How the commissioner's office accepted this challenge was described in the testimony of Leslie O'Connor.

Well, it was constantly thrown back to Judge Landis and myself; "if you don't like the farm system, why don't you come up with something that will meet the necessities that we are under?" And I always maintained that that was really not our job. It was their own job.

But the pressure got so great that I finally devoted a considerable period of time to study of the problem, and I came up with this document that you hand me, * * *. That was sent to the ball clubs by the commissioner on January 25, 1940, with a transmittal letter which is short, and I will read it if you don't mind. * * *

"To All Major and Minor League Clubs:

"The enclosed proposal submits a plan for major and minor-league cooperation in the development and advancement of players, for establishing as to players' acquisition freedom of competition and equality of opportunity for all clubs, and for assistance to minor leagues. It is the result of long observation and study of these problems and seeks to safeguard and advance the legitimate rights and interests of the clubs, leagues, players, and the public in baseball's operation.

"Please give it careful and thorough consideration and let me have your views and suggestions as promptly as may be possible.

"Very truly yours,

"KENESAW M. LANDIS, *Commissioner.*"

* * * * * * *

It received the support of quite a few minor-league clubs; but as far as the major-league clubs, whose acceptance of it was absolutely essential, the only thing that I have ever heard was the comment By two club owners, one of whom denounced it as anarchistic and the other as socialistic.

* * * * * * *

This proposal involves nothing at all except the adaptation of practices which have been in effect in baseball for generations on a cooperative basis instead of an individual basis. It does not require the severance of any ownerships of farms, but the severance of such ownership would result from the fact that it would take away all incentive for having farms. * * * nobody would go into farms for the purpose of controlling ballplayers, because this plan would absolutely prohibit their controlling ballplayers.

The fundamental evil in connection with the control of ballplayers, as it has seemed to me in my contact with the game, is that, rightly or wrongly, the clubs feel that they must take care not merely of their present-day needs, but they must cast themselves in the future and safeguard their player supply for the next 5 or 10 years; and, consequently, they feel obliged to control hundreds of ballplayers.

My personal view is that all that is necessary is that there be constantly available a source of players to which any club may go whenever they need players, and this program was devised on that theory.

* * * * * * *

I was of the opinion that the program of developing ballplayers for higher service and for the baseball organization as a whole could be accomplished with the expenditure of very much less money. I estimated that this plan would save major-league clubs a million dollars a year.[4] (The plan is reprinted in full, hearings, p. 691-694.)

Under this plan, proposed by the commissioner's office, all players remained on the free and open market, eligible to be promoted by any club of higher classification which could use their services. Minor-league clubs, instead of being subsidized in hit-or-miss fashion through farm systems, received graduated subsidies from a central fund. Receipts for the sale of players in excess of this subsidy went to the selling club. Branch Rickey termed this proposal "fantastic and impractical."[5] Larry MacPhail testified that he thought the plan would save the majors a lot of money and that its objectives were desirable.[6]

[4] Hearings, pp. 690-691.
[5] Hearings, p. 1047.

THE DEPRESSION IN WAR YEARS

The thirties were lean years not only for the minor leagues but also for the majors. From 1931 to 1940, inclusive, not a year elapsed when at least five clubs did not lose money. The following table, prepared from financial data supplied by major-league clubs, shows the number of clubs with profits and losses in each of these years:

	Net profit	Net loss		Net profit	Net loss
1931	5	11	1937	9	7
1932	4	12	1938	8	8
1933	2	14	1939	9	7
1934	7	9	1940	10	6
1935	11	5			
1936	10	6	Total	75	85

Many clubs sold themselves into the second division or else sought loans from the league in order to stay in operation. Connie Mack, owner of the Philadelphia Athletics, was forced to sell nine of his players to other American League clubs, 1932 to 1935, for $590,000. His club dropped from first in 1931 to last in 1935 and 1936. Will Harridge and Ford Frick testified to the subcommittee that both the American and the National League had to extend loans to second-division clubs unable to meet their financial obligations. In several instances, notably the Boston Braves, Philadelphia Phillies, and the St. Louis Browns, these loans were written off during corporate reorganization.[7]

Paid attendance during this decade placed in bold relief the anachronistic distribution of major-league franchises among the larger cities. Detroit, with a club which was no more successful than the St. Louis Cardinals, outdrew the Cardinals, 2 to 1. The Yankees outdrew the St. Louis Browns almost 8 to 1. Even the lowly Phillies attracted 75 percent more paying fans than the Browns.

The maldistribution of major-league clubs is perhaps best demonstrated by the following table, which shows the average league standing and the total paid attendance for each of the 16 major-league clubs, from 1931 to 1940.

Club	League	Average standing	10-year attendance	Rank
New York	American	1.60	8,909,696	1
Chicago	National	2.55	7,862,922	2
New York	do	3.05	7,395,882	4
St. Louis	do	3.30	3,869,695	12
Detroit	American	3.30	7,803,028	3
Cleveland	do	3.50	5,312,617	6
Pittsburgh	National	3.70	3,869,812	11
Washington	American	4.80	3,907,187	10
Boston	do	4.85	5,093,365	7
Brooklyn	National	4.90	4,433,312	5
Chicago	American	5.45	4,364,150	9
Cincinnati	National	5.70	4,909,512	8
Philadelphia	American	5.70	3,797,567	13
Boston	National	5.80	3,671,066	14
St. Louis	American	6.80	1,271,579	16
Philadelphia	National	7.00	2,198,809	15

[7] Hearings, pp. 113 and 952.

Further evidence on the plight of the St. Louis Browns is provided by comparing the attendance during this period of the 24 clubs in the highest minor leagues ("AA"). All clubs but Sacramento in the Pacific Coast League; all but Toronto in the International League; and all but Louisville and Toledo in the American Association attracted more paying customers than the St. Louis American League club. (Complete attendance tables for the major leagues and the three largest minor leagues are reprinted in the Appendix, pp. 1617–1618.)

Past owners of both St. Louis clubs realized that their franchises were located in a city large enough to support only one major-league club. And both attempted to move.

In 1932, the St. Louis Cardinals considered transferring their franchise to Montreal, Canada, but the plans were dropped because of the costs involved.[8] Later in the depression, Sam Breadon, owner of the Cardinals, attempted to transfer his franchise to Detroit. Although Detroit was already represented in the American League, it had a metropolitan population 1 million larger than St. Louis and was better equipped to support two clubs than the Mississippi metropolis. However, by Major League Rule 1 (c), such a move had to meet the unanimous approval of all major-league clubs. The proposed shift aborted when Frank Navin, president of the Detroit American League Club, informed Breadon he would veto the entry of a National League rival.[9]

The Browns made the next effort to correct the delicate "St. Louis situation." In 1941, Donald Barnes, president of the Browns, started plans to move the franchise to Los Angeles. By the baseball code then in effect, Barnes needed to secure unanimous approval of the American League and majority consent from the National League. Furthermore, he had to compensate the Los Angeles club for the loss of its territory and pay the Pacific Coast League a nominal $2,500. Philip K. Wrigley, who owned both the Chicago Cubs and the Los Angeles clubs, agreed to sell his Los Angeles franchise for $1 million. Civic leaders in Los Angeles guaranteed to underwrite the difference in attendance if it fell below 500,000, which was four times what the Browns had been drawing in St. Louis. The Cardinals agreed to pay $200,000 to help finance the move and to assume the Browns' lease on Sportsman's Park which had 5 years to run at $35,000 a year. Conferences with airlines officials and the American League schedule maker assured Barnes that the plan was feasible. All that remained to be done was to secure the necessary vote of approval from the major-league clubs, which Barnes intended to do at the Chicago meetings, December 8, 1941. Pearl Harbor came first, and the entire project was dropped.

The Pacific Coast League sought to foreclose any revival of Barnes' plan by adding a new restriction to the major-minor league agreement. By this amendment, Major-Minor League Rule 1 (a) now forecloses major-league invasion of minor-league territory without paying damages to both the club and the minor league affected.

[8] Hearings, p. 1035.
[9] Hearings, p. 1036.

POSTWAR PROSPERITY AND MORE BASEBALL WARS

The popularity of professional baseball went into temporary eclipse with World War II, but commencing with VJ-day 1945, organized baseball witnessed a new boom which dwarfed any previous period in the game's history. Major-league attendance rose to 20 million a year, twice the prewar rate, and the number of minor leagues in operation reached a new peak of 60. Major league profits averaged 4 million dollars annually, 1946–49.

The postwar period also brought the first challenge since the Federal League of 1914–15 to organized baseball's monopsony position in the market for baseball players. In 1946, Don Jorge Pasquel, millionaire president of the Mexican League, an association not affiliated with organized baseball, sought to employ players from the major leagues and touched off what is known as "the Mexican League war." Senator A. B. Chandler, who had been named commissioner in 1945 following the death of Judge Landis, sought to halt the exodus of players from the majors by announcing that any player who jumped his contract or his reserve clause would be blacklisted for 5 years. Despite this threat, 18 players left major-league clubs for the Mexican League.

