Outside the Lines

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The NFL Lost the Race to MLB In Upholding Collective-Licensing of Team Logos

By Lawrence W. Boes[1]

This article summarizes two lawsuits brought under the antitrust laws by vendors of merchandise featuring team logos against the two major professional sports organizations in the USA. Two former MLB and NFL licensees, Salvino, Inc., and American Needle, Inc. (ANI), each complained, respectively, that the MLB and NFL programs for collective licensing of team and league logos are conspiracies in restraint of trade violating § 1 of the Sherman Act of 1890, by foreclosing competition among their teams and league itself in marketing such licenses.[2]

The *ANI v. NFL* case began in 2004 in the federal court in Chicago when NFI sued the NFL and thirty-one of its football teams on an antitrust-law claim

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For prior proceedings in *ANI v. NFL,* through the Oral Argument in the U.S. Supreme Court on Jan. 13, 2010, see also Lawrence W. Boes, "Will The Supremes Revolutionize "Sports Law" and Sing the Praises of Either NFL or MLB, or Both?", Outside the Lines (SABR, Business of Baseball Committee, Winter 2010).

[2] This federal law essentially forbids "contracts, combinations and conspiracies" among business competitors resulting in unreasonable restraint of interstate commerce, for example, agreements restricting output, dividing territories, fixing prices or otherwise restraining competition.

Major League Baseball's Nine Commissioners:
A Qualitative Assessment of Effectiveness and the Development of a Basic Statistical Model

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Note: *This article is based on a scholarly presentation by the author at the 40th Annual Conference of the Society for American Baseball Research in August 2010. The article discusses the successes and failures of the nine commissioners. Additionally, the results of a survey of the commissioners' ability or capacity to lead effectively are presented. 300 surveys were distributed to randomly selected scholars in Academe, with 219 scholars responding.*

INTRODUCTION & METHODOLOGY

The position of Commissioner of Major League Baseball, including roles and responsibilities, is critically important to Baseball's success. Commissioners are responsible for Major League Baseball. Still, none of Baseball's 30 owners report directly to the Office of the Commissioner. This unique reality creates condi

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challenging the NFL program for collective licensing of its teams' trademarked logos through a jointly owned subsidiary, NFL Properties, Inc. (NFLP). (See Part I below.)

The case received much attention, because the NFL and its lawyers proposed a theory that sports organizations' lawyers had long espoused, namely, that the leagues' collective business actions are operated by a "single entity" and thus by nature are not subject to a claim of conspiracy under the Sherman Act.[3] The federal district and appellate courts in Chicago accepted the NFL's theory, dismissed the lawsuit, and the parties concurred in requesting Supreme Court review to test this theory, bypassing any further consideration of the economic facts and law on the merits of this antitrust case. After the Court's reversal and remand, *ANI v.NFL* is pending again in the district court, but to date (October 20, 2010) no judge has yet been assigned.

The *MLB v. Salvino* case was brought in 2000 against MLB and thirty of its teams and other business entities conducting MLB's similar licensing program. The federal trial and appellate courts in New York finally dismissed the lawsuit in 2008. Thus, the MLB won a significant, but unpublicized, legal victory for itself, its teams and their jointly owned licensing marketing subsidiary, Major League Baseball Properties Inc. (MLBP), two years ago, preceding any decision in the *ANI v. NFL* case. (See Part II below.)

This 2008 *MLB* decision was marked by a little-noted opinion of then Judge Sonia Sotomayor of the Second Circuit (who was later appointed a Justice of the U.S. Supreme Court in 2009). According to this decision MLB's collective logo-licensing program is a reasonably necessary part of a legitimately formed joint venture, with the pro-competitive and pro-efficiency aspects of the MLB program clearly outweighing any hypothetical and unproven level of competition among the teams when they operated separate licensing programs.

Because of the Supreme Court's May 24, 2010 decision in this case, attracting major press coverage, we summarize this NFL case first.

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[3] By this argument, the NFL sought immunity from Sherman Act § 1, partially escaping antitrust-law liability. This immunity would be similar to the nonstatutory exemption granted to professional baseball. Baseball long enjoyed this unique exemption from the antitrust laws because it was not considered within "interstate commerce" under the Sherman Act, as a result of repeated time-honored judicial decisions beginning in 1922 by *Federal Baseball Club* v. *National League*, 259 U.S. 200 (Holmes, J., writing for a unanimous Court), and continued in *Toolson v. New York Yankees,* 346 U.S. 356 (1953), and *Flood v. Kuhn,* 407 U.S. 258 (1972) (Blackmun, J., writing for a majority of seven justices). It is doubtful, however, whether this exemption, which was limited to professional baseball among all other sports enterprises, would be extended to exempt such undoubtedly nationwide commercial activities as licensing trademarked logos for use on products sold in interstate commerce, in which both MLB and NFL are competitively engaged. *See, e.g., Flood v. Kuhn,* 407 U.S. at 282, in which Justice Blackmun wrote an extended paean to baseball as the "national pastime" and an apologia adhering to the Court's prior baseball decisions, but acknowledging, "With its reserve system enjoying exemption from the federal antitrust laws, baseball is, in a very distinct sense, an exception and an anomaly." In so limiting the "exemption" to the "reserve clause" of the uniform players contract challenged in the 1922 case, other aspects of baseball as a business have long been accepted as within the usual scope of interstate commerce. Some may urge the effect of the Curt Flood Act of 1998, 15 U.S.C. § 26b, in which Congress, with the prior concurrence of MLB and MLBPA lawyers, effectively overruled a limited application of the Supreme Court's "mistaken" 1922 decision as construed by the Court in *Flood v. Kuhn* in 1973, asserting that the Act itself has no other purpose, by exempting or not other commercial activities of organized professional baseball. For all practical purposes, MLB and its teams no longer enjoy a blanket antitrust-law exemption. After six or more years of vigorous litigation, organized baseball's so-called antitrust exemption is not claimed nor even mentioned in about 70 double-column pages of the district court and 2d Circuit opinions in *MLB v. Salvino,* 420 F. Supp. 2d 212 (2005) (Casey, J.), *aff'd,* 542 F.3d 290 (2d Cir. 2008).

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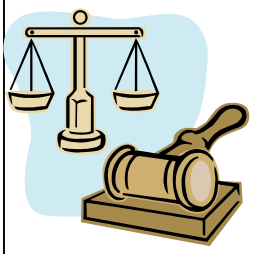
I

AMERICAN NEEDLE, INC. v. NATIONAL FOOTBALL LEAGUE

___ U.S. ___, 130 S. Ct. 2201 (2010), *reversing and remanding* 538 F.2d 736 (7th Cir. 2008), *case remanded to district court for further proceedings* (7th Cir. Aug. 24, 2010)

On May 24, 2010, the U.S. Supreme Court by unanimous decision reversed judgments of the Seventh Circuit and District Court in *ANI v. NFL* and remanded the case for further proceedings in accordance with a unanimous opinion of Justice John Paul Stevens (now retired). The result was not surprising to expert legal commentators, the Court's Opinion being consistent with prior case law under the antitrust laws.



ANI, a former trademark licensee of the NFL engaged in manufacturing and distributing NFL-branded headgear, filed this case about six years ago in federal district court in Chicago. The court, after limited discovery and examination of the bare facts of the NFL teams' collective licensing of league and team logos, dismissed ANI's challenge, ruling that the NFL and its clubs were effectively not acting as business competitors, but as a "single entity," and therefore not subject to Sherman Act § 1. The precise legal issue before the Supreme Court was whether a sports league or other voluntary associations of competing sports clubs or similarly affiliated business entities may operate as if a "single entity" to grant collective licenses of its member clubs' logos, without a factual inquiry of the anticompetitive effects of such collective licensing.

In an article published in the Spring 2010 issue of SABR's *Outside the Lines*, which reviews the briefs and oral argument in the Court in *ANI v. NFL*, this author concluded:

> Based on the 25-year history of opinions written by the current justices and their repeated and emphatic comments during the oral arguments, it is probable that the Court will reverse, vacate or modify the judgment of the 7th Circuit and District Court in dismissing ANI's antitrust claim on an erroneously applied "single entity" concept as applied to the NFL and its member clubs . . . .

The precise reasoning and formal result of the Court's decision was unclear, so the author made some hypothetical guesses. This decision intimates the ultimate result of the lower courts in following Justice Stevens's opinion, as hypothesized in the earlier OTL article:

> [V]acate the judgment and remand the case to the 7th Circuit to review the record to determine whether there are sufficient facts to regrant summary judgment for the NFL based on the alternative grounds recommended by the Solicitor General's brief and as ruled in *MLB v. Salvino, namely,* that collective licensing of team logos by a legitimately organized sports league is a reasonable ancillary restraint of the "joint venture"; or order that the case be further remanded to the District Court for further discovery of material issues on the "reasonableness" of the NFL's policy . . . .[4]

After oral argument before the Supreme Court on January 13, 2010, the "single entity" argument was doomed. It was unclear, however, how far the Court would go in limiting the concept as applied to sports leagues and other associated business combinations or simply rule that the NFL's factual history and organization failed to meet necessary factual criteria, such as common ownership and marketing of their business assets.

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[4] In fact, upon the Supreme Court's remand, the three-judge panel of the Seventh Circuit accepted the parties' requests in written position statements that the case be further remanded to the district court "for further proceedings consistent with the Supreme Court's opinion . . . ." Unpub. Order, dated Aug. 24, 2010. This seems to be founded on the parties' recognition that further discovery of the parties' documents and depositions of potential witnesses, etc., is no longer limited to matters relevant to the "single entity" theory.

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Justice Stevens followed clear precedents for the Court's reasoning, thus achieving unanimity. At the same time the Opinion holds out additional conclusions that, "Football teams are not trapped by antitrust laws [because they] share an interest in making the entire league successful and profitable, [and] must cooperate in the production and scheduling of games, [which] provides a perfectly sensible justification for making a host of collective decisions." (Opinion at 7 online at http://www.cornell.edu/supct/html/08-61.ZO.html.) This clears a path to ultimate victory for the NFL in the lower courts, which had already indicated similar predilections for the NFL's conduct.

Justice Stevens succinctly summarized the essential facts of the past 47 years of collective licensing of all logos owned by the NFL and its 32 teams through a commonly owned corporation acting as their agent.

> In 1963, the teams formed National Football League Properties (NFLP) to develop, license, and market their intellectual property. Most, but not all, of the substantial revenues generated by NFLP have either been given to charity or shared equally among the teams. However, the teams are able to and have at times sought to withdraw from this arrangement. (Op. at 2.)

Although the lower federal courts deciding this case considered these same undisputed facts sufficient to deem the NFL and its teams a "single entity" for antitrust purposes and thus not a "contract, combination or conspiracy" under Sherman Act § 1, the Court unanimously decided the "single entity" concept not applicable to the NFL's logo-licensing operations.

