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COMMENTS

THE TWELVE YEAR RAIN DELAY: WHY A CHANGE IN LEADERSHIP WILL BENEFIT THE GAME OF BASEBALL

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It breaks your heart. It is designed to break your heart. The game begins in the spring, when everything else begins again, and it blossoms in the summer, filling the afternoons and evenings, and then as soon as the chill rains come, it stops and leaves you to face the fall alone.¹

[E]xamining the business of baseball is like looking at the sun, you can't do it for very long before you have to turn away.²

INTRODUCTION

Baseball is a beautiful game. Despite the recent surge in the popularity of professional football and basketball, baseball is—and will always be—the greatest game ever played. Baseball is so graceful and elegant that even the United States Supreme Court could not resist professing its love for the game and its players:

[T]here are the many names, celebrated for one reason or another, that have sparked the diamond and its environs and that have provided

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¹ A. Bartlett Giamatti, *The Green Fields of the Mind*, YALE ALUMNI MAG. & J. 9, 9 (Nov. 1977), reprinted in A. BARTLETT GIAMATTI & KENNETH S. ROBSON, A GREAT AND GLORIOUS GAME: BASEBALL WRITINGS OF A. BARTLETT GIAMATTI 7 (Kenneth S. Robson ed., 1998).

² FAY VINCENT, THE LAST COMMISSIONER: A BASEBALL VALENTINE 294 (2002).

tinder for recaptured thrills, for reminiscence and comparisons, and for conversation and anticipation in-season and off-season: Ty Cobb, Babe Ruth, Tris Speaker . . . Rogers Hornsby . . . Jackie Robinson . . . Honus Wagner . . . Satchel Paige . . . Three-Finger Brown . . . Cy Young . . . Smokey Joe Wood . . . Roy Campanella . . . [and] Dizzy Dean.³

The beauty of the game lies in its relationship to numbers. Baseball is played and revered worldwide; yet no matter where it is played, it remains a universal game of numbers: a baseball must weigh between five and five and a quarter ounces,⁴ ninety feet separate each of the four bases,⁵ and the pitcher's mound lies exactly sixty feet and six inches from home plate.⁶ Baseball also revolves around statistics.⁷ Fans of the game pride themselves on knowing the stats of the single season strikeout leader,⁸ the all-time hits leader,⁹ and the player with the highest single season batting average.¹⁰ The most important numbers in baseball, however, have nothing to do with on-base percentages or earned run averages. The most important numbers in baseball are expressed in terms of dollars and cents.

Baseball is a business. As sad as that is to say, it is true. Fans once attended games at places like Comiskey Park, Tiger Stadium, and the Polo Grounds.¹¹ Now they force themselves

³ Flood v. Kuhn, 407 U.S. 258, 262–63 (1972), discussed *infra* Part II.A. With all due respect to Justice Blackmun, the author would like to include the following names to those that “have sparked the diamond and its environs[.]” George Brett, Willie Mays, Hank Aaron, Nolan Ryan, Roger Clemens, Frank Robinson, Ted Williams, Sandy Koufax, Joe DiMaggio, Greg Maddux, Mike Piazza, Cal Ripken, Jr., Ken Griffey, Jr., Goose Gosage, Mickey Mantle, Duke Snider, Pee Wee Reese, Pedro Martinez, Rickey Henderson, Sammy Sosa, Mark McGwire, and Barry Bonds.

⁴ OFFICIAL RULES: 1.00 OBJECTIVES OF THE GAME § 1.09, *available at* http://mlb.mlb.com/NASApp/mlb/mlb/official_info/official_rules/objectives_1.jsp (last visited Sept. 22, 2004).

⁵ *Id.* § 1.04.

⁶ *Id.* § 1.07.

⁷ See MICHAEL LEWIS, MONEYBALL: THE ART OF WINNING AN UNFAIR GAME 64–96 (2003) (presenting an astounding account of how author, baseball enthusiast and current Senior Baseball Operations Advisor for the Boston Red Sox, Bill James was able to breakdown the numbers of baseball statistics and rebuild them into a language known as “sabermetrics”; see also The Society for American Baseball Research, at <http://www.sabr.org/> (last visited Sept. 22, 2004).

⁸ DAVID S. NEFT ET AL., THE SPORTS ENCYCLOPEDIA: BASEBALL 783 (23d ed. 2003) (indicating that in 1973, California Angels pitcher Nolan Ryan struck out 383 batters—one more than Los Angeles Dodgers pitcher Sandy Koufax struck out in 1965).

⁹ *Id.* at 785 (noting that Pete Rose holds the record with 4,256 hits).

¹⁰ *Id.* at 780 (crediting Rogers Hornsby with the astonishing mark of .424 in 1924).

¹¹ See generally Paul Munsey & Cory Suppes, Ballparks by Munsey and Suppes, *available at* <http://www.ballparks.com/baseball/index.htm> (last visited Sept. 22, 2004) (allowing users to see photographs and obtain information regarding ballparks of the

into tiny seats at advertisement-laden and dreadfully named stadiums such as Comerica Park, Network Associates Coliseum, Citizens Bank Park, and Minute Maid Park.¹² Corporate renaming of ballparks, which has been a staple in the world of sports for nearly a decade, is one of the many ways the business side of the sport overshadows the game of baseball.¹³ It is widely believed that the 1994 player strike marked the point when economics took over and the game of baseball lost its innocence.¹⁴ The game, however, has been dominated by economics since its inception. Baseball is, was, and will always be a business, and like any good business, baseball has one objective—to make money.

The business of baseball has often been compared to the inner-workings of a large corporation.¹⁵ In the business world, corporations need strong leaders to make important decisions and successfully govern the business. Just as a chief executive officer heads a corporation, the Office of the Commissioner governs the game and business of Major League Baseball (“MLB”). However, while a director of a corporation owes fiduciary duties to the corporation and its shareholders, the Commissioner of Baseball does not owe similar duties because “[b]aseball is a private enterprise, bound by its own internal laws and regulations.”¹⁶ The MLB governing structure is an anomaly. If it were more like a public corporation, perhaps baseball could have avoided the issues that have plagued it for years. Instead, baseball is riddled with strikes, lockouts, gambling, drugs, and collusion.

This article analyzes the history of the Office of the Commissioner of MLB and demonstrates how change in the current governing structure will allow fans to concentrate more on the game played between the lines, rather than what occurs in the conference rooms.¹⁷ Part I describes how the Office of the

past, present and future).

¹² See Sherri Deatherage Green, *Corporate Branding—To Win Branding Game, You Must Be in the Right Ballpark*, PR WEEK, June 17, 2002, at 9.

¹³ See *id.*

¹⁴ See JEROLD J. DUQUETTE, *REGULATING THE NATIONAL PASTIME: BASEBALL AND ANTITRUST* xi (1999). The strike forced Major League Baseball to cancel both League Championship Series and the World Series, the latter of which had not happened since 1904. *Id.* at 93.

¹⁵ See VINCENT, *supra* note 2, at 289–94; see also BOB COSTAS, *FAIR BALL: A FAN’S CASE FOR BASEBALL* 41–43 (2000).

¹⁶ ROGER I. ABRAMS, *LEGAL BASES: BASEBALL AND THE LAW* 93 (1998).

¹⁷ See COSTAS, *supra* note 15, at 38 (“Baseball has always been a business,’ . . . [b]ut to tell the full story, the point needs to be made that until recently, baseball has never been *only* a business.”).

Commissioner came into existence. Part II briefly highlights and critiques some of the most important and controversial legal decisions regarding the governance of the game. Additionally, Part II will specifically focus on the Office of the Commissioner's abuse of power, particularly in the collusion and contraction cases. Finally, the conclusion calls for a change in MLB's governing structure and seeks an independent Commissioner to restore the game to its rightful position as the national pastime.

I. THE NEED FOR REGULATION

Baseball is a multi-billion dollar industry; however it was not always the enormous capitalistic enterprise that it is today.¹⁸ The game of baseball—first played in New York State—started out as a simple way to pass the time.¹⁹ This soon evolved when, in 1869, Harry Wright became the first businessman to realize the financial benefits of the sport by assembling the first professional baseball team and charging spectators to watch the team play.²⁰ Other entrepreneurs quickly followed in Wright's footsteps as various teams and leagues began sprouting up across the nation.²¹ William Hulbert took the business of baseball to the next level by creating the National League in 1876.²² The cost of a ticket to see a game in this new league was astronomical, more than half a day's pay in some cases.²³ Additionally, Hulbert implemented a financial security blanket called the "reserve system" which allowed teams to secure their rosters by locking each player into a perpetual series of contracts intended to keep the escalating salaries in check.²⁴

¹⁸ ABRAMS, *supra* note 16, at 9 (pointing out that the legal process and the law in general were partially responsible for "transforming a pastime" into a successful commercial venture).

¹⁹ *Id.* at 13–14 (explaining that the New York game spread rapidly because the soldiers in the Civil War who played the game during downtimes took the game home with them at the end of the war, thus creating "America's game").

²⁰ *Id.* at 14 (pointing out that Wright's Cincinnati Red Stockings toured the nation playing baseball clubs from all over and finished the year with an undefeated record).

²¹ *Id.*

²² *Id.* (indicating that the National League stabilized the business side of the sport by assigning each team its own exclusive area in which no other team could operate).

²³ *Id.* at 15.