Ford C. Frick, present commissioner of baseball, recited the facts of the Mexican League war and summarized the sanctions taken against players who jumped to this "outlaw" league:

> The CHAIRMAN. Do you recall Commissioner Chandler's suspension of approximately 18 players who broke their contracts or jumped their reserve clauses and signed with the Mexican League in 1946?
>
> Mr. FRICK. I do.
>
> * * * * * * *
>
> As I understand the thing, these men were approached during the winter and were offered contracts to play in the Mexican League. Some of these contracts were accepted. In the instance of some players, I know Lanier and Martin and Klein, at least, had already signed contracts for the 1946 season. It was not the so-called reserve, they had actually signed 1946 contracts, and they jumped to Mexico. Of course, this immediately became a matter for consideration by the commissioner, and the commissioner, after some consideration, and I suppose on the basis of rule 15 as it existed at that time, ruled a 5-year suspension of those players.
>
> Mr. GOLDSTEIN. Some of the players were not under contract at that time?
>
> Mr. FRICK. Some of them were not. I am sure Gardella was not, except on reserve contract. As to the others I am not sure, but I am sure Gardella was not, he had not actually signed his contract. I am not sure about Maglie.
>
> The CHAIRMAN. Was there any precedent for the commissioner declaring these men ineligible for 5 years?
>
> Mr. FRICK. That I cannot answer. There have been precedents, of course, of barred ballplayers. As we all know, there were certain players barred by Judge Landis for other misconduct. There were many cases of so-called contract jumping at the time of the Federal League war. That was before my entrance into baseball. I have never read the documents on it, and whether or not players at that time were declared ineligible I do not know. I am sure none of them were given a 5-year suspension. I am quite sure of that.
>
> * * * * * * *
>
> I think this should be put on the record in connection with the things we are talking about also: that before the 5-year suspension was made, before these men were set down, they were given a chance to come back, and one of them did, you may recall. All of them had notification of the situation, what was involved, and were invited to come back without penalty.
>
> Mr. HILLINGS. Who gave them that invitation?

Mr. FRICK. The commissioner before he announced the 5-year suspension, gave them that right, and one player, Mr. Vern Stephens, at the time with the St. Louis Browns, now with the Boston Red Sox, did return and was reinstated and continued to play.

* * * * * * *

The CHAIRMAN. On what authority did the commissioner declare contract jumpers ineligible? Was that rule 15?

Mr. FRICK. I would guess on rule 15.

The CHAIRMAN. Now rule 15 was amended, was it not?

Mr. FRICK. That is true.

The CHAIRMAN. When?

Mr. FRICK. After the ineligibility.

The CHAIRMAN. And a second clause——

Mr. FRICK. The exact date—rule 15 was amended to back up what the commissioner had done—the 5-year suspension.

The CHAIRMAN. Then we have this situation; the commissioner inflicted a penalty of 5 years.

Mr. FRICK. Yes.

The CHAIRMAN. And there was no rule which indicated the penalty of 5 years.

Mr. FRICK. Not spelled out as a penalty, that is true.

The CHAIRMAN. And then after the penalty was inflicted the rule was changed to provide for a penalty of ineligibility for 5 years; is that correct?

Mr. GOLDSTEIN. Mr. Chairman, may I introduce into the record the photostatic copy of minutes of the joint major league meeting of August 28, 1946? I believe, Mr. Frick, that you were present at that meeting?[10]

At this meeting, James Gallagher, general manager of the Chicago Cubs, introduced an amendment to the major-league rules which would support the action taken by Mr. Chandler. The relevant portions of the minutes of this meeting read as follows:

Mr. GALLAGHER. * * *

I am not proud of authorship or anything. I just thought we ought to take some action to let the players know. I think this is far more valuable than any suits or anything else.

The sight of Mickey Owen sitting on his farm or starting the races at the Springfield Fair will do a lot more to discourage Stan Musial from going to Mexico next winter than any suits we may file on the reserve clause.

Mr. O'CONNOR. I second Mr. Gallagher's motion.

Commissioner CHANDLER. Jim, how about referring it to the rules committee, because you have got a provision——

Mr. GALLAGHER. I move that the rules committee be instructed to amend rule 15 to provide a 5-year penalty or 5-year ineligibility for a player who violates his contract or reservation, and that he shall not be eligible to apply for reinstatement until the end of 5 years, and then only if he has been away from the outlaws for at least one full year.

Commissioner CHANDLER. All those in favor say "Aye."

(There was a chorus of ayes.)

Commissioner CHANDLER. Opposed, "No."

(There were no votes to the contrary.)[11]

Former Commissioner Chandler justified his actions by the fact that he felt bound to stop players from leaving clubs, which under "baseball law" if not State or Federal law had title to their services.

Mr. KEATING. When was it that Gardella jumped?

Mr. CHANDLER. In 1946, I guess. Yes; the spring of 1946. And he jumped the reserve clause. He had not signed a contract. He jumped the reserve. And Mr. Lanier, of the Cardinals, and Mr. Martin, and others had already signed their contracts, and they jumped. So the commissioner was faced with the proposition of disciplining young men who had violated the provisions of their contract.

The CHAIRMAN. And they violated the condition of the contract in some instances, but violated the reserve clause in others?

Mr. CHANDLER. In the Gardella case it was the reserve clause. But it was clearly up to me either to discipline them or not to do anything about it, in which

[10] Hearings, pp. 58-60.
[11] Exhibit 1, hearings, pp. 61-62.

event, I think—this is a guess—that 25 or 30 fellows would have jumped their contracts.

So I thought I was bound to do something to try to stop it. I talked with them, as I always did. I advised with many ballplayers just as I advise with my own sons, you understand, and I feel proud that they have come to me with their troubles. Sometimes these club owners make statements in the paper that undo all the things you are doing. Of course, you cannot tell them all what you are doing. I had one ballplayer on the way back to his club, and his club owner said he had no place on his club for him that year. So he turned around. I talked to his mother, and I talked to him, and he was headed for Mexico.

So I sent for him to come back, and told him that I was going to talk to him. Then when the man said there was no place for him he went back the other way and went to Mexico.

Now, if I had said "I will just suspend you 1 year for jumping," he would have said "Well, I can take a chance on it for a year and go down and get what money there is for a year and then come back."

So I had to make an arbitrary rule and I made it with careful consideration of the belief that I should say 5 years.[12]

The only legal action taken against the Mexican League by organized baseball was inconclusive. The New York Yankees obtained a temporary injunction to restrain Pasquel from inducing Yankee players to repudiate their contracts (*American League Baseball Club of New York* v. *Jorge Pasquel*, 187 N. Y. Misc. 230 (May 20, 1946)), but failed on a subsequent motion to strike the Mexican League's defense that the players' contracts and rules of organized baseball were—

monopolistic, inequitable, unconscionable and against the public policy of the State of New York and the United States of America 188 N. Y. Misc. 102, November 25, 1946).

The case became moot when Pasquel, tiring of paying high salaries to players reluctant to jump, stopped his raids on organized baseball.

Few of the Mexican League jumpers found conditions south of the border to their liking. Mickey Owen, who jumped Brooklyn reservation to become a player-manager in Pasquel's circuit, quit the Mexican League after being fired as manager and returned to this country in midseason. (Pasquel subsequently sought damages for Owen's alleged breach of contract. *Pasquel* v. *Owen* (87 Fed. Supp. 278, U. S. D. C. Mo., November 18, 1949).)

Disillusioned by the Mexican League, the blacklisted players applied to Chandler for reinstatement. He refused. When they sought to organize independent barnstorming clubs to play exhibition games, they found all parks controlled by organized baseball closed to them. Professional players hesitated to play with or against the Mexican jumpers for fear of the ineligibility rules being extended to them also. George Trautman, president of the national association, reluctantly admitted these facts to the subcommittee, as is shown in the following questioning by counsel:

Mr. GOLDSTEIN. Now, sections 30.09 and 30.10 of the national agreement state that "No club shall permit games to be played in parks owned or controlled by it in which a club or clubs containing or playing any disqualified player shall participate."

It further says that violations shall subject each offender to fine, suspension, or other penalty in the discretion of the president of the national association.

Have you any idea how long that rule has been on the books?

Mr. TRAUTMAN. As long as I can remember; as long as I have been in baseball, I think.

[12] Hearings, p. 237.

Mr. GOLDSTEIN. Now, was this rule invoked to prevent the Mexican League jumpers from playing exhibition games after their return to the United States?

* * * * * * *

Mr. TRAUTMAN. I do not recall if we did. But I think, in reply to the question of a club or two, we checked the list to find out whether any of these players opposed a player on the ineligible list, and I think in a couple of instances, as I recall it, we called their attention to that rule.

Mr. GOLDSTEIN. I see. Now, specifically there was read here the other day from page 44 of Max Lanier's affidavit, in the second circuit court of appeals, his statement regarding the refusal of the Des Moines club to allow the use of its ball park after its contract had been signed. And I wondered if that in any way related to any action by your office or the office of the national association pursuant to rules 30.09 and 30.10?

Mr. TRAUTMAN. Not from our office, I do not believe. I am not certain about that.

Mr. GOLDSTEIN. Do you happen to know whether Mickey Owen was one of the ineligible Mexican League jumpers?

Mr. TRAUTMAN. Yes; I think he was.

* * * * * * *

Mr. GOLDSTEIN. Do you happen to know whether Mickey Owen organized a semipro team in 1947?

Mr. TRAUTMAN. I think he did.

Mr. GOLDSTEIN. And were all the minor league parks closed to this team?

Mr. TRAUTMAN. I think they were. At least, clubs were put on notice that the playing in their parks of ineligible players would subject them to the penalties as provided for in the particular regulation that you have just read.

Mr. GOLDSTEIN. Now, I would like to submit for the record, Mr. Chairman, if I may, some correspondence which had been made available to us.

* * * * * * *

There is a series of correspondence, a letter dated July 10, 1947, from you to Commissioner Chandler, to which you, Mr. Trautman, attached a copy of this inquiry and ask for his comments.

Then Commissioner Chandler's reply of July 14, 1947, to you in which he says: "Mickey Owen is on the ineligible list, and if evidence is produced to show that eligible players are playing with or against him in any contest in organized baseball, these players will become ineligible under the rules. I would have nothing to do with Mr. Owen's activities outside of organized baseball."

Now, after receiving Mr. Chandler's letter, what action if any did you take with regard to the appearance of Mickey Owen's team? Our record does not disclose any further correspondence from you on that matter.