Justice Stevens started his legal discussion in the Opinion with an antitrust-law primer, contrasting the basic language and purposes of § 1 of the Sherman Act outlawing unreasonable "restraints" of trade as committed by groups of independent entrepreneurs, while § 2 prohibits monopolization and attempts to monopolize by either one or a cartel of business enterprises dominating a "relevant market." (Op. at 2-3.)[5] Then the Court recounted a century-long line of case law in the Court, a 1912 case being the earliest cited, confirming the following proposition:

> We have long held that concerted action under §1 does not turn simply on whether the parties involved are legally distinct entities. Instead, we have eschewed such formalistic distinctions in favor of a functional consideration of how the parties involved in the alleged anti-competitive conduct actually operate. (Op. at 3.)

Justice Stevens concluded his review of the precedents interpreting "contract, combination . . . or conspiracy" by summarizing and distinguishing the Court's 1984 decision in *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752. (Justice Stevens originally dissented in this 1984 case, joining with Justices Brennan and Marshall, but his unanimous Opinion for the Court in *ANI v. NFL* embraces the *Copperweld* decision.) In *Copperweld,* the antitrust plaintiff alleged a conspiracy between a parent corporation and a wholly owned subsidiary. The Court held such an intra-enterprise combination did not constitute the necessary plurality of action for a claim under Sherman Act § 1, since it does not "depriv[e] the marketplace of independent centers of decisionmaking" and thus their "agreement . . . does not constitute a 'contract, combination . . . or conspiracy' for the purposes of § 1." (Op. at 4, *quoting Copperweld,* 467 U.S. at 769.)

Justice Stevens, in his aptitude for bringing together the separate views of the nine Justices, recast the issue to disentangle the "single entity" concept:

> [T]he question is not whether the defendant is a legally single entity or has a single name; nor is the question whether the parties involved "seem" like one firm or multiple firms in any metaphysical sense. The key is whether the

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[5] Under Sherman Act § 2, determination of defendant's economic power in a relevant market is a crucial issue, and difficult to prove.

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> alleged "contract, combination …, or conspiracy" is concerted action—that is, whether it joins together separate decisionmakers. The relevant inquiry, therefore, is whether there is a "contract, combination … or conspiracy" amongst "'separate economic actors pursuing separate economic interests," *id.*, at 769, such that the agreement "deprives the marketplace of independent centers of decisionmaking," *ibid.*, and therefore of "diversity of entrepreneurial interests" . . . [*quoting* the last phrase from *Fraser v. Major League Soccer, L.L.C.,* 284 F.3d 47, 57 (1st Cir. 2002) (Michael Boudin, Ch. J.)]. (Op. at 5.)[6]

The Opinion continued this discussion of the abstract legal issues: "The question is whether the agreement [among the NFL, its teams and NFLP] joins together 'independent centers of decisionmaking.'" (Op. at 5, *quoting Copperweld,* 467 U.S. at 769.)

The Court's Opinion went on to discuss why the NFL agreement on collective logo-licensing cannot avoid antitrust-law scrutiny of the particular facts of the NFL and its teams and NFLP's organization and their collective logo-licensing practices. The Opinion re-summarized the factual premises for its legal conclusions:

> The NFL teams do not possess either the unitary decisionmaking quality or the single aggregation of economic power characteristic of independent action. Each of the teams is a substantial, independently owned, and independently managed business. . . . [*Citing and quoting Copperweld* and another sports league case.] The teams compete with one another, not only on the playing field, but to attract fans, for gate receipts and for contracts with managerial and playing personnel.
>
> Directly relevant to this case, the teams compete in the market for intellectual property. To a firm making hats, the Saints and the Colts are two potentially competing suppliers of valuable trademarks. . . . [Again, *citing and quoting Copperweld*.] Decisions to license their separately owned trademarks collectively and to only one vendor are decisions that "depriv[e] the marketplace of independent centers of decisionmaking. (Op. at 5.)

The Court next discussed the NFL argument that its teams are acting as one entity in centralizing their management of their logo-licensing program through a jointly owned corporate subsidiary, defendant NFL Properties, Inc. (NFLP). The Opinion concluded this is not dispositive, since "the teams still have distinct, potentially competing interests." And, even though the NFL and NFLP administered this licensing program since 1963, "a history of concerted activity does not immunize conduct from §1 scrutiny." The Opinion conceded the closeness of the issue but also concluded:

> . . . NFLP is a separate corporation with its own management and . . . the record indicates that most of the revenues generated by NFLP are shared by the teams on an equal basis. Nevertheless, we think it clear that for the same reasons the 32 teams' conduct is covered by §1, NFLP's actions also are subject to §1, <u>at least with regards to its marketing of property</u>

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[6] Justice Stevens's Opinion also cites decisions of Judge Alex Kozinski of the 9th Circuit and former Judge Robert Bork of the D.C. Circuit, appellate judges also known for interpreting the antitrust laws in a manner influenced by "conservative" and "law and economics" views.

Fraser v. Major League Soccer is interesting. MLS was organized in the mid-90s from the top down as a professional Division 1 soccer league comprising about sixteen teams, whose investors/managers are delegated limited managerial powers by the parent organization (MLS), leaving to MLS the function of hiring and making contracts with major soccer players. Thus, MLS competes with European and other international soccer teams in hiring star players, but this allocation of functions precludes competition among its member teams for these star players. The First Circuit opinion discusses the legality of this arrangement, without reaching any conclusion that it avoids scrutiny under Sherman Act § 1. Instead, the court decided the case on other grounds arising from a jury verdict for defendants on an accompanying § 2 claim.

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> owned by the separate teams. . . . Unlike typical decisions by corporate shareholders, NFLP licensing decisions effectively require the assent of more than a mere majority of shareholders. . . . [C]ompetitors "cannot simply get around" antitrust liability by acting "through a third-party intermediary or 'joint venture'."(Op. at 6-7 (emphasis added), and *quoting* Justice Sotomayor's 2008 concurring opinion while a Judge of the 2d Circuit in *Major League Baseball Properties, Inc. v. Salvino, Inc.,* 542 F.3d 290, 336, discussed in Part II below.[7])

The issue of the reasonableness of collective marketing of team logos through the NFL and NFLP was not before the Court on this particular review and will now have to be decided by a district judge to be assigned and undoubtedly again by the Seventh Circuit Court of Appeals.[8] The circuit court's obvious predilections against ANI's antitrust case and in favor of the NFL and its teams will clearly lead them to decipher the final directions of Justice Stevens's Opinion.[9]

The Opinion finally underlined that this decision of the Supreme Court does not decide the legality of the NFL's logo-licensing policy, it only decided that the lower court's summary judgment for the NFL dismissing ANI's case cannot stand based on the NFL's "single entity" contention.

The basic antitrust-law issue remains to be explored in the lower courts—that is, whether the NFL and its teams' collective logo-licensing, as conducted by NFLP since 1963, is an "unreasonable" restraint of trade in the sports logo-licensing and sports apparel and memorabilia markets under the reasonable standards of the "Rule of Reason." As the Opinion stated:

> Football teams that need to cooperate are not trapped by antitrust law. . . . The fact that NFL teams share an interest in making the entire league successful and profitable, and that they must cooperate in the production and scheduling of games, provides a perfectly sensible justification for making a host of collective decisions. (Op. at 7; emphasis added.)

In the next paragraph, Justice Stevens distinguished, for example, *per se* liability under the antitrust laws that applies to explicit price fixing from the multifaceted "Rule of Reason" test, which requires examination of the peculiar facts of the business in which an alleged anticompetitive restraint takes place, including the condition of the market before and after the alleged restraint, and its anticompetitive, procompetitive and pro-efficiency effects, actual or probable, etc. This complex legal test typically requires much discovery of the parties' records, depositions of officers and expert opinions of economist witnesses, multiple pretrial motions and disputes, eventually leading to a jury (or nonjury) trial and appeals, unless foreshortened by a summary judgment motion to be decided by

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[7] Concluding this critical part of the Opinion with a telling reference to Justice Sotomayor's concurrence in *MLB v. Salvino* (discussed at length in Part II below) was more than a gesture of recognition of the then junior member of the Court, it obviously reflected Justice Stevens's own views of the ultimate antitrust-law legality of the NFL's (and MLB's) collective licensing of league and team trademarked logos, when coupled with revenue-sharing.

[8] District Judge Moran, who originally decided the case by granting summary judgment to the NFL, died in 2009, and so the case is to be reassigned. (See Part II.) And, the Supreme Court having remanded it to the court of appeals, which in turn remanded to the district court, *ANI v. NFL* will most probably be decided upon final decision of the district and appellate courts.

[9] Justice Stevens is well-known among the federal judges in Chicago, not only because he was himself a judge of the 7th Circuit, before being nominated for the Supreme Court post by President Ford; he has long served as Circuit Justice for that court, attending its annual celebrations and judicial meetings with its district and appellate judges.

Some of the media commentary in immediate reaction to the Supreme Court's unanimous decision, rejecting the NFL's "single entity" theory, mistakenly read Justice Stevens's Opinion too broadly, in quoting ANI's counsel's optimistic comments and taking little or no account of the Opinion's final four paragraphs. *See, e.g.,* Ameet Sachdev, "American Needle victory puts NFL on defense," Chicago Tribune, May 25, 2010.

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the trial and appellate courts upon undisputed facts.

The Opinion tellingly concluded, "And depending upon the concerted activity in question, the Rule of Reason may not require a detailed analysis; it 'can sometimes be applied in the twinkling of an eye.'" (Op. at 7 & n. 10, *quoting NCAA v. Board of Regents*, 468 U. S. 85, at 109, n. 39 (1984).) Usually, an antitrust decision under the Rule of Reason when made "in the twinkling of an eye," is decided for antitrust plaintiffs when the lessening of competition is obvious, as in the *NCAA* case; here, however, there is clear indication that application of the Rule of Reason "in the twinkling of an eye" portends that the NFL defendants are "not trapped by antitrust law."

This is confirmed by the next sentence, "Other features of the NFL may also save agreement amongst the teams." Justice Stevens's Opinion referred particularly to his conclusion, "that the interest in maintaining a competitive balance" among "athletic teams is legitimate and important." (Op. at 7, *quoting NCAA*, 468 U.S. at 117.)

Although the NFL had not argued this point in the Supreme Court, obviously Justice Stevens clearly had in mind that a collective logo-licensing operation, when accompanied by revenue sharing enjoyed equally by all teams, furthers competitive balance on the field. He made this point repeatedly and urgently at oral argument when questioning ANI's attorney.

Counsel conceded in response to Justice Stevens's question, "[T]here is an affidavit in the record that says that the revenues that the NFLP entity receives are distributed to the teams in equal shares . . . ." Justice Stevens further questioned, "[W]ouldn't that – that affidavit support the conclusion that this is basically a procompetitive agreement because it tends to make competition stronger on the playing field, and therefore, that's a sufficient defense under the Rule of Reason, and that's the end of the ball game?"[11] The Court concluded that this purpose of maintaining competitive balance on the playing field is "unquestionably an interest that may well justify a variety of collective decisions made by the teams. What role it properly plays in applying the Rule of Reason to the allegations in this case is a matter to be considered on remand." (Underlining added.)

