

Outside the Lines

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Why is THAT Executive a Hall of Famer? Have You Seen His Leadership Stats?

By Steve Weingarden, Christian Resick (Florida International University) and Daniel Whitman (Florida International University)

With another Baseball Hall of Fame induction ceremony now complete, many ecstatic fans have witnessed their endorsed candidates immortalized in bronze. As always, fans will passionately debate whether or not those enshrined actually belong in the hall and will also grumble over which players were snubbed. When compared to their “player-debating” counterparts, those baseball fans passionately debating which executives should and should not be in the Hall of Fame are relatively less conspicuous. Perhaps some of this can be attributed to the fact that players are measured in so many statistical categories and can be compared easily while executive performance, in MLB, is not measured as closely.

From the Editor

The theme of this issue of *Outside the Lines* is Business of Baseball at SABR 36. Most of the presenters with topics involving the business of baseball at SABR 36 in Seattle have agreed to recast their presentations as articles for this and the fall issues of *Outside the Lines*.

The set of articles presented here from SABR 36 approach business of baseball from a number of disciplines—psychology, history, geography, American studies, law and statistics. They reflect the breadth of inquiry in our corner of baseball research. We thank each of the authors for their contribution to our understanding of the game.

The only piece not presented in Seattle is an analysis by Gary Gillette and Pete Palmer of interleague play and the MLB’s claims of its significant impact on attendance. Gillette and Palmer conclude that the boost is “mostly a mirage”—about 5 % when adjusted for time of year and day of week.

John Ruoff

Overall Transformational Leadership Average

Rank	Executive	Rating
1	Rube Foster	6.12
2	William Hulbert	5.88
3	Warren Giles	5.74
4	Bill Veeck	5.61
5	Branch Rickey	5.54
6	Clark Griffith	5.50
7	Tom Yawkey	5.25
8	Lee MacPhail	5.02
9	Larry MacPhail	4.92
10	Al Spalding	4.81
11	Ed Barrow	4.58
12	Charles Comiskey	4.48
13	George Weiss	4.19

*scale is 1-7, 1=strongly disagree and 7=strongly agree

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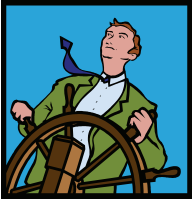
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Executive Leadership Stats (Continued from page 1)

To spark debate over Hall of Fame executives and the measurement of their performance, we presented a poster at the recent SABR convention in Seattle. The poster highlighted the leadership similarities and differences between the executives currently enshrined within the Hall of Fame. Only executives, and not pioneers, were included in our discussion because pioneers were arguably enshrined for different reasons than were executives.



Specifically, we assessed the Hall of Fame executives along several leadership attributes and used these ratings as a measure of executive leadership. Charlie Comiskey, Bill Veeck, Tom Yawkey ... who was the best at articulating a clear vision of the future? Who was most likely to provide special recognition for his employees? Might leadership measures be useful data for ranking executives for the Hall of Fame? If so, what leadership data would you reference to persuade others of your opinion regarding the best Hall of Fame executive ever?

Before going into detail about the measurement, here is a sneak peek of how the Hall of Fame executives rated in an overall leadership category.

The interesting and somewhat expected outcome of the chart above was that, at the SABR convention, different members were surprised by different portions of the chart. William Hulbert so high in the rankings? Bill Veeck isn't higher? Branch Rickey ranking as far down as fifth? Charles Comiskey near the bottom ... shouldn't he rank 14th or 15th?

Measuring Leadership for Hall of Fame Executives

The Hall of Fame executives were assessed along 28 behaviors contained in Podsakoff and colleagues' (1990) survey of transformational and transactional leadership. These 28 behaviors can be combined into 6 leadership attributes. The 6 leadership attributes are described in the box below.

Much research literature is devoted to the study of transformational and transactional leadership in organizations. In a nutshell, the body of research indicates a relationship between higher levels of transformational leadership and higher levels of organizational performance.

In order to rate the Hall of Fame executives on the aforementioned leadership behaviors, archival information was required. To retrieve content for the assessments, we conducted comprehensive searches and obtained relevant biographical information for each Hall of Fame executive. We collected information from multiple sources, including: (a) archives of the Sporting News, (b) local newspapers via

ProQuest, (c) local newspapers via on-site library searches (d) team histories commissioned originally by Putnam in the 1940s and 1950s and reissued by Southern Illinois University Press in the last several years (e) team encyclopedias published by Temple University Press and Sports Publishing LLC, and (f) selected books identified as having content specific to the Hall of Fame executives. A packet of information was created for each Hall of Fame executive, containing four to five different biographical pieces representing approximately 2,000-2,500 total words.

Transformational Leadership Behavior

- Identifying and Articulating a Vision – Behavior aimed at identifying new opportunities for the organization. Articulating a vision of the future and inspiring others with this vision
- Providing an Appropriate Model – Behaving in a manner that is consistent with the values the executive espouses and setting an example for other members to follow
- Fostering Acceptance of Group Goals – Promoting cooperation among employees and getting them to work together toward the vision/common goal
- Providing Individualized Support – Behaving in a manner that demonstrates respect for members of the organization, and demonstrating concern about their personal feelings and needs
- Intellectual Stimulation – Behavior aimed at challenging staff to re-examine some of their assumptions about their work and think about problems in new ways

Transactional Leadership Behavior

- Contingent Reward – Providing feedback and rewards to staff in exchange for their efforts

Selection of assessors involved recruiting a group of university undergraduate students who, through a survey, indicated that they were unfamiliar with MLB executives. Each student received approximately 20 hours of assessor training, including: (a) discussions about leadership theory (b) MLB executive practice assessments using non-Hall of Fame executives, and (c) discussions about the assessment process.

Each assessor was required to provide a written summary of transformational and transactional leadership. Assessors were trained on how to use the leadership questionnaire, including standards for the interpretation of items and inter-

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Executive Leadership Stats (Continued from page 2)

pretation of the scales anchors. Assessors also received training on rater biases such as halo effects and contrast errors. During training, the assessors were assigned a president not included in the final list of presidents to assess. They completed the assessment independently and then met as a group for discussion of the assessment and comparison of their ratings to other assessors. During these discussions, which lasted approximately two hours, each undergraduate discussed his or her rating and had the opportunity to change their rating if they so chose to. This process was completed four times; afterward, assessors were assigned a set number of assessments to complete each week.

Upon successful completion of the training, each student became an assessor. Each assessor was instructed to read the packet of biographical pieces and assess the extent to which they agreed that the Hall of Fame executive demonstrated a particular attribute, using a 1 (strongly disagree) to 7 (strongly agree) rating scale. Three raters assessed each executive and a high level of agreement among assessors was both required and achieved.

Hall of Fame Executives and Leadership Attribute Rankings

Earlier in this article, the overall transformational leadership averages for the Hall of Fame executives were presented. The overall transformational average is a composite of the 5 different dimensions of transformational leadership attributes. The transactional leadership attribute – contingent reward – is distinct from transformational leadership.

Thus, it is not combined in the overall transformational average. On the next page is a summary of the leadership attributes for each Hall of Fame Executive.

There are many possible ways to interpret the leader attribute ratings. For example, one could elect to prioritize the leadership attributes and pay more attention to those deemed most important. However, when we (the research authors) reviewed the data, two of the key take-away points we identified were:

1. Three Hall of Fame executives (Rube Foster, Bill Veeck, and Clark Griffith) consistently scored high on all transformational leadership attributes (rating of 5.25 or above).
2. Rube Foster, William Hulbert, and Warren Giles rated the highest on overall transformational leadership (5.74 or above). All three had accomplishments beyond the “team” level. That is, each of these executives also played a prominent role at the “league” level.

Another noticeable element of the ratings is that the Hall of Fame executives tended to be rated above the midpoint of the ratings scale. That is, assessors usually rated the executives with a “4” or higher on the scales. The question arises as to whether there might be other executives, not in the Hall of Fame, with similar leadership ratings. In fact, at the SABR convention, several names were discussed. For example, Tom Yawkey was a contemporary of Phil Wrigley. How do the two leaders match up?

Executive	Identifying and articulating a vision	Providing an appropriate role model	Fostering acceptance of group goals	Providing individualized support	Intellectual stimulation	Contingent Reward
Rube Foster	6.47	5.89	6.17	6.17	5.92	4.67
William Hulbert	6.33	6.22	5.67	4.92	6.25	4.33
Warren Giles	5.67	6.44	5.08	5.83	5.67	4.60
Bill Veeck	5.80	6.00	5.33	5.58	5.33	5.00
Branch Rickey	5.93	5.67	5.33	4.75	6.00	4.27
Clark Griffith	5.60	5.89	5.25	5.50	5.25	4.47
Tom Yawkey	5.53	5.89	4.83	5.17	4.83	4.27
Lee MacPhail	5.20	5.56	4.75	5.25	4.33	4.93
Larry MacPhail	5.84	5.40	4.30	3.55	5.50	4.24
Al Spalding	5.40	5.33	4.33	3.92	5.08	4.07
Ed Barrow	5.53	4.11	4.58	4.25	4.42	3.60
Charles Comiskey	5.20	4.44	4.33	3.75	4.67	4.93
George Weiss	5.00	4.44	4.50	3.25	3.75	3.93

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Executive Leadership Stats (Continued from page 3)

What are the implications of the ratings?

As is evident from the comparison, Tom Yawkey rates higher than Phil Wrigley in 3 of the 5 transformational leadership attributes while Wrigley rates higher than Yawkey for only 1 of the 5 attributes.

While the ratings are interesting to review, they also help achieve a practical purpose. In simple terms, the leadership ratings provide a quantitative measurement tool for comparison of MLB Hall of Fame executives. The tool can also

Executive	Identifying and articulating a vision	Providing an appropriate role model	Fostering acceptance of group goals	Providing individualized support	Intellectual stimulation	Contingent Reward
Tom Yawkey	5.53	5.89	4.83	5.17	4.83	4.27
Phil Wrigley	4.40	5.33	4.58	5.17	5.50	4.33

As mentioned earlier, many fans have little affection for Charles Comiskey. How would one of Comiskey’s contemporaries, perhaps Garry Herrmann, rate on the leadership scales?

be used to make comparisons like the ones already listed that compare Hall of Fame executives to those executives not currently in the Hall of Fame.

Executive	Identifying and articulating a vision	Providing an appropriate role model	Fostering acceptance of group goals	Providing individualized support	Intellectual stimulation	Contingent Reward
Charles Comiskey	5.20	4.44	4.33	3.75	4.67	4.93
Garry Herrmann	5.67	6.00	5.67	5.92	5.58	4.60

The ratings indicate that Herrmann dwarfs Comiskey on all five transformational leadership attributes. Yet it is Comiskey who is in the Hall of Fame while Herrmann fans are left to stew over this potential injustice.

The implicit question arising from these comparisons is: “Should leadership competency be a criterion for executive election to the Hall of Fame?” Currently, no formal rating of leadership is used in determining whether or not executives should be enshrined.

Finally, it is worth reviewing some of the potentially more infamous executives not in the Hall of Fame. (See next page.) Lou Perini would rank third (after Foster and Hulbert) for identifying and articulating a vision and received impressive and comparably favorable ratings for all transformational leadership attributes, with the exception of fostering the acceptance of group goals. Interestingly, at the SABR conference poster session, there was some support for Walter O’Malley being in the Hall of Fame and, indeed, his ratings are comparable to several executives already enshrined. Notably, both Charley Finley and George Steinbrenner managed to earn some alarmingly low ratings—particularly in providing individualized support.

