* note 3. Robinson batted .311 from 1947-1956 with the Dodgers. He was named Rookie of the Year in 1947 and National League Most Valuable Player in 1949. He was inducted into the Baseball Hall of Fame in 1962, although receiving only 124 of 160 votes (Bob Feller, inducted the same year, received 150 votes). NEFT & COHEN, *supra* note 142, at 332, 628, 661, 662.

PLAYER	NEGRO LEAGUE TEAM	COST OF PURCHASE (YEAR)	MAJOR/MINOR LEAGUE TEAM
Roy Campanella	Baltimore	\$0 (1945)	Brooklyn (NL) <sup>376</sup>
Don Newcombe	Newark	\$0 (1945)	Brooklyn (NL) <sup>377</sup>
Dan Bankhead	Birmingham	\$15,000 (1947)	Brooklyn (NL) <sup>378</sup>

376. Campanella was the son of a Caucasian Mother and an African American Father who grew up playing sports on integrated teams in integrated schools in Philadelphia. LARRY MOFFI & JONATHAN KRONSTADT, *CROSSING THE LINE: BLACK MAJOR LEAGUERS 1947-1959* 27 (McFarland & Co. 1994). He began playing with the Negro League Baltimore Elite Giants at age 16 in 1937 and from 1940-1945 hit over .300 for the Giants. *Id.* Campanella misinterpreted Branch Rickey's intentions and thought that Rickey wanted him for a new Negro League that Rickey was contemplating. *Id.* at 28. Campanella turned down Rickey's offer of employment only to learn later from Jackie Robinson that Rickey actually wanted Campanella to play for the White Dodgers. *Id.* Because he was age 25 and older than most minor leaguers, because he had played on integrated teams, and because of his leadership, Campanella served as manager of the Dodger's Nashua, N.H. minor league team whenever manager Walter Alston was thrown out of a game. *See id.* at 27-29. *See also* John I. Johnson, *Sport Light: Fans Differ With Klansmen*, KANSAS CITY CALL, Jan. 28, 1949, at 8.

Campanella began his full-time catching duties with the Dodgers in 1949. *Id.* at 30. From then through 1957, Campanella was the regular Dodger catcher and the Dodgers won five National League championship and one World Series. *Id.* at 27. Campanella was National League MVP in 1951, 1953, and 1955. *See id.* at 30. He was paralyzed in an automobile accident following the 1957 season and did not accompany the Dodgers to Los Angeles. *See id.* at 31. He was elected to the Baseball Hall of Fame in 1969. NEFT & COHEN, *supra* note 142, at 628.

377. *See* RIBOWSKY, *supra* note 4, at 285. Newcombe was the National League Rookie of the Year in 1949. NEFT & COHEN, *supra* note 142, at 662. His career record from 1949-1960 with the Dodgers, Cincinnati Reds and Cleveland Indians was 149-90 with 1129 strikeouts and an earned run average of 3.56. *See* MOFFI & KRONSTADT, *supra* note 376, at 47.

378. MOFFI & KRONSTADT, *supra* note 376, at 11. The \$15,000 paid to the Black Barons for Bankhead was reported to be "the highest price paid for a black player's contract in 1947." *Id.* Because the Dodgers needed pitching, Bankhead was rushed directly to the Major League roster of the Dodgers with no minor league work. *Id.* at 12. The result, in 1947, was that Bankhead pitched 10 innings, but gave up 15 hits and 8 walks while striking out 6. *Id.* at 13; NEFT & COHEN, *supra* note 142, at 272. In 1948 and 1949, Bankhead pitched impressively for the Class B Nashua team and the Class AAA St. Paul team, proving that he belonged at least at that level. MOFFI & KRONSTADT, *supra* note 376, at 12. Bankhead was back with the Major League Dodgers in 1950 and 1951 compiling a major league record of 9 wins and 5 losses. NEFT & COHEN, *supra* note 142, at 336.

In addition to Bankhead, Larry Doby was purchased by the Cleveland Indians for a reported \$15,000. Doby is discussed *infra*, note 379. Two other players were reportedly purchased from Negro League teams in 1947. They are not included in the listings in the text, because research was unable to indicate the exact amount that was paid to their Negro League team for their contract. They are mentioned here, however, because of Moffi & Kronstadt's statement that the \$15,000 paid for Bankhead was the largest amount paid in 1947. Both Willard Brown and Hank Thompson were purchased by the St. Louis Browns from the Kansas City Monarchs in July, 1947. *See id.* at 13, 23.



PLAYER	NEGRO LEAGUE TEAM	COST OF PURCHASE (YEAR)	MAJOR/MINOR LEAGUE TEAM
Larry Doby	Newark	\$15,000 (1947)	Cleveland (AL) <sup>379</sup>
Monte Irvin	Newark	\$5,000 +/- (1948)	New York (NL) <sup>380</sup>
Sam Jethroe	Cleveland	\$5,000 (1948)	Brooklyn (NL) <sup>381</sup>

379. The report indicates that the Eagles were paid \$10,000 outright for Doby, plus another \$5,000 for remaining with the Indians for 60 days. *Id.* Doby was the first African-American to play in the American League and, along with Satchel Paige, the first African American to play on a World Series winning team, the 1948 Cleveland Indians. *See* MOFFI & KRONSTADT, *supra* note 376, at 15. Doby compiled a lifetime batting average of .283 from 1947-1959 in 1533 games with the Indians, Chicago White Sox and Detroit Tigers. *Id.* at 17. He was elected to the Baseball Hall of Fame in 1998. *See* OFFICIAL MAJOR LEAGUE BASEBALL FACT BOOK 240 (R. Smith, ed., The Sporting News 1999 ed. 1999). *See also* KANSAS CITY CALL, July 11, 1947.

380. MOFFI & KRONSTADT, *supra* note 376, at 40. The \$5,000 figure may not be entirely accurate but is likely close. *Id.* The Dodgers owned the rights to Irvin while Irvin was playing with the Newark Eagles. *Id.* The Dodgers, however, refused to pay the Eagles' asking price of \$5,000 for Irvin's contract. *Id.* The Dodgers gave up their rights to Irvin's contract in 1949 and the Giants paid the Eagles' asking price. *Id.* It is unlikely that this asking price was much greater than the asking price had been when the Dodgers owned these rights.

Irvin went on to become a Hall of Famer, batting .293 in 764 games for the Giants from 1949-1955 and the Cubs in 1956. *Id.* He was elected to the Hall of Fame by the Special Committee on the Negro Leagues in 1973. NEFT & COHEN, note 142, at 329, 628.