Thus, the Opinion clearly suggested to the parties: (1) the NFL need not fear it is trapped by the antitrust laws because this decision rejected its claim of "single entity" immunity from § 1 scrutiny; (2) there are many justifications for collective or concerted business conduct, particularly under the control of legitimate joint ventures; (3) even though the Rule of Reason test may be difficult and expensive, it need not be, and may be "applied in the twinkling of an eye" for either antitrust claimants or defendants, and (4) "maintaining a competitive balance" through revenue sharing in collective business activities is an argument that may and probably will be made by NFL lawyers to be decided by the lower courts on remand.

As outlined in the previous article:

> MLB and its teams are indirectly involved in this NFL case as silent bystanders, even abstaining from filing an *amicus curiae* ("friend of the court") brief. They probably did so because MLB had similarly defeated, on the merits, an antitrust claim brought by a former licensee. MLB had advanced factual and legal grounds based on a different and more complicated legal test—a comprehensive "Rule of Reason" test, which tests and balances the anticompetitive and procompetitive purposes and effects of MLB's collective licensing, not as the NFL did by gaining a simpler antitrust rule based on the "single entity" concept.

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[11] *ANI v. NFL,* U.S. Sup. Ct. Dkt. 08-0661, Official Transcript of Argument, Jan. 13, 2010, p. 28; emphasis added. Justice Stevens is a longtime fan of the Chicago Cubs, having attended Game Three of the 1932 World Series between the Yankees and Cubs when a young boy, and claims he witnessed Babe Ruth's "called" home run. For more information on Justice Stevens, see the earlier OTL article cited in text accompanying note 4 above, and Jeffrey Toobin, "After Stevens—What will the Supreme Court be like without its liberal leader?," *The New Yorker,* Aug. 7, 2010.

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II

MAJOR LEAGUE BASEBALL v. SALVINO, 542 F.3d 290 (2d Cir. 2008), *aff'g* 420 F. Supp. 2d 212 (S.D.N.Y. 2005)

Less than two years earlier, Major League Baseball, thirty of its teams and their team-owned marketing and licensing subsidiaries (MLBE & MLBP) successfully won dismissal of an eight-year-long antitrust case brought under Sherman Act § 1.

Salvino, Inc., a family-owned developer, manufacturer and distributor of a line of sports collectibles and novelty items, filed the antitrust lawsuit in 1999 in the federal district court in Los Angeles. MLB countered by filing a lawsuit in the federal court in New York for trademark infringement and other claims and the two actions were consolidated in New York, a strategic and tactical victory for MLB.[12]

These decisions apparently wholly eluded media and sports bloggers' attention. Many share the presumption that MLB remains wholly exempt from suit under federal antitrust laws, notwithstanding that MLB defended this eight-year-old antitrust case without making any attempt to dismiss it based on the "interstate commerce" exemption relying on the 1922 *Federal Baseball Club* case.[13] Now that the NFL and its lawyers failed to pass the Supreme Court's review in their initial sortie to defeat ANI's claim at the outset by seeking a blanket immunity from Sherman Act § 1, they will undoubtedly resort to the antitrust-law strategy successfully adopted by MLB in this case.

The family-owned Salvino company had licensed some MLB logos in the late 1990's for use on sports collectibles, succeeding in making and selling large numbers of plush bean-stuffed teddy bears in several MLB uniforms (called "Bammers"). In 1998-99 Salvino sought a collective license of MLB team logos, but had failed to get an MLB license for the Diamondbacks logo. It nevertheless made and sold its "Bammers" in Diamondback uniforms for retail sale by the Arizona club. After much discovery of the parties' documents, depositions of corporate officers and expert economists, the U.S. District Court granted summary judgment for MLB, which was affirmed by the Second Circuit, dismissing Salvino's Sherman Act § 1 counterclaim.

The Second Circuit's majority opinion was written by Senior Judge Amalya Kearse, for 17 years an antitrust litigator in a Wall Street firm and then a Judge of the Court of Appeals for the past 31 years. (District Court Judge Miriam Cedarbaum, serving temporarily by designation, concurred.) This majority opinion laboriously plows through the multifaceted and carefully balanced Rule of Reason test in about 42 pages of the federal reports to find Salvino's case factually deficient and legally inadequate. Judge (now Supreme Court Justice) Sonia Sotomayor disagreed with a critical legal point of Judge Kearse's opinion, but concurred with the ultimate judgment rejecting Salvino's antitrust claim on different grounds. She concluded that MLB's collective logo-licensing through MLBP,

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[12] There was typical jousting or "forum-shopping" in the preliminary litigation stages. MLB sent a formal "cease-and-desist letter" in 1999 to the family-owned Salvino, Inc., threatening trademark infringement claims for selling its successful "Bammers" to the Arizona club. (These were bean-filled "teddy bears" wearing Diamondback uniforms, but without the required MLBP license.) Salvino filed an antitrust complaint against MLBP and others in California, where its experienced antitrust lawyer has his law firm. In 2000, MLBP sued in the federal court in NYC, claiming Salvino engaged in trademark infringement. Salvino's antitrust action in California was transferred to the federal court in NYC and then consolidated as counterclaims in MLBP's NY lawsuit. All but one of the claims were eventually abandoned or settled, only the Sherman Act § 1 claim remaining. It was dismissed by US District Court Judge Richard Conway Casey on the MLB parties' motion for summary judgment, based on filed statements of undisputed facts and depositions, affidavits of expert witnesses and documentary evidence in November 2005. In order to expedite appeal procedures, the parties agreed on an appealable consent judgment in March 2006. This was about the same time that similar procedures were used by the NFL parties in *ANI v. NFL* in Chicago on different legal arguments outlined above. (In my experience, federal courts in both NYC and Chicago may be termed "graveyards" of plaintiffs' antitrust claims, as compared to other federal district courts in Philadelphia, San Francisco or Los Angeles, for example.)

[13] *See* note 3 above.

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together with its equal-revenue-sharing, was "reasonably necessary to achieve MLBP's efficiency-enhancing purposes" under the doctrine of "ancillary restraints" as implemented by a legitimately organized joint venture. (*Id*. at 340.)

The undisputed facts, upon which the courts' summary judgment for MLB was based, are similar to the conclusory facts asserted by the NFL in its *ANI* case, with one historical difference. Whereas the NFL began joint marketing of team logos in the Sixties, only after two decades did MLB and its clubs fully integrate their joint licensing program in 1987, by granting MLBP full collective licensing rights in their logos for retail sales in the teams' local, as well as national and international, markets.[14]

In this antitrust case, as in many others, expert economists were hired to become expert witnesses on the merits of the mixed questions of antitrust law and economic fact that basically determine the result of many such high-stakes cases.

For Salvino's case, its expert wrote a report, essentially characterizing MLB and its business entities as an "economic cartel" engaged in collective price-fixing for MLB and its clubs' logo-licensing, by limiting the output of such licenses and using an exclusive agency, MLBP, to grant licenses and setting the prices for all such licenses, when otherwise the clubs would be competing in that logo-licensing market. (*Id.* at 302.)

MLB's expert, in a report supporting MLBP's motion for summary judgment, disputed the opposing economist's views, arguing that MLBP is not an "economic cartel" but a "joint venture." The relevant market in which economic effects must be measured, at least, consists of licenses of logos and other intellectual property for all sports and entertainment properties, not just MLB or NFL and their clubs' logos. Further, he pointed out the procompetitive efficiencies of MLBP's collective licensing in the broader market with other sports leagues and entertainment licensors.

This argument was basically similar to the NFL's in its defense of that league's collective licensing—that the joint venture in its production of a season of regular, playoff and championship professional football games creates the enhanced value of the team logos that would not result but for the league's organization and ongoing operations. He pointed out that even the enhanced value of the Yankees logos depends over time in its continuing to play other MLB teams. (Also, defunct team names not presently used in MLB games have little or no value, such as the Washington Senators.)

Because a cartel's purpose is to limit output and fix prices to maximize profits, this characterization is contradicted by MLBP's consistent record of increasing sales and revenues of MLB-licensed goods. The procompetitive efficiencies of MLBP's policies include centralized management in negotiation and management, availability of "one-stop shopping" for licensees, improving quality control and effective protection of teams' trademarks, protecting their value for complying licensees, and avoiding "free-riders," competing clubs free-riding on the effects of other clubs' marketing efforts. (*Id.* at 301-06.)

Although Salvino submitted a rebuttal report by its expert, the court found no evidence to refute the factual evidence in MLBP's submitted papers, for example, whether or not MLBP's increased revenues from its logo-licensing was caused by a boom in consumer demand or higher prices, rather than the benefits of collective licensing. (Id. at 306.)

After five years of preliminary proceedings in the district court in New York, MLBP applied for summary judgment before Judge Casey, based on undisputed material facts, as outlined above, thus seeking to avoid a lengthy jury trial. Salvino's major legal argument in the lower court, as on appeal, was that MLBP's collective logo-licensing was so-called "per se" price-

(Continued on page 10)

[14] Judge Kearse's opinion emphasizes that the undisputed record shows that, after these above-described changes made in 1987 in MLBP's expansion of its licensing authority to include local retail markets, its total licensing revenues more than doubled and the number of MLBP's licensees increased from 100 to 250. There seems to be no account taken of the revenue of the MLB clubs' separate pre-1987 logo-licensing and the number of licenses they had previously granted in the pre- and post-1987 comparison.

NFL Lost the Race to MLB (Continued from page 9)

fixing in violation of Sherman Act § 1. MLBP collectively establishes the royalty rates for logos of all clubs, both MLB leagues and MLB itself. Previously each club had competed with each other and other licensors in the local markets for logo licensing for various products. This antitrust doctrine of "*per se* illegality" for indirect price-fixing dates back to Supreme Court decisions of the early 20th Century.

District Court Judge Casey rejected this argument on the ground that MLB's collective logo-licensing program was not presumptively anti-competitive, but had a procompetitive purpose in integrating sales and monitoring and enforcing violations of the MLB teams' intellectual property, and should be judged on the more comprehensive "Rule of Reason" test, requiring factual evidence of actual adverse competitive effects in a relevant market. The lower court's opinion relied on more recent cases of the past forty years since 1979, principally *BMI v. CBS*, 441 U.S. 1. There the Court upheld the price-fixing practices of the three copyright licensing and monitoring agencies, which conduct integrates copyright sales, monitoring and enforcement. (*Id.* at 306-07.)

Alternatively, Salvino's lawyers argued for a "quick-look" analysis of anticompetitive purposes and effects of MLB's logo-licensing program under the "Rule of Reason," that the District Court also held inappropriate as not obvious to the casual observer. (*Id*. at 307.)