Mr. TRAUTMAN. I do not recall.[13]

The only places where the Mexican League jumpers could find employment were with remote semipro leagues (Mickey Owen managed the Winner, S. Dak., semipro club in 1948, according to the testimony of Ross C. Horning, hearings, p. 365) or with foreign leagues. At first, the most popular haven was the Cuban Professional Baseball League. Among the players who signed with this league for the winter season, 1946–47, were Max Lanier, Lou Klein, and Fred Martin, ineligibles from the St. Louis Cardinals, and Nap Reyes, an ineligible from the New York Giants. Anxious to hire other luminaries from organized baseball, Dr. Sanguilly, one of the backers, attended the joint major league meeting in October 1946, and sought permission to sign professional players for the winter season. His plea was denied, and when it was discovered that his league was employing ineligible players, it was declared "outlaw."[14] Players from organized baseball who signed with the Cuban League were themselves declared ineligible for playing with other ineligibles. Commissioner Chandler told the subcommittee that the 5-year ban was also imposed upon Coach Mike Gonzales, of the St. Louis Cardinals, who went to Cuba, his homeland,

[13] Hearings, pp. 220–221.

[14] Unless otherwise indicated, facts on the Cuban League are based on the testimony of George Trautman, hearings, pp. 157–175, and Clark Griffith, hearings, pp. 317–345.

to manage one of the four outlaw clubs. "He was running the thing that we objected to."[15]

In competition to the outlaw Cuban Professional League, the Cuban Baseball Federation was formed, with approval from organized baseball to employ eligible players from the United States. This venture cost its sponsors $100,000 and failed before the winter season ended.

When Dr. Sanguilly of the Cuban Professional League again applied for recognition in 1947, organized baseball was more receptive. Fearing that the Cuban League might turn to an alliance with the Mexican League, the major leagues voted to permit the Cuban League to use a limited number of their players who had less than 45 days' major league experience. The Cuban League could use native Cubans under reserve by clubs in organized baseball without restriction. In return, the Cuban League promised not to employ the Mexican League jumpers in the ensuing season.[16] The national association entered an agreement, July 7, 1947, in Chicago, recognizing the Cuban Professional Baseball League as an "unclassified affiliate."[17] Under this agreement, the national association gave the Cuban League permission to employ 32 players with 4 years or less professional experience, provided that the clubs reserving such players gave their consent.

The National association entered similar agreements with the Panama Professional Baseball League, December 1, 1947; the Venezuela Professional Baseball League, August 1, 1948; and the Puerto Rico Professional Baseball League, April 5, 1948.[18]

George Trautman, president of the national association, described the present relations between organized baseball and these "unclassified affiliates" in the following colloquy with subcommittee counsel:

Mr. GOLDSTEIN. * * * Now, is it your understanding that this working arrangement between organized baseball and the Caribbean leagues has worked out satisfactorily for both parties?

Mr. TRAUTMAN. With some unfortunate incidents, that is generally true, and we have been commended for a good-neighbor policy in that direction.

Mr. GOLDSTEIN. Are these leagues still restrained from using ineligible players?

Mr. TRAUTMAN. Yes.

Mr. GOLDSTEIN. Now, these four agreements mention nothing about mutual recognition of player contracts or the rights to reserve players. Is there any such understanding with these leagues?

Mr. TRAUTMAN. They have a regulation among themselves that players that they have this year they reserve for the following year, if the player is invited to return.

Mr. GOLDSTEIN. Is organized baseball free to sign their players to play state-side in the summertime?

Mr. TRAUTMAN. Oh, yes.

Mr. GOLDSTEIN. Does that mean that organized baseball can sign any of the players of these leagues, but they can sign players of organized baseball only with the approval of organized baseball?

Mr. TRAUTMAN. That is right. Of course, they limit the number from organized baseball that can play on each club down there.

Mr. GOLDSTEIN. But any that they do sign would have to be with the approval of organized baseball?

Mr. TRAUTMAN. Except native nationals.

Mr. GOLDSTEIN. On the other hand, you do not have to have their approval in order to sign their players?

Mr. TRAUTMAN. No.[19]

[15] Hearings, p. 288.

[16] Cuban resentment against the exclusion of ineligible players, particularly native Cubans, from the Winter League is indicated by an editorial from Bohemia, reprinted, hearings, p. 250.

[17] Exhibit, 12–A, hearings, p. 233.

[18] Exhibits 12–B, 12–C, and 12–D, hearings, pp. 234–238.

[19] Hearings, pp. 220–240.

With one more avenue of employment cut off, several of the ineligible Mexican League jumpers turned to the Quebec Provincial League, described by Mr. Trautman as "a haven for fugitives from baseball." This league, too, finally came to terms with organized baseball and in 1949 was accepted as a class C minor league.[20]

Don Jorge Pasquel terminated his player raids on organized baseball after the 1946 season. He retired from the direction of the Mexican League in favor of Dr. Eduardo Pitman, who undertook a reorganization to put the league on a self-paying basis. Instead of taking players from organized baseball, the Mexican League discovered its own players were being induced to jump to American clubs by scouts of clubs in organized baseball. This situation led to a so-called nonaggression pact between Pitman and Commissioner Chandler in March 1949. Chandler described this agreement as an oral understanding:

Mr. GOLDSTEIN. Now, would you mind telling us something of the circumstances or the arrangements which led to the end of the Mexican war in terms of arrangements with Dr. Pitman?

Mr. CHANDLER. I had a meeting with Dr. Pitman * * * In an attempt to make peace between the countries, he did come to Cincinnati, and we had a conversation; we just talked together. And while we got no contract or arrangement—I did not think we could make one—we did agree to respect each other's contracts. It is as simple as that. I think we ought to, anyway. If you found out that a fellow was under contract to somebody else, you just did not raid him. And so we agreed. And that understanding, as far as I know, has been kept.[21]

Following this conference, Chandler sent the following telegram to George Trautman, president of the National Association:

Any players under contract to Mexican Baseball League of which Dr. Pitman is president may not be signed. Any player reserved by Mexican League following 1948 season may not be signed. If Mexican League has no reserve clause our clubs are at liberty to sign players not under contract to Mexican League clubs.[22]

On receipt of this telegram, Trautman notified every minor league club of this understanding.

The effect of this agreement on players' freedom to transfer between organized baseball and the Mexican League was described to the subcommittee by Mr. Trautman.

Mr. TRAUTMAN. * * * That sort of arrangement, if you want to call it that, or understanding, prevails today by merely this. If we get a letter from the Mexican League, and I think they have brought some order out of chaos, that one of our clubs has caused a Mexican player to breach his contract, we immediately investigate, and if that is found to be true, our club is notified that that player must revert; he has no approvable contract. * * * I would say that we recognize the sanctity of their contracts and they recognize the sanctity of ours.

* * * * * * *

Mr. GOLDSTEIN. Mr. Trautman, do you happen to know whether under this declaration arrangement, the rules as to draft and waiver apply to the Mexican League? In other words, the draft and waiver rules of the National Association?

Mr. TRAUTMAN. Oh, no.

Mr. GOLDSTEIN. So that the only way a player in the Mexican League could enter organized baseball would be if his contract were purchased by a club in organized baseball?

Mr. TRAUTMAN. No. There is no machinery for that. The only way a player under a Mexican contract would come into the National Association would be as a free agent. Mexico would need to release him and our clubs sign him as a free agent. * * * But I do not believe the declaration of free agency would come from Mexico without some compensation.

[20] Hearings, p. 240.
[21] Hearings, p. 303.
[22] Hearings, p. 225.

Mr. GOLDSTEIN. Does that mean that if a player was now with the Mexican League and his club did not wish to sell him, there would be no chance of his ever reaching the major leagues?

Mr. TRAUTMAN. That is right * * *.

Mr. GOLDSTEIN. Mr. Trautman, in Article II of the National Association Agreement, it states the objectives of the minor leagues * * * One of these objectives reads as follows:

"To promote and protect the interests of minor league baseball players and umpires and to secure to them advancement in their profession commensurate with their skill and expertness."

Now, do you believe that that exchange of declarations * * * by the Mexican League and organized baseball affords the players of the Mexican League a chance for advancement in their profession into the major leagues?

Mr. TRAUTMAN. That machinery is not very well oiled.[23]

After leaving the Mexican League, some of the players blacklisted by Commissioner Chandler pleaded to have the 5-year boycott lifted. Others instituted court actions for treble damages and reinstatement under the Sherman and Clayton Acts. Chandler informed Mickey Owen, one of the players seeking reinstatement, that he would not consider such action unless all antitrust suits against organized baseball were dropped. The litigation-minded players were unwilling to accept this proposal.

The first antitrust action against organized baseball was brought by Danny Gardella, blacklisted player of the New York Giants. The second was by Lanier, Martin, and Klein, former players of the St. Louis Cardinals. Judge Goddard of the district court in New York City dismissed the Gardella suit for want of jurisdiction over the subject matter:

Notwithstanding that there seems to me to be a clear trend toward a broader conception of what constitutes interstate commerce than formerly in view of the expanding and changing conditions since the decision in the Federal Base Ball Club case, I feel that as the circuit court of appeals of this circuit regards *Federal Base Ball Club* v. *National League* as authority, this court must do so (*Gardella* v. *Chandler*, 79 Fed. Supp. 260, 263 (D. C. S. D. N. Y., July 13, 1948).

On appeal, this decision was reversed and the case remanded on the grounds that the issue of whether baseball was in interstate commerce was sufficiently in doubt to warrant a trial (*Gardella* v. *Chandler*, 172 Fed. 2d 402 (C. C. A. 2, Feb. 9, 1949).