381. MOFFI & KRONSTADT, *supra* note 376, at 50. The authors report that it was the success of former Negro League player Larry Doby with the Cleveland Indians that diminished attendance for the Negro League Cleveland Buckeye thereby causing owner Ernie Wright to sell Jethroe. *Id.* Jethroe was extremely successful playing for the Dodger's Montreal AAA team, but, by 1949, Dodger general manager Branch Rickey knew that Duke Snider was the Dodger centerfielder of the future. *Id.* As a result, Jethroe was sold to the Boston Braves for \$100,000. *Id.* Jethroe was named Rookie of the Year for 1950, but the toll of being the first African American to play in Boston, as well as nagging injuries, prevented him from a longer tenure in the major leagues. *See id.* at 50-52. He finished with a .261 batting average for 442 games from 1950-1952 with Boston and 1954 with Pittsburgh. NEFT & COHEN, *supra* note 142, at 329.

PLAYER	NEGRO LEAGUE TEAM	COST OF PURCHASE (YEAR)	MAJOR/MINOR LEAGUE TEAM
Minnie Minoso and Jose Santiago	New York Cubans	\$10,000+/- for the pair (1948)	Cleveland (AL) <sup>382</sup>
"Satchel" Paige	Kansas City	\$5,000 (1948)	Cleveland (AL) <sup>383</sup>
Luke Easter	Homestead Grays	\$10,000 (1949)	San Diego (PCL) <sup>384</sup>
James Pendleton	Chicago	\$7,500 (1949)	Brooklyn (NL) <sup>385</sup>

382. See *Cleveland Indians Buy Two More Players*, KANSAS CITY CALL, Sept. 3, 1948, at 18. It was reported that the New York Cuban Giants actually wanted \$25,000 for Minoso and Santiago, but settled for \$10,000 for the pair. *Id.*

Santiago pitched for pennant-winning minor league teams at Dayton, Wilkes-Barre and Dallas from 1949-1953. See MOFFI & KRONSTADT, *supra* note 376, at 121. When he was called up to the Indians in 1954, he predicted they too would win the pennant—and they did. Santiago, however, pitched in only 27 major league games for the 1954 and 1955 Cleveland Indians and the 1956 Kansas City A's. *Id.* at 122

Minoso, however, played major league baseball in five different decades, performing for the 1949 and 1951 Cleveland Indians, the 1951-1957 Chicago White Sox, the 1958-59 Indians, the 1960-61 White Sox, the 1962 St. Louis Cardinals, the 1963 Washington Senators, and the 1964, 1976 and 1980 Chicago White Sox. *Id.* at 44. His 17 year career batting average is .298 in 1841 games. *Id.* He led the American League in triples in 1951, 1954, and 1956, in doubles in 1957 and in hits in 1960. *Id.* at 44. His daring style of play made Minoso a popular player in Chicago when he joined the White Sox in 1951 and also increased attendance. *Id.* at 41-43. Chicago drew a record-setting 1,328,000 fans for the 1951 season. *Id.* at 43.

383. LEROY SACHEL PAIGE, *MAYBE I'LL PITCH FOREVER* 199 (Univ. of Nebraska Press 1993). Arthur Ashe indicates that Paige was "in a class by himself. He was simply the best known of all the players in black baseball before Jackie Robinson." ASHE, *supra* note 2, at 28

384. *The Chicago Defender* indicates that the Homestead Grays were paid \$5,000 for Easter and promised another \$5,000 if Easter stayed with the Padres for 60 days. *Marquez, Easter to Cleveland*, THE CHICAGO DEFENDER, Mar. 4, 1949, at 12. Easter was credited with helping integration in the Pacific Coast League go smoothly and quickly. *Id.* He batted .436 in his first 15 games in the league. *Id.* When he was injured later in the year, newspapers reported that his absence from the lineup cost owners \$200,000 in attendance revenues. MOFFI & KRONSTADT, *supra* note 376, at 37. The Padres had a working relationship with the Cleveland Indians and Easter was purchased by the Indians late in the 1949 season. He remained with Cleveland through the early part of the 1954 season, compiling a major league batting average of .274 in 1725 at bats over 491 games. *See id.* at 38-39.

385. See *Dodgers Buy Art Pendleton*, THE CHICAGO DEFENDER, Mar. 5, 1949, at 14. Pendleton was a shortstop who spent 1949-1952 in the Dodger minor league system because PeeWee Reese was a fixture at shortstop in Brooklyn. MOFFI & KRONSTADT, *supra* note 376, at 99. Pendleton was part of a six-player trade that sent him to the Milwaukee Braves in 1953 where he batted .299 in 120 games. *Id.* Thereafter, Pendleton was unable to maintain this average while remaining in Milwaukee for the 1954-1956 seasons. *Id.* He was traded to Pittsburgh in 1957 and to Cincinnati in 1959. After being out of baseball for 1960 and 1961, Pendleton was one of the original Houston Colt 45/s in 1962. *Id.* He finished with a career batting average of .255. *Id.* at 100.

PLAYER	NEGRO LEAGUE TEAM	COST OF PURCHASE (YEAR)	MAJOR/MINOR LEAGUE TEAM
Arite Wilson	Birmingham	\$15,000 (1949)	Cleveland (AL) <sup>386</sup>
Robert Boyd	Memphis	\$12,500 (1950)	Chicago (AL) <sup>387</sup>
Elston Howard	Kansas City	\$15,000 (1950)	New York (AL) <sup>388</sup>
Willie Mays	Birmingham	\$15,000 (1950)	New York (NL) <sup>389</sup>

386. MOFFI & KRONSTADT, *supra* note 376, at 69. Wilson was the object of competition between the Yankees and the Indians. *Id.* When the Indians signed Wilson, the Yankees accused Indians owner Bill Veeck of unethical conduct. *Id.* Ultimately, Baseball Commissioner Chandler ordered that Wilson be traded to the Yankees for Luis Marquez. *Id.* Wilson's major league career was limited to 19 games with the 1951 New York Giants during which he collected 4 hits and 2 stolen bases in 22 at bats. *Id.*; see also NEFT & COHEN, *supra* note 142, at 334.

387. *The Kansas City Call* of August 12, 1950, reported this sale. Boyd played in 1951 and in 1953-54 with the White Sox. He then played with the Orioles from 1956-1960 and with the Kansas City A's in 1961. He compiled a batting average of .293 in 1936 at bats splitting time between first base and the outfield. See NEFT & COHEN, *supra* note 142, at 287, 294, 298, 307, 326.