²⁴ *Id.* at 45–46 (explaining that salaries were 60% of a team's revenue before the "reserve system" which dwindled to less than 15% by the 1950s). The reserve system allowed the owners to maximize the profits of their business for nearly 100 years. *See id.* In 1969, however, St. Louis Cardinal's outfielder Curt Flood began a fight that would eventually lead to the demise of the reserve system. *See Flood v. Kuhn*, 407 U.S. 258 (1972), discussed *infra* at Part II.A.; *see also* ABRAMS, *supra* note 16, at 45. Flood argued

Therefore, the owners had complete financial control of the game:

[T]he owners of major league baseball teams could expect to retain the services of their players on a year-to-year basis. So long as they chose not to trade the players, and continued formally to offer them contracts, they could keep them on the team for whatever price they chose [A] player had no ability to increase his compensation by offering his services to competitor franchises in the league.²⁵

Despite its strong financial interest and near monopoly of the game, the National League could not stave off competition and guarantee the continued financial success of the owners.

Rival leagues rapidly sprung up hoping to enjoy the same financial success of the National League.²⁶ The American League, the most successful of these rival leagues, was able to threaten the financial position of the National League by looting its talent.²⁷ The feud between the two competing businesses became so fierce that courts began issuing injunctions to stop players from switching leagues.²⁸ “For the first three years of the twentieth century, team rosters, player salaries, and contractual obligations in major league baseball were in a state of turmoil. . . .”²⁹ Eventually, the success of the new American League and the realization that both leagues could co-exist and work together for increased profits allowed the rival leagues to

that baseball’s reserve system rendered him “a piece of property to be bought and sold irrespective of . . . [his] wishes.” ABRAMS, *supra*, at 65. Andy Messersmith—pitcher for the Los Angeles Dodgers—was ultimately responsible for the complete destruction of the reserve system, discussed *infra* at Part II.A. See *id.* at 117–33. Continuing Flood’s fight, Messersmith took his case to arbitration, per the Major League Rules, and on December 23, 1975, won the right for players to declare “free agency,” thus marking the end of the reign of the reserve system. See *id.* at 118, 126, 128.

²⁵ G. EDWARD WHITE, CREATING THE NATIONAL PASTIME: BASEBALL TRANSFORMS ITSELF 1903–1953, at 49–50 (1996) (highlighting the fact that the reserve system so heavily favored the owners’ financial interests that the owners were not required to offer a player the same salary from year to year, and each player’s contract contained a “ten-day clause” that allowed an owner to release a player with ten days notice for any or no reason).

²⁶ See *id.* at 65.

²⁷ ABRAMS, *supra* note 16, at 31 (indicating that at one point in 1901, 111 of the 182 players in the American League were formerly of the rival National League).

²⁸ WHITE, *supra* note 25, at 47–48. Future Hall of Famer Napoleon “Nap” Lajoie of the Philadelphia Athletics was the biggest star to defect from the National to the American League. *Id.* During the seventh inning of the American League’s 1902 season opener, Lajoie was served with an injunction obtained by the National League’s Philadelphia Phillies and issued by the Supreme Court of Pennsylvania, which prohibited his playing in the American League. *Id.*; see generally Philadelphia Ball Club, Ltd. v. Lajoie, 202 Pa. 210 (1902) (determining that Lajoie could be restrained from playing for any other team).

²⁹ WHITE, *supra* note 25, at 48.

declare a truce and form an agreement.³⁰ The 1903 National Agreement marked the beginning of MLB as it is known today.³¹

A. *Early Attempts at Regulation*

As baseball began to play a more significant role in the lives of many Americans, the need for stricter governance became apparent. From 1903 to 1920, baseball was entrusted to an oligarchy—called the National Commission.³² This three-headed monstrosity was comprised of American League President Ban Johnson, National League President John K. Tener, and Cincinnati club owner August “Garry” Herrmann.³³ To illustrate how disastrous the National Commission was as a governing entity, imagine the office of the President of the United States concurrently held by President George W. Bush, Senator John Kerry, and a third member that they both agreed upon.

The 1903 National Agreement was unprecedented and its importance cannot be understated; the team owners relinquished their stronghold and gave the three-man National Commission power to control the game of baseball however it saw fit.³⁴ But more importantly, the Commission was to do so “without the aid [or interference] of [the] law.”³⁵ The owners essentially gave up their right to contest any action taken by the National Commission in a court of law and promised to abide by the Commission’s decisions, thus allowing baseball to become

³⁰ ABRAMS, *supra* note 16, at 40–41 (setting out the details of the agreement between the two leagues). The American and National Leagues signed the National Agreement after bitter competition between one another. *Id.* By signing the National Agreement in 1903, the two leagues made their peace and promised “to perpetuate baseball as the national game of America. . . .” *Id.* at 41. Two years later, the leagues realized the potential financial interests of having a “World Series” between the champion of each league—yet another way to enlarge the business of baseball. *Id.* at 42.

³¹ See 1903 National Agreement for the Government of Professional Base Ball Clubs [hereinafter 1903 National Agreement], available at <http://www.businessofbaseball.com/1903nlagreement.htm> (last visited Sept. 22, 2004).

³² DUQUETTE, *supra* note 14, at 28 (indicating that the National Commission governing baseball was “made up of the National and American League presidents and a third member chosen by them”).

³³ ABRAMS, *supra* note 16, at 41; DUQUETTE, *supra* note 14, at 29.

³⁴ 1903 National Agreement, *supra* note 31, art. IV; see also ABRAMS, *supra* note 16, at 41 (describing the National Agreement as the “constitution” of baseball that bound the American League and National League “to perpetuate baseball as the national game of America, and to surround it with such safeguards as to warrant absolute public confidence in its integrity and methods”).

³⁵ ABRAMS, *supra* note 16, at 41.

its own form of private law.³⁶

This system worked for about a decade, mostly because the National Commission was more concerned about the influx of rival leagues than the internal problems between the two prominent leagues or their teams.³⁷ But with a three-man commission comprised of prominent figures from within the game, the ugly head of the National Commission could only hide for so long: “internal dissention was surfacing within Organized Baseball’s executive circles. Between 1915 and 1920 a series of squabbles over the disputed ownership of players . . . caused certain owners to resent the decisions of baseball’s three-man National Commission.”³⁸ These ownership affairs eventually caused Garry Herrmann, the National Commission’s Chairman, to resign.³⁹ National League President John K. Tener also resigned “amidst charges of corruption.”⁴⁰ This left the National Commission in ruin, with American League President Ban Johnson opposing virtually everyone nominated to take over Herrmann’s recently vacated seat.⁴¹

The owners were finally beginning to see the difficulty of vesting executive powers in people closely related to the game of baseball.⁴² “The members of the commission were often accused of allowing their financial interests to interfere with their duties . . .”⁴³ Therefore, the idea of having a single commissioner—with “no financial interest in the game”—replace the disastrous

³⁶ See 1903 National Agreement, *supra* note 31, art. IV.

³⁷ See generally *Fed. Baseball Club of Balt., Inc. v. Nat’l League of Prof’l Baseball Clubs*, 259 U.S. 200 (1922) (illustrating that the plaintiff, a member of the defunct Federal League of Base Ball Clubs, brought suit against the National and American Leagues of Professional Base Ball Clubs alleging they orchestrated a conspiracy to destroy the rival league by purchasing some of its clubs, thus leaving it inoperable).

³⁸ WHITE, *supra* note 25, at 107 (indicating that the owner whom the National Commission ruled against in a dispute between two teams would begin resenting implementing such a system of self-governance). One of the most intense disputes occurred between the Boston Red Sox, New York Yankees, and American League President Ban Johnson. *Id.* Pursuant to powers conveyed by the National Agreement, Johnson suspended star Red Sox pitcher Carl Mays after Mays quit during a game, vowing never to pitch for Boston again. *Id.* The Red Sox owner did not adhere to Johnson’s suspension of Mays and traded him to the Yankees defying the National Commission. *Id.* Mays’ suspension was transferred to the Yankees, who then sought and received an injunction (presumably contrary to the National Agreement) against the National Commission from enforcing its punishment of Mays. *Id.*

³⁹ *Id.* at 107; see also DUQUETTE, *supra* note 14, at 29.

⁴⁰ DUQUETTE, *supra* note 14, at 29.

⁴¹ WHITE, *supra* note 25, at 107–08.

⁴² *Id.*

⁴³ DUQUETTE, *supra* note 14, at 29.

National Commission began to take form.⁴⁴ At first, the owners did not like the idea of vesting power in disinterested individuals. They soon changed their minds, however, once the infamous “Black Sox” scandal broke.⁴⁵

B. One Man In, Eight Men Out

On September 28, 1920, a Chicago grand jury indicted eight Chicago White Sox players, along with some gamblers, for conspiring to fix the outcome of the 1919 World Series.⁴⁶ American League President Ban Johnson submitted evidence of the conspiracy, which was confirmed by signed written “confessions obtained from several of the [accused] players.”⁴⁷ However, the evidence could not prove the players’ guilt beyond a reasonable doubt, and a Chicago jury acquitted the eight “Black Sox” players on all charges.⁴⁸

The “Black Sox” scandal—although tragic on so many levels—became the driving force for the creation of a single commissioner that the game of baseball desperately needed:

The revelation of the scandal forced the owners of major league franchises to create the office of baseball commissioner, who would be charged with overseeing their own conduct as well as that of the players. In theory, the owners relinquished a considerable amount of their power and autonomy in the act of creating a commissioner. They

⁴⁴ *Id.* (giving credit to Albert D. Lasker—prominent Republican and “part owner of the Chicago Cubs”—for drafting and lobbying the first version of this new plan, which called for a single commissioner and two associate commissioners); see *infra* Part I.B.; see also *infra* text accompanying note 52.