On appeal, the three-judge panel of the Second Circuit unanimously affirmed the District Court's dismissal of Salvino's antitrust claim, but Judge Sotomayor disagreed with the majority's reasoning that no type of price-fixing was involved when a common agent, MLBP, sets uniform royalty rates, terms and conditions for the individually owned logos of the separate teams.[15]

Judge Sotomayor used a different rationale for upholding MLB's collective licensing program based on the doctrine of "ancillary restraints" applicable to legitimate joint ventures. She started with the undisputed factual premise, "[T]he clubs have agreed through the exclusivity and profit-sharing clauses in the MLBP agreement not to compete with each other on the sale of trademark licenses [and] . . . the effect of the agreement clearly eliminates price competition between the Clubs for trademark licenses." (*Id*. at 335.)

She would find such an agreement among participants in a legitimate joint venture "offers substantial efficiency-enhancing benefits that the individual Clubs could not effect on their own, including decreased transaction costs, . . . lower enforcement and monitoring costs and the ability to one-stop shop . . . ." (Id. at 337.) MLB and its collective business agent MLBP are not a sham joint venture nor was it shown that their collective logo-licensing is not "reasonably necessary to achieve any of the efficiency-enhancing benefits of a joint venture . . . ." (Id. at 338.)[16]

Judge Sotomayor explained that she believes the "ancillary restraints framework" is superior when analyzing the actions of a joint venture, such as MLB. As previously noted in the first article in Outside the Lines, Justices Stevens echoed this opinion of Judge Sotomayor in *MLB v. Salvino* in his queries to counsel on oral argument in *ANI v. NFL,* as did the comments of Justice Breyer and Justice Sotomayor.)

(Continued on page 11)

[15] *Compare* 542 F.2d at 318-34 (Kearse, Ch. J. for majority), *with id.* at 334-41 (Sotomayor, J., concurring in judgment).

[16] In this part of her concurrence in the 2d Circuit, Judge Sotomayor cited antitrust opinions of the leading jurists of the "law and economics" movement, including Judges Alex Kozinski of the 9th Circuit, Robert Bork, formerly the D.C. Circuit, and Richard Posner of the 7th Circuit, endorsing the "ancillary restraints" doctrine. *Id*. at 338. In *ANI v. NFL,* the Court's Opinion made similar references to opinions of named Judges Kozinski and Bork.

NFL Lost the Race to MLB (Continued from page 10)

Conclusion

On remand of the NFL case to the lower courts[17] Justice Stevens and Sotomayor's views will eventually be tested--whether procompetitive and efficiency-and-revenue-enhancing purposes and effects of collective licensing with revenue-sharing for the benefit of all teams and the game prevails over the anticompetitive purposes and effects of its collective licensing program -- precluding thirty-two separate licensing competitions conducted by the different clubs and sharing revenues in order to produce a more competitive game on the playing field. As Justice Stevens queried, "[T]hat's the end of the ball game?"[18]

[17] As noted previously, the Seventh Circuit, on the parties' submission of separate position statements, ordered the case be remanded to the district court, which the Supreme Court and Seventh Circuit ordered, "for further proceedings consistent with this [the Supreme Court's] opinion." Note 4 above. That order of August 24, 2010, was filed in the District Court's docket on September 15, two months ago, without any decision having been made to date reassigning the case. ANI's solo attorney contended in his 7th Circuit position statement that the case may now also proceed on a Sherman Act § 2 monopolization claim against the NFL for the same conduct challenged under § 1 as a "conspiracy, contract or combination." To actually prove a § 2 monopolization claim is far more difficult for an antitrust-law claimant than proving a § 1 claim.

[18] As quoted in text accompanying note 11 above.

Editor's note—
This article was submitted by the author on October 20, 2010. Since that time, the case on remand has been assigned to Judge Sharon Johnson Coleman of the District Court for the Northern District of Illinois for all further proceedings. Judge Johnson is a newly appointed federal judge, appointed by President Obama and confirmed on July 12, 2010. Author Boes notes: "Based on her career record , my supposition is that she will follow the lead given to the lower courts by the advisory section of the Court's opinion in *ANI v. NFL* (Justice Stevens) and by Justice Sotomayor's opinion in *MLB v. Salvino.* "

MLB's Nine Commissioners (Continued from page 1)

tions necessitating effective communication, coordination, and leadership from the Office of the Commissioner.

This article discusses the key successes and failures of Baseball's nine commissioners. Additionally, the commissioners' leadership skills are assessed.

Classic leadership criteria selected from the relevant literature of leadership are used to evaluate the commissioners' ability to lead effectively. Information on the commissioners' successes and failures as well as the leadership criteria were distributed to 300 randomly selected scholars in Academe. Some, interestingly, are members of the Society for American Baseball Research.

Scholars examined the information and then rated or ranked the commissioners on each of the specific leadership criteria. For example, Commissioner A is assessed by 300 scholars on "Political Skills" as well as other leadership criteria on a scale running from 0 (Poor) to 10 (Excellent). The average of the 300 tallies on Commissioner A's "Political Skills" is computed. Similarly, averages of the 300 tallies on the other leadership criteria are calculated for Commissioner A. Finally, the averages for each of Commissioner A's leadership criteria are combined and one overall average is created for the commissioner.

To illustrate the above methodology, suppose the averages for Commissioner A's "Political Skills," "Sense of Mission," and "Sense of Integrity" are 7.5, 8.0, and 8.5, respectively. Commissioner A's overall average is 8.0. 300 randomly selected scholars were selected. 219, or 73.0% of the scholars responded.

Key leadership criteria are selected from the publications of several scholars and practitioners whose expertise and experience in the art and practice of leadership are viewed as authoritative. These publications are outlined in Appendix I.

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Leadership Criteria

1. Understand Baseball's organizational culture
2. Work effectively with Baseball's organizational culture
3. Work effectively with ambiguity as well as chaotic conditions
4. Understand Baseball's relationships with larger societal realities
5. Look beyond the day's crises, beyond the quarterly report, beyond the horizon
6. Influence constituencies in Baseball's internal and external environments
7. Create strategic alliances and partnerships
8. Emphasize the intangibles of vision, values, and motivation
9. Possess a set of clear, positive, and defensible values
10. Possess effective political skills
11. Possess effective conflict-resolution skills
12. Appreciate the relevance of consensus
13. Identify and work with strategic priorities
14. Possess a sense of mission
15. Possess a sense of integrity
16. Possess a sense of optimism
17. Possess effective entrepreneurial skills
18. Willing to take risks
19. Willing to accept responsibility for mistakes and failures
20. Focus on quality
21. Trustworthy
22. Do the right thing (as opposed to doing things right)
23. Think in terms of renewal

Senge's axioms (See Appendix I)

NFL Lost the Race to MLB (Continued from page 11)

KENESAW MOUNTAIN LANDIS BASEBALL'S FIRST COMMISSIONER (1920-44)

Commissioner Kenesaw Mountain Landis assumed the responsibilities of the Office of the Commissioner in 1920. The 1919 Black Sox scandal significantly affected Baseball's credibility. As a result, the Office of the Commissioner was created by the owners in collaborative efforts to restore Baseball's integrity and credibility. Landis was empowered to "investigate, either upon complaint or upon his own initiative, an act, transaction or practice, charged, alleged or suspected to be detrimental to the best interest of the national game of baseball, (and to determine and take) any remedial, preventive or punitive action (he deemed appropriate)."[1]

Judge Landis acted expeditiously to articulate and consolidate the authority and powers of the Office of the Commissioner. With a positive public image and a reputation as a judge with integrity, Landis banned the players associated with the Black Sox scandal, including the popular Shoeless Joe Jackson. The players were banned for life. "Regardless of the verdict of juries, no player that throws a ball game, no player that entertains proposals or promises to throw a game, no player that sits in a conference with a bunch of crooked players and gamblers where the ways and

(Continued on page 13)

[1] http://mlb.mlb.com/mlb/history/mlb_history_people.jsp?story=com

MLB'S First Nine Commissioners (Continued from page 12)

means of throwing games are discussed, and does not promptly tell his club about it, will ever play professional baseball." With Landis's emphasis on integrity and with Babe Ruth's exploits on the diamond, Baseball progressed beyond the scandals of 1919-20 and into a decade of unprecedented status, popularity, and revenues.[2]

Library of Congress, Prints & Photographs Division, LC-DIG-ggbain-31678 (G.G. Bain Collection)

Landis's influence on the World Series was significant. Prior to his arrival, the games of the World Series were important, but not universally popular across the nation. Landis realized the relevance of the games from a public relations perspective. He publicized the World Series as a prestigious event and even barred umpires from ejecting players from the games. In one of his final acts as commissioner, Landis contributed all of the 1943 World Series revenues, excluding the players' shares, to the World War II effort, a judicious decision underscored by patriotic as well as political motives.[3]

World War II presented a series of challenges for Landis. Many of the players volunteered or were drafted. Also, transporting teams from city to city via the railroads was problematic. Landis contacted President Roosevelt, requesting a clarification of Baseball's status. Roosevelt responded immediately with the "Green Light" letter allowing Baseball to continue, but with no special considerations. On January 15, 1942, Roosevelt wrote "I honestly feel that it would be best for the country to keep baseball going. There will be fewer people employed and everybody will work longer hours and harder than ever before. And that means that they ought to have a chance for recreation and for taking their minds off their work even more than before." Landis worked with the War Department's Transportation Office to obtain needed railroad transportation and also contributed money to purchase baseballs, bats, and gloves for the troops.[4]

Landis's political skills were astute and judicious, possibly as a result of his tenure as a judge. He used his political skills and the mandate to restore integrity to Baseball in the 1920s to influence individuals and coalitions in Baseball and in society.

Landis recognized and defined relative priorities. His decisions were usually informed and focused on his image of Baseball's future. He worked with Baseball's owners, autocratically at times, to create a shared vision of the future. While not necessarily committed to or inspired by the realities of the vision, the owners worked with, or were pulled by, Landis to refine and support the vision, especially in the 1920s.

Unfortunately, Baseball was not integrated by Commissioner Landis. The players in the Negro Leagues did not have an opportunity to participate in Major League Baseball from 1920 to 1944. As the Commissioner of Major League Baseball, Landis failed to work and collaborate with the owners to integrate Baseball. "While denying the existence of a color line in baseball, Landis carefully guarded his personal opinions on the race issue.

Most contemporaries agreed, however, that he adamantly opposed desegregation. . . . During the mid-1930s, according to then National League President Ford Frick, Lands short-circuited a suggestion by several owners to debate the issue in closed session, ruling that the topic had not been properly been placed on the agenda. In 1942, when Brooklyn Dodger manager Leo Durocher stated that he would sign black players if allowed to, Landis publicly proclaimed 'Negroes are not barred from organized baseball … and never have been in the 21 years I have served.'

(Continued on page 14)

[2] http://www.baseball-almanac.com/ws/yr1919ws.shtml

[3] Pietrusza, David. *Judge and Jury: The Life and Times of Judge Kenesaw Mountain Landis*. South Bend, Indiana: Diamond Communications, 1998. Spink, J. G. Taylor. *Judge Landis and Twenty-Five Years of Baseball*. New York: Thomas Y. Crowell, 1947.