388. See AL HIRSHBERG, *BASEBALL'S GREATEST CATCHERS* 179 (G.P. Putnam's Sons 1966). In 1950, Tom Greenwade, who had scouted the Negro Leagues for Branch Rickey with the Dodgers, had become a scout with the New York Yankees. *Id.* After Howard batted .310 for the 1950 Kansas City Monarchs, Greenwade convinced the Yankees to sign Howard. *Id.* Howard would, of course, go on to be the first African American to play with the Yankees, after the team spent several years turning him from an outfielder to a catcher. MOFFI & KRONSTADT, *supra* note 376, at 134. While a number of critics saw the Yankees efforts as an attempt to avoid integration, Howard was willing to bide his time, catching as a backup to Hall of Famer Yogi Berra until 1961 when he first caught over 100 games in a season. *Id.* at 134-35. Howard was named American League Most Valuable Player in 1963 and was an American League All Star selection each year between 1957 and 1965. *Id.* He became the Yankee's first Black coach in 1969, but was never given an equal opportunity at managing the team. *Id.* at 135. Howard batted .274 in 1605 games between 1955 and 1968 for the Yankees and the Boston Red Sox. He also appeared in 54 World Series games. *Id.* at 136.

389. MCKISSACK & MCKISSACK, *supra* note 369, at 150. Another source indicates that Mays received \$6,000 of this money as a signing bonus, while the Black Barons received \$9,000. See CHICAGO DEFENDER, July 1, 1950. For Mays' own account of his short career in the Negro Leagues, see WILLIE MAYS & LOU SAHADI, *SEY HEY: THE AUTOBIOGRAPHY OF WILLIE MAYS* 29-44 (Simon & Schuster 1988). Mays played from 1951-1972 with the Giants in both New York and San Francisco and ended his career in 1972-1973 with the New York Mets. He batted .302 with a slugging average of .557 in 2992 games. NEFT & COHEN, *supra* note 142, at 414, 651-53. He had 3283 hits (9<sup>th</sup> all time) and 660 home runs (3<sup>rd</sup> all time). *Id.* He is 5<sup>th</sup> all time in runs scored, 7<sup>th</sup> all time in runs batted in, 6<sup>th</sup> all time in games played and number of career at bats, 4<sup>th</sup> all time in extra base hits, and 3<sup>rd</sup> all time in total bases. See. He was the National League Rookie of the Year in 1951 and the league's Most Valuable Player in 1954 and 1965. *Id.* at 661-62. He was elected to the Baseball Hall of Fame in 1979. *Id.* at 629.

PLAYER	NEGRO LEAGUE TEAM	COST OF PURCHASE (YEAR)	MAJOR/MINOR LEAGUE TEAM
Jehosie Heard and "Curley Williams"	Memphis	\$12,000 for the pair (1951)	St. Louis (AL) <sup>390</sup>
Ernie Banks and Bill Dickey	Kansas City	\$35,000 for the pair (1953)	Chicago (NL) <sup>391</sup>
Tom Alston	Porterville <sup>392</sup>	\$500 (1951/1952)	San Diego (PCL) <sup>393</sup>

Even to the casual observer, the way in which major league teams

390. *The Kansas City Call* reported the sale of Heard and Williams for \$12,000 on August 20, 1951. Heard became the first African American to play with the Baltimore Orioles in 1954 following their move from St. Louis. MOFFI & KRONSTADT, *supra* note 376, at 114. He pitched only 3 1/3 innings in his major league career, although he had previously posted a 20-12 record in the Class A Western International League. *Id.* There is no record of a "Curley" Williams in Moffi and Kronstadt. There is likewise no record of such a player in ASHE, *supra* note 2, at 118-193 (listing an all-time register of Negro League Players). Similarly, Williams is not mentioned in either McKissack & McKissack's, *Black Diamond: The History of the Negro Baseball Leagues* or Donn Rogosin's *Invisible Men: Life in Baseball's Negro Leagues*. See *supra* notes 369 and 15.

391. There is some controversy about the amount of money paid for "Mr. Cub," Ernie Banks. Authors Moffi and Kronstadt report the amount at \$35,000. MOFFI & KRONSTADT, *supra* note 376, at 85. This amount would reflect the bidding war that went on among the Chicago White Sox, the New York Yankees and the Cubs for Banks. Indeed, the White Sox and the Yankees were thought to be in a better position to sign Banks. *Id.* Baseball historian Jules Tygiel, in his *Baseball's Great Experiment: Jackie Robinson and his Legacy*, agrees that \$35,000 was the price paid for the pair. TYGIEL, *supra* note 3, at 293. In her history of the Kansas City Monarchs, however, Janet Bruce indicates the amount to be \$20,000. JANET BRUCE, *THE KANSAS CITY MONARCHS: CHAMPIONS OF BLACK BASEBALL* 119 (University of Kansas Press 1985). Bruce is citing from Banks' autobiography which agrees with the \$20,000 figure. See ERNIE BANKS & JIM ENRIGHT, *MR. CUB* 76 (Follet Pub. 1971). The most likely scenario is that \$35,000 was paid for the pair of players, with some official, or more likely unofficial, allocation between the two players of \$20,000 for Banks and \$15,000 for Dickey. *Id.*

Banks, of course, is a Hall of Famer, elected in his first year of eligibility in 1977. NEFT & COHEN, *supra* note 142, at 629. Banks played with the Chicago Cubs from 1953-1972 batting .274 with 512 home runs and 2,583 hits. MOFFI & KRONSTADT, *supra* note 376, at 87. He won the National League MVP award in both 1958 and 1959. NEFT & COHEN, *supra* note 142, at 661. Banks' individual success is made even more remarkable by the fact that the Cubs finished 5<sup>th</sup> in the eight-team National League in both years. *Id.* at 316, 320.

392. Porterville was in the Southwest International League, not a part of either the Negro American or National Leagues. Because Alston was the first African American signed by the St. Louis Cardinals, he is included here.