⁴⁵ DUQUETTE, *supra* note 14, at 29; see also Chicago Historical Society, *The Black Sox: Charles Comiskey and the White Sox*, available at <http://www.chicagohistory.org/history/blacksox/blk1a.html> (last visited Sept. 22, 2004) (indicating that contrary to popular belief, the entire Chicago White Sox team was nicknamed the “Black Sox” prior to the 1919 World Series incident because Charles Comiskey—the infamously frugal owner of the club—once tried to save money by not paying for the laundering of the players’ uniforms).

⁴⁶ J.G. TAYLOR SPINK, *JUDGE LANDIS AND TWENTY-FIVE YEARS OF BASEBALL* 57 (1947) (listing the fateful eight as Eddie Cicotte, Claude Williams, Arnold “Chick” Gandil, Charles “Swede” Risberg, George “Buck” Weaver, Oscar “Hap” Felsch, Fred McMullin, and Joe Jackson). See generally ELIOT ASINOF, *EIGHT MEN OUT: THE BLACK SOX AND THE 1919 WORLD SERIES* (1963) (providing a detailed account of the entire “Black Sox” scandal).

⁴⁷ SPINK, *supra* note 46, at 57. Joe Jackson and Buck Weaver, however, led the White Sox during the 1919 World Series with batting “averages of .375 and .324 respectively”—hardly the output one would expect from players accused of intentionally losing. *Id.* at 60.

⁴⁸ ABRAMS, *supra* note 16, at 155 (pointing out that there could not have been enough evidence to support the charges because the two players’ written confessions “somehow disappeared” before being submitted into evidence).

did so even though they had been the victims, not the perpetrators, of the scandal.⁴⁹

Regardless of who created the scandal, the owners refused to allow baseball to be put on the same level as boxing and horseracing—sports that are synonymous with gambling.⁵⁰ Terrified of losing control of the game and the business of baseball, the owners decided to surrender unprecedented power to an outsider in order to cleanse and regulate the game.⁵¹

On November 12, 1920, the owners of the 16 major league clubs met at the Congress Hotel in Chicago, where they created the governing structure of baseball that continues to this day. With the Lasker plan as a benchmark, the owners unanimously chose to have a single commissioner. They dropped the associate commissioners, fearing that they would dilute the authority of the commissioner. They also chose to make the commissioner a virtual czar of baseball, vesting him with absolute authority to rule in the interests of the game in the hope that his strong hand could restore the integrity of baseball in its time of profound crisis.⁵²

This meeting was monumental because the owners drastically changed the governing structure of their business by creating the Office of the Commissioner of Baseball in the 1921 Major League Agreement.⁵³

Similar to a chief executive officer's powers being delineated in a corporate charter and by-laws, the agreement defined the scope of the new Commissioner's powers.⁵⁴ The owners granted the Office of the Commissioner a broad power in the form of the "best interests" clause, in which the Commissioner was given the sole authority to regulate and punish any act that he deemed "detrimental to the best interests of the national game of baseball."⁵⁵ Thus, the owners disregarded any notion of a

⁴⁹ WHITE, *supra* note 25, at 92. *But see* ASINOF, *supra* note 46, at 15–18 (suggesting that the entire "Black Sox" scandal may have been avoided had Chicago White Sox owner Charles Comiskey not refused to pay his players—who were the best in the league—more money than some of the poorer players on lesser teams made).

⁵⁰ WHITE, *supra* note 25, at 92–93.

⁵¹ See SPINK, *supra* note 46, at 64.

⁵² DUQUETTE, *supra* note 14, at 29.

⁵³ See 1921 Major League Agreement, available at <http://www.businessofbaseball.com/1921mlagreement.htm> (last visited Sept. 22, 2004).

⁵⁴ *Id.*

⁵⁵ *Id.* art. I, § 2(a), 3. The "best interests" clause has been invoked some 70 times in 70 years. It has been used to suspend a manager (the Dodgers' Leo Durocher in 1947, for consorting with gamblers). It has been used to bar two retired stars, Mickey Mantle and Willie Mays, from any contact with baseball as long as they were employed at an

democratic structure and allowed for the possibility of despotism.

C. *The Savior and Commissioner of Baseball*

On January 12, 1921, federal Judge Kenesaw Mountain Landis became the first Commissioner of Baseball.⁵⁶ Judge Landis quickly became the hero and savior that the game had been lacking. Described by a journalist who covered his courtroom as “an irascible, short-tempered, tyrannical despot,” Landis shot from the hip and ruled the game with utopian visions of morality.⁵⁷ Using his clout as a federal judge to secure virtually unlimited power for the new position,⁵⁸ Landis may even have used the plight of the owners who hired him as leverage against them. Sensing their urgency and despair, Landis accepted the position with unlimited power to rule the game however he saw fit.⁵⁹ Furthermore, “[d]espite being hired by the owners,” he made it clear that the Commissioner of Baseball’s decisions would not always favor the owners.⁶⁰

Early in his reign, Landis set a ruthless tone through a series of swift and powerful moves. His first order of business was to end the “Black Sox” scandal that was plaguing the game. Shortly after taking office, Landis issued the following statement:

‘Regardless of the verdict of juries, no player who throws a ball game, no player that undertakes or promises to throw a ball game, no player that sits in conference with a bunch of crooked players and gamblers

Atlantic City casino. It was used in 1976 to stop an owner, Charles Finley of the Athletics, from conducting a fire sale of players, a sale that would have instantly degraded the franchise.

George F. Will, *A One-Man Error Machine*, NEWSWEEK, Aug. 6, 1990, at 57. The “best interests” clause was also used to ban New York Yankees owner George Steinbrenner from baseball for his hiring of a known “gambler-hustler” to dig up dirt on star player Dave Winfield. VINCENT, *supra* note 2, at 187–99.

⁵⁶ 1921 Major League Agreement, *supra* note 53, art. I, § 6; *see also* SPINK, *supra* note 46, at 64–65 (revealing that Judge Landis won the position over such prominent men as former President William H. Taft, General John J. “Black Jack” Pershing, General Leonard Wood, and Senator Hiram Johnson).

⁵⁷ WHITE, *supra* note 25, at 105–07.

⁵⁸ *See* SPINK, *supra* note 46, at 16, 20–28 (providing a detailed account of how President Teddy Roosevelt appointed Landis to the United States District Court for the Northern District of Illinois in Chicago and how Landis made a name for himself in the infamous *Standard Oil* case by imposing the then unprecedented, but later vacated, fine of \$29 million on the Standard Oil Co.).

⁵⁹ WHITE, *supra* note 25, at 108.

⁶⁰ *Id.* at 104.

where the ways and means of throwing a game are discussed and does not promptly tell his club about it, will ever play professional baseball.’⁶¹

In essence, Commissioner Landis disregarded the jury verdict acquitting the “Black Sox” as he “took the first in a series of actions that were to establish him as a law unto himself within the regime of Organized Baseball, and the symbol of a morally incorruptible sport.”⁶² This was the most important statement ever made by any Commissioner of Baseball because it established the Office as an authoritative entity that had the power to change the game and business of baseball without using the judicial system.

Commissioner Landis ruled the game and business of baseball for twenty-three years with the same vehemence that he used in deciding the fate of the infamous “Black Sox.” When he died in 1944, “there had not been the slightest whisper of a gambling or fixing scandal in baseball for nearly two decades . . . [and] baseball had clearly restored its position as a sport that deserved to be thought the ideal of youth. . . .”⁶³ Though not always liked, Landis was respected for creating a powerful governing entity and saving the game of baseball.

II. BASEBALL LEGALESE

Unfortunately, the absolute power imbedded in the Office of the Commissioner during Judge Landis’s reign as baseball’s supreme monarch died along with the legend in 1944. The Major League Agreement, which gives the Commissioner his power, was amended in 1945.⁶⁴ Never again did the owners allocate such an awesome amount of power to the Office of the Commissioner.⁶⁵ Following Landis, a string of Commissioners presided over the game, including Peter Ueberroth, Fay Vincent,

⁶¹ *Id.* at 104–05 (citation and quotation omitted).

⁶² *Id.* at 104. The Black Sox were banned from playing professional baseball for life and Landis’s decision was apparently irreversible. *See id.* at 105. Buck Weaver spent the rest of his life unsuccessfully trying to clear his name and receive reinstatement into baseball. *Id.* Joe Jackson was not even allowed to manage a minor league team in the 1930s. *Id.*

⁶³ *Id.* at 126.

⁶⁴ *See* 1945 Major League Agreement (on file with the National Baseball Hall of Fame Library, Cooperstown, N.Y.).

⁶⁵ *The Commissionership: A Historical Perspective*, MLB.com, at http://mlb.mlb.com/NASApp/mlb/mlb/history/mlb_history_people_story.jsp?story=com (last visited Sept. 22, 2004).

and current Commissioner Bud Selig.⁶⁶ For better or for worse, these three Commissioners had a tremendous impact on both the game and business of baseball.⁶⁷ Before examining these Commissioners' contributions to the game, however, the business of the antitrust exemption, free agency and the reserve system must be addressed in order to better understand the Commissioners' actions in dealing with collusion and contraction.