The issue of the multi-faceted executive also deserves further consideration. It appears that, at least with the measure used in this research, executives who serve both at the “team” level and the “league” level rate higher than executives who serve only at the team level. This is sometimes further complicated by the issue of whether or not an executive is also considered a pioneer. As noted, we separated the pioneers from the executives, yet William Hulbert, Al Spalding, and Rube Foster were all included in the research. One suggestion might be the separation of pioneers from executives, so that each category could be properly measured and recognized. Of course, this assumes that you

Executive	Identifying and articulating a vision	Providing an appropriate role model	Fostering acceptance of group goals	Providing individualized support	Intellectual stimulation	Contingent Reward
Lou Perini	6.20	5.89	4.50	5.08	5.42	4.27
Walter O’Malley	5.67	5.78	4.92	5.00	5.17	4.67
Charlie Finley	4.33	2.89	3.25	1.42	4.92	3.20
George Steinbrenner	5.33	4.89	4.17	2.83	5.67	4.00

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Executive Leadership Stats (Continued from page 4)

accept the proposition of developing formal criteria for executive election to the Hall of Fame.

Finally, the research reported here does not relate the leadership ratings to measurable outcomes such as team performance. Higher leadership ratings are presumably associated with higher team performance (e.g., winning percentage, attendance, etc.). Earlier research that we have completed (not using the leadership measure reported in this article) provides some support for this assertion. We are currently in the process of further examining the issue, using the leadership measure from this research and including a much larger sample of executives regardless of their

Hall of Fame status. We hope that by expanding the use of leadership measures and studying the work of baseball executives, we can shed more light on the important roles these upper-level leaders play, and provide basis for determining effective MLB executive performance.

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Interleague Attendance Boost

Mostly a Mirage

By Gary Gillette and Pete Palmer

Over the past 10 years, interleague play has become one of the rites of summer for baseball fans. Interleague play arrives with a lot of fanfare as so-called “natural rivals” square off. New teams from the other league come to town for the first or second time, theoretically creating a set of unusual and attractive match-ups that get the fans excited and boost attendance.

Interleague play is also typically one of the accomplishments cited as part of MLB’s PR campaign to persuade people that the sport has come all the way back from the devastating strike of the mid-1990s. Along with the Division Series and the wild card, interleague play is given credit for reviving interest in the National Pastime and pumping up attendance. Looking at per-game attendance, MLB was drawing 31,352 fans through August 14. If that holds up for the rest of the season, which it probably won’t after kids go back to school and more teams fall out of contention, it would be a tiny bit higher than 1993’s 31,337 and second only to 1994’s all-time peak of 31,612.

Without detailed information from a marketing survey, it’s impossible to quantify just how much extra interest interleague play generates among fans. Regardless, it certainly generates a spate of media stories each summer, some of them focused on how much interleague play boosts attendance. Many of these stories are fueled by the annual press releases from MLB touting the increased attendance in interleague games as compared to intraleague games.

The Pitch. A non-by-lined July 3, 2006, story on MLB.com retailed MLB’s company line—the 252 interleague games this season set records for total fans (8,592,482) as well as average attendance (34,097). The same story said that interleague play had boosted attendance 13.2 percent from 1997-2006. On the surface, that seems an impressive endorsement of the policy.

These numbers are very misleading, however, mostly because they fail to account for two scheduling factors that pump up interleague attendance and make the interleague/intraleague comparison artificially positive. A closer look at this sunny spin on interleague play tells a different story.

Interleague attendance analysis. From 1997 through 2006, there have been 2,439 interleague games with an average attendance of 32,838, compared to 20,368 intraleague games with an average attendance of 29,099. On the surface, that would show an apparent increase of 13.2 percent in attendance for interleague games.

Interleague Attendance Boost (Continued from page 5)

Except in 1997, the first year of interleague play when some games were played in August and September, about 80 percent of interleague games have been played in June, with most of the rest played in July. Because of that favorable scheduling in higher attendance months, interleague play starts with a built-in attendance advantage.

When we took into account the time of the season when interleague games were played (i.e., normalizing by the day of the year), the weighted average of intraleague attendance became 29,763, reducing the apparent attendance increase to only 10 percent. The weighted average is calculated by taking the intraleague average for days of interleague play multiplied by the number of interleague games on that date.

That's not the only important advantage the schedulers bestow on interleague games. Previous analyses of the positive effect interleague play has on attendance have ignored the fact that more than 61 percent of interleague games have been played on the weekend, compared to only 46 percent of intraleague games. Scheduling the bulk of interleague games on weekends provides a hidden favoritism and represents an overlooked factor that also dramatically changes any attendance assessment.

Looking at the effects of the days of the week when interleague games have been played, the average of intraleague games on the same days is 29,910, making the apparent attendance increase for interleague play also about 10 percent. When both special factors are considered, we need to add 664 to the average intraleague attendance to compensate for the time of year (day of the year) and a further 811 to compensate for day of the week. These adjustments raise the weighted intraleague average to 30,574, which reduces the overall attendance gain for interleague play to only seven percent.

As one might expect, most of the interleague attendance gain was in 1997—its first year, when the apparent (i.e., unadjusted) attendance increase was to 33,421 from 27,727 or 21 percent. The apparent increase for subsequent seasons (1998-2006) was much smaller—to 32,783 from 29,249 or 12 percent. *The true gain provided by interleague play, then, is reduced to only five percent after the first year—the 32,782 interleague average divided by the 29,248 intraleague average plus adjustments of 970 for time of year and 904 for days of the week.*

Figures sometimes lie. All “attendance” figures announced by Major League Baseball and its 30 clubs are actually the number of tickets sold, not the number of people at the game or the number of people at the game who paid to see

it. Because MLB no longer announces actual attendance at its games, it's easy to jigger these “attendance” figures. Moreover, both individual clubs as well as MLB itself can engage in various maneuvers to pad reported figures.

In 2002, apparently in order to avoid the embarrassment of having Jeffrey Loria's Marlins draw fewer fans than his former club—the forlorn MLB-owned Expos—someone supposedly bought more than 10,000 tickets to the last Florida home game in late September. The club acknowledged the bulk purchase but refused to provide any information about who bought the tickets or why.

A September 30, 2002, story by veteran AP sports business report Ron Blum, reported:

Florida drew 813,118, an average of 10,038. On Sunday the Marlins announced a crowd of 28,599—its second largest at home this year—but only about 8,000 fans appeared to be in the ballpark.

Marlins president David Samson said a longtime fan of the team who lives in South Florida bought more than 15,000 tickets that went unused—which enabled the Marlins to surpass the Expos. Samson said the fan wasn't affiliated with the organization but declined to identify him.

On a much larger scale, MLB organized a “charitable” ticket donation in 2004 and 2005 called the “Commissioner's Initiative for Kids”. This program distributed one million tickets each season to Boys & Girls Clubs and other charities after Ameritrust paid one dollar each for those tickets. Because these “charitable” tickets were actually paid for, they were counted in the attendance totals.

How many of those tickets actually put a kid in a ballpark is unknown, but it's likely that many went unused given that the initiative wasn't announced until August 9 in 2004 and until July 27 in 2005. No explanation was ever given for the reason that the initiative was announced so late in the season, two months after school got out in most cities.

As of August 14, MLB had not announced a new Commissioner's Initiative for Kids for the 2006 season. With 2006 MLB attendance seemingly headed for another all-time high, perhaps the padding was deemed unnecessary. Or perhaps the lateness of the announcement each season meant the benefit was limited.

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Conclusions. Interleague play is only one of the recent innovations that have continued to change the dynamics of the great baseball tradition that Jim Brosnan simply but eloquently dubbed “The Long Season”. As such, interleague play has both positive and negative effects much like the wild card innovation does.

With the wild card, more teams appear to be in contention for a longer period of time, boosting attendance in cities where interest would presumably suffer late in the season. That’s a real and obvious gain. But the wild card also has its less visible costs. It has pretty much made the classic barnburner-kind of pennant race obsolete. After all, if both teams get to advance to the postseason, the pressure and excitement is greatly diminished. Bobby Thomson’s home run would never have been dubbed The “Shot Heard ‘Round the World” if there had been a wild card.

In the same way, the extra layer of postseason series simultaneously creates a visible benefit along with a longer, subtler corrosive effect. Clubs that haven’t played in October for years are thrilled to see any kind of postseason action, but teams that perennially make the postseason quickly find that many fans eschew the Division Series, viewing it merely as an extension of the regular season or as a tune-up for the LCS and World Series. The thousands of empty seats seen at so many Division Series games—not to mention TV ratings in the low single-digits—testify to the blasé attitude so many baseball fans have toward the first round of MLB’s “playoffs”.

Notwithstanding the measurable benefit, there are very real—if yet unmeasured—costs associated with interleague play that profoundly affect baseball’s popularity and financial health. The dramatic drop in interest in the All-Star Game appears to be directly related to interleague play. The all-time lows seen in postseason TV ratings in the past five years—even as announced regular-season attendance was setting records—is probably also related.

Historically, one of baseball’s core strengths compared to other sports was the attractiveness of its Midsummer Classic. One of the big reasons that the ASG has lost its luster is interleague play. With interleague play showcasing the stars of one league against the other league during the regular season, the ASG naturally loses much of its special nature. Thus, the decline in ratings is part of the hidden costs of interleague play. The same can be said of the World Series.

Now that interleague play has taken the bloom off of the All-Star rose, baseball is faced with the choice of cutting out interleague play or changing its traditional All-Star for-

mat. Since the former seems unlikely to happen in the near future, MLB has to figure out how to avoid having its Midsummer Classic become merely an afterthought to its home run-hitting contest, somewhat like the NBA’s slam-and-jam All-Star Game, or an afterthought to the season like the NFL’s Pro Bowl.

One factor that could not be measured with the available attendance data is the real possibility that fans who plan on attending a certain number of games per season might be more likely to choose an attractive or unique interleague match-up, thus reducing attendance at other games. The extent to which this happens is unknown, but whatever effect it has would create an incorrect appearance of a net gain when it is really just shifting attendance from intraleague games to interleague ones. And it would further reduce the real boost given by interleague play below the current five percent.

While it provides some tangible benefit, interleague play’s effect on attendance is mostly a mirage considering that interleague schedules are engineered to be as attractive as possible. More than half of the apparent attendance gain MLB boasts about is illusory. When one considers the double-scheduling of “natural rivals” and the rotation of divisions in interleague play, the average five percent advantage realized since 1998 is extremely modest.

Notes. *Per-game* attendance figures quoted in this analysis are technically *per-opening* numbers. In baseball parlance, an *opening* is defined as a single game or a doubleheader with a single admission price. Day/night doubleheaders with separate admissions are considered the same as single games. Because of the fact that doubleheaders have rarely been played in the past decade, per-game and per-opening figures are virtually identical. (For example, only four doubleheaders have been played so far in 2006 in the NL, and none in the AL.)

Unofficial attendance figures as reported in the media were used for this analysis. There may be some small differences between those figures and the final, official figures released by MLB after the season ends, but they would be very minor.