393. San Diego was not in the Major Leagues at the time Alston was signed by San Diego from the Porterville roster in either 1951 or 1952. What is to be noted, however, is that San Diego, a Pacific Coast League team, subsequently sold Alston in 1953, to the major league St. Louis Cardinals, for \$100,000. See MOFFI & KRONSTADT, *supra* note 376, at 108. Alston played in only 91 games from 1954-1957 with the Cardinals, batting .244 in 271 at bats. *Id.* at 109.

treated Negro League teams during this reintegration period seems obvious. The Negro Leagues were used as all-draft leagues, with major league teams never paying more than minor league-draft prices for any player. Consider this group of players from the perspective of minor league draft pricing:

Players Drafted at the Pacific Coast League price of \$15,000	Player Purchased by (Organized Baseball Team)
Dan Bankhead	Brooklyn Dodgers
Larry Doby	Cleveland Indians
Artie Wilson	Cleveland Indians
Elston Howard	New York Yankees
Willie Mays	New York Giants
Bill Dickey	Chicago Cubs <sup>394</sup>

Players Drafted at the AAA price of \$10,000	Player Purchased by (Organized Baseball Team)
Minnie Minoso	Cleveland Indians <sup>395</sup>
Luke Easter	San Diego (PCL)
Robert Boyd	Chicago White Sox <sup>396</sup>

Players Drafted at the AA price of \$7,500	Player Purchased by (Organized Baseball Team)
James Pendleton	Brooklyn Dodgers

Players Drafted between the A price of \$6,000 and the B price of \$4,000	Player Purchased by (Organized Baseball Team)	Amount
Satchel Paige	Cleveland Indians	\$5,000
Monte Irvin	New York Giants	\$5,000
Sam Jethroe	Brooklyn Dodgers	\$5,000
Johesie Heard and "Curley" Williams	St. Louis Browns	\$12,000 total

394. See *supra* note 391, as to the \$15,000 figure used for Dickey.

395. See *supra* note 382, as to the \$10,000 figure used for Minoso.

396. The price paid for Boyd was actually \$12,500, which is \$2,500 larger than the AAA figure. See *supra* note 60 and accompanying text.

In fact, only two of the listed players do not fit neatly into the “draft” pricing schemes then in use. One of those players, Tom Alston, purchased from Porterville of the Negro Leagues by San Diego of the PCL, was purchased for only \$500, below the draft price level.<sup>397</sup> The other player, Ernie Banks, was the object of a three-team bidding war.<sup>398</sup> It seems clear that the \$35,000 the Cubs actually paid to the Kansas City Monarchs<sup>399</sup> was not the first amount bid. Indeed, “[t]he [New York] Yankees and [Chicago] White Sox originally had the inside track on Banks since the [Kansas City] Monarchs played games in their stadiums, but Cubs general manager Wid Matthews would not take no for an answer.”<sup>400</sup>

It could, of course, be argued that organized baseball teams paid only as much as the Negro League teams demanded for these players and that it is only happenstance that the figures roughly match with then-existing draft prices.

Here, however, the difference between moral and financial decision takes on heightened importance. For Negro League players, owners and fans, the reintegration of major league baseball was a moral issue.

When Kansas City Monarchs co-owner Tom Baird learned that Branch Rickey had signed Jackie Robinson without paying any compensation to the Monarchs, he complained that Robinson had signed a contract for 1946 and threatened suit against Rickey.<sup>401</sup> Baird, who was white, as well as fellow White Monarch co-owner J.L. Wilkinson, were then both pilloried in the African American media allegedly for being “‘as selfish as any plantation owner’ for standing in the way of Robinson’s crusade.”<sup>402</sup> The mere signing of Robinson by White baseball apparently “‘transcended everything else at this particular time.’”<sup>403</sup>

For Major League owners, however, the issue was financial. When Newark Eagles’ owner Effa Manley hired an attorney to fight Branch Rickey’s signing of Monte Irvin without any compensation to the Eagles, Rickey told Irvin that the Dodgers were no longer interested. To get some

397. See *supra* notes 392-93.

398. MOFFI & KRONSTADT, *supra* note 376, at 85.

399. See *supra* note 391.

400. MOFFI & KRONSTADT, *supra* note 376, at 85.

401. See RIBOWSKY, *supra* note 4, at 283-84.

402. *Id.* at 284.

403. *Id.* Baird took back his threat to sue and Wilkinson issued a statement indicating there would be no protest to organized baseball’s commissioner Chandler. *Id.* at 285. Following the signing of Robinson and others without formal contracts with their Negro League teams, the Negro Leagues, in 1946, instituted formal contracts with each of their players. ROGOSIN, *supra* note 15, at 216. A copy of that contract can be seen in *Black Diamond*. MCKISSACK & MCKISSACK, *supra* note 369, at 143.

compensation for this future Hall of Fame player, Manley accepted \$5,000 from the New York Giants for her star, acknowledging that she “was glad to get it.” But she also apparently noted: “‘If he’d been white [the Giants would] have given me \$100,000.’” “‘It was a case of the strong taking advantage of the weak,’” she said.<sup>404</sup>

The fact was that major league owners knew they could purchase these players at financially attractive prices because of the Negro League players moral desire to racially reintegrate the majors. The financially minded major leagues thus took advantage of the morally minded Negro Leagues.

#### X. CONCLUSION, AND WHY MORALITY STILL MATTERS

Jackie Robinson racially reintegrated major league baseball on April 15, 1947<sup>405</sup> before a modest crowd of 26,623 at Brooklyn’s Ebbets Field.<sup>406</sup> Fifty years later, on April 15, 1997, over 54,000 baseball fans, including the President of the United States, the then acting Commissioner of Baseball, and Jackie Robinson’s wife Rachel<sup>407</sup> jammed New York’s Shea Stadium to commemorate the event.<sup>408</sup>

The focus of the fiftieth anniversary gathering was the moral justness of Robinson’s actions. President Clinton reportedly told the crowd that the entry of Jackie Robinson into a major league game “‘changed the face of baseball and America forever. . . . He showed us that America can be a better, stronger and richer country when we all work together.’”<sup>409</sup> Then acting baseball commissioner Bud Selig chimed in apparently noting that: “‘Major League Baseball operates under the notion that no single player is

404. ROGOSIN, *supra* note 15, at 216-217. Rickey reportedly leaked the story to the press and Mrs. Manley was criticized for preventing her players from moving to organized baseball. MCKISSACK & MCKISSACK, *supra* note 369, at 144.

405. RIBOWSKY, *supra* note 4, at 296.

406. FALKNER, *supra* note 12, at 163. Robinson went hitless in the game but his sacrifice bunt in the latter part of the game was misfielded by the Braves first baseman whose wild throw hit Robinson in the back allowing Robinson to advance to second and another runner to advance to third. *Id.* Robinson scored on a Pete Reiser double and the Dodgers won 5-3. *Id.* Others have characterized the crowd attending the game as a “large” one. Robinson himself apparently remembered the crowd as being “‘an overflow’” one. RAMPERSAD, *supra* note 286, at 169.