Organized baseball failed to have the Martin suit dismissed for failure to serve Commissioner Chandler (*Martin et al.* v. *Chandler et al.*, 85 Fed. Supp. 131 (D. C. S. D. N. Y., July 8, 1949). Motions for injunctions pendente lite by plaintiffs in both suits to restore them to eligibility were denied on the ground that plaintiff's rights to reinstatement depended on disputed questions of law and fact (*Martin* v. *National League Baseball Club*, 174 Fed. 2d 917 (C. C. A. 2, June 2, 1949) and *Gardella* v. *Chandler*, 174 Fed. 2d 919 (C. C. A. 2, June 2, 1949)).

Three days after the circuit court of appeals refused to order the reinstatement of Gardella, Martin, Lanier, and Klein, Commissioner Chandler offered to reinstate all of the Mexican ineligibles. Chandler described his actions to the subcommittee in the following terms:

Mr. CHANDLER. * * * Gardella sued us and then Martin and Lanier sued us, and I was under some pressure from the club owners and the lawyers to put the fellows back. But I would not do it until the court said I did not have to.

[23] Hearings, pp. 225-227.

They had asked for a mandatory injunction which would have required the commissioner to reinstate them. After they went down there and the thing was not as good as they thought it was, they were sadder and wiser, you understand, and they came back and wanted to play.

The judge said, if you recall it, in his opinion in the Martin and Lanier case, that he would not require the commissioner to put these young men back into positions that they had voluntarily vacated. Then, Congressman, when he said I did not have to put them back, I put them back, just as soon as I got to the place where I thought I would not liquidate the commissioner's office, because if the court said I had to put those fellows back, the power of suspension of the commissioner would have been gone; at least, I thought so, and I thought that would have been a retreat.

I thought what I did at first was not only necessary but I had to do it under the circumstances.

So when the court said he would not require me to put them back then I put them back. They said they were sorry they went, and I was sorry they went. And it is no fun punishing kids like that, a lot of good kids. It was not all their fault. Some of them wanted more money and they could not get it. Some of them thought they could get more money down there.

* * * * * * *

The CHAIRMAN. Was there any rule on which you could ground your decision for reinstatement?

Mr. CHANDLER. No, sir. As far as I know, it had not come up before, Mr. Chairman. Later the club owners passed a rule approving it, you understand. As you know, they passed a rule which just exactly undertook to put into the rules what I had done.

Mr. WILSON. I take it that after you felt that the court had upheld your power of suspension, you could afford to be magnanimous.

Mr. CHANDLER. Congressman, I thought that I could not only afford to be, but I thought I was bound to temper justice with mercy * * *.[24] (The complete text of Chandler's reinstatement offer is reprinted in the hearings, p. 343.)

The Gardella and Martin suits never reached trial. Players in both actions agreed to withdraw their complaints for an out-of-court settlement.

PROBLEMS ARISING FROM TERRITORIAL RIGHTS

Organized baseball since World War II has not been without problems arising from the anachronistic distribution of clubs among the larger cities of the continent. Membership in the two major leagues has remained the same as in 1903. Los Angeles, which in 1900 was one-fourth the size of St. Louis, had more than twice the metropolitan population of the Mississippi city after the war and was the third largest city in the country. Still, St. Louis had two major leagues and Los Angeles had none. Baltimore, Montreal, and San Francisco, with populations greater than either Washington or Cincinnati, were unrepresented in the major leagues.

Average league standings and total paid attendance for the 16 major league clubs from 1941 to 1950 illustrates in part the unequal competition, both on the field and in the player market, caused in large part by the varying metropolitan population in the 10 major league cities:

[24] Hearings, pp. 289-290.

Club	League	Average standing	10-year attendance	Rank
New York	American	1.90	15,360,309	1
St. Louis	National	1.90	8,706,177	9
Brooklyn	do	2.50	12,402,499	3
Detroit	American	3.25	12,711,202	2
Boston	do	3.30	10,261,668	5
Cleveland	do	4.00	11,838,872	4
Boston	National	4.80	7,131,829	11
Cincinnati	do	5.00	5,834,991	15
New York	do	5.10	10,207,034	6
Pittsburgh	do	5.15	8,805,086	8
Chicago	do	5.40	7,362,922	7
St. Louis	American	5.45	3,338,419	16
Washington	do	5.65	6,715,415	12
Chicago	do	5.70	7,189,969	10
Philadelphia	National	6.15	4,339,943	13
Do	American	6.75	5,901,823	14

Because of the general prosperity of this decade, only one club faced perennial financial difficulty. That club was the St. Louis Browns. From November 17, 1947, to July 1, 1951, the club engaged in 14 player sale transactions in excess of $25,000, selling 20 of its better players for $1,290,000 in cash and the contracts of 28 lesser-known players. During this period, it made no purchases of player contracts in excess of $25,000. Financial statements of the American League indicate that the league loaned an additional $300,000 to the DeWitt brothers to help keep the Browns in St. Louis. (See appendix, p. 1424.) [25]

While the American league clubs have been subsidizing the Browns through loans from the league treasury or the purchase of player contracts, promoters in Baltimore, Milwaukee, and Los Angeles have indicated their desire to locate major league franchises in those cities. Mr. Leonard J. Roach, representing civic interests in Los Angeles, went before the major league meeting, July 7, 1947, with a request that the major leagues consider placing a franchise in that city. At this same meeting, the Pacific Coast League, the most flourishing of the three AAA minor leagues, petitioned for recognition as a third major league. The Roach bid was tabled.[26] In response to the Pacific Coast League's request, the major league executive council consisting of Commissioner Chandler, the two major league presidents, and two major league club owners, went to the west coast to study the situation. Unable to agree as to a course of action, the committee never submitted a report. Ford Frick and Mr. McKinney, then president of the Pittsburgh club, prepared their own report for the National League. In this report, they declared that the Pacific Coast League was then qualified to be a third major league but that the major leagues should consider admitting clubs from the west coast in pairs if proper application ever be made.[27] The National League in 1947 twice adopted motions to this effect, but the American League refused to concur.

[25] Hearings, p. 263.
[26] Hearings, p. 722.
[27] Exhibit 4, hearings, pp. 88-91.

VI. Economic Analysis of Organized Baseball

A. THE PRODUCT

Baseball clubs have several sources of revenue. But their product upon which practically all of their revenue directly or indirectly depends is a game. The product is a game between two clubs, preferably evenly matched, with the outcome of that game in doubt.

Each championship game is part of a larger drama, the pennant race. Major league clubs play 154 championship games each season plus from 20 to 40 exhibition games before and after the championship season.

The principal source of revenue for professional baseball clubs has always been admission receipts. The 16 major league clubs in 1950 took in over $24 million from this source, accounting for three fourths of their revenue. These figures do not include that share of gate receipts from the all-star games, the world series, and regular championship games which go directly to one of the major league offices or the commissioner's office or excise taxes collected on behalf of the Federal Government. Gate receipts from the 1950 world series and all-star games were about $1.1 million.

Reported minor league paid attendance in 1950 was 34.7 million, or about $29 million in gate receipts. Gross paid admissions (excluding excise taxes) in 1950 for all organized baseball were about $55 million.

The second major source of revenue in organized baseball is concessions—the "peanut privileges." Gross sales in major league parks in 1950 of concession items were about $8 million. Because several clubs lease their concession privileges to separate firms, income from this source is reported at a net figure in the tables prepared by the subcommittee.[28]

The third-ranking and most rapidly increasing source of revenue is from the sale of radio and television rights. This brought almost $3.5 million in revenue to the 16 major league clubs in 1950, over $4 million in 1951. Receipts in the minor leagues from this source are negligible.

Other sources of income brought the major league clubs over $2 million. These include park rental, sale of score cards, sketch books, pictures, and mementos, and the sale of advertising in the ball park or the clubs' publications.

Estimated gross income of all professional baseball clubs in 1950 was about $82 million. This figure does not include interclub transfers such as the sale of player contracts, which cannot realistically be regarded as income for organized baseball as a whole.

The three major sources of revenue of professional baseball clubs—gate receipts, concessions, radio and television—are all keyed to the maintenance of competition on the ball field. Concession sales and gate receipts obviously depend upon the size of attendance, which in turn depends largely upon the keenness of the competition between the two clubs. Radio and television receipts also depend in large part upon public interest in the ball games and the equality of competition in those ball games.

As a result, baseball clubs are both partners and competitors. Partners because cooperation is essential for the exhibition of baseball games; and competitors, because the success of those games depends upon the earnest desire by both home and visiting club to get the better of its opponent. They are also competitors for the most vital factor in the production of baseball games—baseball players.

[28] Hearings, pp. 969–970, appendix, pp. 1602–1609.

This feature, in the eyes of most witnesses, distinguished organized baseball and other professional team sports from other industries. Testified Ford C. Frick, present commissioner of baseball:

> Professional baseball entertains the public by the playing of a prearranged regular schedule of league games between independently owned clubs. The public interest and patronage, upon which players and owners depend for their livelihood, demands first a good contest on the field and good competition among the clubs in a league, and, secondly, the unquestionable integrity and honesty of the game and its participants. Without such competition and integrity, public patronage will be lost and professional baseball, as a means of livelihood for thousands, will cease to exist.
>
> Baseball clubs, as I have said, are both competitors on the field and partners in business. Ordinary industry does not face the problem of this dual relationship. In baseball competition is the end in itself. What the public pays for and demands is a competitive contest. To excite interest the contest must be reasonably equal and uncertain as to result. This feature alone distinguishes baseball from ordinary industry.
>
> * * * * * * *
>
> Each club must be out to win. At the same time, some equality to competition must be preserved. The clubs have attempted to achieve this—and by and large they have achieved it—by the baseball rules and regulations of which the reserve rule is one.[29]

For the creation of exciting baseball contests, baseball entrepreneurs have had two alternatives. They could create competing clubs under common ownership or under separate ownership. If under common ownership, the corporate management could shift its player employees from club to club in order to maintain balanced competition on the ball field. If under separate ownership, baseball promoters are separated by the corporate entity from shifting playing personnel from club to club in the interests of keeping clubs of equal strength.