[4] http://www.baseball-almanac.com/prz_lfr2.shtml

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The following year, after black leaders addressed a major league meeting, Landis quickly stifled any discussion of their proposals. 'The gentlemen asked for an opportunity to address the joint meeting. They were given the opportunity,' he told a dissident owner. 'What's next on the agenda?'"[5]

Landis's views on segregation were not particularly isolated in the 1920s, 1930s, and 1940s. Many of Baseball's owners supported Landis. These attitudes were also reflections of societal attitudes. "Landis . . . did not single-handedly perpetuate baseball's segregation. No owner raised a significant challenge to his edicts on the issue and the ban on blacks reflected the prevailing attitudes of baseball hierarchy. Unable to acknowledge discrimination, owners developed a series of rationalizations defending the necessity of separate competition."[6]

Landis attained relevant goals. Baseball's integrity was restored after the 1919 Black Sox scandal. He realized the importance of the World Series and cultivated this annual event into the "fall classic." Baseball continued uninterrupted during World War II as a result of his negotiations with the federal government. He recognized the importance of the media and negotiated important financial agreements with radio networks. Unfortunately, he failed to integrate Baseball, a significant failure.

A. B. CHANDLER: BASEBALL'S SECOND COMMISSIONER (1945-51)

Albert Benjamin Chandler succeeded Judge Landis as commissioner in 1945. In A. B. "Happy" Chandler's extensive political career, he served as a state senator in Kentucky, U.S. senator from Kentucky, and governor of Kentucky.

After Landis died in 1944, the owners, tired of Landis's "absolute rule" over baseball's affairs, instituted several dramatic policy changes affecting the authority and powers of the Office of the Commissioner. "Alterations included the creation of an advisory council to the commissioner for the purpose of submitting rules or amendments to existing regulations, the restoration of an owner's right to challenge a ruling of the commissioner in a court of law, and the elimination of a provision whereby the commissioner could act on his own authority in any matter he considered detrimental to baseball. In addition, the owners increased the vote required to elect a new commissioner from a simple majority to three-fourths of the clubs."[7]

As World War II concluded, more than 350 veterans returned to baseball, creating an excess of qualified players. Opportunities for the veterans soon opened up as a significant number of the World War II-era players departed voluntarily, minimizing a potentially problematic situation. Prior to the beginning of the 1946 season, more than 20 players defected to the Mexican League. Chandler reacted to these defections by instituting a five-year ban on all defectors, successfully impeding additional efforts to defect. As the 1946 season progressed, organizational tensions surfaced with the rise of the American Baseball Guild, a labor union concerned with Chandler's responses to the defections. Chandler negotiated successfully with the American Baseball Guild, minimizing the possibility of a strike. Fortunately (for Chandler), the American Baseball Guild focused on one team, the Pittsburgh Pirates.[8]

In a collective response to the Mexican League defections as well as the activities of the American Baseball Guild, Baseball's owners created an advisory committee to investigate several issues, including "organization, the legality of the game's structure, player relationships, public relations, the race question, and general operations." The committee's rec-

(Continued on page 15)

[5] Tygiel, Jules. *Baseball's Great Experiment: Jackie Robinson and His Legacy*. New York: Oxford University Press, 1983.

[6] Tygiel, *Great Experiment*.

[7] Marshall, William. *Baseball's Pivotal Era: 1945-51*. Lexington, KY: University of Kentucky Press, 1999. Marshall, William. "A. B. Chandler as Baseball Commissioner, 1945-51: An Overview." *Register of the Kentucky Historical Society* 82 (1984): 358-388.

[8] Marshall, *Pivotal Era*, Marshall, "Chandler".

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Then-Sen. Chandler with V.P. J.N. Garner. Library of Congress, Prints & Photographs Division, LC-DIG-hec-27897 (Harris & Ewing Collection), January 3, 1940.

ommendations included provisions for minimum annual salaries for players ($5,000) as well as a pension plan. Supported only by funds generated by the World Series and the All-Star Game, the pension plan's financial base and potential success were initially tenuous. Chandler's negotiations with companies in the private sector eventually improved the plan's financial base. "Credit for the plan's solvency and continued success belongs to Commissioner Chandler, who negotiated multi-million-dollar contracts with the Gillette Razor Company for television and radio sponsorship of the two events." [9]

Racial integration of baseball in 1947 was facilitated by the collective efforts of Commissioner Chandler, Branch Rickey, and Jackie Robinson. Rickey, the astute and creative general manager of the Brooklyn Dodgers, needed Chandler's full support to promote Robinson from the minor leagues to the Dodgers. "Chandler, Rickey, and Robinson all share credit for breaking the color barrier: Rickey for being the entrepreneur willing to risk high stakes to take advantage of the other owners; Chandler for having the courage to follow his convictions; and Robinson for not withering under intense pressure and abuse. Had Chandler not supported Rickey, baseball's integration might not have occurred until well into the 1950s." [10]

Chandler suspended Leo Durocher, the controversial manager of the Brooklyn Dodgers, for the 1947 season. He was particularly concerned with Durocher's alleged ties to associates who gambled. The commissioner acted to protect Baseball's integrity. Nonetheless, "Had Durocher taken his case to a court of law, the entire structure of the game built upon the commissioner's authority might not have withstood the challenge. Yet, Chandler sincerely felt that he was strengthening the fabric of baseball. In simplistic terms, the commissioner wanted to make baseball safe for the Knot Hole Gang, the Catholic League Organization, and the Boy Scouts. Leo Durocher was not a person Chandler wanted them to emulate. In addition, the stigma of the Black Sox Scandal still lingered, and baseball wanted to divorce itself from gambling at all costs." [11]

Danny Gardella, a World War II-era player who was banned as a result of his association with the Mexican League, decided to challenge baseball in 1949. Gardella's attorney, Frederick Johnson, an expert on the laws and regulations associated with Baseball, argued that Baseball owed Gardella $300,000 as compensation for an illegal suspension. Johnson also argued that baseball was subject to federal anti-trust laws as a result of contracts

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[9] Marshall, *Pivotal Era*, Marshall, "Chandler".

[10] Marshall, *Pivotal Era*, Marshall, "Chandler".

[11] Marshall, *Pivotal Era*, Marshall, "Chandler".

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with radio and television and that the "reserve clauses" preventing players from moving from one team to another were essentially the tools of an illegal monopoly. These were serious charges and potentially affected Baseball's fundamental organizational structure. Chandler's attorneys and Baseball's owners were particularly concerned. On June 5, 1949, Chandler revoked the ban on the defectors. Gardella eventually settled for $60,000 from Major League Baseball.[12]

By waiting until mid-1949 to revoke the ban on the defectors, Chandler allowed a series of legal activities and events to coalesce into a serious situation. As a result, his credibility with Baseball's owners was affected. "To have waited so long to grant the Mexican jumpers a reprieve had been a dangerous risk, especially in view of the poor conditions American players faced in Mexico. While Chandler maintained the integrity of baseball by meeting the Mexican League threat head on, he had not adhered to Judge Landis's precedent of keeping the game out of the courts. This was a circumstance not overlooked by several owners." Two years after Chandler revoked the ban on the defectors, on July 15, 1951, he resigned as Commissioner of Baseball as he failed to receive the required three-quarters vote from the owners to continue.[13]

Chandler's support of Rickey and Robinson and his negotiations with affected parties facilitated the integration of Baseball, a significant accomplishment. Promoting Robinson to the Dodgers within the context of a segregated society required courage and resolution as well as the willingness to take risks. The societal impact of Robinson's promotion was enormous. Baseball and society changed.

Chandler realized the importance of the relationship between Baseball and society. In addition to integrating baseball, he was a tireless and effective promoter of Baseball via numerous speeches across the nation. He also promoted baseball by allocating funds to support non-professional baseball. Chandler was aware of the societal conditions in which baseball was played and tried to attain a harmonious relationship between Baseball and society.

Chandler's political skills occasionally failed in efforts to influence individuals and coalitions. He struggled in efforts with the owners to create and refine a shared vision of the future. As he was a professional politician, this is ironic and unfortunate. His actions also reflected a degree of inflexibility on occasion. This is particularly evident in his refusal to revoke the ban on the defectors until Gardella's legal initiatives actually threatened baseball's organizational structure and possible fortunes. Still, Chandler attained relevant goals. Assuming the responsibilities of Baseball's commissioner on the heels of Judge Landis's extensive and event-filled tenure probably affected his ability to work and collaborate with the owners. "As commissioner, A. B. Chandler was neither a visionary nor a crusading reformer. He was at heart a baseball fan, a man who wanted to take the commissioner's position off its pedestal, to humanize it, and to share himself and the game with its followers. In this he succeeded admirably.[14]

(Continued on page 17)

[12] Marshall, *Pivotal Era*, Marshall, "Chandler, and "Chandler, A. B., and Vance H. Trimble. *Heroes, Plain Folks, and Skunks: The Life and Times of Happy Chandler*. Chicago: Bonus Books, 1989.

[13] Marshall, *Pivotal Era*, Marshall, "Chandler, and "Chandler, A. B., and Vance H. Trimble. *Heroes, Plain Folks, and Skunks: The Life and Times of Happy Chandler*. Chicago: Bonus Books, 1989.

[14] Marshall, *Pivotal Era*, Marshall, "Chandler".

League Presidents Frick and Harridge, Library of Congress, Prints & Photographs Division, LLC-H22- D-1568 (Harris & Ewing Collection), May 26, 1937

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FORD C. FRICK: BASEBALL'S THIRD COMMISSIONER (1951-65)

Following Chander's resignation in 1951, Ford C. Frick was selected to bVoigt, *American Baseball*.e Commissioner of Baseball. Frick had served as President of the National League from 1934 to 1951.

Several teams moved to other cities during Frick's tenure. Baseball also expanded from 16 to 20 teams. The Boston Braves moved to Milwaukee, the St. Louis Browns moved to Baltimore, the Philadelphia Athletics moved to Kansas City, the Brooklyn Dodgers moved to Los Angeles, and the New York Giants moved to San Francisco. Teams were added in New York, Houston, Los Angeles, and Washington, D.C. Additionally, 10 new ballparks were constructed.