407. Rachel Robinson had also attended the 1947 major league debut of her husband. RAMPERSAD, *supra* note 286, at 168-69. The Robinsons had been living in a Manhattan hotel following the 1947 spring training, with their son Jackie, Jr. Mrs. Robinson found it difficult to convince a taxi cab to take her all the way out to Brooklyn to attend the game. *Id.* There is no evidence that Mrs. Robinson had any difficulty finding a ride to the 50<sup>th</sup> anniversary game.

408. Jon Gelberg, ‘*A night for everyone*’ *The Fans, the Players and the President Honor the Legacy of Jackie Robinson*, THE NEWARK STAR LEDGER, Apr.16, 1997, available at 1997 WL 8063812; Lawrence Rocca, *Mets 5 Dodgers 0. They Came to Shea Stadium Last Night to Celebrate . . .*, THE NEWARK STAR LEDGER, Apr.16, 1997, available at 1997 WL 8063842.

409. Gelberg, *supra* note 408.

bigger than the game. . . . No one except Jackie Robinson.”<sup>410</sup> The commissioner called Robinson’s reintegration “the most powerful and important event that ever took place in baseball history. The social ramifications are just enormous.”<sup>411</sup> Commissioner Selig then reportedly added: “We have to honor his legacy in our deeds.” Selig permanently “retired” Robinson’s uniform number 42 from use by any major league team, with the exception of those players already wearing it. Finally, Selig noted that baseball had “gone far” in dealing with issues of race but that “[w]e still have a long way to go.”<sup>412</sup>

From all outward signs, the Robinson Fiftieth Anniversary celebration was designed to prove that organized baseball understood both the social importance in dealing with race and baseball’s social consciousness in that regard.

Outward signs were evidently deceiving.

One year later, on April 15, 1998, “[t]he day came and went and no one bothered to notice. There were no ceremonies. No tributes by baseball. No speeches by President Clinton.”<sup>413</sup>

Don Newcombe, himself a recruit from the Negro Leagues,<sup>414</sup> and a teammate of Robinson on the Dodgers through much of the early and middle 1950’s, noticed the lack of follow-through of Robinson’s historic achievement: “There wasn’t one word about it, not a single mention, like it’s all forgotten. . . . It’s like everything that happened last year was wasted. And you know what? We won’t hear another about it again until the 75<sup>th</sup> anniversary, or maybe the 100th.”<sup>415</sup> Newcombe noted that organized baseball teams were now building baseball academies in places like the Dominican Republic trying to convince Latin players to come to America to play.<sup>416</sup> He also noted the efforts of major league teams to go

410. *See id.* President Clinton also evidently indicated that Robinson had “scored the go-ahead run” during his opening day game. *Id.* This is incorrect as the runner who scored ahead of Robinson on Reiser’s double would have untied the score and would therefore have been the go-ahead run.

411. Editorial, *Baseball Pioneer Courageous Robinson Broke Color Barrier*, THE COLUMBUS DISPATCH, Apr. 19, 1997, available at 1997 WL 7357608.

412. *See* Gelberg, *supra* note 408.

413. Nightengale, *Newk toCscouts: Start at Home*, BASEBALL WEEKLY, Apr. 22, 1998, available at 1998 WL 8645138.

414. He was with Robinson on the Dodgers from 1949-1951 and, after military service, from 1954-1956. NEFT & COHEN, *supra* note 142, at 341.

415. NIGHTENGALE, *supra* note 413.

416. Kuwada, *supra* note 267. The Dodgers continue to be leaders in the movement to recruit players from such sources, having built “baseball fields in Tianjin, China, Managua, Nicaragua, and . . . Dublin, Ireland. *Id.* This method of recruiting players is not without controversy as evidenced by the fine the team was required to pay as a result of the signing of Adrian Beltre prior to his 16<sup>th</sup> birthday. *Nothing New—Lasorda: Teams Signed 50 Illegal Players*, at <http://www.foxposts.com.baseball.html>. (last visited Nov. 16, 1998). Beltre was a product of the



to Japan and Korea to recruit players. While Newcombe acknowledged that major league baseball had started some inner city recruiting programs, he also indicated that "if the industry really wanted to make a full-fledged commitment, teams would start building baseball academies in their own cities."<sup>417</sup>

What Don Newcombe did not directly point out, in his angst over baseball's apparent loss of conscience in just one year, was the obvious. While organized baseball was willing to spend \$4 million in two inner city programs,<sup>418</sup> it seems only logical to assume that the long term cost of building baseball academies in most foreign countries would be considerably less than those same costs would be in the United States. Organized baseball points to the infeasibility of building programs in the United States.<sup>419</sup> But lack of feasibility almost certainly includes a heavy financial component.

Major league baseball has acted shocked at racially offensive comments including those made in 1987 by Dodger executive Al Campanis and those first revealed in 1992 as having been made previously by Cincinnati Reds owner Marge Schott.<sup>420</sup> Public shock, however, did not

Dodgers' Campo Las Palmas in the Dominican Republic. The Dodgers were required to close this facility for one year. *Dodgers fined for signing young Beltre*, ESPN.com news services, December 21, 1999 (on file with the law review). The Dodgers claimed that the signing of Beltre was nothing new and alleged that at least 50 players playing in the major leagues had been illegally signed. *Id.*

417. Nightengale, *supra* note 413.

418. *Id.*

419. *Id.*

420. Celebrating the 40<sup>th</sup> anniversary of Jackie Robinson entry into Major League baseball, Los Angeles vice president Al Campanis indicated that it was not prejudice that kept African Americans from executive level baseball jobs. "I truly believe that they (blacks) may not have some of the necessities to be, let's say, a field manager, or perhaps a general manager." *Nightline's* interviewer and host Ted Koppel was incredulous, but let Campanis go forward: "How many quarterbacks do you have? How many pitchers do you have that are black? Why are black men, or black people, not good swimmers? Because they don't have the buoyancy." Clarence Page, *Going to Bat for Affirmative Action*, CHICAGO TRIBUNE, Apr. 12, 1987, available at 1987 WL 2946073. See also Thomas Boswell, *Commentary: It's Certainly Baseball's Ugliest and Most Secret Scandal*, LOS ANGELES TIMES, Apr. 19, 1987, available at 1987 WL 2189050. Campanis had, in fact, been the other half of the Montreal Royals double play combination, playing shortstop to Robinson's second base. See TYGIEL, *supra* note 3, at 125. Campanis stuck up for Robinson when Robinson was early confronted by racial prejudice. See *id.* at 134.