Both methods of organization have their obvious draw-backs. If competing clubs are placed under single management, baseball clubs may be evenly matched, but the integrity of the games will be seriously questioned by the public. On the other hand, if competing clubs are separately owned, differences in financial resources and managerial acumen may lead to an unbalanced distribution of player strength among competing clubs. However honest such contests may be, they may be so lopsided that public interest will lag.

To meet these two draw-backs, the economic organization of organized baseball has evolved compromises between the two alternatives. In order to preserve the integrity of the game, competing clubs are independently owned. But in an effort to obtain a measure of equality of competition on the field these clubs are parties to a series of agreements which regulate their competition in the market place.

In the 80 years since the first professional baseball league began, the industry has pursued an uneven path between the polar extremes of cooperation and competition. Sometimes this path has veered too close to cooperation and has raised the cry of "syndicate baseball" from the game's faithful followers. At other times, the path has veered toward the absence of restraints and resulted in the cry of

[29] Hearings, pp. 34–35.

"Break up the Red Stockings," "Break up the Yankees," or whatever club has succeeded in transforming its financial superiority into overwhelming and depressing competitive advantage.

The compromise between untrammeled private initiative and common management is demonstrated by the MacPhail draft of the major league steering committee report of 1946:

> Professional baseball is a peculiar and complicated industry. Most of us like to think we run our own organizations and that it is our initiative, experience, and ability that have been responsible for success. This is true, of course, to some extent.
>
> But to a greater extent, we are in business with 7 and sometimes 15 active partners. This partnership, and the agreement among the partners to cooperate in the business of baseball, constitute a monopoly. Our counsel do not believe we are an illegal monopoly (because our partnership arrangement and cooperative agreements are necessary in the promotion of fair competition and are therefore for the best interests of the public) but we are a combination, and as such, the policies and rules and regulations adopted control every one of us in the operation of our individual businesses.
>
> In considering the extent to which baseball functions as an entity, compare a major-league club with a large motion-picture corporation. They both operate and maintain plants and have a product to sell. They have similar public relations and personnel problems, and both are dependent upon publicity. But Metro-Goldwyn-Mayer, for instance, hires whom it pleases and makes whatever pictures it chooses to make. They show the pictures where and when they please. They do their own planning, visualize their own needs, and determine for themselves the most advantageous future course for their business. RKO, United Artists, Paramount, and others are competitors, not partners.
>
> While the Detroit Baseball Club also operates its own plant, sets up its own accounting systems and handles its own finances—baseball tells the Detroit Club whom it may or may not hire, where and when it will play its games, what proportion of its income it may retain, and, in great degree, determines its policies and controls its employees and public relations.[30]

B. THE MARKET

In the exhibition of professional baseball games, the 400 corporations united by agreement into organized baseball have a virtual monopoly.

"Professional baseball games" are exhibitions performed by players whose sole or primary occupation is the giving of such exhibitions. The exact number of professional baseball clubs outside of organized baseball is not known. The only such clubs within the United States in 1951 known to the subcommittee are members of the independent American Negro League. Other clubs, known as semiprofessional, also sell baseball exhibitions, but their players usually rely upon some outside occupation for their living. Actual receipts from such semipro games are not large.

Of approximately 400 professional baseball clubs in organized baseball, only 13 compete in the same city with another club for public favor. Boston, Chicago, Los Angeles, Philadelphia, and St. Louis each have two clubs in organized baseball; New York has three. Wherever possible, these clubs schedule their home games so as not to compete with their intracity rivals.

The principal competition faced by clubs in organized baseball is not from other professional baseball clubs, either inside or outside the association. It is competition from other professional sports—from amateur spectator sports such as college football, college basketball, etc.; from other spectator amusements such as the motion pictures

[30] Hearings, p. 508.

and the legitimate theater; and from all other recreational activities such as participant sports, reading, radio, and television.

No matter how this larger market is defined, organized baseball has faced increased competition from other fields. That organized baseball is well aware of this fact is evident from the following interclub memorandum prepared by P. K. Wrigley, president of the Chicago Cubs, during the consideration of candidates for the office of commissioner:

> Competition from other forms of recreation has become a factor of great importance over the last 32 years. At the time the commissioner's office was started, there was relatively little in the way of organized, aggressively promoted recreation, sports or otherwise. The movies were in their infancy. This was before the days of big chains of movie houses seating thousands of people and before the days of sound pictures. There were only a couple of million car owners in the entire country and no paved highways, and automobile vacation trips and week-end outings were limited to a small percentage of the population, whereas today more than 35 million families own cars.
>
> The craze for golf that was to attract millions of devotees had not yet begun. The big bowling alleys with their thousands of leagues were undeveloped. Horse racing was limited to a very few States and was undeveloped and unpromoted. Aside from boxing, there were no professional sports to speak of other than baseball. Pro football, basketball, and hockey on an organized scale were things of the future, as was big-time college football.
>
> Radio consisted of one experimental broadcasting station, and television was, of course, unheard of. In short, baseball had almost no competition to speak of and the club owners tended to feel that inasmuch as baseball was the national game, attendance would come to the parks automatically and without effort except to have a winning team.[31]

Despite the entry of new forms of recreation over the past 35 years, organized baseball has managed to hold its own in the entertainment field. Estimated personal consumption expenditures, 1929–50, supplied by the Department of Commerce, indicate that the relative popularity of organized baseball increased steadily from 1929 to 1948. Since that time, the sport has shared the recession of all spectator amusements, although not to the same degree as some of its competitors.

In 1929, professional baseball received 0.39 percent of the consumers' recreation dollar. This share increased steadily to 0.62 percent by 1939, dropped to 0.29 percent during the midwar depression, rose to a postwar peak of 0.68 percent in 1948, and receded to 0.49 percent in 1950.

In the area of spectator amusements, organized baseball competes with the motion-picture theaters, the legitimate theaters and opera, entertainments of nonprofit organizations such as symphony orchestras, professional football, professional hockey, horse and dog racing, college football, other amateur spectator sports, professional boxing, professional wrestling, automobile racing, carnivals, circuses, and other "commercial amusements."

Estimated personal consumption expenditures for admissions to these specified spectator amusements, 1929–50, are given in table I. It will be noted that while organized or professional baseball has maintained the edge consistently among professional team sports, it never has surpassed college football in gate receipts. Likewise, it has always ranked behind the motion-picture theaters, the legitimate theaters and opera, and entertainments of nonprofit organizations.

[31] Hearings, p. 743.

TABLE I.—*Personal consumption expenditures for admissions to specified spectator amusements, 1929–50*

[Millions of dollars]

	1929	1930	1931	1932	1933	1934	1935	1936	1937	1938	1939	1940	1941	1942	1943	1944	1945	1946	1947	1948	1949	1950
Motion-picture theaters	720.1	732.5	718.4	527.4	482.5	518.5	556.1	626.1	676.5	663.1	689.4	709.2	755.7	961.3	1,038.4	1,253.1	1,356.1	1,511.5	1,407.2	1,394.3	1,341.9	1,328.0
Legitimate theaters and opera	91.4	60.6	47.3	32.6	18.7	18.3	19.4	20.6	21.4	26.6	31.9	35.9	40.3	48.0	67.3	81.6	79.7	91.4	103.2	95.5	91.8	90.1
Entertainments of nonprofit organizations except athletics	35.6	31.6	29.6	23.1	20.8	22.7	24.4	26.9	30.3	26.3	30.0	32.0	34.6	38.9	41.6	49.5	53.1	68.5	69.2	71.3	72.3	69.5
Professional baseball	17.0	17.0	14.2	12.4	10.8	12.7	14.7	17.7	18.6	18.7	21.5	19.6	20.9	17.5	14.2	17.4	21.5	51.7	64.2	68.1	66.0	53.4
Professional football	.7	.7	.6	1.0	1.1	1.3	1.5	2.0	2.3	2.3	2.7	2.9	3.3	3.1	2.3	3.0	4.4	10.4	10.6	9.6	8.7	8.0
Professional hockey	2.6	2.6	2.7	2.3	2.0	2.3	2.6	2.9	3.0	3.1	3.2	3.4	3.6	4.1	3.1	3.9	5.6	7.0	7.8	8.0	7.4	6.3
Horse and dog race tracks	2.6	1.7	1.5	1.1	2.0	4.6	7.1	8.4	9.1	11.6	11.4	12.3	12.9	11.5	11.0	14.6	22.0	28.6	41.1	38.9	37.3	35.5
College football	22.5	21.5	19.6	17.8	20.3	24.6	27.1	31.1	33.0	36.6	37.1	37.0	38.7	31.3	23.6	31.8	46.6	78.4	91.3	96.4	105.9	102.7
Other amateur spectator sports	18.3	17.9	13.4	12.4	13.9	15.5	16.6	19.1	21.3	19.2	20.3	20.4	22.3	19.7	19.1	19.4	28.2	42.9	50.4	53.3	58.9	56.6
Commercial amusements	90	89	74	55	54	62	68	75	87	61	69	71	84	83	78	100	122	172	196	214	224	232

Source: Office of Business Economics, U. S. Department of Commerce.

The motion-picture theaters, the giant of the spectator amusement field, witnessed an increase in paid admissions from 1929 to 1950 of 73 percent; while the legitimate theaters and opera actually witnessed a decline of 1 percent. In contrast to this, paid admissions to horse and dog race tracks has increased 1,675 percent; to professional football games, 1,043 percent; to college football games, 357 percent; to all "commercial amusements," 258 percent. The increased expenditures for professional baseball has been 226 percent; for amateur spectator sports, 210 percent; for professional hockey, 132 percent; and for entertainments of nonprofit organizations, 115 percent.

Baseball's relative position in the spectator amusement market has risen from 1.86 percent in 1929 to 3.31 percent in 1950.