Another way that MLB has spun its attendance numbers is by publicizing total attendance instead of per-game attendance. Since baseball has expanded by adding four teams, thus adding more than 15 percent to the number of games played in the past 13 years, these “all-time” records really aren’t that impressive. MLB *should* be setting records for total attendance because it has more teams than ever before.

Gary Gillette is Co-Chair of the Business of Baseball Committee. He and Pete Palmer co-edited the *2006 ESPN Baseball Encyclopedia*.

The Battle for Textile Field

By Scott Roper (Castleton State College) and
Stephanie Roper (Rivier College and New Hampshire
Community Technical College)

On September 8, 1913, the Boston Red Sox arrived in Manchester, New Hampshire, for a game against the local Manufacturers' League All-Stars. The reigning World Series champions featured their regular starting lineup; Smoky Joe Wood started the game, and Tris Speaker, Harry Hooper and other regulars played for between seven and nine innings. The game served as the featured attraction in the dedication ceremonies for Textile Field, the city's new concrete-and-steel stadium constructed for the Manufacturers' League by Manchester's primary employer, the Amoskeag Manufacturing Company.

Amoskeag, the largest single textile manufacturing company in the world, constructed Textile Field as part of an initiative to control worker sympathies, deflect the state's threatened reform of the industry's labor practices, and prevent union movements and strikes that had crippled Lawrence, Massachusetts, in 1912. In fact, the New Bedford

(Massachusetts) *Sunday Standard* later called the field "the finest answer to I. W. W.ism," referring to the radical Industrial Workers of the World union which had helped to organize the Lawrence "Bread and Roses" strike of 1912.

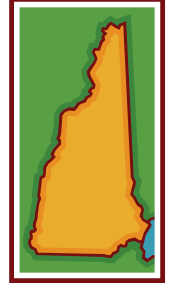
In the company's attempts to control baseball, it barred the New England League, a regional eight-team minor league, from placing a club in Textile Field. By the end of the 1915 season, both organizations had suffered major losses. The New England League instigated a successful major-league boycott of Manchester as a site for exhibition games, causing Amoskeag to reverse its own policy and permit the league to play at the new stadium. However, the company's policies regarding use of the ballpark worked to the league's disadvantage, causing strife between the two organizations. By 1916, Amoskeag's participation in the Manufacturer's League had ended, no minor league team would call Manchester home, and the Amoskeag Manufacturing Company was six years away from a crippling strike.

Amoskeag and Manchester

In 1912, Manchester, New Hampshire, consisted of roughly 65,000 residents, about one-quarter of whom worked for the Amoskeag Manufacturing Company. Several smaller textile, cigar and shoe factories also existed in the city. At one time or another Amoskeag, which was organized in 1831, owned most of the land along the Merrimack River in the northern and central sections of the city and had controlled the city's growth through the periodic auction or

sale of land throughout the nineteenth century. Company engineers planned the city and Amoskeag managers regularly served as city officials.

In 1913, Manchester was an immigrant city, represented by second- and third-generation Irish, first- and second-generation French-Canadians and Germans and more recent groups from eastern and southern Europe. The latter groups were viewed with suspicion throughout the United States and often were stereotyped as being violent anarchists or terrorists. Adding to this image was the violent 1912 Bread and Roses Strike in Lawrence, Massachusetts. Unrest occurred when foreign-born workers went on strike when Massachusetts law reduced their workweek from 56 to 54 hours reducing workers' pay accordingly. The involvement of the Industrial Workers of the World fed into fears that the movement was an anarchist one. However, as government investigators learned during the course of the nearly three-month strike, workers in Lawrence were not earning a "living wage" to begin with--in most cases, less than \$6 per week.



In Manchester, city police and Amoskeag officials became alarmed when the strike showed signs of spreading to Manchester. Manchester's three major daily newspapers—which generally opposed the strike—reported on Manchester meetings where workers took up collections for the Lawrence strikers, where Socialist leaders spoke, and where talk sometimes turned to unionizing Amoskeag's workers.



At the same time, Amoskeag came under fire from state government. The state scrutinized the company's relationship with the local police, resulting in changes to state laws relating to how police chiefs were appointed. Also, various organizations objected to Amoskeag's employment of children. Photographs of Amoskeag's child laborers were highly publicized in 1909. Governor Robert Bass of the Progressive Party favored legislation eliminating child labor and creating a 48-hour workweek. Not surprisingly, in the November 1912 election the company publicly attempted to induce its employees to vote for pro-business Republican candidates.

Amoskeag tried to offset government scrutiny and employee discontent through the Amoskeag Textile Club, a group of about 1,400 Amoskeag employees—many of them managers—organized to offer educational and recrea-

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Battle for Textile Field (Continued from page 8)

tional opportunities. The club, incorporated shortly after the Bread and Roses Strike, hoped to “to promote a feeling of fellowship and loyalty—loyalty to each other and to the great concern whose name it bears.” The organization also sought to Americanize Amoskeag employees, offering



English classes and home economics classes along with picnics. Its sporting events shared that goal. Members could take part in “American” games such as bowling, football, baseball and basketball, although in football and baseball they could participate only as fans.

In June 1912, the Textile Club created the Manufacturers’ League, a baseball league representing the city’s major manufacturers. Each of the league’s teams consisted of employees of the factory that sponsored the team. Through the Manufacturers’ League, the Amoskeag Manufacturing Company hoped to promote employee loyalty to the company by offering its own version of the “national game”. Thanks in part to interest generated from the success of the Boston Red Sox that summer, the league was highly successful, attracting 3,000 spectators to its final regular-season game.



After the 1912 season, the Amoskeag Manufacturing Company spent \$30,000 to construct Textile Field. One of the first concrete-and-steel grandstands in New England outside Boston, the grounds featured such amenities as an electronic scoreboard, fire hydrants, toilet facilities and access via ramps (rather than stairs). The field was advertised as the “largest and finest resort of athletic sports in New England outside of Boston.” The company also boasted that the fireproof grandstand demonstrated its concern for its workers’ safety and comfort. Amoskeag claimed that its benevolence was “progressive”—not coincidentally, a word used by Amoskeag’s critics in state government to describe the labor reforms that they wished to impose on the company.

The New England League

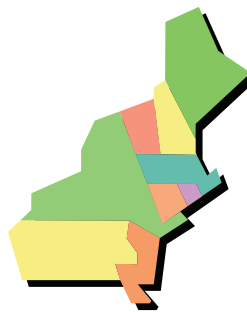
Officials for the New England League, a class-B minor-league circuit which last had fielded a team in Manchester in 1906, took notice of the success of the Manufacturers’ League. As early as November 1912, the league sent a representative to Manchester to negotiate with Textile Club officials for use of the grounds that would become Textile Field. However, since the introduction of a league club promised to interfere with the company’s goal of promot-

ing corporate loyalty and because the Textile Club would have little control over the proposed league team, the club resisted the league’s overtures. Even so, when a group of businessmen proposed to establish the Northeast League, a class-C league consisting of teams from cities in New England and the Canadian Maritimes, the Amoskeag Textile Club offered the new league use of Textile Field.

Amoskeag would have retained significant control within the proposed circuit. Organizational meetings were held in Manchester in January and Manchester’s mayor was to serve as the league’s honorary president. The league failed to materialize, however, and Manchester remained without minor-league baseball.

Throughout the 1913 season, Amoskeag teased the New England League with its new ballpark. Three league teams played exhibition games at Textile Field and *Boston Globe* sportswriter Tim Murnane—who also happened to be the president of the New England League—attended the Red Sox game in Manchester in September. In Manchester, Murnane witnessed first-hand the crowd of 7,000 who welcomed the Red Sox to Textile Field. After the 1913 season the New England League pressed Amoskeag to allow one of its owners, Fred Lake, to place his team in Manchester. The Textile Club continued to rebuff the league and Lake moved his club to Fitchburg, Massachusetts.

In the meantime, Amoskeag and other teams in the Manufacturers’ League signed numerous former college and minor-league players as “company employees”. The Textile Club announced that it had secured games with the Boston Red Sox, Chicago Cubs and Philadelphia Athletics. The New England League, however, announced that it would not permit its teams to play exhibitions in Manchester. By the end of the month, the league had invoked the National Agreement to induce major-league clubs to boycott



the city as well. The Cubs and Red Sox cancelled their games in Manchester and Connie Mack reconsidered his promise to bring the Athletics to Textile Field.

On April 21, the New England League made another move to pressure Amoskeag into allowing it to use Textile Field. Again invoking the National Agreement, the league declared that “players on the reserve list of any club protected by organized base ball are to be prevented from playing on the local fields as members of the Manufacturers’ league.... If players under contract are to play in the Manufacturers’ league they must procure the sanction of the professional club manager.” Amoskeag responded: “While it is impossible for the Manufacturers’ league to get the protection of

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Battle for Textile Field (Continued from page 9)

the National Association, the directors of the [Manufacturers' League] feel that they cannot afford to have the league pointed out as a party not in harmony with the National Association agreement of professional leagues."

Both the Manufacturers' League and the Fitchburg club appeared to have suffered from the New England League boycott of Manchester, however. In early July, Fred Lake again approached the Textile Club to negotiate for use of Textile Field. On July 28, Lake announced that he would transfer his franchise to Textile Field. Yet there was some confusion over the terms by which Lake's last-place team was permitted to play in Manchester. Ultimately the New England League was barred from using Textile Field on Saturdays—at a time when most Manchester residents did not finish work until after 6:00 in the evening during the week and Sunday baseball was illegal.

The 1914 season was disastrous for both the Textile Club and Fred Lake's team. Lake's club lost money; the team's August exhibition game against the Red Sox did not attract a capacity crowd at Textile Field, and those who attended were disappointed with Boston's second-string lineup. Newspapers were unimpressed with rookie Babe Ruth, who pitched the entire game for the Red Sox a day before his demotion to Providence. By season's end, local newspapers referred to Lake's team as a "joke outfit" and Lake was looking to sell the club. The Manufacturers' League, meanwhile, also posted a loss, despite a September exhibition against the champion Philadelphia Athletics. Making matters worse, the Athletics "took the game more as a joke than a real contest." Behind its regular lineup, most of whom switched positions late in the game, Philadelphia easily defeated the Manufacturers' League All-Stars, 8-1. In November, newspapers announced that the Manufacturers' League was dead and that Textile Field was available for minor-league baseball—if a team wished lease it.

The "Textiles"

By January, the New England League was determined to keep a team in Manchester. Tim Murnane declared that he would run the team himself if Fred Lake could not sell it. The league's most prominent owners, including Louis Pieper (Lynn, MA) and Duffy Lewis (Portland, ME), negotiated with the Textile Club to lease the grounds. Eventually the league found a buyer for the team: Tom Keady, who was well known in Manchester for his years as a Dartmouth College baseball player. Yet before the league could

secure use of Textile Field, the Federal League announced its intention to start its own minor league in New England.

The Textile Club favored leasing its park to the new league. When that news broke, Louis Pieper claimed that the New England League had been double-crossed in its negotiations and that Manchester would not be represented in his league. This comment became particularly troubling after February 16, when the Federal League announced that it had abandoned its attempts to create a new minor league. Tom Keady continued to negotiate for both the purchase of the team and the use of Textile Field. With the Federal League out of the picture, Fred Lake increased his asking price from \$1,200 to \$2,500. Meanwhile, the Textile Club increased its annual rental fee for Textile Park from \$1,500 to \$2,500, its officials admitting to local newspaper reporters that they did so in reaction to Pieper's comments. With the sale of the club now in doubt, the New England League created a schedule without a team in Manchester.