In 1991, Cincinnati Reds controller Tim Sabo was discharged by the Reds. Sabo sued the Reds, claiming discriminatory practices in hiring and firing. During pretrial discovery, depositions by Reds' employees indicated that Reds' owner Marge Schott used derogatory comments against Jews and African Americans, reportedly calling players Dave Parker and Eric Davis her "million dollar niggers." *Sports Talk*, THE INDIANAPOLIS NEWS, Nov. 18, 1992, available at 1992 WL 5988804; *Schott's Remarks Spark Debate*, Nov. 24, 1992, available at 1992 WL 8202589. Schott admitted keeping a swastika arm band in her home. *Schott's Remarks Spark Debate*, *supra*. Later, Sharon Jones, a former Oakland A's executive assistant, told baseball investigators that Schott

translate into action. In fact, at neither time did organized baseball seem overly anxious to move beyond hiring African Americans as players to hiring African Americans at the executive management level. At the time of Campanis' remarks, fifteen of twenty-six major league teams had no African American in executive level positions.<sup>421</sup> "Of perhaps 870 management jobs in baseball, blacks hold no more than 10."<sup>422</sup> At the time, within organized baseball's vast minor league system, only one minor league manager was African American.<sup>423</sup> At the same time, no major league team had either an African American manager or general manager.<sup>424</sup> These facts led the NAACP to threaten to disrupt organized baseball by "picketing parks and suing team owners who do not hire more blacks for top posts on and off the field." "The NAACP . . . sent telegrams to owners of all professional baseball teams asking for drafts of their affirmative action plans."<sup>425</sup>

Campanis, of course, was discharged by the Dodgers. Was the action by the Dodgers motivated by moral judgment or financial imperative?

As noted by one author, Campanis, "demonstrated how subtle and ingrained the levels of bias are in baseball."<sup>426</sup> Major league baseball was then forced to deny that Campanis spoke for the organization. Despite initially indicating they would not fire Campanis for his comments, baseball pointed to the fact that the Dodgers did in fact let Campanis go as proof of the fact that Campanis' remarks "were not representative of the team owners."<sup>427</sup> In reality, however, baseball "protesteth too much."<sup>428</sup> Organized baseball, faced with possible picketing by the NAACP made a scapegoat of Campanis for saying outloud what a lot of baseball officials privately thought.<sup>429</sup> Publicly, baseball tried to appease the NAACP by talking about how owners desired to improve the situation.<sup>430</sup> As one

slurred African Americans in a June, 1987 conference call "with representatives of all the major league clubs on the line." John Erardi, GANNETT NEWS SERVICE, Dec. 29, 1992, available at 1992 WL 9657764.

421. Boswell, *supra* note 420.

422. Dave Kindred, *To conquer racism, baseball must want to*, ATLANTA JOURNAL AND CONSTITUTION, Apr. 18, 1987, available at 1987 WL 5280588.

423. See Kindred, *supra* note 422. One other African American managed in an independent minor league in the Florida State League.

424. *Baseball's Barrier*, THE BOSTON GLOBE, Apr. 11, 1987, available at 1987 WL 3972377.

425. Alison Carper, *Blacks Threaten Sit-Ins, Suits To Open Baseball's Top Jobs*. NEWSDAY, Apr. 16, 1987 available at 1987 WL 2601507.

426. Boswell, *supra* note 420.

427. *Id.*

428. *Id.*; *Baseball's Barrier*, *supra* note 424.

429. *Baseball's Barrier*, *supra* note 424.

430. See Carper, *supra* note 425.

author noted, however, then baseball commissioner Peter Ueberroth had already been in office two years, had replaced almost all of the key management personnel in the commissioner's office and had not counted a single African American among those hires.<sup>431</sup> In short, when baseball's lack of morality was publicly displayed by Al Campanis, baseball executives knew they had to put an appropriate "spin" on their efforts.

What changed between the 1987 Campanis incident and the 1992 revelation of Schott's prior comments? Despite the commissioner's 1987 predictions for change, not much did. In Schott's own Cincinnati Reds organization, only one person in a front office staff of 45 was African American.<sup>432</sup> Similar statistics existed at the league level.<sup>433</sup> While 31% of the players were either African American or Hispanic, only 8% of baseball's front office staff were black and there were only three African American and two Hispanic managers of the 26 major league teams.<sup>434</sup> One baseball executive, Minnesota Twins President Jerry Bell indicated the Twins had made a "good faith effort to recruit minorities" between the two incidents.<sup>435</sup> The fact remained, however, that at the time of the Campanis remarks, the Twins listed 51 full time front office employees, only one of whom was African American.<sup>436</sup> Five years later, as the Marge Schott controversy swirled, the Twins also listed 51 full time front office employees, only one of whom was African American.<sup>437</sup> The situation was such that anti-Schott rallies were scheduled by the Reverend Jesse Jackson.<sup>438</sup> The NAACP believed that Schott should resign and two Reds minority owners believed she should be barred from life for her comments.<sup>439</sup>

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431. Leonard Koppett, *Baseball racism: The hypocrisy is hard to beat*, STAR-TRIBUNE NEWSPAPER OF THE TWIN CITIES, Apr. 15, 1987, available at 1987 WL 4912954.

432. See Charles Farrell, *Don't punish anyone: wake-up call was needed*, USA TODAY, Dec. 8, 1992, available at 1992 WL 8420425.

433. See *id.*

434. *Id.* In fairness, similar statistics existed for both the NBA and the NFL and for college athletics. See *id.*

435. Dennis Brackin, *Twins defend minority hiring. Team officials call record misleading*, STAR-TRIBUNE NEWSPAPER OF THE TWIN CITIES, Dec. 8, 1992, available at 1992 WL 10467817.

436. *Id.*

437. *Id.*

438. Ross Newhan, *Committee to Investigate Schott Case-Baseball: The Angels Jackie Autry is among the four who will study the allegations of racism by the Reds' owner*, LOS ANGELES TIMES, Dec. 2, 1992, available at 1992 WL 2831852 (12/2/92).