A. *The Antitrust Exemption, Reserve System and Free Agency*

Major League Baseball is a unique American entity because it enjoys protection from the federal antitrust laws and regulations that govern interstate commerce.⁶⁸ In the late nineteenth century, Congress encouraged competition and sought a more efficient marketplace by enacting the Sherman Act. The Act responded to the public opposition to economic trusts monopolizing and controlling interstate commerce.⁶⁹ Under the Act, any business engaged in interstate commerce was subject to antitrust legislation. Baseball, however, received its antitrust exemption in 1922 when Justice Oliver Wendell Holmes penned the infamous *Federal Baseball* decision, which held that baseball is not an interstate activity and cannot be bound by the Sherman Antitrust Act.⁷⁰ Closing its eyes to the obvious, the

⁶⁶ See Historical Perspective on Commissioners, MLB.com: Kenesaw Mountain Landis (1921-44), Albert "Happy" Chandler (1945-51), Ford Frick (1951-65), General William Eckert (1965-68), Bowie Kuhn (1969-84), Peter Ueberroth (1984-88), A. Bartlett Giamatti (1988-89), Francis "Fay" Vincent (1989-92), No official Commissioner (1992-98), Allan H. "Bud" Selig (1998-Present), available at http://mlb.mlb.com/NASApp/mlb/mlb/history/mlb_history_people.jsp (last visited Sept. 22, 2004) (providing links to Commissioners' biographies).

⁶⁷ See discussion Part II.

⁶⁸ See generally Bruce Johnson, *Why Baseball's Antitrust Exemption Must Go*, in STEERIKE FOUR!: WHAT'S WRONG WITH THE BUSINESS OF BASEBALL? 138-41 (Daniel R. Marburger ed., 1997) (setting out the history of the antitrust exemption and arguing for its dissolution); William F. Shughart II, *Preserve Baseball's Antitrust Exemption, or, Why the Senators Are out of Their League*, in *id.* at 143.

⁶⁹ See Herbert Hovenkamp, *Antitrust's Protected Classes*, 88 MICH. L. REV. 1, 21-24 (1989) (providing a brief look at Congress's justifications for enacting the Sherman Act); see also Sherman Act, 15 U.S.C. §§ 1-7 (2000). "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal." § 1.

⁷⁰ Fed. Baseball Club of Balt., Inc. v. Nat'l League of Prof'l Baseball Clubs, 259 U.S. 200, 208-09 (1922); see also Johnson, *supra* note 68, at 138 (stating that "[o]ne of America's greatest jurists, Oliver Wendell Holmes, had one of the all-time worst days in Supreme Court history in 1922 when he wrote the opinion in *Federal Baseball* . . . The decision made no sense in 1922.").

Supreme Court classified baseball games as “purely state affairs.”⁷¹ Additionally, the Court found “the transport [of teams from city to city and state to state to be] . . . a mere incident, not the essential thing.”⁷² The *Federal Baseball* decision came before the Supreme Court revolution of 1937,⁷³ so its outcome may have been predictable.

Less than one year after *Federal Baseball*, however, the Court began abandoning its positions on well-settled constitutional doctrines and started changing its view on interstate commerce. In *Hart v. B.F. Keith Vaudeville Exchange*, the Court ruled that “traveling vaudeville shows were engaged in interstate commerce, despite the fact that the shows appeared to be purely state affairs” accompanied by incidental interstate travel.⁷⁴ The Supreme Court categorized baseball and traveling vaudeville shows exactly the same way; yet baseball became an anomaly, escaping the Court’s radical interpretive change of interstate commerce.⁷⁵ “Within 20 years, the Court’s expansion of the scope of the commerce clause negated essentially every substantive point that was made in the Holmes decision.”⁷⁶ The holding in *Federal Baseball* virtually ensured that Commissioner Landis and his successors could rule the game of baseball without fear of government interference.

The Supreme Court has had several opportunities to correct its position, yet it has refused to do so. In 1953, the Court granted certiorari to hear *Toolson v. New York Yankees*, but in a short per curiam opinion, the Court plainly stated that *Federal Baseball* is, and will continue to be, the controlling authority on the subject.⁷⁷ In a logical and well-written dissent, Justice

⁷¹ *Fed. Baseball Club of Balt., Inc.*, 259 U.S. at 208.

⁷² *Id.* at 209; see also DUQUETTE, *supra* note 14, at 31 (indicating that the Supreme Court decision “gave government sanction to what some have called baseball’s private self-government”).

⁷³ See generally BARRY CUSHMAN, *RETHINKING THE NEW DEAL COURT: THE STRUCTURE OF A CONSTITUTIONAL REVOLUTION* (1998) (providing in-depth analysis of the Supreme Court during the New Deal Era of the 1930s and demonstrating why the Court abandoned its long-standing jurisprudential positions in favor of expanding constitutional doctrines such as the Commerce Clause).

⁷⁴ See *Hart v. B.F. Keith Vaudeville Exch.*, 262 U.S. 271, 273–74 (1922); see also DUQUETTE, *supra* note 14, at 31.

⁷⁵ See DUQUETTE, *supra* note 14, at 31 (stating that the *Hart* court’s ruling suggested that “Holmes [and the *Federal Baseball* court] inadvertently signaled that baseball was indeed special.”).

⁷⁶ JAMES QUIRK & RODNEY D. FORT, *PAY DIRT: THE BUSINESS OF PROFESSIONAL TEAM SPORTS* 185 (1992).

⁷⁷ *Toolson v. N.Y. Yankees, Inc.*, 346 U.S. 356, 357 (1953) (holding that it was not Congress’s intention to subject baseball to antitrust legislation). George Toolson, a

Burton refused to identify himself with a majority that failed to see baseball as a form of interstate commerce when everything about the sport is interstate commerce.⁷⁸ Instead of following Justice Burton's reasoning, the Court said "that if there are evils in this field which now warrant application to it of the antitrust laws it should be by legislation."⁷⁹ As such, baseball's antitrust exemption remains intact as the Court continually refuses to deal with the issue, insisting that if the antitrust exemption is ever to be repealed, Congress must do it.⁸⁰

Since the owners were not subject to the antitrust laws, they were allowed to engage in business that restrained trade in the baseball industry by not allowing players to choose their teams. Once a player signed a contract to play for a team, the team owned the rights to the player indefinitely and no other team could compete for the player's services.⁸¹ A player could only change teams if his owner traded him or sold his contract to another owner.⁸² Essentially, players were considered the owner's property, rather than his employees. This became known as the "reserve system."⁸³

It is widely assumed that competitive balance is the ultimate goal in the business of baseball.⁸⁴ If there is competitive balance in the game, not only will fan interest rise, but so will the

minor leaguer in the New York Yankees organization, chose not to report to his new team after being traded and brought an antitrust suit against the Yankees, claiming that the reserve clause violates the Sherman Act. See ABRAMS, *supra* note 16, at 60-61; *Toolson*, 346 U.S. at 362-63 (Burton, J., dissenting).

⁷⁸ *Toolson*, 346 U.S. at 357-58 (Burton, J., dissenting) (setting forth an extensive and convincing list of baseball's business actions that are considered interstate commerce, which includes constant interstate travel, numerous interstate materials purchases, media activities, and the "highly organized 'farm system'").

⁷⁹ *Id.* at 357.

⁸⁰ See *Flood v. Kuhn*, 407 U.S. 258, 283-84 (1972) (affirming baseball's long-standing general exemption to antitrust laws in lieu of congressional inaction). Compare *Charles O. Finley & Co. v. Kuhn*, 569 F.2d 527, 541 (7th Cir. 1978) (stating that the Supreme Court's exemption was intended to cover baseball entirely), with *Piazza v. Major League Baseball*, 831 F. Supp. 420, 440-41 (E.D.Pa. 1993) (holding that the antitrust exemption did not extend beyond the now-defunct reserve system). See also *Butterworth v. Nat'l League of Prof'l Baseball Clubs*, 644 So. 2d 1021, 1024-25 (Fla. 1994) (agreeing with the decision in *Piazza* that the exemption does not extend beyond the reserve system); *Johnson*, *supra* note 68, at 138.

⁸¹ ABRAMS, *supra* note 16, at 118.

⁸² *Id.*

⁸³ See *id.* (describing the reserve clause as a series of contractual provisions that have "served as the cornerstone of baseball's labor system for a century").

⁸⁴ See John L. Fixel, *Free Agency and Competitive Balance*, in STEE-RIKE FOUR!: WHAT'S WRONG WITH THE BUSINESS OF BASEBALL? 61 (Daniel R. Marburger ed., 1997); see also ABRAMS, *supra* note 16, at 50-51.

generated revenue.⁸⁵ When the game lacks competitive balance, however, fans become disinterested and take their money to other forms of entertainment:

As the Yankees won the pennant each year from 1950 to 1958, the attendance of the American League declined. Fans in New York and in every other American League city dozed, knowing that they would miss little because the season outcome was a foregone conclusion. Clearly, the financial viability of the league and each of its teams requires that Major League Baseball (MLB) preserve competitive balance.⁸⁶

Despite seeing the effects of running an industry with a non-competitive product, the owners still claimed that the reserve system was in the best interests of the game because in a free market, the rich teams would buy up all of the star players, resulting in an uncompetitive product, thus reducing fan interest and overall revenue.⁸⁷ In his study on free agency and arbitration, however, John Fixel points out that the owners used the reserve system to take financial advantage of player movement, while caring nothing about providing the fans with competitive games.⁸⁸

Much to the owners' dismay, the reserve system—and the antitrust exemption—nearly came to an abrupt end when a little-known player named Curt Flood refused to report to his new team after being traded and subsequently took his grievance against MLB all the way to the Supreme Court.⁸⁹ If ever there was a case that would allow the Supreme Court to correct its blatant error in *Federal Baseball*, this was it. Justice Blackmun, however, in an unusually verbose and poetic opinion, ultimately chose not to disrupt the game or business of baseball and held that *Federal Baseball* and *Toolson* were still

⁸⁵ Fixel, *supra* note 84, at 61 (indicating that Major League Baseball would benefit from competitive balance because fans enjoy “one-run games, tight pennant races, and Cinderella stories”).