Keady, however, continued to negotiate both with Lake and with the Amoskeag Textile Club. On March 1, 1915, Keady announced that he had purchased the team and that it would play in Manchester. Co-owner Jack Kiernan would manage the club. Additionally, the Amoskeag Manufacturing Company was given input into the team's affairs. For instance, the *Manchester Union-Leader* sponsored a name-the-team contest and received more than 1,000 suggestions. On May 1 the newspaper reported that the club would be known as the "Textiles." The committee that decided the name consisted of manager Kiernan, William McKay of the Amoskeag Textile Club, and Jack Finn, a local sports reporter who had served as secretary of the Manufacturers' League.

Considering Amoskeag's support, the Textiles were surprisingly unsuccessful, drawing a total of only 1,500 people over their first three home games, well short of the average of 600 per game required for the team to break even reported by one newspaper. Owners could not meet their financial obligations to the Boston firm that supplied the team's uniforms, to the Textile Club for use of Textile Field, or to the team's previous owners. In mid-season, one Textiles pitcher was indefinitely suspended for "indifferent play"—a punishment and a charge usually leveled at players who conspired to throw games. Then, as the club fell to seventh place, a hoped-for exhibition against the Boston Braves failed to materialize. Meanwhile, other teams reported financial problems, and when the season ended, only league-champion Portland claimed to have posted a profit.

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Battle for Textile Field (Continued from page 10)**A Grand Ball Town**

Amoskeag's attempts to control baseball were unsuccessful. After the 1915 season, the New England League and the Eastern Association, which was based largely in western Massachusetts and Connecticut but had not played in 1915, merged to create the Eastern League. The merger was pushed by the New England League's old-guard owners, most publicly by Louis Pieper. Perhaps not coincidentally, Manchester was one of two New England League cities not represented in the new league. The owners of the Textiles supported the merger and were offered stock in the league's Lowell franchise.

Amoskeag, meanwhile, endorsed a short-lived "yard" league, based at Textile Field and consisting of legitimate employees of the corporation who played for the "love of the sport." The league charged no admission. In 1917, it rejoined the Manufacturers' League, renamed the City League. Its attempts to control labor through the control of baseball ultimately failed, however. In 1922 the company's workforce waged—with the help of the United Textile Workers Union—a devastating nine-month strike against the company. In 1936, Amoskeag closed for good after another strike.



In 1916, Fred Lake—who still had not given up on finding a way to place a minor-league team in Manchester—observed that "Once you get the Amoskeag corporation and its employees interested in a baseball franchise, you'll find Manchester is a grand ball town. Without this support local interest in the team is lacking. When independent baseball draws 3,000 people on Saturdays, league baseball in Manchester would draw more if under local direction." Even so, the city remained without minor-league baseball until 1926.

Sources

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Salary Arbitration: A Burden or a Benefit?

By Bill Gilbert

The salary arbitration process is not well understood. Media, clubs and players frequently describe it in negative terms. The purpose of this article is to improve the understanding of the process and how it works.

Salary arbitration was instituted as part of the collective bargaining agreement between the Major League Baseball Players Association (MLBPA) and Major League Baseball (MLB) in the early 1970s to provide a system for players not yet eligible for free agency to be compensated based on a comparison with their peers.

The first hearings were held in 1974. The number of cases filed peaked in 1990 with 162. In 2006, 100 cases were filed. The number of cases that went to an arbitration hearing peaked in 1986 (35). In 2006, only 6 cases went to a hearing. Over the years, 469 cases have been heard by arbitrators with the clubs winning 269 (57%) and the players winning 200 (43%).

Eligibility for Salary Arbitration. Two classes of players are eligible for salary arbitration. The first class is players with 3-5 years of major league service (MLS) and the top 17% in seniority of MLS-2 players.

The second class of eligible players includes free agents with 6+ years of MLS. Clubs have the option to offer arbitration to free agents who were with the club the previous season. These players have the option of accepting or declining these arbitration rights. If they accept arbitration, they are bound by the club and are no longer free agents. Cases involving this class of players rarely go to a hearing. The last hearings involving MLS-6+ free agents were in 1991.

Benefits of the Arbitration Process. The arbitration process enables Clubs to retain control of players with less than 6 years MLS. The benefit to the players is that they receive salaries that are influenced by the market and their performance. The benefit to both sides is that the process is designed to promote a settlement without a hearing. If a case goes to a hearing, the arbitrators must award either the player's filing or the club's filing – nothing in between. In the last 10 years, over 90 % of the cases filed have settled prior to a hearing.

How Is a Hearing Conducted? The panel consists of three arbitrators with one designated as the chairperson. Other present include the player, his representative(s) and representatives from the MLBPA. The club is represented by an official, usually the general manager, other representatives

and representatives from MLB.

The player gets one hour for his case to be presented followed by an hour for the club to present its case. After a break to prepare rebuttals, each side is allowed 30 minutes for rebuttal. The arbitrators then have 24 hours to render their decision.

Arbitration Criteria. The collective bargaining agreement is specific regarding what is admissible and non-admissible in a hearing. Admissible items include the quality of the player's performance, the length and consistency of his performance, his record of past compensation, any physical or mental defects and comparative baseball salaries. The arbitrators are directed to give particular attention to contracts of players not exceeding one service group above that of the player.

Non-admissible items include the financial position of the player or the club, press comments on the player's performance and prior offers by either side.

Arbitration Hearing Strategies. In the player's case, emphasis is given to the strength of his performance and his awards or achievements. He is compared with players in the same service class with high salaries. The objective is to build evidence that supports a salary higher than the mid-point in the case. Sometimes another player will be brought in to testify in support of the player. A classic example was the 1998 Charles Johnson case when Scott Boras brought in Kevin Brown to testify that he had pitched to both Johnson and Ivan Rodriguez and that Johnson was better at working with pitchers.

The challenge of the club is to point out deficiencies in the performance of the player *without personally demeaning the player*. This is tricky but essential since the player is part of the club. The club can point out the lack of awards and achievements and will strive to compare the player with players in the same service class with relatively low salaries. The objective is to build evidence that supports a salary lower than the mid-point in the case.

Arbitration Hearing Results		
Years	# Hearings	% Player Wins
1980-1992	21	45%
1993-2001	11	37%
2002-2006	6	31%

Arbitration Hearing Results. The trend in recent years is for more cases to be settled prior to hearings. This is due to several reasons, including that both sides now have a better

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Salary Arbitration (Continued from page 12)

grasp of a player's value in the arbitration process and file accordingly, anticipating a settlement around the mid-point. Clubs have won a majority in each of the past 10 years.

Salary Histories. The three tables on the following page provide examples of how a player's salary changes as he moves from club control in his first 3 years, through arbitration, to his eligibility for free agency after 6 years. Each case is different

B. J. Ryan – Ryan's case is typical of a player whose role and performance increases as he moves through his arbitration years. In his first two arbitration years, he settled with Baltimore near the mid-point before a hearing and in the third year a salary was agreed upon before figures were exchanged. Ryan became a very effective closer in 2005 and signed a 5-year contract with Toronto when he became a free agent after 6 years.

Jarrod Washburn – Washburn had a big year (18-6, 3.15 ERA) prior to his first year of arbitration eligibility. This gave him the leverage to command a big contract as an MLS-3. His salary continued to increase the next two years when he was essentially an average major league starting pitcher. In all three of his arbitration years, he settled on a contract with the Angels before figures were exchanged. He signed a 4-year contract with Seattle when he became a free agent after 6 years.

Michael Barrett – Barrett was one of the fortunate players who became eligible for free agency as an MLS-2. In his first 2 arbitration years, he agreed on a contract with Montreal before figures were exchanged. However, his career hit a bump in 2003 when he batted .208 and lost his job as the starting catcher. He was traded to the A's and then to the Cubs who did not tender him a contract. This took away the leverage he would have had as an arbitration eligible player and the Cubs signed him to a contract with a salary far below what he was paid the previous year. He responded with a breakout season and signed a 3-year contract with the Cubs in his final year of arbitration eligibility after figures were exchanged.

Conclusions

- The arbitration process provides benefits to both clubs and players.
 - Clubs retain player control for 6 years.
 - Players receive market-influenced salaries 3 years before free agent eligibility.
- The process has been in place since 1974 and has survived numerous labor negotiations.
- The vast majority of salaries are determined by the

process, not by an arbitration award.

- The number of cases going to hearings has declined sharply in recent years.
- Arbitration is not expected to be an issue in labor contract negotiations this year.

B.J. Ryan Salary History					
Year	MLS	Salary Status	Salary (\$K)	Arbitration Filings	
				Club	Player
2000	MLS-0	Club Control	204.0		
2001	MLS-1	Club Control	240.0		
2002	MLS-2	Club Control	300.0		
2003	MLS-3	Arb. Eligible	762.5	700	825
2004	MLS-4	Arb. Eligible	1,275.0	1,000	1,500
2005	MLS-5	Arb. Eligible	2,600 ¹	Settled early	
2006	MLS-6	Free Agent	4,000 ²		
¹ Earned an additional \$225,000 in performance and awards bonus.					
² First year of 5 year, \$47 million contract.					

Jared Washburn Salary History					
Year	MLS	Salary Status	Salary (\$K)	Arbitration Filings	
				Club	Player
2000	MLS-0	Club Control	222.5		
2001	MLS-1	Club Control	270.0		
2002	MLS-2	Club Control	350.0		
2003	MLS-3	Arb. Eligible	3,875.0	Settled early	
2004	MLS-4	Arb. Eligible	5,450.0	Settled early	
2005	MLS-5	Arb. Eligible	6,500.0	Settled early	
2006	MLS-6	Free Agent	7,450 ¹		
¹ First year of 4 year, \$37.0 million contract.					

Michael Barrett Salary History					
Year	MLS	Salary Status	Salary (\$K)	Arbitration Filings	
				Club	Player
2000	MLS-0	Club Control	265.0		
2001	MLS-1	Club Control	285.0		
2002	MLS-2	Arb. Eligible	1,150.0	Settled early	
2003	MLS-3	Arb. Eligible	2,600.0	Settled early	
2004	MLS-4	Arb. Eligible	1,550.0	Non-tendered	
2005	MLS-5	Arb. Eligible	3,133 ¹	3,400	3,900
2006	MLS-6	Multi-Year	4,333.0		
² First year of 3-year, \$12 million contract. Earned an additional \$50,000 award bonus.					

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“Soft Ball”

MLB Shifts from Neocolonizer To Multinational Corporation

By Bob Lewis

Introduction. Joseph S. Nye, Jr., head of Harvard’s Kennedy Center for Government, differentiates the “soft power” of cultural and ideological attraction and persuasion from the “hard power” of economic and military force in international relations. Both are necessary components, albeit contextually in different proportions, of “smart power.” He contends that American global leadership today increasingly depends upon an ability to attract and persuade than on commanding and coercing, i.e., on soft rather than hard power. In its world, MLB, which has historically relied upon economic hard power, is now more skillfully using the soft power of its traditional ideology and cultural attraction in its smart power formula to enhance its multinational as well as domestic appeal.