439. See Newhan, *supra* note 438. Her conduct was likened to those of owners Fred Saigh of the Cardinals and William Cox of the Phillies both of whom were forced to divest themselves of ownership interests. No mention was made of the fact that Saigh had been convicted of tax evasion when he was forced out. See HELYAR, *supra* note 159, at 235. Compare Newhan, *supra* note \_\_\_ (referring to the Saigh matter as a "tax scandal.") Likewise no mention was made of the fact that Cox had been

Why was it necessary to discipline Schott? Owners did not need to eliminate racism in their midst, but instead needed to eliminate its appearance. "The main goal of Schott's fellow owners now is to avoid inviting legislative or judicial action that might eliminate their exemption from federal antitrust laws."<sup>440</sup> In short, organized baseball was forced to deal with Marge Schott for largely financial reasons.

The notion, as alleged by Commissioner Selig that baseball has "gone far" in dealing with race seems a tad overinclusive.

Has the situation changed? Consider the most recent example.

In December, 1999, *Sports Illustrated* magazine published an article about Atlanta Braves relief pitcher John Rocker.<sup>441</sup> During the 1999 National League Championship Series, Rocker's Braves faced the New York Mets.<sup>442</sup> Rocker had several run-ins with New York fans and was asked what his feelings might be if he played for a New York team.<sup>443</sup> He reportedly told *SI* that he "would retire first," and then gave an example of riding a subway to the ballpark: "Imagine looking like you're [riding through] Beirut next to some kid with purple hair next to some queer with AIDS right next to some dude who just got out of jail for the fourth time right next to some 20-year-old mom with four kids."<sup>444</sup> He also indicated that he did not like New York City much and told why: "The biggest thing I don't like about New York are the foreigners. . . . You can walk an entire block in Times Square and not hear anybody speaking English. Asians and Koreans and Vietnamese and Indians and Russians and Spanish people and everything up there. How the hell did they get into this country?"<sup>445</sup> As indicated by the *Sports Illustrated* reporter, "Rocker is rarely tongue-tied when it comes to bashing those of a race or sexual orientation different from his."<sup>446</sup> Rocker was suspended by baseball commissioner Bud Selig for 2 ½ months, fined \$20,000 and ordered to undergo

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found to be betting on Phillies games when he were forced to resign. See SPINK, *supra* note 111, at 282-284 (Thomas Y. Crowell Co., 1947). Compare Newhan, *supra* note \_\_ (referring to the Cox matter as a "gambling scandal").

440. Joe Lersky, *Why They Need to Hush Marge*, THE PLAIN DEALER CLEVELAND, OH, Dec. 7, 1992, available at 1992 WL 4309617.

441. Jeff Pearlman, *At Full Blast Shooting Outrageously from the Lip, Braves Closer John Rocker Bangs Away at his Favorite Targets: the Mets, Their Fans, Their City and Just About Everyone in it*, SPORTS ILLUSTRATED MAGAZINE, Dec. 27, 1999, available at 1999 WL 22048196 (12/27/99).

442. *See id.*

443. *See id.*

444. *Id.*

445. *See* Pearlman, *supra* note 441.

446. *Id.*

sensitivity training.<sup>447</sup> “Major League Baseball takes seriously its role as an American institution and the important social responsibility that goes with it,” were Commissioner Selig’s reported words in announcing the Rocker discipline.<sup>448</sup>

Was the handling of John Rocker a moral matter? No. Just as was the case in 1987 when at least one author criticized baseball for its hypocrisy in “expressing outrage at a condition they have silently tolerated for nearly 30 years”<sup>449</sup> in the handling of the Al Campanis incident, baseball’s true motive was now seen by the media in the handling of the Rocker matter. While Rocker’s statements were “[r]eprehensible,” “Major League Baseball’s public relations stunt response [was] nearly as bad,” is the way an Editorial in The Grand Rapids Press expressed its skepticism of baseball’s intentions.<sup>450</sup> ESPN’s baseball commentator Peter Gammons recognized Commissioner Selig’s actions as a “public relations move,” that would not likely withstand the filing of a grievance by the Major League Baseball Players’ Association.<sup>451</sup>

As was the case following the Campanis and Schott incidents, baseball’s words on morality spoke louder than its actions. Several months before Rocker’s comments, Major League Baseball lost its highest ranking African American executive when National League President Leonard Coleman resigned because he did not want to be a mere figurehead in a reshuffling of power in Commissioner Selig’s office, a restructuring that as of September, 1999 left “five white men at the top of baseball’s power structure.”<sup>452</sup> Thus, even when baseball hired Hall of Famer, and African American, Frank Robinson to be vice president in charge of baseball operations in February, 2000,<sup>453</sup> he only moved into the number three posi-

447. See Editorial, *Baseball’s Rocker Stunt*, THE GRAND RAPIDS PRESS, Feb. 3, 2000, available at 2000 WL 6634902. Selig had previously forced Rocker to undergo psychiatric testing. See *id.*

448. Bob Nightengale, *Baseball slams Rocker with one-month suspension*, BASEBALL WEEKLY, Feb. 2, 2000, available at 2000 WL 101655868. See also *Rocker Suspended From Action Until May 1*, ESPN.com NEWS SERVICES, Jan. 31, 2000. Rocker’s published comments, according to Commissioner Selig, reportedly constituted “a profound breach of the social compact we hold in such high regard.” *Id.*

449. Koppett, *supra* note 431.

450. Editorial, *Baseball’s Rocker Stunt*, *supra* note 447.

451. *Rocker suspended from action until May 1*, *supra* note 448. The Rocker suspension was cut in half, to 14 days, following an arbitration hearing. Rocker was allowed to report to Spring Training. See Ronald Blum, *Arbitrator cuts Robker’s suspension in half*, ASSOCIATED PRESS NEWSWIRES, Mar. 1, 2000. The fine was reduced from \$20,000 to \$500. See *Braves’ Rocker Gets Reduced Suspension*, CHICAGO SUN-TIMES, Mar. 2, 2000, available at 2000 WL 6671124.

452. *Diversity in Baseball Takes a Hit*, CHICAGO SUN-TIMES, Sept. 19, 1999, available at 1999 WL 6559329; George Mitrovich and John “Buck” O’Neil, *Baseball and Leonard Coleman*, THE KANSAS CITY STAR, Oct. 7, 1999, available at 1999 WL 2440357.