⁸⁶ *Id.*

⁸⁷ ABRAMS, *supra* note 16, at 51.

⁸⁸ Fixel, *supra* note 84, at 62 (noting that even under a reserve system, star players end up with the rich teams—just as they do in today's free market system—because the owners' greedy profit incentives allow them to “reap the financial rewards from player movement” by selling their players' contracts, whereas in a free market system, the players themselves would “reap the [financial] rewards”).

⁸⁹ ABRAMS, *supra* note 16, at 64–65 (indicating that Flood, after being traded from the St. Louis Cardinals to the Philadelphia Phillies in 1969, wrote then Commissioner Bowie Kuhn: “After 12 years in the Major Leagues, I do not feel I am a piece of property to be bought and sold irrespective of my wishes. I believe that any system which produces that result violates my basic rights as a citizen.”).

controlling authority.⁹⁰ The basis of the *Flood* holding was that Congress had ample opportunity to pass legislation that would subject baseball to antitrust laws and regulations, but failed to do so.⁹¹ Therefore, according to baseball legal historian Roger Abrams, “[u]nder Blackmun’s theory, Congress legislate[d] by not legislating.”⁹²

After striking out in the federal court system, the players turned to arbitration, a process that the Major League Baseball Players Association (“MLBPA”) negotiated into the Collective Bargaining Agreement (“CBA”) as a way to support player interests, and effectively abolished the reserve clause.⁹³ In 1975, Los Angeles Dodgers pitcher Andy Messersmith filed a grievance against team owner Walter O’Malley, claiming that he was a free agent—no longer bound in perpetuity to a single team—based on the language of the uniform player’s contract.⁹⁴ Relying on the contractual clause allowing a team owner to renew the terms of the contract for one year, Messersmith claimed that after the one-year option, he was free to take his services to another team.⁹⁵ The owners, after failing to obtain a federal injunction to stop the arbitration hearing, pinned their entire argument on a clause in the CBA that specifically stated, “this Agreement does not deal with the reserve system.”⁹⁶ Arbitrator Peter Seitz was not convinced, however, because the entire CBA was filled with contractual language specifically pertaining to the reserve system, despite the covenant stating otherwise.⁹⁷

⁹⁰ *Flood v. Kuhn*, 407 U.S. 258, 284 (1972). Justice Blackmun made it abundantly clear that the Supreme Court was not going to overrule *Federal Baseball*, and that if Congress had wanted to include baseball in its antitrust legislation, it had ample opportunity to do so through the fifty bills introduced since *Toolson*. *Id.* at 281. While the Court did not hold in favor of ending baseball’s antitrust exemption, it finally conceded that “[p]rofessional baseball is a business and it is engaged in interstate commerce.” *Id.* at 282. Further, the Court recognized baseball’s status as an anomaly in the sporting world when it stated that football, boxing, basketball, hockey, and golf are businesses engaged in interstate commerce and subject to antitrust laws and regulations. *Id.* at 282–83. Justice Blackmun ended the opinion by blaming “any inconsistency or illogic” in the law concerning baseball and its antitrust exemption on Congress. *Id.* at 284.

⁹¹ *Id.* at 283.

⁹² ABRAMS, *supra* note 16, at 67.

⁹³ *Id.* at 117; *see also* DUQUETTE, *supra* note 14, at 68–70.

⁹⁴ ABRAMS, *supra* note 16, at 118.

⁹⁵ *Id.* at 118–19.

⁹⁶ 1973 Collective Bargaining Agreement, art. 15 (on file with the National Baseball Hall of Fame Library, Cooperstown, N.Y.); *see also* ABRAMS, *supra* note 16, at 124.

⁹⁷ ABRAMS, *supra* note 16, at 124–25 (explaining that the MLBPA had negotiated the language of Article 15 into the 1973 CBA because it feared that the Supreme Court would rule differently in *Flood*—which was still pending during the CBA negotiations—

After three days of hearings, Seitz agreed with Messersmith that the option clause only allows a team to renew a player's contract for one year; reasoning that an indefinite retention cannot be implied and must be explicitly stated.⁹⁸ Therefore, in what is considered "the most important single act in the history of the business and law of baseball," Seitz ruled that the players were free agents, no longer bound by the reserve system.⁹⁹ The Messersmith arbitration hearing accomplished more for baseball in a few days than the federal courts had in a century.

Free agency had an astounding effect on the game of baseball. The end of the reserve system caused the owners to lose the financial stronghold that they had enjoyed since the game's inception. In one fell swoop, the players were given the opportunity to finally enjoy a more reasonable share of the profits. They were no longer the owners' pawns, required to submit to any salary without negotiation. The club owners, however, like any business owners, did not want to let their profits go without a fight.

B. Collusion

MLB's antitrust exemption generally renders any act of collusion within the game entirely legal.¹⁰⁰ However, the collective bargaining agreement between the MLBPA and MLB prohibits such acts.¹⁰¹ The CBA specifically states: "Players shall not act in concert with other Players and Clubs shall not act in concert with other Clubs."¹⁰² Nonetheless, collusive acts were not always prohibited in MLB. In 1966, Sandy Koufax and Don Drysdale—two of the most dominating pitchers of all time—staged a joint holdout from the Los Angeles Dodgers during

leaving the MLBPA "jointly liable with management for an antitrust violation").

⁹⁸ *Id.* at 125.

⁹⁹ *Id.* at 126; see also DUQUETTE, *supra* note 14, at 70 (describing how the owners retaliated by firing Seitz and appealing his decision in federal court). The owners' appeal reached the Eighth Circuit Court of Appeals, which held that the CBA gave the arbitrator "exclusive jurisdiction," and that "baseball is not a matter for the [federal] courts." See DUQUETTE, *supra* note 14, at 70.

¹⁰⁰ BLACK'S LAW DICTIONARY 259 (7th ed. 1999) (defining collusion as "[a]n agreement to defraud another or to obtain something forbidden by law.>").

¹⁰¹ Eugene Freedman, *Collusion IV?*, Baseball Think Factory, Nov. 14, 2003, at http://www.baseballthinkfactory.org/files/main/article/eugene_freedman_2003_11_14_0/ (last visited Sept. 22, 2004).

¹⁰² 2003–2006 Basic Agreement, art. XX, E(1), available at http://us.il.yimg.com/us.yimg.com/i/spo/mlbpa/mlbpa_cba.pdf (last visited Sept. 22, 2004).

spring training, and demanded a joint salary renegotiation.¹⁰³ Koufax and Drysdale's tenacity allowed them to gain the upper hand on team owner Walter O'Malley and enjoy "significant pay increases."¹⁰⁴

The joint holdout propelled the owners, who were unwilling to give any other players the financial leverage enjoyed by Koufax and Drysdale, to insist on including the anti-collusion clause in all future collective bargaining agreements beginning in 1976.¹⁰⁵ The MLBPA agreed to the provision if it would apply to the owners as well, and seeing no reason for them to collude, the owners agreed.¹⁰⁶ Although they did not know it at the time, the owners' demand for anti-collusion protection to prevent the players from sharing in the profits of America's national pastime "would come back to bedevil them a decade later,"¹⁰⁷ and eventually would prove to be the downfall of the game.

In essence, greed crippled baseball. In 1985, when free agency was drastically escalating players' salaries, Commissioner Peter Ueberroth conducted a series of meetings with the owners' Players Relations Committee, the league presidents, and various other club management personnel with the goal of permanently ending free agency.¹⁰⁸ Commissioner Ueberroth warned the owners that if they were to succeed, each would have to "independently" decide not to sign free agents because "an orchestrated effort" would violate the collective bargaining agreement.¹⁰⁹

Of course, it immediately became an orchestrated effort, personified by . . . [Milwaukee Brewers Owner] Bud Selig and [Chicago White Sox Owner] Jerry Reinsdorf. It was a direct violation of the collective-bargaining agreement that banned 'collusion' among owners to set the players' salaries. Through most of the winters in the 1980s, it was obvious to even the ordinary fan that collusion among the owners was taking place. Name players, players with considerable track records, were not being signed by anybody.¹¹⁰

¹⁰³ Freedman, *supra* note 101; *see also* ABRAMS, *supra* note 16, at 138–39.

¹⁰⁴ ABRAMS, *supra* note 16, at 139.

¹⁰⁵ Freedman, *supra* note 101.

¹⁰⁶ ABRAMS, *supra* note 16, at 139.

¹⁰⁷ *Id.*

¹⁰⁸ Freedman, *supra* note 101; *see also* VINCENT, *supra* note 2, at 279.

¹⁰⁹ VINCENT, *supra* note 2, at 279.

¹¹⁰ *Id.*; *see also* Freedman, *supra* note 101 (stating that "[i]n 1985's free agent period, 29 of the 33 free agents went back to their old teams having received no other offers and the four who moved on were no longer wanted by their former teams. The free agents averaged only a 5% salary increase.").