Some of the above moves were controversial. In particular, Walter O'Malley's astute and somewhat deceptive negotiations to move the Dodgers from Brooklyn to Los Angeles were investigated by a Congressional subcommittee for possible anti-trust violations. As the subcommittee's deliberations progressed, members were "shocked to learn that such decisions were made solely by owners, with no input from the commissioner." Able to influence individuals and coalitions, O'Malley's role as "unofficial counselor to the commissioner" probably facilitated a successful move from Brooklyn to Los Angeles.[15]

Baseball's television revenues increased dramatically as Frick negotiated several lucrative contracts with the networks. The All-Star Game, the World Series, and the Game of the Week wee televised to national audiences, generating approximately $3,500,000 annually for Baseball.[16]

In reality, Frick served as a "dependable figurehead" for Baseball's owners. He continually acquiesced and essentially "limited his scope to administering rules and procedures laid down by his masters." Additionally, "Frick stood by as carpetbagging owners abandoned ancient franchises; as the first expansion weakened clubs; as Congressional subcommittees probed for anti-trust violations; as players formed a protective Association; as owners vied for bonus babies; as television became a reshaping force; and as the minor leagues sickened unto death."[17]

Focusing on the details and procedures associated with his position, Frick failed to see Baseball's "big picture," and struggled to recognize or understand the relevance of baseball within a larger societal context. His political skills were not particularly judicious. As a result, he struggled in efforts to influence individuals and coalitions. Baseball's owners usually defined his priorities. Not especially creative or innovative, he relied on the owners for solutions to problems.

(Continued on page 18)

[15] Voigt, David Q. *American Baseball (Volume III): From Postwar Expansion to the Electronic Age*. University Park: Pennsylvania State University Press, 1983.

[16] Voigt, *American Baseball*.

[17] Voigt, *American Baseball*.

[18] Voigt, *American Baseball*. Frick, Ford C. *Games, Asterisks, and People*. New York: Crown Publishers, 1973.

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Frick's reluctance to confront O'Malley and others on the possible move from Brooklyn to Los Angeles is representative of his inability to confront problematic situations openly and in a timely way.

Viewed as biased toward the owners, the players were not particularly impressed with Frick. His decision to note Roger Maris's 61 home runs with an asterisk in Baseball's official records, for example, was not viewed as supportive. He was not respected or trusted by the players. Frick's attitude and biases "helped to inspire major league player unionism."[18]

"At a time when critical leadership was needed, Frick offered none." While relevant goals were attained during Frick's tenure as commissioner, his ability and capacity to lead and to provide essential focus and direction for Baseball were limited. [19]

WILLIAM D. ECKERT: BASEBALL'S FOURTH COMMISSIONER (1965-68)

After Frick retired, William D. Eckert, a graduate of the United States Military Academy and a retired General, was selected as Baseball's commissioner in 1965. Eckert's expertise and experience in Baseball's activities or policies were negligible. Nonetheless, the fractious owners were impressed with his extensive administrative experiences as an officer. Unfortunately, Eckert failed to recognize the importance or relevance of Baseball's organizational dynamics and values. "That Eckert was a figurehead was apparent from the start as the owners soon named a four-man cabinet to handle Eckert's major chores of administration, public relations, records and finance, and liaison with the minor leagues."[20]

Eckert's eventual dismissal as Commissioner of Baseball was precipitated by several events or concerns. In 1966, Marvin Miller was elected by the players to manage the union. Miller negotiated aggressively. As Eckert was not particularly assertive, the owners became concerned. Eckert also struggled to communicate effectively with the media. He struggled with issues and questions in press conferences. This affected his credibility with the writers as well as the owners. Additionally, the owners were concerned with the perception that Baseball was not in tune with the times. The 1960s exemplified change and transition. Some viewed Baseball as traditional and tedious. Under pressure from the owners, Eckert resigned in 1968.[21]

In his abbreviated tenure as Baseball's commissioner, Eckert was unable to work and collaborate with the owners to create a shared vision of the future. He struggled with important decisions. For example, he was unable to decide if games should be cancelled as a result of the King and Kennedy assassinations in 1968. His indecisiveness frustrated the owners as King and Kennedy were national figures. Problems were not confronted openly and in timely way. As Eckert was unable to recognize and define priorities, relevant goals were not attained. His limited expertise and experience affected his credibility as well as his ability to lead. "He knew, and learned, little about baseball, and he feared his masters." The late 1960s were tumultuous times for Baseball and society. "Obviously, he was no czar; yet leadership was sorely needed in 1968, as falling attendance, inter-league wrangling, and strike threats swirled round baseball."[22]

(Continued on page 19)

[19] Voigt, *American Baseball*.

[20] Voigt, *American Baseball*.

[21] Voigt, *American Baseball*.

[22] Voigt, *American Baseball*.

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BOWIE KUHN: BASEBALL'S FIFTH COMMISSIONER (1969-84)

Bowie Kuhn, an attorney with a degree from Princeton University, was selected as Baseball's commissioner in 1969. As an attorney, he had worked for the National League and for several of the teams.

Kuhn faced a variety of situations and problems. Demographic studies indicated Baseball's audience was middle-aged. Characterized by perpetual motion and with exceptional marketing programs, professional football and basketball were generally viewed as more exciting than Baseball. Aggressive marketing activities and programs were not basic elements of Baseball's organizational culture. As the 1960s progressed, Baseball's pitchers increasingly dominated the hitters, with the National League hitters averaging .243 and the American League hitters averaging only .230 in 1968. A significant number of Baseball's fans and writers were concerned with the lack of run production. Additionally, the onerous 10-team league structure was not viewed as exciting by the fans. With 10 teams in both leagues, it was more difficult for teams to advance from one position or level to another. In a sense, Baseball was not in vogue with the times. "Baseball's style and stately cadences seemed more attuned to an era of royal minuets than to the rebellious sixties." [23]

Mandated to examine and restructure Baseball's administrative apparatus, Kuhn retained the University of Pennsylvania's prestigious School of Business for $100,000 for the analysis. The study recommended that the American and National League presidents, the Player Relations Committee, and the Major League Baseball Promotion Corporation report directly to the Office of the Commissioner. The study also suggested that the commissioner assume responsibility for nominating candidates for presidents of the American and National Leagues. Other recommendations focused on and essentially expanded the authority and powers of the Office of the Commissioner.

The owners, concerned with a potential loss of autonomy, were not impressed with the recommendations of the study. All of the recommendations were rejected by the owners. Kuhn accepted the rejection philosophically. In *Hardball: The Education of a Baseball Commissioner*, he wrote that the "report was not adopted, but over the years significant elements of it were adopted. . . .By balking at my reasonable restructuring plan, the owners had gone back on the mandate they gave me when I was elected; implicit in that mandate was a promise to restructure. I was angered by that backtracking. On the other hand, the proponents of restructuring were guilty of contributory negligence. We had let the opposition out-lobby us. I also had confidence in my ability to sell restructuring in substantial pieces, if not wholesale. That in fact happened."[24]

Kuhn's initial term as commissioner included numerous controversies, including Curt Flood's challenge to Baseball's sacred reserve clause, the struggle to "save" the Senators, the strike of 1972, a controversial episode with Henry Aaron (Kuhn's failure to be available for #715), and continued battles with Charles O. Finley. With Walter O'Malley's support in a series of frenzied negotiations, Kuhn was re-elected for a second term in 1975. After the election, writers described Kuhn as "O'Malley's tool."[25]

Kuhn's relationship with the players eventually deteriorated. His annual "State of the Game" message usually criticized the players, with a focus on the players' increasing salaries. As the values of the teams or franchises were increasing dramatically, Kuhn's credibility with the players was seriously affected. Henry Aaron's refusal to attend an official ceremony to commemorate #715 was indicative of the players' hostile attitude toward the commissioner.[26]

(Continued on page 20)

[23] Kuhn, Bowie. *Hardball: The Education of a Baseball Commissioner*. New York: Crown Publishers, 1987.

[24] Kuhn, *Hardball*.

[25] Kuhn, *Hardball*.

[26] Kuhn, *Hardball*.

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The strike of 1981 started on June 12. Baseball resumed on August 10. It was a problematic time for the commissioner and for Baseball. Complex issues were deliberated. Some progress on compensation for free agents was made. The strike was not viewed positively by the fans. Kuhn's credibility with the owners and the players was seriously affected. "Finally, how did I fare in all this? Poorly at best, and that may overstate the case in my favor." [27]

Kuhn survived as commissioner until 1984, completing his second term. He struggled to create a shared vision of the future. As time passed, loss of credibility affected his ability to influence individuals and coalitions. He recognized and defined priorities, but struggled to inspire others to commit to these priorities. He also confronted problems openly and in a timely way. Not particularly creative or innovative, he relied on classic or standard administrative methodologies. His political skills were not sophisticated. Still, the Player Relations Committee and the Major League Baseball Promotion Corporation eventually reported directly to the Office of the Commissioner, two of Kuhn's original recommendations. Kuhn attained several relevant goals, but was not a particularly effective leader.

PETER V. UEBERROTH: BASEBALL'S SIXTH COMMISSIONER (1984-89)

Peter V. Ueberroth assumed the responsibilities of Baseball's commissioner in October 1984. Ueberroth, a successful corporate strategist, had just completed his responsibilities as President of the Los Angeles Olympic Organizing Committee.

Ueberroth was particularly active in late 1984 and in 1985. He immediately settled the umpires' strike that threatened the playoffs in 1984. The commissioner favored the umpires and essentially doubled the umpires' compensation for the playoffs. Concerned with imbalances in revenues among the teams, Ueberroth convinced the television superstations that basically intruded into the markets of the other teams to limit telecasts and to contribute to a fund to be shared by the other teams. In mid-1985, Ueberroth facilitated efforts to settle a potentially serious strike. In the negotiations, he ordered Baseball's owners to open their books, "a move that earned him the players' gratitude and simultaneously established that, while 21 of 26 clubs were losing money, the owners were not in nearly the perilous condition they had claimed to be." Utilizing the media, one of Ueberroth's common practices, he chastised the owners for asking the players to solve management's problems and also suggested options for a settlement. After the two-day strike was settled, he refused to accept any responsibility or recognition for the settlement. The media, aware of Ueberroth's role, praised his efforts. "The man on the white horse, it seemed, had knocked together the heads of the greedy players and the stingy owners and brought peace to the land."[28]

A public relations advocate, Ueberroth worked tirelessly to promote Baseball's image and, in the process, improved the financial status of baseball. In 1984, 21 of the 26 teams reported financial losses. Within five years, none of the teams were losing money. He negotiated contracts with the television networks that doubled national television revenue. Merchandise related to Baseball was advertised and promoted, generating additional revenue for the teams. Attendance at games increased dramatically while ticket prices remained relatively stable. Ueberroth's stance on drugs also helped to improved Baseball's image. Work stoppages were limited to 1985's two-day strike. Additionally, issues associated with racial imbalances were discussed openly. Baseball's image and revenue improved significantly under Commissioner Ueberroth's leadership.[29]

(Continued on page 21)

[27] Kuhn, *Hardball*.

[28] Holtzman, Jerome. *The Commissioners: Baseball's Midlife Crisis*. Kingston, NY: Total Sports Publishsing, 1998. Moffi, Larry. *The Conscience of the Game: Baseball's Commissioners from Landis to Selig*. Lincoln, NE: Bison Books, 2006. Okrent, Daniel. "On the Money." *Sports Illustrated* 70 (1989): 41-44.

[29] Holtzman, *Commissioners*; Moffi, *Conscience*.