For its first century, Major League Baseball (MLB) played economic “hard ball” as an imperialist neocolonizer with accompanying race and class implications.

“Neocolonialism” was defined in 1961 by the Ghanaian president, Kwame Nkrumah, as “the last act of imperialism,” continuing the colonial tradition by economic rather than by political or military means. MLB’s early neocolonial phases excluded non-white races, while the latter exploited them.

Internal Colonies. MLB’s cultural hegemony began with “internal colonies”—European immigrants and their sons. As they assimilated, aided by playing baseball, they secured control of the professional game and laid the foundation for future neocolonial exploitation by excluding non-white players. They demonstrated what George Lipsitz calls “a possessive investment in whiteness,” an exclusionary practice of white supremacy. Befitting broader societal norms, racism was a prevailing attitude of the players as well as the owners, exemplifying the general practice described by David Roediger in *The Wages of Whiteness*. America’s and MLB’s melting pots were white.

Two decades before he led MLB’s shift from racial exclusion to exploitation, Branch Rickey created a white-only, class-based rural “neocolony” among minor league teams in the west and south. His St. Louis Cardinal scouts recruited poor white farm boys (raw materials), assigned them to affiliated minor league teams (colonies), which developed (processed) them for use by the Cardinals in selling their team (product) to fans throughout the recruiting area. Other teams followed that initiative and thus established the farm system.

The Color Barrier. MLB has a long history of racism. Like other racist organizations, it has a mutually reinforcing linkage with nationalism (“national pastime”). With its anti-trust exemption, self-contained government, and contractual leverage over its participants, MLB approximated, in a neo-Marxist sense, the form of a nation-state. It acted as a racist nation at home and abroad.

When Rickey signed Jackie Robinson in 1945, he was applauded for his morally courageous integration act. He was, however, foremost a shrewd exploitative capitalist who secured first-rate, cheap talent and concurrently destroyed the rival Negro Leagues, thereby increasing production (players) and consumption (fans). Like society, MLB integrated slowly. From Robinson’s signing, it took nine years before the *Brown v. Board of Education* school desegregation ruling, 12 years until the last MLB team added an African American to its roster, and 20 years until the Civil Rights Act was passed.

Today, however, baseball has become the most racially diverse sport in the country, with the aggregate of African-Americans, Latinos and Asians now approximating half of the combined major and minor league rosters. MLB promotes racial and national diversity as saleable assets in the competitive domestic sports market and in its international ventures. Early development of its diverse profile, however, was more attributable to MLB’s hard power neocolonialism than its societal leadership in integration. MLB’s current smart power strategy, however, embraces race and nationality through soft power attractions that promote diversity.

Caribbean Exploitation. Clark Griffith, the longtime owner of the Washington Senators, began using Rickey’s wholesale recruiting approach in 1930s Cuba, whose legacy dated to game introduction by American sailors and sugar capitalists in the prior century. After Rickey moved to the Pittsburgh Pirates in 1951, he improved upon Griffith’s Cuban strategy. Impressed by the Puerto Rican outfielder, Roberto Clemente, a future Hall of Famer whom he secured from Brooklyn, he sent Howard Haak to scout throughout the Caribbean. He signed hundreds of players over the next 50 years, thereby establishing an international, albeit exploitative, direction for MLB.

When MLB initiated the domestic annual amateur draft in 1965, Caribbean scouting became increasingly important financially to major league teams. Caribbean scouts signed Latinos for about 1% of the bonus paid to Americans.

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While that differential has lessened considerably, it's not surprising that Latinos now account for about 40% of the combined major and minor league player rosters.

By differentiating its Caribbean recruiting from its American practices, MLB was explicitly illustrating a class-based approach to race as it did with early African American players' compensation. In describing her "split-labor theory," economist Edna Bonacich observes that, as capitalism develops, the price of labor rises, leading capitalists to seek labor abroad. MLB ownership followed the imperialist practice of "super-exploitation" of racial minorities, which, she notes, is rooted in Western European colonialism.

Stimulated by Haak and later scouts—as well as Fidel Castro's 1959 takeover of Cuba and resultant severance of American relations, the Dominican Republic became the center of Caribbean baseball. The creation of Dominican baseball academies by major league teams enhanced recruiting. The Toronto Blue Jays established the first Dominican baseball academy in 1977 and other teams followed. The Houston Astros extended the academy concept to Venezuela in 1989 and others now exist in Mexico and Puerto Rico. Similar to a local factory of a dominant foreign company, an MLB team academy uses local sources to secure the raw materials (athletes), refines (trains) them, and ships the products (players) abroad for finishing (minors) and market (fan) consumption. In 1981, the Philadelphia Phillies estimated that it cost \$355,000 to develop an American player and only \$25,000 to develop a Latin player.



Resistance. The academies reinforced American economic hard power dominance, distorted the soft power attraction of baseball and provoked resistance. Like other neocolonies, the Dominican Republic has developed an ambivalent, approach-avoidance reaction toward its baseball colonizer. Contrary to the academy approach, the local game has become infused with a unique, flashy style, called *beisbol romántico*. The Negro Leagues had also developed a unique, upbeat variation of the MLB game to assert their resistant individuality.

Dominican sportswriters have been especially influential in resistance activity. They have lavishly applauded Dominican player accomplishments in the U. S. At the same time, they have sharply criticized the inequalities that exist between major league teams and Dominican affiliates. They have also strongly objected to the pressure the major league teams exert on their Dominican players to reduce or eliminate their playing time in the Dominican winter league to

reduce probability of injury.

Allen Guttman contends that adoption of a dominant culture's sport doesn't result in loss of authenticity because cultures are not static. He notes that the result is often an indigenous subversion of externally imposed forms of play, such as *beisbol romántico*, coupled with a nationalistic desire to beat the dominator at its own game. Nkrumah also asserted that neocolonialism works to the detriment of the exploiter as well as of the exploited because of the inherent resistant reaction of the victims to the oppressor. At home, MLB incurred significant negative consequences—strong player union, final-offer salary arbitration, and player free agency—from the organized resistance of its players to ownership's imperialist abuse of power. The Dominican Republic has exemplified the resistance MLB encountered from its international labor colonies.

End of Neocolonialism. Indications of an end to MLB's neocolonial racist history surfaced during the late 1990s. In 1998, Mark McGwire, a white American, and Sammy Sosa, an Afro-Dominican, assailed the MLB single season home run record, the most revered in a game that is replete with records. During their competition both players continuously demonstrated respect, admiration and friendship toward each other. When McGwire broke the record with a home run against Chicago, Sosa trotted in to hug the rival he called "The Man.". McGwire showed his regard for Sosa a few months later when he contributed \$100,000 to the foundation Sosa established to help victims of Hurricane Georges that hit the Dominican Republic. Sosa's response to the media's persistent racial focus that continued even after the season was, "Come on, man. It's 1998."

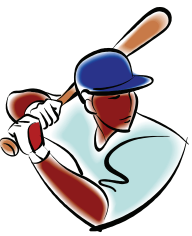
Concurrently, MLB was undertaking domestic and international soft power initiatives to mitigate its hard power neocolonial reputation. MLB used the 2001 All-Star Game, hosted by the Seattle Mariners, the only foreign-owned (Japanese) team, to emphasize the international dimension of the game by highlighting the national origins of the participants. Prior to the game, the ceremonial first pitch baseball toured the world, traveling 43,894 miles to six continents.

To enhance ongoing organizational support to the Caribbean, MLB established a branch office, headed by former Pittsburgh Pirates pitcher Rafael Perez, in the Dominican Republic in 2000. The MLB office facilitates cooperation between its clubs and Caribbean countries and asserts more control over recruiting and development processes. Since then, conditions and practices have improved. Adoption of an international draft would be another step forward.

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In an effort to curry favor with the growing Latino markets as well as to respond to the exclusion of Latinos from the 1999 All-Century Team, MLB selected a 12-player "Latino Legends Team" in 2005. This year, the National Baseball Hall of Fame and Museum will begin a five-year salute to Latino baseball. "Baseball! *Beisbol!*" will include two traveling exhibits, a forum commemorating Hall of Famer Roberto Clemente and an exchange program to strengthen relationships with various Latin American national hall of fame curators.

At the 50th anniversary of Robinson's 1947 entry, his uniform number 42 was retired. In 2004, MLB decreed that April 15, his debut date, would be celebrated at games each year as "Jackie Robinson Day." Recognizing that African



Americans now comprise less than 10% (down from 27% in 1975) of major leaguers, MLB has implemented a Revitalizing Baseball in Inner Cities (RBI) program in selected areas to provide soft power attraction and on- and off-field development for African American and Latino underprivileged urban youth. This year it opened a

\$10 million facility in Compton, California. As part of the construction agreement for the new Washington Nationals stadium, MLB is building a \$3.5 million academy in the inner city. It currently plans to develop one in Atlanta as well.

Initiated by an MLB grant in 2000, the Hall of Fame recently completed a five-year research project on Negro baseball from 1860 to 1960. As a byproduct of this historical research, a special committee elected 17 new members from that era to the Hall, bringing the pre-MLB Negro baseball-related total to 35. The Cooperstown institution also collaborates with its Negro Leagues museum counterpart in Kansas City.

Incorporation of some minorities in top management positions is helping MLB shed its neocolonial label. MLB now has two minority executive vice presidents, Jimmie Lee Solomon in baseball operations and Jonathan Mariner in finance, as well as vice president Bob Watson, a former team general manager and player. Ulice Payne of the Milwaukee Brewers became the first minority team president in 2002. Kenny Williams of the world champion White Sox and Omar Minaya of the New York Mets are current minority general managers and there are four minority field managers. MLB teams are gradually adding minorities in feeder positions..

MLB also has a Latino owner, Arturo Moreno, who purchased the Anaheim Angels in 2003 and renamed them the

Los Angeles Angels of Anaheim to broaden their market identity. He cut ticket and concession prices and shelled out \$146 million in long-term contracts for free agent Dominicans, Vladimir Guerrero and Bartolo Colón, to broaden fan appeal and to compete with the market-dominant Dodgers, with their significant Latino following.

The Angels strategy recognizes the value of Latinos on the consumption as well as the production side in a business-like rather than a neocolonial manner. The Mets, which also play in a large Latino market, have enhanced that focus, led by Minaya. For 2005, they committed \$170 million to superstar free agents Pedro Martínez (Dominican Republic) and Carlos Beltrán (Puerto Rico) and fielded a diverse team that also included players from Venezuela, Japan and South Korea to appeal to its multi-ethnic market. For 2006, they traded for Puerto Rican slugger Carlos Delgado. Minaya refers to these signings as part of "a global development plan."

As the above examples indicate, MLB has made progress since Robinson's entry to provide financial parity and opportunity for all participating races and nationalities.

MLB's World. MLB's neocolonial power and resistance history, particularly in the Caribbean, has provided experiential learning to help it deal in a larger, more complicated international market. MLB has encountered contrasting results in Europe and Asia in its efforts to promote the game abroad. The greater Asian acceptance seems to be a function of both Europe's increasing general resistance to America and Asia's historically greater interest in American cultural programs. As a former colonizer of America, Europe seems less willing to accept an American innovation like baseball than Asia, which has no history of dominance over America. Other ball sports, such as soccer, are also more pervasively entrenched in Europe than in Asian countries, some of which did not earlier promote such activity because of educational or religious beliefs.