The MLBPA quickly noticed the game's top free agents were not receiving offers from clubs other than their own team; so it took action on behalf of all players eligible for free agency and filed a grievance against the owners.¹¹¹ These actions became known as "Collusion I."¹¹²

Arbitrator Thomas Roberts issued the "Collusion I" decision on September 21, 1987.¹¹³ He found in favor of the MLBPA, dismissing the owners' claims that paying free agents was bad business and that the 1985 free agents were bad ballplayers who did not deserve contract offers.¹¹⁴ Roberts based his decision on the fact that no players were being signed, and "[o]nly a common understanding that no club will bid on the services of a free agent until and unless his former club no longer desires to sign the free agent will accomplish such a universal effect."¹¹⁵ After taking the crippling blow from the arbitrator's decision, the owners and management fired Roberts, thus ending "Collusion I."¹¹⁶

One would think the owners would have learned their lesson after being caught red-handed improperly dealing with the 1985 free agents; however, the MLBPA again filed grievances against the owners during the 1986 and 1987 seasons, aptly known as "Collusion II" and "Collusion III."¹¹⁷ Following the 1986 season, the owners' allegedly collusive acts affected a much broader base of players, including the game's top stars.¹¹⁸ The "Collusion II" decision was issued on August 31, 1988 and, like its predecessor, was decided in favor of the MLBPA.¹¹⁹ Arbitrator George Nicolau found it hard to ignore the fact that the only way Montreal Expos outfielder Andre Dawson could leave the clutches of Canada's astroturf for the greener pastures in "the

¹¹¹ ABRAMS, *supra* note 16, at 137 (naming Hall of Fame catcher Carlton Fisk as one of the free agents being punished by the owners' greed).

¹¹² Freedman, *supra* note 101.

¹¹³ ABRAMS, *supra* note 16, at 141 (highlighting that management had tried to fire Roberts midway through the arbitration proceeding; but this shameful and fearful cover-up attempt was stopped by Richard Block, another arbitrator chosen to hear the MLBPA's complaint about Roberts's removal).

¹¹⁴ *Id.* at 142-44 (illustrating that after winning the 1985 World Series, the Kansas City Royals publicly coveted the services of Kirk Gibson, but abruptly changed positions after attending the series of meetings headed by Commissioner Ueberroth).

¹¹⁵ *Id.* at 143 (quoting Roberts's decision).

¹¹⁶ *Id.* at 145 (pointing out that the MLBPA quickly hired Roberts to help divide the millions of dollars in damages, discussed Part II.B).

¹¹⁷ Freedman, *supra* note 101; *see also* ABRAMS, *supra* note 16, at 145-46.

¹¹⁸ Freedman, *supra* note 101 (listing the top players affected as including Andre Dawson, Reggie Jackson, Tim Lincecum, Jack Morris, and Lance Parrish).

¹¹⁹ *See* ABRAMS, *supra* note 16, at 145.

friendly confines” of Wrigley Field was to give the Chicago Cubs a signed blank contract, allowing Cub’s management to fill in his salary at their discretion.¹²⁰ In fact, in a letter to Bud Selig and Jerry Reinsdorf, of the Player Relations Committee, Chicago Cubs’ president Dallas Green explained he would have adhered to the owners’ gentleman’s agreement not to sign free agents. Dawson’s unprecedented actions, however, left Green no choice.¹²¹

The owners enjoyed immediate financial success after implementing their collusive plan to freeze out free agents. The average free agent salary dropped sixteen percent from 1986 to 1987, and MLB claimed to have made its first profit in nearly a decade, despite setting attendance records every season from 1984 to 1987, and receiving \$450 million in licensing revenue.¹²² The owners were no longer shearing their sheep for profit—they were skinning them.

To make matters worse, in 1987, management completely disregarded the MLBPA’s past grievances and devised yet another way to violate the collective bargaining agreement and collude against the players. In what is known as “Collusion III,” the final act of collusion in the 1980s, the owners set up an “information bank” that allowed teams to share their free agent offers with other teams, thus attempting to stifle the growth of free agent salaries.¹²³ In the final collusion opinion issued on July 16, 1990, arbitrator Nicolau found the owners’ “safe bidding environment” to be in violation of the collective bargaining agreement’s “anti-collusion provision.”¹²⁴ The owners had failed for a third and final time.

After being caught colluding against their own players for

¹²⁰ *Id.*; see also Bruce Anderson, *A Bargain at Any Price*, SPORTS ILLUSTRATED, June 15, 1987, at 36 (setting out the details of the Dawson transaction, which caused him to lose approximately \$500,000 per year—nearly half of his annual salary). Andre Dawson left the Montreal Expos and the astroturf of Olympic Stadium, which wreaks havoc on players’ knees, and performed so well his first year patrolling the outfield of Wrigley Field (.287 batting average, 49 homers, 137 RBIs) that he was named 1987 National League MVP—the first time in Major League Baseball history that a player from a last place team won the MVP. Peter Gammons, *An MVP (Boo) and Lights (Sigh) for the Cubs*, SPORTS ILLUSTRATED, Nov. 30, 1987, at 15.

¹²¹ Freedman, *supra* note 101.

¹²² *Id.*

¹²³ *Id.*; see also ABRAMS, *supra* note 16, at 146 (quoting Nicolau as saying, “[t]he Bank’s message was plain—if we must go into that market and bid, then let’s quietly cooperate by telling each other what the bids are. If we do that, prices won’t get out of line and no club will be hurt too much.”).

¹²⁴ ABRAMS, *supra* note 16, at 146.

three consecutive seasons, Bud Selig, Jerry Reinsdorf, and the rest of the owners gave up the fight on December 5, 1990, when they “settled all outstanding claims” with the MLBPA and “agreed to make a single \$280 million payment to compensate players for contract violations.”¹²⁵ When the collusion among the owners finally ended in the late 1980s, player salaries—after more than doubling—finally started to resemble a decent share of the profits that the business of baseball was generating.¹²⁶ Regretfully, the effects of the owners’ greed have tarnished and plagued the sport so severely that the game of baseball has yet to fully recover. The \$280 million scar on the owners’ balance sheets was proof that power had shifted from the owners to the players in the business of baseball. The owners, however, led by Milwaukee Brewers owner Bud Selig, were determined to regain control of baseball and would stop at nothing to achieve their goal.

C. *The Last Commissioner*

The business side of baseball became eerily quiet—a calm before the storm—following the collusion cases of the 1980s. This was due in large part to the infamous gambling scandal involving Pete Rose.¹²⁷ Following the tragic and untimely death of Commissioner Bart Giamatti in the fall of 1989, Fay Vincent—a reluctant soldier heading into battle—took the reigns eventually becoming the “Last Commissioner” of baseball.¹²⁸ Unfortunately, Vincent’s ascent to the commissionership could not have come at a worse time, nor at a greater cost. The bitter feud between the players and owners hid in the shadows and grew in intensity until it exploded after the 1989 season, when the 1985 collective bargaining agreement expired.

¹²⁵ *Id.*; VINCENT, *supra* note 2, at 279.

¹²⁶ See ABRAMS, *supra* note 16, at 149 (indicating that the average annual salary for a Major League Baseball player skyrocketed from “\$430,000 in 1988 to more than \$1 million by 1992”).

¹²⁷ See generally Ronald J. Rychlak, *The Dowd Report: Pete Rose, Bart Giamatti, and the Dowd Report*, 68 MISS. L.J. 889 (1999) (providing a brief and succinct outline of the controversy between Pete Rose and Major League Baseball); see also PETE ROSE & RICK HILL, *MY PRISON WITHOUT BARS* 134 (2004) (admitting—finally—that he did bet on baseball).

¹²⁸ See generally VINCENT, *supra* note 2. In his aptly named autobiography, Commissioner Vincent subtly and elegantly proclaims himself to be baseball’s “Last Commissioner,” which is a silent, but potent stab at Bud Selig, the owner of the Milwaukee Brewers—and current Commissioner—who forced Vincent out of office in 1992, discussed *infra* at Part II.D.

Commissioner Vincent had the difficult task of trying to preside over a game that was in the middle of the biggest labor war in its history.

The owners and MLBPA were so far apart in their negotiations for the new collective bargaining agreement that it looked like they would never come together in time for the 1990 season.¹²⁹ Therefore, fearing a strike by the MLBPA, the owners preemptively locked the players out of spring training prior to the 1990 season.¹³⁰ In order to defuse the situation and end the lockout, Commissioner Vincent used the power of the office and took over the negotiations “in the best interests [of the game] of baseball.”¹³¹ Vincent, knowing that the owners’ requests to install a salary cap and dismantle the salary arbitration system were unreasonable, unilaterally created a proposal on behalf of the owners, which effectively ended the labor dispute.¹³²

Commissioner Vincent’s victory in ending the lockout, however, came with dire consequences, as dissension among the owners began to rise:

Although they endorsed the deal at the time, it was widely reported that Allan “Bud” Selig, owner of the Milwaukee Brewers, and Jerry Reinsdorf, owner of the Chicago White Sox, were unhappy with Vincent. Over the next two years Selig and Reinsdorf quietly convinced other club owners that Vincent was too pro-player, not capable of representing the owners’ interests in labor negotiations.¹³³

In May 1992, after convincing enough of the owners to join them, Selig and Reinsdorf presented Commissioner Vincent with a statement of no confidence.¹³⁴ Instead of using the legal system to fight the owners, Commissioner Vincent resigned, thus ending the reign of baseball’s last commissioner.¹³⁵ Instead of offering the commissionership to an outside and independent person, the owners selected Milwaukee Brewers owner Bud Selig as “temporary” commissioner, who promised to serve as interim

¹²⁹ See DUQUETTE, *supra* note 14, at 96 (indicating that the owners were adamant in having both revenue sharing and a salary cap incorporated into the new agreement).