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Ueberroth was unable to convince the owners to share revenue generated from local television contracts to facilitate economic parity between the larger and smaller markets. His proposal of random drug tests was not adopted. Additionally, Baseball's owners were charged with collusion in relation to salaries offered to players. While Ueberroth denied the accusations of collusion, arbitrators ruled that collusion among the owners had occurred and ordered that due compensation be paid to the affected players. It is unlikely that Baseball's commissioner was completely unaware of the issues associated with collusion.[30]

Ueberroth was usually able to influence individuals and coalitions. He was also able to work and collaborate with the owners to create a shared vision of the future. A charismatic individual, he possessed the social and political skills required to inspire the owners to commit to the shared vision. His political skills were especially judicious, probably as a result of his successes in the private sector as well as the 1984 Olympic Games. He was particularly aware of the importance of public relations and the necessity of cultivating a positive image. Ueberroth utilized the media effectively to promote baseball and to alleviate problematic situations.

Ueberroth's heroic stature and prior successes contributed significantly to his credibility and effectiveness. The owners did not necessarily agree with his decisions and methodologies, but they respected him and appreciated the increased revenue. Ueberroth recognized and defined priorities and attained relevant goals. He confronted problems openly and in a timely way. A creative or innovative commissioner, he viewed problems as opportunities. He was able to work effectively with ambiguity and chaotic situations. "To a job previously occupied by the ineffectual (Bowie Kuhn), the invisible (William Eckert), the inconsequential (Ford Frick), and the incomprehensible (Happy Chandler), Ueberroth brought an authority, an effectiveness, and a public visibility that matched those of Judge Kenesaw Mountain Landis, the man for whom the job was invented in 1920."[31]

BART GIAMATTI: BASEBALL'S SEVENTH COMMISSIONER (1989-89)

Peter Ueberroth did not seek a second term and was succeeded by Bart Giamatti on April 1, 1989. Formerly a professor of literature and President of Yale University as well as President of the National League, Giamatti loved baseball.

As President of the National League in 1988, Giamatti suspended Pete Rose for 30 days. A year later, as Baseball's commissioner, he banned Rose for life as a result of the investigation of Rose's alleged gambling activities. "By choosing not to come to a hearing before me, and by choosing not to proffer any testimony or evidence contrary to the evidence and information contained in the report of the Special Counsel to the Commissioner, Mr. Rose has accepted baseball's ultimate sanction, lifetime ineligibility." Giamatti had studied the philosophy and decisions of Judge Landis and was particularly concerned with issues of integrity and justice. Landis's obsessive views on gambling and the necessity of preserving baseball's integrity significantly influenced Giamatti as he reviewed the evidence. Banning Rose from baseball, Giamatti asserted that Rose's behavior was "detrimental to the best interests of the game." "Let it also be clear that no individual is superior to the game."[32]

Bart Giamatti died on September 1, 1989, five months

(Continued on page 22)

[30] Holtzman, *Commissioners*; Moffi, *Conscience*.

[31] Holtzman, *Commissioners*; Moffi, *Conscience*.

[32] Valerio, Anthony, ed. *Bart: A Life of A. Bartlett Giamatti*. New York: Harcourt Brace Jovanovich, 1991. Reston, Jr., James. *Collision at Home Plate: The Lives of Pete Rose and Bart Giamatti*. New York: Edward Burlingame Books, 1991. Vincent, Fay. *The Last Commissioner: A Baseball Valentine*. New York: Simon & Schuster, 2007.

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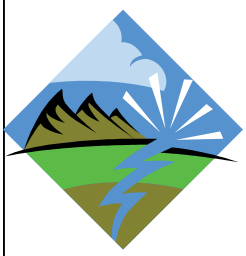
after assuming the responsibilities of Baseball's commissioner. In particular, he confronted the Rose allegations openly and in a timely way. Banning Rose was not necessarily a popular decision as Rose was a celebrated national figure. Nonetheless, Giamatti reviewed the evidence and acted decisively. "As Baseball Commissioner and President of Yale, Giamatti believed that society could not survive without institutions – and that their values, ratified by common consent, must be protected from reckless attack."[33]

FAY VINCENT: BASEBALL'S EIGHTH COMMISSIONER (1989-92)

Fay Vincent served as Bart Giamatti's deputy commissioner. After Giamatti died, Vincent was asked to complete Giamatti's term of office as Baseball's commissioner in September 1989.

One month into his term of office, a major earthquake rocked the San Francisco Bay Area. As the Giants and the A's were participating in the World Series, Vincent faced a serious crisis. He conferred with numerous individuals and coalitions and eventually announced that the World Series would continue after the stadia were examined and declared structurally safe. Vincent hoped that the games would be elements of the "healing process" for the people in the Bay Area. "In his first major test as baseball's commissioner – and in one of the most difficult situations any commissioner has ever faced – Francis T. Vincent, Jr., showed intelligence, compassion, and wit. He displayed a remarkable sense of perspective as well as the ability to listen and communicate. If there was a silver lining for baseball last week, it was the emergence of Vincent."[34]



In February 1990, frustrated with the stalled labor negotiations, the owners declared a "lockout" for all training camps. Vincent intervened and, eventually, his statements stimulated discussions on the contentious points. Issues related to salary arbitration and minimum salaries were resolved and the training camps reopened. Several weeks after the labor negotiations concluded, George Steinbrenner, the majority owner of the New York Yankees, admitted he had paid $40,000 to an individual associated with gambling. An investigation was conducted. Concerned with baseball's integrity, Vincent asked Steinbrenner to admit his errors, to reduce his owner's status from majority to minority owner, and to remove himself from the day-to-day operations of the Yankees. Vincent acted decisively and Steinbrenner concurred with the commissioner's assertions. One writer noted that "by single-handedly orchestrating the abdication of King George, the commissioner has revived dreams of a final arbiter who cares more about the game than about profits and promotion."[35]

The National League planned to expand from 12 to 14 teams in 1993. Each of the expansion teams was required to contribute $95,000,000. Vincent ruled that the $190,000,000 needed to be divided among the teams of both leagues, with the National League teams receiving 78% and the American League teams receiving 22%. But the National League's owners wanted to keep and divide all of the $190,000,000. As the American League teams were required (by Vincent) to contribute players to the expansion pool, the American League's owners wanted more than 22%. Neither the National League's owners nor the American League's owners were pleased with Vincent's decisions. Several of the American League's owners were "outraged."[36]

(Continued on page 23)

[33] Franklin, R. William. "A Sense of Place." *College Teaching* 37 (1989): 150-151.

[34] Wulf, Steve. "A Man in Command." *Sports Illustrated* 71 (1989): 30.

[35] Shapiro, Walter. "The Artful Pick-Off." *Time* 136 (1990): 63. Vincent, Fay. *The Last Commissioner: A Baseball Valentine*. New York: Simon & Schuster, 2007.

[36] Chass, Murray. "Owners, in an 18-9 Vote, Ask Vincent to Resign." *New York Times* (September 4, 1992): B7, B9. Vincent, *Last Commissioner*; Holtzman, *The Commissioners;* Moffi, *Conscience*.

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On September 3, 1992, Baseball's owners formally stated that they did not have confidence in Commissioner Vincent's abilities to move Baseball forward "effectively and constructively." In a vote of 18-9, they asked for his resignation. Some of the owners wanted to take a "militant stance" with the union and were convinced Vincent would not support them. Other owners were still unhappy with Vincent's decisions on the allocation of the $190,000,000 in expansion fees. The Tribune Company, owner of the Cubs and also of one of the superstations, was particularly concerned with Vincent's efforts to reduce the impact of superstation telecasts. The owners emphasized the need for a commissioner who was able to develop and refine a consensus on fundamental issues and also able to manage relationships with parties external to Baseball. The embattled commissioner resigned in late 1992. [37]

Vincent struggled to create a shared vision of the future among Baseball's fractious owners and associated constituents. He was decisive and confronted problems openly and in a timely way as evidenced in his decision to reduce Steinbrenner's status as owner of the Yankees. In the serious and chaotic situation created by the Bay Area earthquake in 1989, Vincent listened actively to individuals and coalitions, considered a variety of options, and acted with genuine concern for all affected parties. Not a charismatic individual, he relied on logic, expertise, and information. He was more effective as an administrator or manager than as a leader.

To be fair, Vincent was not actually selected for the position of Baseball's commissioner. He was asked to complete Giamatti's term of office. This probably affected his political base among the owners. He did not have the opportunity to request administrative concessions or privileges at the beginning of his term of office. With a limited political base, his opportunities to create a shared vision, influence others, and attain relevant goals were seriously affected.

BUD SELIG: INTERIM COMMISSIONER (1992-98) & BASEBALL'S NINTH COMMISSIONER (1998 – PRESENT)

Bud Selig was selected as baseball's interim commissioner in 1992. After six interim years, Selig became the official Commissioner of Baseball in July 1998.

Commissioner Selig's efforts have focused on several relevant issues. These include the reorganization of the American League and National League into six geographic divisions; the introduction of interleague games as well as the "Wild Card;" a critical examination of competitive balance ("Blue Ribbon Report on Baseball Economics") and the implementation of the Competitive Balance Tax; the centralization of Internet operations in the Office of the Commissioner; the implementation of the World Baseball Classic; the implementation of random drug testing (in the minor leagues and eventually in Major League Baseball); and the facilitation of the move of the Expos from Montreal to Washington, D.C.[38]

The six geographic divisions and the introduction of the Wild Card provide more opportunities for teams to be in the playoffs. Initially controversial, the Wild Card option has been especially popular with the fans. Competitive balance has been a key issue for Selig. With the compilation of the "Blue Ribbon Report on Baseball Economics," the commissioner targeted Minnesota and Montreal as candidates for contraction. Popular as well as political opposition minimized Selig's efforts to "contract" the teams in Minnesota and Montreal. Eventually the Expos moved to Washington, D.C. and the Competitive Balance Tax was implemented. A form of revenue sharing, the Competitive Balance Tax facilitates the transfer of money from teams with more financial re-

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[37] Chass, Murray. "Owners, in an 18-9 Vote, Ask Vincent to Resign." *New York Times* (September 4, 1992): B7, B9. Vincent, *Last Commissioner*; Holtzman, *The Commissioners;* Moffi, *Conscience*.

[38] Holtzman, *The Commissioners;* Moffi, *Conscience*; Zimbalist, Andrew. *In the Best Interests of Baseball? The Revolutionary Reign of Bud Selig*. Hoboken, NJ: John Wiley & Sons, 2006.