If organized baseball has any consumer market dominance in the field of recreation or spectator amusements, it is only within the narrow market of professional baseball itself. In that market, organized baseball is, and for 70 years continuously has been, exercising virtually complete dominance. Because of the extent of competition from other forms of entertainment, baseball has had little if any opportunity to exploit its position through higher consumer prices. Commissioner Ford Frick testified that the real price of professional baseball admissions is as low today as it ever has been since before World War I and is 40 percent below 1933, when in the midst of the depression baseball owners generally refused to reduce admission prices.[32]

C. THE INVESTOR

A frequent assertion made by witnesses before the subcommittee was that organized baseball was not a business but a sport.[33] Obviously it is both. This common assertion, however, does reflect one of the unique features of the baseball industry. It is not governed solely by the profit motive. While it is difficult to generalize, the evidence indicates that organized baseball is an anomalous conglomerate of investors, some of whom seek their return in profits but a majority of whom are primarily interested in a return of "psychic income"—a winning club. The extent to which management decisions are based on profit considerations and the extent to which such decisions are based on pennant aspirations varies considerably from club to club and from league to league. Frequently these twin motives lead to identical results; but often they do not.

Ford Frick testified that at least 10 of the 16 club owners who own major league clubs are men whose fundamental business interests lie outside of professional baseball:

> With them baseball is an avocation. They are primarily in baseball because they are interested in baseball as a game. They are not dependent upon it for a living and they are well aware that the financial return from baseball does not justify it as an investment.[34]

George Trautman, president of the National Association, reported that in the minor leagues, out of 2,287 officers and directors of minor league clubs, only 291 could be classified as making their living as baseball executives.[35] Bonneau Peters, president of the Shreveport Club in the Texas League, reported he had received neither salary nor

[32] Hearings, p. 43.
[33] See, e. g., testimony of Ty Cobb, hearings, pp. 14–16; A. B. Chandler, hearings, p. 257.
[34] Hearings, p. 25.
[35] Hearings, p. 198.

dividends in his 14 years with the club. He estimated that 90 percent of the clubs in the minor leagues were started by persons who were in professional baseball because they liked the game and not because they wanted to make any money.[36]

The number of stockholders in major league clubs varies from 1 to 1,219. In most cases, corporate management control is exercised by one person.

In the American League, Thomas A. Yawkey owns all 1,500 outstanding shares in the Boston Red Sox and Walter O. Briggs controlled all 10,000 shares in the Detroit Tigers.[37] The Chicago White Sox and the Philadelphia Athletics are family corporations. Mrs. Grace Reidy Comiskey owns 3,094 shares, or 41½ percent, of the 7,450 shares in the Chicago White Sox. The rest of the stock is divided equally among three other members of the Comiskey family. Connie Mack holds 302 of the 628 outstanding shares in the Philadelphia Athletics. Roy Mack and Earle Mack hold 163 shares apiece.

The 1,800 shares in the New York Yankees are divided equally between Del E. Webb and Daniel R. Topping. Of 74 shareholders in the Cleveland Indians, two have holdings greater than 10 percent. Ellis W. Ryan, president of the club, owns 492 of the 3,000 shares; Nathan Dolin, 347. The Washington Senators have 37 stockholders. President Clark Griffith owns 5,569 shares, 29.3 percent of the 19,400 shares outstanding. H. Gabriel Murphy and Marie M. Murphy own 3,925 shares apiece. Although the St. Louis Browns are owned by 1,219 stockholders, one company—the BBC Corp., with management control exercised by William Veeck—holds 206,250 of the 261,782 shares outstanding.

In the National League, the number of shareholders in each corporation and the largest interests are as follows:

Club	Shareholders	Shares outstanding	Largest holding	
			Name	Amount
Boston	15	2,493	Louis, Joseph, and Charles Perini	1,270
Brooklyn	4	11,000	Walter M. O'Malley	5,500
Chicago	202	10,000	Philip K. Wrigley	7,976
Cincinnati	35	6,000	Powell Crosley, Jr.	4,520
New York	205	11,751	Horace C. Stoneham	6,484
Philadelphia	48	47,000	R. R. M. Carpenter, Jr.	39,615
Pittsburgh	30	7,960	John W. Galbreath	2,489
St. Louis	4	1,837	Fred M. Saigh	1,667

Of the 16 major-league clubs, only Chicago, Philadelphia, St. Louis, and Washington in the American League and St. Louis and Brooklyn in the National League are controlled by persons who owe their livelihood primarily to organized baseball.

D. PROFITABILITY OF ORGANIZED BASEBALL

Generalizations on the profitability of clubs in organized baseball are extremely hazardous, chiefly because of the many variables involved in such an economic analysis. The earnings picture in the minor leagues today is quite different from the majors. Likewise, the level of profits fluctuates widely according to the phase of the business cycle, the size of a club's market, the playing success of its team, and the relative motives of an owner for pecuniary reward or a pennant winner.

[36] Hearings, pp. 760-761.

[37] With the death of Mr. W. O. Briggs, January 17, 1952, control of the Detroit Tigers passed to his son, Walter O. Briggs, Jr. New York Times, January 18, 1952, p. 27.

Most witnesses appearing before the subcommittee believed that few major league clubs provide attractive investment opportunities. This is typified by the following colloquy between P. K. Wrigley, president of the Chicago Cubs, and Congressman Hillings:

> Mr. HILLINGS. For the most part, though, most of the major-league teams make money; do they not?
>
> Mr. WRIGLEY. Speaking from my own experience, the answer is "No." It makes a bare living. Averaging it out for 30 years, it has been in the black. I think it has averaged about 5 percent on investment over a 30-year period.[38]

The example Mr. Wrigley cites—the Chicago Cubs—is illustrative of the average major-league club. Over the 31-year period from 1920–50, the Cubs earned $2,613,456, or $84,305 a year, which ranks them ninth among the 16 major-league clubs. A few clubs, favored by their choice locales or a head start on the farm system, earned two or three times this amount. Others have usually shown a deficit.[39]

The financial study prepared on behalf of organized baseball by Arthur Andersen & Co., Washington accountants (hereinafter referred to as the Andersen study) reports the consolidated net worth of the 16 major-league clubs to be about $20,000,000 at the end of 1950.[40] Consolidated major-league income in 1950 was about $765,000, a return on capital of only 3.83 percent. During the preceding 4 years, however, the picture was much different. Consolidated earnings averaged more than 20 percent per annum, a record unequaled in modern baseball history. Profits climbed from $1,212,000 in 1945 to $4,887,000 in 1946; $4,866,000 in 1947; $3,237,000 in 1948; and $3,252,000 in 1949.

To gage major-league earnings on return from investment is, however, misleading. This is due partly to the fact that some clubs (notably the Boston Red Sox, whose books show a negative net worth, with liabilities exceeding the book value of assets) are financed largely by loans from the majority stockholder. In addition, clubs follow widely divergent practices in evaluating both player contracts and franchises. Although these intangible assets account for a large share of a club's going value, most clubs value them at a nominal amount. Because of the difficulties in determining accurately the return on investment, the subcommittee has based most of its analysis of earnings on the percent of profit from gross operating income—the profit margin of the sales dollar.

Except during the depression of the early thirties and the lean years of World War II, the profit share from the consumer dollar in the major leagues has compared very favorably with other industries.

During the Golden Twenties, earnings ranged between 10 and 25 percent of gross operating income. This period of prosperity ended abruptly in 1931, and in 1933 the major leagues showed a 23.2-percent loss on gross sales. After three losing years, the majors returned to the profit side of the ledger in 1935. The high point of the 1930's was 1939, baseball's centennial year, when 6.9 cents of the sales dollar

[38] Hearings, p. 756.

[39] See Income and Dividend Summary, Major Leagues, 1920–50, hearings, pp. 1592–1601.

[40] Hearings, p. 1519.

epresented net profit. The war brought another recession which eached its depth in 1943 with a 2.2-percent loss. The dip was brief, nowever. Profits in 1944 were the highest since 1930. Two years ater, in 1946, earnings approached the $5-million mark, representing 1 17.4-percent margin of profit on gross operating income.[41]

Thus, whether regarded as return on investment or as the profit nargin on gross operating income, the earnings of the major-league clubs, viewed collectively, have not been meager.

To conclude, however, that through the years the major leagues nave been profitable in no measure detracts from their standing as a sport. If anything, it illustrates that sport and business are not ncompatible; the major-league owners can provide healthful entertainment to the American public without sacrificing their personal resources. The record of major-league earnings is encouraging to the fan, for it is essential to the stability and growth—indeed, the very existence—of the sport he follows.

It is significant to note that the lion's share of major-league profits have been retained in the enterprise. During the 1920's, investors in major-league clubs were rewarded in dividends with less than a third of total earnings. The only periods in which dividends equaled or surpassed earnings were the 1931–37 depression and 1943. Since 1944, more than 80 percent of major-league profits have been plowed back into the enterprise.[42] The amount of earnings realized by investors in the major leagues through capital gains on selling club assets or stock is unknown.

The over-all profitability of the major leagues by no means typifies each of the 16 big-league clubs. Their earnings vary radically, not only in any particular year but also over the long run. Consistently profitable clubs are those located in New York, Detroit, Cleveland, Pittsburgh, and the St. Louis Cardinals. These seven clubs averaged over $90,000 in net profit from 1920 to 1950, inclusive. In the middle bracket are the clubs situated in Chicago, Washington, and Cincinnati. The poorest clubs, averaging $35,000 a year or less, are the St. Louis Browns and those clubs in Boston and Philadelphia.