¹³⁰ *Id.*; see also Daniel R. Marburger, *Whatever Happened to the “Good Ol’ Days”?*, in STEE-RIKE FOUR!: WHAT’S WRONG WITH THE BUSINESS OF BASEBALL? 25 (Daniel R. Marburger ed., 1997).

¹³¹ Marburger, *supra* note 130, at 27; see also DUQUETTE, *supra* note 14, at 96–97.

¹³² Marburger, *supra* note 130, at 25–26; see also DUQUETTE, *supra* note 14, at 96–97.

¹³³ DUQUETTE, *supra* note 14, at 97.

¹³⁴ *Id.*; see also Marburger, *supra* note 130, at 27.

¹³⁵ Marburger, *supra* note 130, at 27; see also VINCENT, *supra* note 2, at 277 (addressing the “common misconception” that he was fired by the owners, Commissioner Vincent vows that he would have won a legal battle with the owners because the Major League Agreement does not allow the owners to fire a commissioner).

Commissioner until the start of the new collective bargaining agreement with the MLBPA.¹³⁶ Nearly fifteen years later, Bud Selig—the same man who orchestrated the collusion cases¹³⁷—is still the Commissioner of Baseball.¹³⁸

D. Retribution, Despotism, and the Dark Ages of Baseball

Since 1992, the Commissioner's office has been the center of some of the most disturbing and tumultuous activities the game of baseball has ever seen. As the self-proclaimed "most powerful man in America,"¹³⁹ Bud Selig was able to instill some of the worst business plans in baseball history. He used the Office to further his interests as an owner (the Selig family still owns the Milwaukee Brewers¹⁴⁰) rather than the interests of the game. After helping rid baseball of its last real commissioner, Selig tried to lead the game towards greatness and leave his personal mark on the game. Instead, he has lead baseball down a wayward path, and into a twelve year rain delay.

Selig's first order of business as Commissioner of Baseball was to put an end to the collusion cases that he had orchestrated during the 1980s.¹⁴¹ Instead of paying the \$280 million settlement that Selig and the other owners agreed to,

¹³⁶ ABRAMS, *supra* note 16, at 179–80; *see also* Bob Kemper, *Election 2004: Campaign Watch*, ATL. J.-CONST., Sept. 14, 2004, at 10A (suggesting that President George W. Bush, former majority owner of the Texas Rangers, nearly became the Commissioner of Baseball over Bud Selig).

¹³⁷ *See* discussion *supra* at Part II.B.

¹³⁸ *See* Rod Beaton, *Commissioner Gets Unanimous Mandate*, USA TODAY, July 10, 1998, at 1C (reporting that on July 9, 1998, Major League Baseball owners unanimously voted Bud Selig as the game's ninth Commissioner, thus dropping the "interim" prefix that he had since ousting Fay Vincent from the Office of the Commissioner in 1992).

¹³⁹ David Greising, *Knocking the Commish Out of the Park*, BUS. WK., March 7, 1994, at 52. Selig was trying to portray the Office favorably during the owners' search for a new permanent Commissioner. *Id.*

¹⁴⁰ *See* Hal Bodley, *Selig Could Be Close to Saying Yes*, USA TODAY, Nov. 9, 1993, at 3C (reporting that upon becoming the acting Commissioner of Baseball, Bud Selig will put his ownership shares in the "Milwaukee Brewers in trust and let his daughter, . . . Wendy Selig-Prieb, run the club during his sabbatical"). Selig's daughter has done a poor job running his team as revealed during the 2003 off-season—dubbed "[t]he winter of discontent"—in which Wisconsin taxpayers and legislators demanded an audit of the Brewers. *See* Tom Haudricourt, *Down to Final Out: Inevitable Sale of Brewers Will Close Book on 40-Year Ride*, PITTSBURGH POST-GAZETTE, Jan. 25, 2004, at D14; Don Walker, *Brewers vs. Legislators: Team's Response Disappoints Some*, MILWAUKEE J. SENTINEL, Dec. 6, 2003, at 2C. The Selig family has recently responded to the audit by announcing the pending sale of the Milwaukee Brewers to Mark Attanasio. Press Release, MLB, Milwaukee Brewers Statement Regarding Sale of Club (Oct. 4, 2004) (on file with author).

¹⁴¹ *See* VINCENT, *supra* note 2, at 279–80.

Commissioner Selig found a way to pawn off their debt onto the innocent. MLB (Selig and the owners) approved the expansion of the game into four new cities: Miami, Denver, Phoenix, and Tampa Bay.¹⁴² Instead of charging the relatively low franchise fees of the past,¹⁴³ the owners charged the four new owners an astounding \$490 million to join Major League Baseball.¹⁴⁴ This scheme allowed Selig and the owners to pay off the \$280 million collusion settlement and split the remaining \$210 million. Essentially, the “new owners...pa[id] for the old owners’ sins.”¹⁴⁵

Expansion alleviated the strain on the owners’ bank accounts and allowed them to pay off their collusion settlement. However, it perpetuated the mirage of a healthy baseball economy and was not in the best interests of baseball; therefore, Selig should never have allowed expansion to happen.¹⁴⁶ The consequences and repercussions of the owners’ greed became apparent on November 6, 2001 when Commissioner Selig—a mere three years after the Tampa Bay Devil Rays and Arizona Diamondbacks joined the League—announced that two teams (“presumably the Minnesota Twins and Montreal Expos”) would have to be contracted in order to alleviate some of the game’s economic problems.¹⁴⁷

The backlash against Commissioner Selig and Major League Baseball was tremendous. The MLBPA filed a grievance claiming that contraction violated the expired collective bargaining agreement that the union and owners were operating under, while the Metropolitan Sports Facilities Commission, the

¹⁴² ABRAMS, *supra* note 16, at 178; *see also* VINCENT, *supra* note 2, at 280.

¹⁴³ Marburger, *supra* note 130, at 26 (listing the franchise fees as “\$7 million per team in the 1977”).

¹⁴⁴ ABRAMS, *supra* note 16, at 178 (showing that the Miami and Denver owners were each charged \$95 million in 1993, while the Tampa and Phoenix owners were each charged \$150 million in 1998).

¹⁴⁵ VINCENT, *supra* note 2, at 280.

¹⁴⁶ *See* Professional Baseball Agreement, art. II(B) (granting power to the Commissioner to investigate “conduct not in the best interest of baseball” and take appropriate corrective action). The Professional Baseball Agreement is effective through September 30, 2007. *Id.* art. III(A). *See* discussion *supra* Part I.B. and note 55.

¹⁴⁷ Ross Newhan, *Once Again, the Owners Decide to Become Their Own Worst Enemy*, L.A. TIMES, Nov. 7, 2001, at D1; *see* Tracy Ringolsby, *Selig: Expansion ‘Hard to Digest’; Commissioner Seeks Quick Contraction to Aid Game Long Term*, ROCKY MTN. NEWS, Nov. 8, 2001, at 1C; *see also* Bill Saporito, *Yer Out!: Baseball Says Two Poor Teams Have to Go, Players Wonder If the Owners Are Just Playing Hardball*, TIME, Nov. 19, 2001, at 149 (explaining that the Montreal Expos and the Minnesota Twins are the most likely to be contracted since they both rank at or near the bottom in team payroll (\$35 million and \$25 million, respectively) and neither team generates sufficient local revenue (the Expos are the only team in the league without a television contract)).

Minnesota Twins' landlord at the Metrodome, secured an injunction requiring the Twins to play every 2002 home game in the Metrodome.¹⁴⁸ More importantly, Congress intervened and called Commissioner Selig in to testify before the House Judiciary Committee, which responded to the news of contraction by introducing legislation that would partially repeal Major League Baseball's antitrust exemption.¹⁴⁹ While Selig's testimony was not enough to convince the House to take further legislative action, it provided the judicial committee and other individuals present at the hearing with enough skepticism to doubt the Commissioner and his motives for contraction.¹⁵⁰ In a

¹⁴⁸ *Metro. Sports Facilities Comm'n v. Minn. Twins P'ship*, No. CT 01-16998, 2001 WL 1511601, at *1 (Minn. Dist. Ct. Nov. 16, 2001), *aff'd*, 638 N.W.2d 214 (Minn. Ct. App. 2002); see also Scott R. Rosner, *The History and Business of Contraction in Major League Baseball*, 8 STAN. J.L. BUS. & FIN. 265, 272-73 (2003) (discussing how the injunction issued by the Minnesota state court caused Commissioner Selig to postpone the League's contraction plans).

¹⁴⁹ See generally *Fairness in Antitrust in National Sports (FANS) Act of 2001: Hearing on H.R. 3288 Before the House Comm. on the Judiciary*, 107th Cong. (2001) [hereinafter *Hearing*]. On December 6, 2001, Selig testified that from 1995 to 1999, only three teams (New York Yankees, Colorado Rockies, and Cleveland Indians) were profitable. *Id.* at 5. Further, Selig inexplicably tried to persuade the House Judiciary Committee to believe that baseball lost \$1 billion during those same years and that it currently faces an \$8 billion debt. *Id.* at 5-6. In 2001 alone, Selig claimed that "[t]wenty-five clubs lost money" and that baseball as a whole lost \$519 million. *Id.* at 9. Chairman F. James Sensenbrenner, Jr. was not persuaded by Selig's testimony:

Now, Mr. Selig, with all due respect, maybe I was asleep in the Economics 101 class that I took as an undergraduate, but what you are saying is that these teams lose money, and they have huge operating deficits and huge debt loads But since 1995 or 1996, the value of a franchise has gone from the \$96 million that the [Kansas City] Royals went to between \$3[00] and \$400 million for a little bit more than half of the interest in the [Boston] Red Sox Now, what am I missing here? If baseball is in such dire straits, and the franchise costs keep on going through the roof . . . it seems to me that owning a Major League Baseball franchise is not the one-way ticket to the bankruptcy court [that you claim it to be].