453. See Richard Justice, *Baseball Names F. Robinson VP*, THE WASHINGTON POST, Feb. 26,

tion in baseball's executive hierarchy, a net loss, by Blacks, of one position from having one of the number two League Presidents in Leonard Coleman.<sup>454</sup>

Further, when Coleman left the National League presidency in September, 1999, baseball had no African American general managers.<sup>455</sup> Despite the fact that Commissioner Selig had ordered teams to consider minority candidates for top management positions, the Commissioner refused to discipline the Detroit Tigers when the team interviewed no minority candidates and hired Phil Garner to be its field manager for the 2000 season. NAACP president Kweisi Mfume reportedly indicated that baseball continued to "condone by inaction" and that baseball had "lost a golden opportunity to set a new course."<sup>456</sup> As reportedly noted by Don Baylor, one of five African American managers to start the 2000 seasons, "there's still some places minority guys are saying they have absolutely no chance of being interviewed." As a result, says Baylor, "[b]aseball is the old guard" and has fallen behind sports such as football and basketball.<sup>457</sup>

For players, fans, and even for the general public of the United States, Jackie Robinson was a teacher. He taught them how individual civil rights could be achieved peacefully, with dignity; he taught lessons that were applied by civil rights leaders like Dr. Martin Luther King.<sup>458</sup> The ripple created by Robinson's peaceful methodology eventually caused President Kennedy to warn the country that race was a "moral issue" for the American people, one "as old as the Scriptures and . . . as clear as the American Constitution."<sup>459</sup> But for Major League baseball, the hiring of African

2000, available at 2000 WL 2287757; Peter Schmuck, *F. Robinson Batting 3<sup>rd</sup> in Baseball's Hierarchy; Ex-Oriole Promoted, in Charge of Discipline*, THE BALTIMORE SUN, Feb. 28, 2000, available at 2000 WL 4859313.

454. In fairness, baseball did promote two other minority executives at the same time as the Robinson hiring. Jimmie Lee Solomon was made senior vice president for baseball operations and Lou Melendez was named vice president of international baseball operations. See Justice, *supra* note 453.

455. *Diversity in Baseball Takes a Hit*, *supra* note 452. There were additionally only two women assistant general managers. *Id.*

456. David Goodman, *NAACP leader Mfume blasts baseball commissioner in Tigers race case*, ASSOCIATED PRESS NEWSWIRES, Feb. 17, 2000.

457. Dave Van Dyck, *Baseball 2000 Preview*, CHICAGO SUN TIMES, Mar. 28, 2000, available at 2000 WL 6675381.

458. See Devine, *supra* note 16, at 554-55. Dr. King told Brooklyn Dodger players Don Newcombe and Roy Campanella that they, as well as Robinson, had made King's job easier.

459. John F. Kennedy, *The Negro and the American Promise*, in 18 THE ANNALS OF AMERICA 152, 153 (Encyclopedia Britannica, Inc. 1976). On June 11, 1963, Alabama Governor George Wallace promised to block access to the University of Alabama to two African American students. He stepped aside at the last minute, allowing the two students, accompanied by federal troops, to enter the university. That night, President Kennedy addressed the American people.

American players was primarily a business decision. The Negro Leagues presented a golden opportunity for major league teams to shore up their post-World War II rosters with high quality talent<sup>460</sup> at minor league draft prices after years of dispute between major and minor league owners about the number of players who could be drafted from the minor leagues, after years of dispute between major and minor league owners about fair prices for the purchase of non-drafted players, after attempts to create a vertical monopoly with major league teams controlling all of their minor leagues, and after facing the wrath of the anti-monopolist Commissioner Landis.

As a result of the fact that morality was, at best, a secondary reason for reintegration in the first place, Major League Baseball today suffers from a lack of any moral vision in dealing with race. Major League Baseball rushes to judgment against pitcher John Rocker, owner Marge Schott, and executive Al Campanis, but continues executive hiring practices that lack racial substance and follow through.

And how is it known that business—rather than morality—drives Major League Baseball on the issue of race? Return to the fiftieth anniversary celebration of Jackie Robinson's entry onto the Brooklyn Dodgers, the moment Commissioner Selig has called "'baseball's proudest moment.'"<sup>461</sup> At that celebration in New York on April 15, 1997, on the big scoreboard at Shea Stadium was a large mural of Jackie Robinson's exploits on a baseball basepath, along with words of praise for his determination.

Under the mural, however, was the sponsor information: "'Budweiser salutes Jackie Robinson.'"<sup>462</sup> The facts are that Jackie Robinson did not drink and that his wife, Rachel, would not license beer advertising as part of the fiftieth anniversary celebration.<sup>463</sup>

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460. From 1947, when Jackie Robinson won the Rookie of the Year Award, nine of the next fourteen Rookies of the Year in the National League were African American. From 1949 when Jackie Robinson was named Most Valuable Player in the National League, ten of the next thirteen Most Valuable Players in the National League were African American. See NEFT & COHEN, *supra* note 142, at 661-62.

461. *1997 Baseball Roundup*, EBONY, June 1, 1997, at 68, available at 1997 WL 8755681.

462. News, *A misplaced tribute to Robinson*, THE STAR LEDGER, NEWARK, N.J., Apr. 16, 1997, 1997 WL 8063591. "He was the handsome, heroic giant of our youth, who taught us determination, taught us perseverance and, finally, taught us justice." *Id.*

463. Don Amore, *Windup . . . And the Pitch*, The Hartford Courant, Apr. 15, 1997, 1997 WL 2993875.

Some other entity, then, was reaping the financial benefit from Budweiser's commercialization of Robinson's achievements. Wonder who?<sup>464</sup>

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464. Prior to the Jackie Robinson celebration, attendance for the early games of 1997 was down in many cities. While cities like Baltimore, Seattle, Texas, Cincinnati, Atlanta, Houston and Los Angeles sold were sold out for opening day, cities like Toronto, Montreal and San Francisco were down. Overall attendance was up by 21% from 1996 in the American League and 3% in the National League, but that figure was deceiving. 1995 attendance had been down 20% from 1994, largely due to the prolonged 1994-1995 baseball strike. 1996 attendance was up only 6% from 1995. Tom Haudricourt, *Sports*, THE MILWAUKEE SENTINEL, Apr. 7, 1997, available at 1997 WL 4785708. As a result, a 21% increase in 1997 American League's attendance would have the league just 2% over the 1994 figures and a 3% increase in the National League attendance would still have that league 16% below the 1994 level. If the 54,000+ at Shea Stadium was an example, the Jackie Robinson anniversary would be very good for attendance. Other teams and entities apparently agreed, as can be seen from the promotional events set for other cities. See *50<sup>th</sup> Anniversary Marked Many Ways*, THE ARIZONA REPUBLIC, Mar. 30, 1997, available at 1997 WL 8352605.