The most profitable professional baseball enterprise is the New York Yankees. From 1920 to 1950 the Yankees earned approximately $8,500,000, more than six other American League clubs combined. Blessed with the largest selling area in organized baseball and guarded from competitive intrusion by "territorial rights," the Yankees were able to accumulate the wealth which brought them the best of player talent and 17 pennants during this period. This steady succession of pennant-winning clubs, nourished by one of the strongest farm systems in organized baseball,[43] has made the Yankee organization a perennial money maker. Since 1946, profits have averaged $600,000 a season.

The St. Louis Cardinals have been the most lucrative enterprise in the National League. Their profits since 1920 have reached $6,000,-

[41] In compiling these earnings figures, the subcommittee used the following adaptations to the financial material submitted by the major-league clubs. Concessions' income was reported at net in order to provide uniformity among the clubs, some of whom operate their own concessions, some of whom lease them to independent concerns. Transactions in player contracts were reported as net expenditures after deducting income from the sale of such contracts from the cost of contract purchases. Operating losses for subsidiaries were reported as net expenditures, although in a few years the majors' farm clubs made small profits. Consolidated income statements for the American and National Leagues for 1929, 1933, 1939, 1943, 1946, and 1950 appear in the record of the hearings, pp. 967, et seq. The reader should consult these for a full understanding of the methodology employed by the subcommittee in this analysis.

[42] See Consolidated Major League Income, Dividends, and Retained Earnings, 1920–50, hearings, p. 1569.

[43] The Yankees spend on the average almost $1 million a year on player development. Hearings, p. 873.

000. Unlike the Yankees, this record is not attributable to the fortuity of a favorable franchise protected by territorial-right restrictions. The St. Louis area, with two clubs to support, has the poorest attendance potential in either league. The success of the Cardinals lies solely at the feet of one promoter, Branch Rickey, whose success with the farm system revolutionized the structure of organized baseball. The flow of player talent which the farm system channeled through the St. Louis Cardinals brought the club an enviable record of pennants and enabled the management to realize substantial profits by the sale of surplus players to other clubs. One St. Louis sportswriter estimated that from 1922 until 1941 the Cardinals received $2,000,000 from the sale of player contracts to other major-league clubs.[44] In the light of other available information, this estimate seems reasonable. The club's profits during the same period were about $2,250,000. Thus, about 90 percent of the Cardinals' profits during this 20-year period accrued from the sale of excess talent produced by the farm system. Most major-league clubs, in comparison, show annual net losses in player-contract transactions.

The earning record of most other major-league clubs closely follows the relative attendance strength of their franchises. Detroit, Cleveland, and Pittsburgh, with clubs in large metropolitan areas in which they enjoy complete monopolies, have grossed over $3,500,000 in profits apiece from 1920 to 1950. Washington is not far behind. The New York Giants and Brooklyn Dodgers, although competing in the same league, have fared well in the attendance stronghold of Greater New York. The two Chicago clubs also have done well in the second-largest city in the United States. The Cincinnati Reds have met the handicap of a small metropolitan area with reasonable success.

The other five major-league clubs, however, have found it difficult to keep pace with their richer rivals and still show a profit. St. Louis, Boston, and Philadelphia have been unable to provide the patronage necessary to support the two clubs in each city during the lean years. Unless affluent backers were available, they have been forced to sell players to make ends meet, thereby jeopardizing their future playing strength and popularity. Both the Philadelphia Phillies and the Boston Braves have averaged small deficits since 1920. The Boston Red Sox have cost its backers over $2,000,000, and the profits of the Philadelphia Athletics have been small, especially when the depression-forced sale of its 1929–31 American League champions is taken into consideration. The St. Louis Browns have shown a small profit through the years, but only because of mass liquidation of its player assets in recent years. Under the ownership of Phil Ball, and after his death by his estate, 1920–36, the club was not profitable. In fact, with the exception of small profits in 1929, 1935, and 1940, it had an annual deficit from 1927 to 1941, inclusive. From 1947 to June 15, 1951, the Browns netted $1,296,000 in player transactions with other major-league clubs, enabling its management to transform a $500,000 deficit into a $600,000 profit.

Most clubs do not pay regular dividends, either because of an absence of sufficient earnings or a desire to strengthen their competitive positions. The two Boston clubs have not declared a dividend in

[44] Sid Keener, "Baseball's Rags-to-Riches Story—the Cards," St. Louis Star-Times, January 15–21, 1946. Peter S. Craig, Organized Baseball (thesis, Oberlin College, 1950), pp. 187–188.

over 30 years; the two Philadelphia clubs in 20 years. The only significant dividends by either the New York Yankees or the Detroit Tigers since 1931 were prompted by the short-lived Federal undistributed-profits tax. The present managements of Cleveland, Pittsburgh, and the two St. Louis clubs also have foregone any regular dividend policy, at least through 1950. Washington, Brooklyn, Cincinnati, the Chicago Cubs, and the New York Giants, on the other hand, apparently are following as regular a dividend policy as their earnings will permit.

The sole income of most baseball investors active in corporate management is salaries. Average payment of salaries to club officers in recent years has been $50,000 per club. The preference given to compensation through officer salaries rather than dividend payments is illustrated by the following summary of the past 5 years:

Payments made to stockholders of all major-league clubs

	1946	1947	1948	1949	1950
Salaries and bonuses	$768,000	$845,000	$710,000	$705,000	$775,000
Dividends	686,400	894,000	331,000	296,000	192,000

Some major-league club owners serve without compensation, relying solely on other business interests for their income. A few, however, have received substantial stipends, the highest in the past 5 years being $133,000, including bonus, received by one National League Club officer in 1949.

Earnings in the minor leagues, by sharp contrast with the majors, have been meager or nonexistent in recent years. The over-all financial plight of the minor leagues is well documented by George Trautman, president of the National Association, in the following testimony before the subcommittee:

> Minor-league baseball is far from a profitable sport. A survey was made of the results of the 1950 operations and with 18 leagues, having a total of 134 clubs reporting, it shows that 65 percent of the clubs reporting operated at a loss. The following is a further break-down of the figure:

Classifications	Number of leagues	Number of clubs in classification	Number of clubs operated at a loss
AAA	1	8	5
AA	1	8	1
A	2	16	10
B	4	30	20
C	4	32	22
D	6	40	29
Total	18	134	87

> The operation of a minor-league club is most assuredly no bonanza. In fact, with a great many of them it is rather a case of keeping losses to a minimum rather than making or expecting to make a profit.
>
> * * * * * * *
>
> It must be remembered that the clubs in the leagues of lower classification are maintained and financed by public-spirited citizens who take a civic pride in having a baseball team represent their community for the purpose of providing wholesome recreation for the men, women, and children of the community. These clubs are not operated on a basis of financial gain and the records show that throughout the years a majority of them sustain financial losses more often than they break even * * *.[45]

Mr. Trautman's conclusions as to the losses incurred throughout the minor leagues are confirmed by available financial data. The Andersen study reports losses in every classification but double A for 1950. This is supported by studies prepared by the subcommittee staff. Although the response to the subcommittee's requests for financial records from 1946–50 was incomplete, especially in the lower leagues (classes B, C, and D), the reports are complete enough to give significant results. In 1946, all classifications shared in the postwar sports boom. Profits for the 24 AAA clubs were $885,000. Each lower classification also showed net profits, although not as large. The triple-A leagues continued to operate in the black until 1950, when sharply reduced attendance, apparently aggravated by the Korean war and radio and television, brought combined losses of $1,413,000. The double-A leagues, which include 16 clubs, have constituted the only classification with an annual profit since 1946. The 30 clubs in four class A leagues suffered net losses in 1947, 1948, and 1950. The B and C clubs have showed annual deficits since 1948, and the D clubs since 1947.[46]

F. FACTORS INFLUENCING FINANCIAL SUCCESS

The weather vane of financial success in baseball, particularly in the major leagues, is paid attendance. Practically all of the major-league club's revenue may be traced directly or indirectly to the number of fans passing through its turnstiles. Revenue coming directly from paid admissions to exhibition and championship games comprised 74.1 percent of major-league income in 1950. Concession purchases by these fans accounted for another 9.2 percent. And radio and television receipts, which largely depend on a club's popularity with the fans, brought another 10.5 percent of the gross operating income. The remaining 6.2 percent was derived from park rentals, park advertising, and other miscellaneous sources.

Factors influencing paid attendance are almost as immeasurable as they are diverse. They include general economic conditions, the price of admissions, the number of competing amusement industries in the area, the size of the consumer market, the size, location, and condition of the ball park, the popularity of individual players on the club, the weather, the time of day games are scheduled, the number of championship games played, the closeness of the pennant race, and the playing success of the team.

The prices of admission have remained substantially the same for each type of seat since 1920, but the definitions of each category ("bleacher," "pavilion," "grandstand," "reserved," and "box") have been changed periodically so as to raise the average price of admission. In 1920, the prices ranged from 50 cents for a bleacher seat, to $1 for a grandstand seat and $1.50 for a box seat, all prices including a 10-percent Federal "war tax." These prices remained fixed at this level in succeeding years when the excise tax was removed, but went up 10 percent in 1932 when the Federal Government again imposed the levy. In 1944, when the Federal excise tax rose to 20 percent,

[45] Hearings, pp. 196, 197, and 199.
[46] The annual profit or loss [illegible]

admission prices rose accordingly so that the clubs' share remained the same as in 1920. By 1950, the prevailing rate schedule was as follows (20-percent Federal tax included):

Bleacher	$0.60
Pavilion	1.00
Grandstand	1.25
Reserved	1.80
Box	2.00 and up

Sporting News, Apr. 16, 1952, p. 27.

The average price of admission, however, increased at least 60 percent from 1920 to 1950. Except for a brief dip during the first years of the depression, the average price of admission to major-league ball games (gate receipts divided by the number of paid admissions) was $1.00, Federal taxes included. This rose gradually to $1.10 by 1939, $1.20 by 1943, $1.40 by 1946, and $1.60 by 1950.