Id. at 53-54.

¹⁵⁰ See Sarah Talalay, *Selig Gets Flak From Congress; Tale of Woe Questioned*, SUN-SENTINEL (Ft. Lauderdale), Dec. 7, 2001, at 1C; Luke Cyphers, *Congress Takes Cuts at Bud's Pitch, Says MLB's Numbers Don't Figure*, N.Y. DAILY NEWS, Dec. 7, 2001, at 108; Associated Press, *Congress Takes Swings at Selig, Skeptics Confront Commissioner*, SEATTLE TIMES, Dec. 7, 2001, at D7; see also Kevin Diaz, *Ventura Gives Selig and Baseball a Scolding During House Hearing*, STAR TRIB., Dec. 7, 2001, at 1A (describing how then Minnesota Governor Jesse Ventura testified before the House Judiciary Committee and called MLB a "self-regulating, billion-dollar monopoly," that needs to be addressed by Congress and the antitrust laws). Governor Ventura compared MLB to OPEC in that both control supply and price of their product "with absolutely no accountability." *Hearing*, *supra* note 149, at 17. Ventura also questioned Selig's claim that Baseball lost over \$500 million in 2001, and cried foul when, during the hearing, reports came in that the New York Yankees had signed free agent Jason Giambi to a \$120 million dollar contract. Kevin Diaz, *supra*. "How, on one side of their mouths, can they plead poverty, and then on the other side . . . they're paying these kinds of salaries?" *Id.* (omission in original). "Since the Seitz decision [see *supra* Part II.A.], the

press release issued on February 5, 2002, Commissioner Selig succumbed and ended his push for contraction.¹⁵¹

For years, Commissioner Selig has been attempting to leave his personal mark by overzealously instilling radical changes (i.e. contraction) on a game that values its history and conservatism.¹⁵² Since overthrowing Commissioner Vincent in 1992, Selig has proposed and supported a barrage of radical ideas and actions that have negatively altered the game of baseball. First, to accumulate as much power as possible, Selig—in a blatant disregard for history and tradition—eliminated the offices of the Presidents of the American and National Leagues and consolidated that power into the Commissioner's office.¹⁵³ Second, to rectify an embarrassing decision to end the 2002 All-Star Game in a tie, Selig announced that the winning league of the All-Star Game in July will receive home-field advantage in that year's World Series.¹⁵⁴

owners complained loudly about free agency but then rushed to the winter meetings with deep pocketbooks, anxious to deliver a Messiah to the home-town crowd at any price." Marburger, *supra* note 130, at 24.

¹⁵¹ Press Release, MLB, MLB Contraction Reset for 2003 (Feb. 5, 2002), available at http://mlb.mlb.com/NASApp/mlb/mlb/news/mlb_news_story.jsp?article_id=mlb_2002_0205_contraction_selig_pr&team_id=mlb (last visited Sept. 22, 2004) (leaving open the possibility for future contraction).

'Like most industries, we will continue to evaluate our weakest franchises to determine how much contraction is warranted and in the overall best interests of Baseball and its fans. We remain committed to obtaining competitive balance in the game, which fans in all our markets say is the top priority, and will take the steps necessary to achieve it.'

Id.; see Rosner, *supra* note 148, at 273 (suggesting that Selig buckled because of pressure from the Minnesota courts).

¹⁵² See Rob Neyer, *Bud a Bit Blurred As a Visionary*, ESPN.com, (June 10, 2003), at http://espn.go.com/mlb/columns/neyer_rob/1566452.html (last visited Sept. 22, 2004) (stating that Selig's "love or [sic] baseball ranks somewhere behind 1) his love of profit, 2) his desire to leave a legacy as an activist commissioner, 3) his love of his fellow owners.>").

¹⁵³ See Associated Press, *A.L. President Budig to Be Selig's Adviser*, N.Y. TIMES, Jan. 7, 2000, at D7.

¹⁵⁴ Press Release, MLB, World Series Advantage to Be Awarded to All-Star Winner (Jan. 16, 2003), available at http://mlb.mlb.com/NASApp/mlb/mlb/news/mlb_press_release.jsp?ymd=20030116&content_id=191991&vkey=pr_mlb&fext=.jsp (last visited Sept. 22, 2004). In 2003, the first season under this system, the New York Yankees were awarded home-field advantage in the 2003 World Series because of a homerun by Texas Rangers rookie Hank Blalock that propelled the American League to victory in the All-Star Game. Chris Jenkins, *They Can Thank Hank: Blalock's All-Star Heroics Responsible for Yankees' Home-Field Advantage*, SAN DIEGO UNION-TRIB., Oct. 17, 2003, at D-8. Therefore, in a game that was supposed to be a fun-filled exhibition for the fans, Blalock—a player on a last-place team with no hope of making the postseason—was able to single-handedly determine which League would have the advantage in the most important sports event of the year. See *id.*

Third, to increase fan interest, Selig—in another blatant disregard for history and tradition—introduced interleague play, which allowed teams from the American and National Leagues to play each other in regular season games.¹⁵⁵ Finally, since Selig has taken office, he has reportedly increased the Commissioner's annual salary from \$650,000 to "somewhere around \$6 million."¹⁵⁶

Bud Selig has failed as Commissioner of Baseball because "[t]he public perception is that he isn't a legitimate commissioner because he is an owner. . . ."¹⁵⁷ Every action he takes must be looked upon with skepticism, regardless of his intentions, because Selig is and will always be considered an owner first and a commissioner second. He is incapable of making impartial decisions in the best interests of baseball. He is quite accomplished, however, in making decisions in the best interests of the owners' bank accounts. "Bud Selig didn't break baseball, but it broke nevertheless. Now somebody else needs a chance to fix it."¹⁵⁸ Despite past assurances that he would retire in 2006, Commissioner Selig's contract was extended until 2009 by a unanimous vote of the major league owners.¹⁵⁹ Eventually, Selig will retire, thus ending the rain delay that has been plaguing MLB for the past twenty years.

¹⁵⁵ See John Donovan, *AL vs. NL: Good or Bad, Interleague Play Returns This Weekend*, CNNSI.com, (June 6, 2002), at <http://sportsillustrated.cnn.com/baseball/news/2002/06/05/interleague/> (last visited Sept. 22, 2004).

Things used to be so simple in baseball. You had the National League and you had the American League. Each League did its own thing. It kept its own statistics and kept to itself, mostly, until the big showdown in the World Series. Then along came 1997 and interleague play, a brainchild of the owners to boost interest in the game. Not to mention boosting the bottom line.

Id.

¹⁵⁶ VINCENT, *supra* note 2, at 289 (stating that while most baseball salaries are publicly known, Commissioner Selig has refused to publicly release information regarding his salary); see also *What People Earn: Our Annual Report on the Economy and You*, PARADE, Mar. 14, 2004, at 4 (listing Selig's annual salary as \$5 million).

¹⁵⁷ See Peter Gammons, *Game Needs Firm Push Forward*, ESPN.com, (Nov. 23, 2003), at <http://sports.espn.go.com/mlb/gammons/story?id=1668983> (last visited Sept. 22, 2004) (claiming that the perception of impropriety with the Commissioner's Office is due to the fact that baseball in Milwaukee would not be around today if the Commissioner were not also the team's owner because any other Commissioner would have pushed for contracting the perennial losing Brewers instead of the Minnesota Twins).

¹⁵⁸ Dale Hoffman, *Wake Up Baseball, Selig's Not the Man*, PITTS. POST-GAZETTE, June 20, 1998, at D-1.

¹⁵⁹ See Ken Davidoff, *Owners Meetings; Selig's Reign Extended for Three More Years; Commissioner Will Stay in Post through 2009 Season at the Insistence of Owners*, NEWSDAY, Aug. 20, 2004, at A78.

CONCLUSION

A change in MLB's governing structure, as well as a call to hire an *independent* Commissioner, who is capable of making baseball's best interests his or her priority, is sorely needed. To the next Commissioner of MLB: Return the integrity and independence to the Office of the Commissioner of Baseball. "[R]estore the commissioner's office as an interventionist moral force, a check on owners as well as players."¹⁶⁰ Undo past mistakes and let the American and National Leagues regain their autonomy. Recreate the offices of the League Presidents. Dissolve or reduce interleague play in order to restore the wonder and uniqueness of seeing the best of each league meet in the Fall Classic. Cleanse the game in the footsteps of Commissioner Landis. Correct the labor problem (or at least have enough courage to try). Forbid expansion. Lessen the financial gap between the large and small market teams, but not so far as to promote complete parity. Push for the installation of a salary cap (if only on a trial basis). Slow the escalation of ticket prices. Finally, lead the game of baseball out of economic ruin and help it solidify its claim of being the national pastime.

¹⁶⁰ WHITE, *supra* note 25, at 329 (claiming that it may be too late to restore this quality to the Office).