Adding to the Europe-Asia relative difference is the lack of a significant local country stimulus in Europe and a strong catalytic support from Japan in Asia. Accordingly, MLB has established an office in Japan. Like Cuba and later the Dominican Republic, Japan has served as an influential bridge to nearby country acceptance of the game. Like the Dominican *beisbol romántico*, Japan's more disciplined *yakyū* version of baseball has facilitated regional identity.

The Asian experience has differed significantly from the Caribbean and likely will foretell future global business conduct. The process for acquiring Japanese players for MLB serves as a model. In contrast with the open and previously chaotic Caribbean player recruiting, Japan pre-

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cludes amateur recruiting and requires that MLB first deal with Nippon Professional Baseball (NPB-the Japanese major leagues) for its players. If a Japanese player qualifies for free agency, interested MLB teams must first bid for signing rights before offering a contract to the player. Such an approach, which is variously followed throughout Asia, provides control and stability for the foreign leagues and assures an orderly movement of players.

The emergence of Japanese stars in MLB has fostered a broader celebrity appeal not only among Asian Americans but among Asians themselves. Largely because of that appeal, Japan is by far the largest source of MLB's growing international revenue. As the quality of the Japanese game improves and its influence grows among other Asian countries, MLB faces stronger competition for players and fans in that area.



MLB and MLBPA jointly launched the first World Baseball Classic (WBC), a 16-nation tournament including 39 games at six sites March 3-20, 2006. Cooperating sponsors included Nippon Professional Baseball, Korea Baseball Organization, their respective player organizations and professional leagues in other participating countries. Rather than hard power exploitation, the WBC used racial and national diversity as soft power attractions. A player who had "ties" with several countries could choose which country he could represent, thereby enabling MLB stars to play for most of the teams. These liberal guidelines enhanced the global connection and soft power appeal of baseball as well as spread MLB talent beyond the American team to strengthen the overall competition.



In the final game, Japan defeated Cuba 10-6, appropriately reflecting that four Asian and six Latin America teams were among the 16 participants. Only two MLB players were on finals team rosters, both with Japan, indicating that talent is growing beyond MLB. Attendance and viewer results met expectations and related merchandise sales far exceeded projections.

The WBC exemplified the value of soft power not only in the collaboration among participating countries, but also in dealing with the U.S. government to permit Cuban entry. Although an economic embargo has existed for many years, a compromise, facilitated by former MLB team owner President George W. Bush, enabled perennial international baseball power Cuba to participate by diverting its profits to Hurricane Katrina and Rita survivors. Cuban par-

ticipation enabled the International Baseball Federation (IBAF) to sanction the tournament and partially mitigate the 2005 negative decision by the International Olympic Committee (IOC) to drop baseball from the Olympics after 2008. MLB hopes the WBC success will strengthen its chances of reversing the IOC decision before 2012.

The WBC provided an international showcase to enhance the image of baseball in the participating countries. Participation by only 16 countries, with significantly different skill levels despite "native" MLB player distribution, illustrates that baseball is far from a major global sport, but that it has a positive future well beyond the "national pastime." The International Baseball Federation's 113-member countries indicate the market potential for MLB's international pursuits.

In a telephone interview, Paul Archey, Jr., MLB's Senior Vice President, International Operations, positioned the WBC within MLB's overall global strategy to develop both participant and fan interest world wide, with particular emphasis on certain countries such as China, which fielded a WBC team, and Russia, which didn't. The primary objective for the WBC, he stated, is to stimulate global marketing of MLB-related products and services. With MLB games now being televised in over 220 countries and international commercial sponsors exceeding 50, he argued that such a base enables MLB to leverage its international mix of players to take advantage of the celebrity currency in their respective countries, thereby enhancing opportunities to make more deals with local entities. Losing the WBC tourney may have enhanced WBC's success abroad. Future MLB collaborative soft power tactics may prove more fruitful than unilateral hard power initiatives in its smart power strategy. "Play (soft) ball!"

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Do Players Outperform in Their Free-Agent Year?

By Phil Birnbaum

Do players outperform in their free-agent year? Conventional wisdom says that they do. Players entering the market coming off a good year can earn hundreds of thousands more than if they have only a typical year, so they have incentive to increase their effort. But once they sign a long-term guaranteed contract, there's no additional pay for a good year, so players may take it easy and revert to their normal level of play.

Take, for instance, Jack Clark. A decent slugger for many years, Clark had by far the best season of his career in his 1987 free agent year. After signing with the Yankees in January, 1988, Clark became mortal again.

Year	AB	R	H	2B	3B	HR	RBI	BB	SO	BA	OPS	RC/27
1985	442	71	124	26	3	22	87	83	88	.281	.899	7.15
1986	232	34	55	12	2	9	23	45	61	.237	.786	5.58
1987	419	93	120	23	1	35	106	136	139	.286	1.058	11.08
1988	496	81	120	14	0	27	93	113	141	.242	.818	5.98
1989	455	76	110	19	1	26	94	132	145	.242	.873	7.11

Was Clark a greedy player, turning it on only when there was big money on the line? There's no way to tell for Clark in particular, but we certainly can check whether this kind of pattern holds in general.

For every player in his free-agent year, I computed what you'd "expect" his performance to look like, based on the previous two years and the following two years. The algorithm is slightly modified from the one I used in "Which Great Teams Were Just Lucky?" *Baseball Research Journal*, 34 (2005) 60, but it's very similar. Basically, it tries to do what you'd do by eye, and fill in the blank in a career.

1988	3.43
1989	4.07
1990	?
1991	6.73
1992	5.79

Let's try this for Terry Pendleton, who had a free-agent year in 1990. The box contains Pendleton's RC27 (what you'd expect a team of nine Pendletons to score in a game) for the years surrounding 1990. How would you fill in the blank for 1990? The four years average out to about 5, so

maybe 5.00 would look about right?

The algorithm came out with 4.87, approximately what we'd expect. But Pendleton's 1990 was actually much lower at 2.81.

1988	3.43
1989	4.07
1990	2.81
1991	6.73
1992	5.79

Conventional wisdom would say the opposite should have happened—Pendleton should have turned it on and, like Jack Clark, exceeded expectations in search of bigger

money. But he didn't. He had a horrible year with the bat, exactly opposite to the "greed" theory. Pendleton was almost 32 runs worse than expected that year. That balances out Clark, who was 33 runs *better* than expected.

For every Jack Clark who looks like he's proving the point about greedy players saving their effort for free agency, there's a Terry Pendleton, having an off-year that costs him thousands of dollars.

Results

But these are only two players—two anecdotes. To answer the question more persuasively, I analyzed every free-agent season up to the 2001 season and figured the average number of runs above or below expected. To be included, batters had to have had at least 300 batting outs and pitchers at least 100 innings pitched.

The results:

**Batters outperformed by 1.9 runs;
Pitchers outperformed by 0.6 runs.**

This shows little evidence of a "free-agent" effect.

First, the results are very close to zero—so close as to be statistically insignificant at any reasonable level. Second, the algorithm itself is accurate only within a run or two, so these numbers could be caused by imprecision in the formula rather than any real effect.

Third, if we weight pitchers by rate (that is, pretending all pitchers had the same number of innings) rather than by absolute runs, the effect disappears. In fact, the effect turns negative to -1.1 runs, suggesting that the 0.6 is not a real effect. For hitters, weighting by rate increases the effect slightly to 2.2 runs.

**Hitters, Free agent years: +2.2
All other hitters: +1.1
Pitchers, free agent years: -1.1
Everyone else: +2.6**

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Do Players Outperform in Their Free-agent year? (Continued from page 18)

Finally, even if the effect was real, these are very small numbers. 1.9 runs is the approximate equivalent of turning two strikeouts into a single and a double—over an entire season. And 0.6 runs is less than turning one walk into an out.

Another way to look at the data is to compare free-agent years to non-free-agent years. Here are hitters numbers by rate:

Here, we see no significant difference between free agents and everyone else. In fact, pitchers get *worse* the year they are about to be granted free agency.

Biases

There are several possible biases in this study:

- Players retiring after their free-agent year are not included in the study. Since retiring players are more likely to have had an off-year, this would bias the sample in the direction of players having better-than-average years. This would tend to magnify any effect, meaning that real free-agent out-performance would be less than observed. Since little was observed, this bias would not change our conclusion.
- Players who re-sign before the end of the season are also not included. If teams are more likely to sign players having good years, this would tend to hide a portion of any real effect that existed. If, on the other hand, teams are more likely to resign those having *off-years*—perhaps because those players are less optimistic about testing the free-agent market, this would tend to magnify any effect.
- The study included only regular players, those with 300+ batting outs or 100+ innings. Players having off-years would be less likely to meet this standard, since they might be benched or waived. This would again tend to magnify any effect.

Other Studies

The most recent similar study on this question appeared in Baseball Prospectus's 2006 book *Baseball Between the Numbers*. There, Dayn Perry found a much larger effect—five runs instead of the one or two runs found here. “Do Players Perform Better in Contract Years,” *Baseball Between the Numbers* (2006) 199. However, Perry used a non-random sample of “prominent” free-agents. Players who figure prominently may be those who were more

likely to have had notable years; this may have biased the sample upward.

An academic study by Evan C. Holden and Paul M. Sommers, “The Influence of Free-Agent Filing on MLB Player Performance,” *Atlantic Economic Journal* (Dec. 2005) at <http://www.allbusiness.com/periodicals/article/864744-1.html> found no free-agent year effect. It did, however, find that performance declined the year after the contract was signed. However, since free-agents tend to be older players more likely to be in their declining phase, this might simply be a case of the normal effects of player aging.

In “Shirking or Stochastic Productivity in Major League Baseball?” *Southern Economic Journal* (April 1990) 961, Anthony Krautmann checked all free-agents signing five-year contracts between 1976 and 1983. He counted the number of players with outlying performances and found only the expected number, which means no evidence of the free-agent year effect.

Finally, Benjamin Grad, in his study “A Test of Additional Effort Expenditure in the ‘Walk Year’ for Major League Baseball Players,” *University Avenue Undergraduate Journal of Economics*, v. II n. I (1998) at http://www.econ.ilstu.edu/uauje/PDF's/issue1998/Effort_Expenditure.pdf regressed player performance on a group of variables, including one representing whether the player was in his free-agent year. He found no effect for that variable.