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sources to teams with less financial resources. The formula has been criticized as unfair and even socialistic by the owners of the teams with more financial resources.[39]

Cultivation and support of the World Baseball Classic has been a priority for Commissioner Selig. After the completion of the 2009 World Baseball Classic, Selig asserted "Long after I'm gone, this will get to be bigger and bigger and bigger." Centralization of Intenet operations via mlb.com has been financially beneficial for the 30 teams as well as the Office of the Commissioner. Philosophically, Selig supports the importance of consensus and centralized Internet operations are a representative example of consensus at the electronic level.[40]

Selig presided over a serious strike, including the cancellation of the World Series, as interim commissioner in 1994. An agreement with the Major League Baseball Players Association was eventually negotiated. Nonetheless, the strike affected the attitude of fans across the nation. Attendance at games was affected for several years. Selig was viewed as less than assertive in the negotiations and was criticized by the owners, players, and fans. The owners reduced some of the commissioner's authority in several key areas, including expansion, sale or relocation of teams, revenue sharing, television contracts, and schedules. "At a time when baseball needed effective leadership from the commissioner, the owners moved to minimize the authority and powers of the commissioner. When Judge Landis died in 1944, the power of each succeeding commissioner was reduced further and further until the owners decided that no commissioner was the best commissioner. Thus Mr. Selig."[41]

Selig's struggles with important decisions are exemplified by his decision to cancel the 2002 All-Star Game after 11 innings. Fans were particularly disappointed, especially those at the All-Star Game. To compensate for the decision, he announced in 2003 that the victorious league will have the home-field advantage in the World Series. This decision has been controversial and was probably an overreaction to the 2002 All-Star Game cancellation.

Selig presided over the "steroid era." After the extended strike in 1994, attendance was seriously affected for several years. Fans returned in 1998 to see Mark McGuire and Sammy Sosa hit prodigious home runs. The nation was captivated by the "battle" between McGuire and Sosa. Other players were also becoming more muscular and hitting more home runs. McGuire admitted using androstenedione, a "human growth hormone." While banned in professional football and basketball, steroids and human growth hormones were legal and used in baseball in 1998. Home runs continued to be hit and records continued to be set from 1998 to 2005. Hitting 73 home runs in 2001, Barry Bonds typified the steroid era.

Several books, including *Juiced*, *Juicing the Game*, and *Game of Shadows*, chronicle the use of steroids. *Game of Shadows* provides detailed and documented information on the use of steroids and other substances by Barry Bonds. Unfortunately, Selig, the owners, and the fans conveniently ignored the increasingly muscular players and the obvious rationale for these home run records. Fans were coming to the ballparks to see the home runs, so the owners were elated.

As Commissioner of Baseball, Selig failed to act. In 2005, Selig, Donald Fehr (Major League Baseball Players' Association), and several players (including McGuire and Sosa) testified at a Congressional hearing. The testimonies embarrassed the commissioner, Mr. Fehr, and the players. Selig worked and collaborated with the Major League Baseball Players' Association in 2005 and eventually announced the "three

(Continued on page 25)

[39] Holtzman, *The Commissioners;* Moffi, *Conscience*; Zimbalist, Andrew. *In the Best Interests of Baseball? The Revolutionary Reign of Bud Selig*. Hoboken, NJ: John Wiley & Sons, 2006.

[40] "Selig Waxes on the World Baseball Classic." *New York Times*, March 22, 2009. See also: http://bats.blogs.nytimes.com/2009/03/22/selig-waxes-on-the-world-baseball-classic.

[41] Berkow, Ira. "As Innings Dwindle, Baseball Chief Talks." *New York Times* (August 7, 1994): 1, 28.

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strikes" policy in relation to steroids. Players are suspended for 50 games for the first violation and 100 games for the second violation. Players are banned for life for the third violation.[42]

Several of Selig's accomplishments have been significant and continue to affect Major League Baseball. In particular, introduction and implementation of interleague games and the "Wild Card" affect the regular season as well as the playoffs. His interest in competitive balance is important as some teams have more financial resources. Symbolically, the World Baseball Classic is important to Major League Baseball. Centralized Internet operations have been practical and financially beneficial. The eventual implementation of a meaningful random drug testing policy is particularly relevant.

Unfortunately, Commissioner Selig failed to react in a timely way to Baseball's drug situation. The "steroid era" occurred under Selig's leadership. Only after the Congressional hearing on steroids in Baseball did Selig react, eventually implementing the "three strikes" policy. To be fair to Selig, the owners and the media also ignored the situation. And the Major League Baseball Players' Association was not particularly cooperative on this particular issue.

RESULTS OF THE TALLIES

1. Giamatti = 7.843
2. Chandler = 7.656
3. Ueberroth = 6.875
4. Landis = 6.656
5. Vincent = 5.906
6. Selig = 5.625
7. Frick = 4.906
8. Kuhn = 4.843
9. Eckert = 1.875

LESSONS & OBSERVATIONS ASSOCIATED WITH THE TALLIES

Time in the Office of the Commissioner appears to be an interesting variable, especially with Giamatti's position, considering he was in the Office for less than six months. Obviously the 219 scholars who responded view Giamatti's efforts with Pete Rose as particularly important, and possibly symbolic of the importance of integrity in Baseball.

Integration is another interesting variable. Chandler's position reflects his work with Rickey and Robinson. These collaborative efforts integrated Major League Baseball. The impact of these events on societal conditions is also important. It's also likely that Landis's opposition to integration affected the scholars' opinions of Baseball's first commissioner.

Ueberroth is higher than the author expected. The commissioner's emphasis on image and public relations as well as his ability to "use" the media to attain relevant goals possibly contributed to the scholars' opinions.

219 scholars responded with tallies, or 73.0%. This is a reasonable response, possibly influenced by a significant interest in Major League Baseball, with a focus on leadership. A significant number of the scholars who responded also expressed a genuine interest in these issues. Others were interested in the issues of leadership. Some were simply unaware of these issues.

Additional research will provide information as well as perspective on Major League Baseball's nine commissioners, especially the commissioners' ability to lead effectively.

(Continued on page 26)

[42] Bryant, Howard. *Juicing the Game: Drugs, Power, and the Fight for the Soul of Major League Baseball*. New York: Viking, 2005. Canseco, Jose. *Juiced: Wild Times, Rampant 'Roids, Smash Hits, and How Baseball Got Big*. New York: Regan Books, 2005. Fainarul-Wada, Mark, and Lance Williams. *Game of Shadows: Barry Bonds, BALCO, and the Steroids Scandal that*

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APPENDIX I: LEADERSHIP: DEFINITION, ATTRIBUTES, & CRITERIA

The attributes of leadership used to assess the commissioners are selected from the publications of several scholars and practitioners whose expertise and experience in the art and practice of leadership are viewed as authoritative.

James MacGregor Burns's definition of leadership in his classic *Leadership* provides a degree of perspective – "Leadership … is exercised when persons with certain motives and purposes mobilize, in competition or conflict with others, institutional, political, psychological, and other resources so as to arouse, engage, and satisfy the motives of followers." *Baseball's commissioners need to mobilize institutional, political, psychological, and other resources effectively to attain relevant goals that will satisfy the owners as well as the fans and other key constituents.*

Baseball exists within the context of a relatively complex organizational culture. In *Organizational Culture and Leadership*, Edgar H. Schein defines culture as a "pattern of basic assumptions – invented, discovered, or developed by a given group as it learns to cope with its problems of external adaptation and internal integration – that has worked well enough to be considered valid an, therefore, to be taught to new members as the correct way to perceive, think, and feel in relation to those problems." *An intimate, working knowledge of the elements or constituents in Baseball's internal and external cultures underscores success for the commissioners. Working effectively with Baseball's organizational culture is an important attribute of effective leadership.* "What all this means is that one cannot separate the process of leadership from the process of building culture, that the very issues identified as the problems around which culture is eventually evolved or learned are the issues identified as leadership functions in most theories. One might go so far as to say that a *unique* function of leadership, as contrasted with management or administration, is the *creation and management of culture*. *The commissioners are assessed on their ability to recognize, understand, and work with the key elements and related contingencies in Baseball's organizational culture, including its internal and external environments.*

John W. Gardner's six descriptors of leadership noted in The Nature of Leadership are applicable to Baseball's commissioners.

- They [Leaders] think longer term—beyond the day's crises, beyond the quarterly report, beyond the horizon.
- They look beyond the unit they are heading and grasp its relationship to larger realities.
- They reach and influence constituents beyond boundaries.
- They put heavy emphasis on the intangibles of vision, values, and motivation.
- They have the political skills to cope with the conflicting requirements of multiple constituencies.
- They think in terms of renewal.

Two classic articles on leadership by Warren G. Bennis and Martha W. Tack are published in the *Phi Kappa Phi Journal*. Bennis discusses several leadership competencies:

- Mangement of attention (vision or a set of intentions)
- Management of meaning (clarification of the vision so that others are motivated to contribute)
- Management of trust (reliability or "constancy")
- Management of self (knowledge of one's skills, and competencies).

Bennis emphasizes that "Leaders are people who do the right thing; mangers are people who do things right." *Hopefully Baseball's commissioners do the right thing.*

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Tack discusses essential qualities of leadership, including:

- Leaders must have a set of clear, positive, and rationally defensible values that they understand and on which they rely when making decisions.
- Leaders must have the courage to focus on quality in everything they do.
- Leaders must be willing and able to take calculated risks in order to capitalize on new opportunities.

Warren G. Bennis's *On Becoming a Leader* asserts that effective leaders "share some, if not all, of the following ingredients:"

- Guiding vision
- Passion
- Integrity (candor, maturity, and self-knowledge)
- Trust (earned)
- Curiosity and daring

Additionally, Bennis discusses several key attributer used to cope or deal effectively with change, ambiguity, and chaos:

- Leaders manage the dream. All leaders have the capacity to create a compelling vision, one that takes people to a new place, and then to translate that vision into reality.
- Leaders embrace error.
- Leaders encourage reflective backtalk.
- Leaders encourage dissent.
- Leaders possess the Nobel factor: optimism, faith, and hope.
- Leaders have … the Gretzky Factor. Leaders have the sense of where the culture is going to be, where the organization must be if it is going to grow.
- Leaders see the long view. They have patience.
- Leaders understand stakeholder symmetry. They know that they must balance the competing claims of all the groups with a stake in the [organization].
- Leaders create strategic alliances and partnerships.

Henry Mintzberg's classic *The Nature of Managerial Work* discusses fundamental managerial roles and skills, several of which are especially applicable to Baseball's commissioners. These include the negotiator role and the figurehead role (social, legal, inspirational, and ceremonial) as well as conflict-resolution and entrepreneurial skills.

Peter Senge's classic *The Fifth Discipline: The Art and Practice of the Learning Organization* discusses organizations as actual or potential learning organizations. Several of Senge's axioms are included as a result of the relative independence of the 30 owners, none of whom report directly to the Office of the Commissioner. These reporting relationships create unique realities necessitating commissioners who are effective communicators, coordinators, and able to work effectively with ambiguity and chaotic conditions. Senge's axioms include:

- Today's problems come from yesterday's solutions
- The harder you push, the harder the system pushes back
- The easy way out usually leads back in
- The cure can be worse than the disease
- Dividing an elephant in half does not produce two elephants

Business of Baseball Committee

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The committee's website is at http:\\www.businessofbaseball.com. You should stay in touch with the site as we improve the look and add content.

The Committee's discussion group, BusinessofBaseball, 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@yahoogroups.com.

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