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Fast Pitch

The Regulatory Regimes Governing Lawyer- and Non-lawyer-agent Solicitation of Major League Baseball Players

By Nolan Reichl

Part I – The Luke Hochevar Story

On Tuesday June 6, 2005 the Los Angeles Dodgers made 21-year-old University of Tennessee junior pitcher Luke Hochevar their first selection in Major League Baseball's (MLB) Amateur Draft.¹ The sports media, and indeed the Dodgers themselves, saw the pick as a coup.² Although Hochevar had been thought of as one of the top 10 players available in the draft and had the potential to be taken by the Arizona Diamondbacks with the first overall choice³, the Dodgers were nevertheless able to select him with the 40th pick.⁴

As is often the case with extremely talented amateur players, the teams selecting before the Dodgers neglected to choose Hochevar not because they differed with the Dodgers in their estimation of his ability but rather because they feared his price tag. Hochevar had not publicly announced his salary demands but he had retained Scott Boras, a lawyer and baseball's premier player representative, to serve as his advisor. Teams saw this move as an indication of Hochevar's intention to seek a large contract and consequently refused to risk a draft pick on someone with whom teams

perceived it might be both difficult and expensive to reach an agreement.⁵ The Dodgers, however, had a history of working with the Los Angeles-based Boras, having negotiated large contracts with Boras clients Derek Lowe and J.D. Drew in the previous off-season. In selecting Hochevar, the Dodgers decided to take the chance that they could reach an agreement with the pitcher and soon began contract negotiations.⁶

Contract talks between the two parties progressed slowly and by Labor Day weekend no deal was in place; according to reports made at the time, the Dodgers had offered a \$2.3 million signing bonus while Hochevar was holding out for closer to \$4 million.⁷ Although MLB's draft rules granted the Dodgers the exclusive rights to negotiate with Hochevar, the pitcher wielded an important piece of leverage: the threat that he might return to Tennessee for his senior season and re-enter the draft in 2006, giving another team the chance to select and sign him. Indeed, Hochevar was careful to preserve his collegiate athletic eligibility by retaining Boras as his "legal counsel" rather than as his "agent."⁸

Over Labor Day weekend, the negotiations took a strange turn. While relaxing at the home of his best friend and Tennessee teammate Eli Iorg, himself chosen 38th in the 2005 MLB draft, Hochevar was reportedly bombarded with calls from Iorg's non-lawyer agent, Matt Sosnick.⁹ As Hochevar tells the story, Sosnick "had badgered [the pitcher] for

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Notes:

¹ Steven Henson, *Dodger Report: Boras Part of Draft Package*, L.A. Times, Jun. 8, 2005, at D7.

² Jim Callis, *Diamondbacks Take Upton with First Pick*, BaseballAmerica.com, Jun. 7, 2005 (on file with author).

³ John Manuel, 2005 Draft Scouting Report: Tennessee, BaseballAmerica.com, Jun. 1, 2005 (on file with author).

⁴ Due to MLB's Byzantine rules, several of MLB's 30 teams had the opportunity to pick twice before the Dodgers were allowed to make their first pick. This is not uncommon. See generally Major League Baseball Players Association Collective Bargaining Agreement, available at <http://www.businessofbaseball.com/docs.htm#2002basicagreement> (last visited Dec. 5, 2005). perception proved to be accurate.

⁵ Jim Callis, *2005 Draft: Draft Day Blog*, BaseballAmerica.com, Jun. 7 2005 (on file with author). As Hochevar recently signed a major-league contract (rather than the standard minor league contract) that, with incentives, could be valued up to \$7 million, this perception proved to be accurate.

⁶ Steve Henson, *Dodger Report: Navarro Is One Option*, L.A. Times, Jun. 22, 2005, at D5.

⁷ Tony Jackson, *Hochevar Saga Taking Several Stranger Turns*, Daily News of L.A., Sep. 9, 2005, at S7.

⁸ National Collegiate Athletic Association (NCAA) rules strip a player of college athletic eligibility when "he or she has ever agreed (orally or in writing) to be represented by an agent for the purpose of marketing his or her athletics ability or reputation in that sport." 2005-06 NCAA Division I Manual, Article 12.3.1, available at http://www.ncaa.org/library/membership/division_i_manual/2005-06/2005-06_d1_manual.pdf (last visited Dec. 5, 2005). However, NCAA regulations allow players to secure "advice from a lawyer concerning a proposed professional sports contract...unless the lawyer also represents the individual in negotiations for such a contract." Article 12.3.2. It is not clear how vigorously the NCAA enforces this distinction or how often it levies penalties against the players and their representatives who violate it. Nevertheless, Hochevar and Boras actively maintained this distinction in order to preserve Hochevar's ability to return to Tennessee and, consequently, to enhance Hochevar's bargaining power against the Dodgers. See Rich Hammond, *Dodgers Notebook: Hochevar Talks Go Nowhere*, Daily News of L.A., Sep. 10, 2005, at S9.

⁹ These facts and those that follow are disputed by the Iorgs and Sosnick. See Jackson, *supra* note 7. However, I will assume they are true for purposes of working through the various issues that Sosnick and Boras's alleged behavior raises. At one time, the Major

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months to leave Boras.”¹⁰ These efforts reached a climax on the night of September 2nd, when Sosnick allegedly made four calls to Iorg’s cell phone, asking to speak to Hochevar. Hochevar claims that he refused to take the first three but took the fourth in order to tell Sosnick that he “had been with Scott [Boras] and would always be with Scott.”¹¹ However, in the course of that conversation, Sosnick allegedly told Hochevar that he “knew for a fact he could get [Hochevar] close to \$3 million” and end the protracted hold-out. The catch? The offer was only available through Sosnick and for a limited time—Hochevar had 10 minutes to decide.¹²

Hochevar, who since has said he was “blinded” by Sosnick’s offer and that he “weakened in a moment of confusion,” signed a document naming Sosnick as his agent (thereby foreclosing his future National Collegiate Athletic Association (NCAA) eligibility) and authorized him to negotiate a contract with the Dodgers.¹³



That night, Sosnick reached an agreement with the Dodgers on a \$2.98 million signing bonus but, by the time the team was

able to dispatch an area representative to have Hochevar sign the contract, the pitcher had spoken to Boras, agreed to reinstate him as his representative and refused to finalize the deal with the Dodgers.¹⁴ When the dust settled, the Dodgers had rescinded their \$2.98 million offer, leaving Hochevar both without a contract and without the NCAA eligibility that was the key to his bargaining position.¹⁵

Although the predatory tactics and ethical responsibilities of professional sports agents have been widely discussed,¹⁶ the relationships among Hochevar, Boras and Sosnick present an interesting case study in the differing regulatory regimes governing personal solicitation faced by lawyer-agents and non-lawyer-agents. The remainder of this paper will discuss these issues in four parts. In order to call attention to the disparity in regulation felt by lawyer-agents and non-lawyer-agents, Part II will examine the ethical rules Sosnick would have broken had he been an attorney. Part III will identify and briefly discuss the existing regulatory structures, particularly the Major League Baseball Players Association (MLBPA) “Regulations Governing Player Agents,” that could potentially close the regulatory gap between lawyer-agents and non-lawyer-agents. Part IV will suggest improvements to the existing MLBPA regulations in order bring non-lawyer-agents in greater parity with lawyer-agents. Part V will conclude.

Part II – Sosnick’s Violations of the “Model Rules of Professional Responsibility”

Had Matt Sosnick been an attorney, there is no question that his alleged behavior would have violated the regulations on solicitation in the American Bar Association’s Model Rules of Professional Responsibility.¹⁷ Sosnick’s alleged behavior clearly fell under the ambit of Model Rule 7.3(a), which prohibits a lawyer from using “in-person, live telephone or real-time electronic contact [to] solicit professional employment from a prospective client when a sig-

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League Baseball Players Association (MLBPA) said that it was “looking into” the incident, though they have not addressed the matter publicly in nearly a year. See John Manuel, *Dodgers and Hochevar Start From Scratch*, BaseballAmerica.com, Sep. 19, 2005, available at <http://www.baseballamerica.com/today/news/050919hochevar.html> (last visited Dec. 5, 2005).

¹⁰ Tim Brown, *Dodgers’ No. 1 Pick Throws a Changeup*, L.A. Times, Sep 9, 2005, at D1.

¹¹ Jackson, *supra* note 7.

¹² *Id.*

¹³ Brown, *supra* note 10.

¹⁴ *Id.*

¹⁵ Tony Jackson, *Hochevar Bonus Offer Rescinded*, L.A. Times, Sep. 15, 2005, at S4. In the end, Hochevar and the Dodgers failed to reach an agreement. Hochevar was unable to return to Tennessee and played independent league baseball to showcase his abilities prior to the 2006 draft. The Royals selected Hochevar with the first overall selection in the 2006 draft and recently signed him to a major league contract.

¹⁶ See, e.g., Bryan Couch, *How Agent Competition and Corruption Affects Sports and The Athlete-Agent Relationship and What Can Be Done to Control It*, 10 Seton Hall J. Sports L. 111 (2000); Stacey M. Nahrwold, *Are Professional Athletes Better Served by a Lawyer-Representative than an Agent? Ask Grant Hill*, 9 Seton Hall J. Sports L. 431 (1999); James E. Brown, *The Battle the Fans Never See: Conflicts of Interest for Sports Lawyers*, 7 Geo. J. Legal Ethics 813 (1994).

¹⁷ It seems clear that the type of services Sosnick sought to provide Hochevar – contract negotiation with a prospective employer – were sufficiently similar to those services typically provided by lawyers to have brought his activities, had he been a lawyer, within the jurisdiction of the Model Rules. Additionally, courts have held that attorneys are bound by their state’s applicable ethical rules in all business endeavors. See, e.g., *In re Dwight*, 573 P.2d 481 (Ariz. 1997). However, the extent to which other states have followed this position is unclear.

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nificant motive for the lawyer's doing so is the lawyer's pecuniary gain.¹⁸ Alternatively, if a court were to find that Sosnick's pecuniary gain were not at issue, Sosnick would have been in violation of Rule 7.3(b)(1), which prohibits a lawyer from soliciting a prospective client when "the prospective client has made known to the lawyer a desire not to be solicited by the lawyer."¹⁹ These Rules explicitly aim to protect the "prospective client, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, [and who] may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation and over-reaching."²⁰

Hochevar, who later described Sosnick as "crazy" and who told reporters that he wished Sosnick would "leave [him] alone"²¹ was in the precise position contemplated by the Rules: a 21 year-old kid without a college degree or relevant professional skills, locked in his first contract negotiation and facing the pressure of media attention.



Part III – Existing Regulations on Non-lawyer-agent Activity

Sosnick's status as a non-lawyer-agent begs the question: What legal or industry standards could have restrained Sosnick's alleged conduct in a manner akin to the Model Rules' regulation of lawyer-agents? As well will see, the answer to this question is, "Few, if any."

First, Boras or Hochevar may have been able to bring suit against Sosnick under existing common law agency, tort or

contract theories.²² In fact, Boras reportedly threatened suit against Sosnick, apparently for tortious interference of contract.²³ Although a detailed discussion of Hochevar's or Boras's potential common law claims is beyond the scope of this paper, it is unlikely that any would have succeeded. Sosnick was not in a privity relationship with either Boras or Hochevar and was under no fiduciary obligations to either of them. Additionally, any claim for tortious interference probably would have failed since Hochevar's contract with Boras, if similar to other player-agent contracts, was a typical at-will employment contract. Hochevar could have dismissed Boras at any time and for any reason.

Second, several states have laws specifically aimed at regulating athlete agents that create both civil and criminal penalties for agent wrongdoing. As of July 1, 2006, 34 states had passed the "Uniform Athlete Agents Act" (UAAA), while four others had pending UAAA legislation. As of the same date, five states, including Sosnick's business state, California, had passed non-UAAA athlete agent laws. Twelve states had no athlete agent laws.²⁴ None of these statutes, however, is well-suited to regulating the sort of conduct at issue in the Hochevar affair. Both the UAAA and the existing non-UAAA laws were developed and passed in the wake of several high-profile scandals in which agents were found to have provided active NCAA athletes with clothes, cars, cash, drugs and prostitutes in order to "recruit" them as clients upon their attaining professional status.²⁵ Therefore, these statutes are designed to protect those student-athletes who, unlike Hochevar, are still active in collegiate athletics, have not been drafted, are not engaged in contract negotiations with a professional organization and who have no intention of forfeiting their NCAA eligibility.²⁶ Consequently, existing state laws chiefly focus on agent registration, certification and disclosure.²⁷ When these statutes do seek to regulate conduct, they restrict agents from providing "money or anything of benefit or value" to student-athletes.²⁸ In no way do these

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¹⁸ MODEL RULES OF PROF'L CONDUCT R. 7.3(a).

¹⁹ *Id.* R. 7.3(b)(1).

²⁰ *Id.* R. 7.3(a) cmt.

²¹ Brown, *supra* note 10.

²² See, e.g., Jamie P.A. Shulman, *The NHL Joins In: An Update on Sports Agent Regulation in Professional Team Sports*, 4 Sports Law J. 181, 192-96 (1997).

²³ Jackson, *supra* note 7.

²⁴ See "Uniform Athlete Agents Act (UAAA) History and Status", available at <http://www1.ncaa.org/membership/enforcement/agents/uaaa/history.html> (last visited Jun. 15, 2006).

²⁵ See Couch, *supra* note 16.

²⁶ Indeed, the UAAA's drafting commission, the National Conference of Commissioners on Uniform State Laws, recognized that regulating the agent conduct referred to in the UAA raised "questions about interfering in legitimate contracts where a student-athlete, such as a football or basketball player who wants to forego some portion of his or her eligibility, knowingly signs a contract with an agent that will terminate his or her collegiate eligibility." Robert N. Davis, *Exploring the Contours of Agent Regulation: The Uniform Athlete Agents Act*, 8 Vill. Sports & Ent. L.J. 1 (2001).

²⁷ See, e.g., U.A.A.A. §§ 4, 5, 6, 10 and 11 and Cal. Bus. and Prof. Code §§ 18896, 18896.6 and 18897.1.

²⁸ See, e.g., U.A.A.A. §§ 14(2) and Cal. Bus. and Prof. Code § 18897.67.

statutes intend to function as professional codes of conduct similar to the Model Rules. Therefore, it is not surprising that neither the UAAA nor the non-UAAA statutes restrict the use of aggressive client solicitation tactics such as the “in-person, live telephone or real-time electronic contact” prohibited by the Model Rules.²⁹

Finally, the MLBPA has promulgated agent certification and conduct rules similar to those instituted by each of the other three major sports leagues.³⁰ Although these rules better address the Hochevar situation than do existing state laws—they are not concerned with the relationship between agents and those amateurs who wish to remain amateurs—they nevertheless fail to address Sosnick’s conduct. The MLBPA’s “Regulations Governing Player Agents” (Regulations) institute several requirements for agent certification and regulate various forms of post-certification agent conduct, including fee arrangements and player-agent contract length.³¹ No clause in the Regulations, however, prohibits in-person or telephone solicitation in a manner similar to the Model Rules. The MLBPA Regulations *do require* that agents refrain from engaging in “conduct involving dishonesty, fraud, deceit, misrepresentation, or other conduct which reflects adversely on...fitness as a Player Agent.”³² Additionally, the Regulations require that each agent “carry out his representation services with the highest degree of professional competence and integrity.”³³ Although the latter two clauses could be read as covering Sosnick’s conduct, they could just as easily be read as *not covering* that conduct. This catch-all language is simply too vague to provide any adequate notice that in-person or telephone solicitation is prohibited.

Therefore, though the union’s duty is to protect and safeguard the rights of its players, the MLBPA’s current rules regarding agent conduct clearly failed to regulate Sosnick’s alleged behavior in a way that may have protected Luke

Hochevar.

Part IV – Needed Changes in the MLBPA’s “Regulations Governing Player Agents”

Examination of the relevant state laws and industry regulations makes clear that Matt Sosnick’s status as a non-lawyer-agent freed him to personally solicit Luke Hochevar in what Hochevar perceived to be an intimidating and harassing fashion. As a result, and as other commentators have noted,³⁴ non-lawyer-agents have an advantage over lawyer-agents in their ability to recruit prospective clients. In the case of Luke Hochevar the loophole created by this disparity caused him the loss of his collegiate athletic eligibility and his bargaining power against the Dodgers.

The MLBPA, rather than courts or state legislatures, is best suited to address this issue. First, as noted above, the union has unfettered power to regulate the conduct of the agents who represent its players. Second, the union’s central role in the governance of its players puts it in a better position than state agencies to monitor agent activity and enforce agent misconduct. Therefore, the MLBPA has both the responsibility and the opportunity to promulgate new rules of agent conduct that provide players with strong protections from agent misconduct.

Primarily, the MLBPA should strongly consider adopting a rule akin to Model Rule 7.3 prohibiting agents from soliciting players in-person or over the phone. Not only will such a regulation diminish the chance of Luke-Hochevar-situations surfacing again in the future, but it also will give lawyer-agents a better opportunity to compete for players with non-lawyer-agents.

Of course, one would probably be reasonable in asserting that veteran players like Roger Clemens and Gary Sheffield are not in need of paternalistic regulation. They’ve been around a long time and probably know their business better than most agents. Therefore, it may make more sense for the MLBPA to adopt a limited restriction on in-person so-

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²⁹ The relevant section of California’s statute, Cal. Bus. and Prof. Code § 18897.63(b), states that registered and certified athlete agents “may send a student athlete...written materials” under certain conditions and subject to certain restrictions. The statute does not mention and clearly does not prohibit in-person communication.

³⁰ Players’ unions have broad power to restrict the activities of player agents due to labor’s exemption from antitrust law. See Shulman, *supra* note 22, at 206.

³¹ MLBPA Regulations Governing Player Agents §§ 4(F) and 4(D), available at <http://www.businessofbaseball.com/docs/MLBPAREgsPlayerAgents.pdf> (last visited Aug. 6, 2006).

³² *Id.* § 3(B)(11).

³³ *Id.* § 3(C).

³⁴ See, e.g., Tamara L. Barner, *Show Me the...Ethics?: The Implications of the Model Rules of Ethics on Attorneys in the Sports Industry*, 16 *Geo. J. Legal Ethics* 519 (2003).

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licitation that covers only the youngest and most vulnerable players—prospective draftees, minor leaguers or maybe even pre-arbitration major leaguers

Second, the MLBPA should contemplate following the lead of the National Football Players Association (NFLPA) by mandating that each agent carry malpractice insurance.³⁵ Just as it is important that the MLBPA prohibit certain types of agent misconduct, it is equally important that players be made whole when agents have engaged in prohibited misconduct and caused players to suffer monetary damages.³⁶ Professional sports are replete with stories of agents whose conduct has caused players severe economic damage; the MLBPA has a responsibility to its players to ensure that they can recover if similar incidents occur.

Finally, the MLBPA should improve the “gatekeeping” elements of its agent regulation system. Currently, the MLBPA Regulations do not require agents to have attained a minimal level of education, in contrast to the NFLPA, which recently raised its minimum education requirement from a four-year undergraduate degree to a post-graduate degree.³⁷ Additionally, the NFLPA requires its agents to pass a written exam in order to gain certification³⁸ and to attend annual seminars as part of its continuing education program.³⁹

Of course, as with any increase in regulation, the added cost of compliance will price some suppliers (in this case, the agents) out of the market. Additionally, the remaining suppliers will pass their increased costs on to the consumer (here, the players). Certainly, the MLBPA has an interest in ensuring that their players can access agent representation at affordable price. However, the union has a similar interest in ensuring that their players get adequate and effective representation. In fact it is possible that, in the current state of little to no regulation, incompetent or unscrupulous agents are costing the MLBPA’s players more than they would lose in increased fees under a stricter regulator regime. Therefore, the MLBPA should not shy away from reasonable and incremental regulatory steps, such as requir-

ing agent to possess college degrees.

Part V- Conclusion

For every Roger Clemens or Pedro Martinez, there are hundreds if not thousands of college and high school stars who do not get a chance to pitch in the big leagues. Some never improve upon their level of high school or college performance and toil for years in the minors. Many, if not most, injure their arms and cannot continue to pitch effectively. Therefore, most of the time, players like Luke Hochevar only get one chance to make any money from their baseball abilities. And for many of these players, most of whom only have high school diplomas, the one contract they sign coming out of the draft may have to sustain them long after their playing careers are over.



The MLBPA has a responsibility to make sure that these players are well-represented when they sign a professional contract. To that end, the MLBPA should encourage the use of lawyers in player representation by making sure that non-lawyer-agents are subject to the same rules of ethical conduct as lawyer-agents. Additionally, the MLBPA should require all agents to carry malpractice insurance in order for players to recover when agents have violated their fiduciary duties.

Finally, the MLBPA should raise its certification standards to ensure that only well-trained professionals are able to represent players in contract negotiations.

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³⁵ The NFLPA requires that agents carry malpractice insurance policies with a minimum of \$1 million in coverage. See Memorandum from NFLPA Legal Department to Contract Advisors Regarding Contract Advisor Liability Insurance (Aug. 18, 2005), available at http://www.nflpa.org/PDFs/Agents/INSURANCE_MEMORANDUM_8-18-05.pdf (last visited Dec. 5, 2005). Given that MLB players’ salaries, and therefore the risk of loss due to malpractice, are higher on average than those of NFL players, the MLBPA may need to set a higher coverage floor. A detailed discussion of this proposal is beyond the scope of this paper but certainly merits further research.

³⁶ See, e.g., Couch, *supra* note 16, at 129-31.

³⁷ Memorandum from NFLPA Legal Department to Contract Advisors Regarding 2005 Amendments to the NFLPA Regulations (May 16, 2005), available at <http://www.nflpa.org/PDFs/Agents/2005RegAmendments.pdf> (last visited Dec. 5, 2005).

Business of Baseball Committee Update

John Zajc, SABR Executive Director, issued the following statement on July 20:

“Maury Brown has asked the SABR Board of Directors for a leave of absence from his committee co-chairmanship until there is clarification for SABR Research Committee chairs on how writing for, or working for, other business entities in the committee they lead's field of study should, or should not, impact their ability to lead that committee.

After some e-mail discussion, the Board has decided that this merits a face-to-face discussion at their next meeting. Because of the timing of the Board of Director meetings, this issue very well may not be resolved until mid-November.

In the meantime, Maury will step back from his duties as co-chair of the committee, but plans to remain as active as he can in various projects.”

We are in the process of moving BusinessofBaseball.com, the committee's website, to the SABR servers. We are seeking volunteers who are willing to help maintain the committee website.

Gary Gillette (GGillette@247Baseball.com)

John Ruoff (jruoff@bellsouth.net)

Co-Chairs, Business of Baseball Committee



Business of Baseball Committee

The Business of Baseball Committee co-chairs are Gary Gillette (GGillette@247Baseball.com) and John Ruoff (jruoff@bellsouth.net). Ruoff edits *Outside The Lines*.

The committee's website is at <http://www.businessofbaseball.com>. The Committee's discussion group, Businessof-Baseball, is on YahooGroups. If you are a member of the Committee and want to join, go to <http://sports.groups.yahoo.com/group/BusinessofBaseball/> or send an e-mail to [Business of Baseball-subscribe@yahogroups.com](mailto:BusinessofBaseball-subscribe@yahogroups.com).

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