The consumer demand for major-league baseball games has been relatively inelastic. Rises in prices have tended to depress the number of major-league customers but over-all gate receipts have increased. Price reductions caused by competition from independent baseball clubs or other amusement media have been nonexistent since before World War I.

Gross paid admissions to major-league games are closely correlated with the gross national product. In 1920, when the gross national product (GNP) was $93.18 billion, fans paid about $9,100,000 to see the 16 major-league clubs play their championship games. In 1950, when the GNP had tripled ($282.63 billion), gate receipts also tripled 1920 levels, reaching about $28,000,000 for the two leagues. From 1920–40, the average gross national product was about $86 billion. In the same period, American League gate receipts for an ordinary pennant race averaged $4,800,000 and the National League, about $4,200,000. For every change in the GNP of $16 billion, American League receipts tended to fluctuate $800,000 and National League receipts, $700,000.

The two most evident exceptions to this general pattern were the early depression years and World War II. The effect of the depression was delayed at the major-league box office, 1930 receipts, in fact, exceeding the level of any previous year. The loss of players to the Armed Forces and the diversion of public interest resulted in a mild recession in paid admissions during the critical war years, 1942–44.

By trial and error the major leagues have found a 154-game season, commencing in mid-April and closing around October 1, the most satisfactory. The National League scheduled only 70 games (three a week) in its first season, 1876. Gradual extension of the schedule produced ever-increasing revenues and quieted owners' fears that daily games would reduce consumer demand. The present 154-game schedules(22 games against each league rival) became entrenched in 1904. The higher minor leagues now also follow a 154-game schedule after extensive experimentation with a higher number of games. Both the American Association and the International League employed 168-game schedules until the depression of 1933. The Pacific Coast League abandoned its 180-202-game schedule in favor of 154 in 1951.

Paid attendance is highest on holidays, week ends and evenings. The growth in attendance, both major and minor, over the past half century has generally accompanied the increased number of Sunday and night games on the playing schedule. The National League forbade its members to play Sunday games until 1892, but when the barrier was removed few clubs were in a position to profit thereby. Of the 16 major-league clubs at the turn of the century, only 5—those in Chicago, St. Louis, and Cincinnati—could play Sunday contests. Elsewhere, State or local blue laws limited clubs to weekday games. The last blue-law barrier in the major leagues fell in 1933 when Pennsylvania voted to permit Sunday baseball games. Today, Sabbath and holiday games draw the greatest crowds. In an attempt to maximize this attendance, major-league clubs generally schedule double-headers on these dates.

Night games first came into vogue in the minor leagues around 1930. Their introduction helped soften the effects of the depression, and, in the opinion of many, saved the minor leagues from destruction. Today, practically all minor-league games are played under the arc lights. From 1935–48, night baseball was introduced by 15 of the 16 major-league ball clubs. Only the Chicago Cubs do not have lights today. The number of night games played at home by each club varies from 14 to 50, with 25 being the average.

G. ATTENDANCE VARIABLES AMONG LEAGUE CLUBS

Price levels, general economic conditions, the length of the playing schedule, and the number of holiday, Sunday, and night games influence the general level of league attendance. But for competing clubs, the variables are greatly multiplied.

The seating capacities of their parks, varying accessibility of the stadiums, differences in the comfort afforded by these parks all tend to upset any attendance equilibrium among competing clubs. The most important factor, however, which generates against equal economic conditions and hence equal competitive opportunities on the playing field is the wide discrepancy in the size of major-league clubs' sales markets. The three New York clubs, sharing a metropolitan area containing almost 13 million persons, have ranked 1, 2, 3 in American or National League attendance strength since 1919. Detroit with a metropolitan population of almost 3 million has 1 major-league club to support; St. Louis with a metropolitan population of only 1.7 million has 2 clubs.

The 1950 census figures for metropolitan population and the 1948 figures for metropolitan retail sales offer an approximate gage of the market areas for the 16 major-league clubs.

	Metropolitan population per club	Retail sales per club
AMERICAN LEAGUE		
New York Yankees	4,277,000	$4,217,000,000
Detroit Tigers	2,973,000	3,014,000,000
Chicago White Sox	2,738,000	2,996,000,000
Philadelphia A's	1,830,000	1,672,000,000
Washington Senators	1,458,000	1,486,000,000
Cleveland Indians	1,454,000	1,524,000,000
Boston Red Sox	1,177,000	1,130,000,000
St. Louis Browns	857,000	784,000,000
NATIONAL LEAGUE		
New York Giants	4,277,000	4,217,000,000
Brooklyn Dodgers	4,277,000	4,217,000,000
Chicago Cubs	2,738,000	2,996,000,000
Pittsburgh Pirates	2,398,000	1,993,000,000
Philadelphia Phillies	1,830,000	1,672,000,000
Boston Braves	1,177,000	1,130,000,000
Cincinnati Reds	898,000	889,000,000
St. Louis Cardinals	857,000	784,000,000

The paid attendance ranking of 10 of the 16 major-league clubs is identical with the ranking of retail sales in their metropolitan areas. Actual paid attendance for the major leagues, 1931–50, were as follows:

American League		National League	
New York	24, 270, 007	Brooklyn	18, 835, 811
Detroit	20, 514, 230	New York	17, 602, 906
Cleveland	17, 151, 489	Chicago	17, 437, 680
Boston	15, 355, 033	Pittsburgh	12, 674, 878
Chicago	11, 554, 119	St. Louis	12, 575, 872
Washington	10, 622, 602	Boston	10, 802, 895
Philadelphia	9, 699, 370	Cincinnati	10, 744, 503
St. Louis	4, 609, 998	Philadelphia	8, 538, 752

Of the six clubs without identical rankings, the Boston Red Sox and St. Louis Cardinals had teams which perennially were pennant contenders; the Chicago White Sox, Philadelphia A's, and Phillies, had perennial also-rans. A large share of Cleveland's attendance came from thickly populated areas adjacent to its metropolitan district such as the Akron-Canton area.

To compete favorably for player talent, a major-league club must have financial resources which equal those of its league rivals. This would mean ideally that each club would draw one-eighth of its league attendance. The St. Louis Browns have not reached this level since 1922, the Philadelphia A's since 1932. In the 33 years since World War I, the Boston Braves have drawn 12.5 percent of league attendance 2 times; the Philadelphia Phillies 2 times; the Cincinnati Reds 9 times; and the St. Louis Cardinals 10 times. In contrast, the Yankees have never fallen below that mark. The Giants and Dodgers have dropped below 12.5 percent twice each; the Detroit Tigers only four times; and the Chicago Cubs five times.[47]

In order to measure the actual attendance strength of each major-league franchise, the subcommittee used two different methods. Both are attempts to eliminate the variable of clubs' playing performance.

The first method assumes that the average club, finishing in fourth and a half place in the league standings, would normally draw 12.5 percent of league attendance and that for every variation of one place in the standings the average club's share of league attendance would fluctuate 1.5 percent. By these two assumptions, the average first-place club would draw 17.75 percent of league attendance and the average last place club would draw 7.25 percent. Comparison of such estimated shares of league attendance with actual attendance yields the following results for the decade, 1941–50:[48]

Attendance strength, 16 major league clubs as measured by probable share of league attendance for an average finish in the pennant race, 1941–50

American League	Percent	National League	Percent
New York	16. 34	New York	16. 06
Detroit	15. 42	Brooklyn	15. 56
Cleveland	14. 07	Chicago	15. 47
Chicago	12. 29	Pittsburgh	13. 57
Philadelphia	11. 91	Philadelphia	11. 35
Boston	11. 84	Boston	9. 70
Washington	11. 51	Cincinnati	9. 57
St. Louis	6. 65	St. Louis	8. 72

[47] Annual figures of the percent of league attendance for each major league, 1901–51, appear in the hearings, pp. 1534–1535.

The second method used as the norm actual attendance percents over the past 40 years. Comparing the share of league attendance for each club with that club's average won-and-lost percentage for five dates during the pennant season (June 1, July 1, August 1, September 1, and the end of the season) yielded a definite pattern which Is illustrated by the graph appearing at page 1593 in the appendix. Three-year averages of each club's attendance variation from this norm appear in the graph appearing on pages 1595–1598 in the appendix. These graphs should be consulted in connection with this discussion.

According to this second method of analysis the attendance strength for the major league clubs, 1941–50, was as follows:

American League	Percent	National League	Percent
New York	16. 14	Chicago	13. 59
Detroit	13. 69	New York	15. 46
Cleveland	15. 94	Brooklyn	15. 38
Chicago	12. 51	Pittsburgh	15. 36
Boston	12. 09	Philadelphia	11. 64
Washington	11. 67	Cincinnati	9. 90
Philadelphia	10. 65	Boston	8. 85
St. Louis	7. 49	St. Louis	9. 98

These tables indicate that for the St. Louis Browns to equal the Yankees' paid attendance, they would have to win twice as many games. The Browns have been the poorest drawing club in the American League, even discounting their inferior playing record, every year since 1926. The Yankees and the Detroit Tigers, on the other hand, ranked 1–2 every year from 1919 until 1947 when Cleveland also became an attendance stronghold. In the National League, the St. Louis Cardinals were the poorest drawing club from 1933 to 1947. They now rank fifth, thanks chiefly to extensive use of night baseball. The New York Giants, Brooklyn Dodgers, and Chicago Cubs ranked 1–2–3 in attendance strength in the National League from 1919 to 1946. Since 1947, they have been joined by Pittsburgh as the four strongest franchises in the National League. The recent rise of Pittsburgh, a one club city, is attributable to its population growth, its new progressive management, and its popular hero, Ralph Kiner.

The disequilibrium in economic competition among rival major league clubs caused by varying market potentials is not limited to paid attendance. It permeates every major source of major league income. Clubs holding the richer franchises are able to field stronger teams which make them greater attractions in exhibition games and in championship games away from home. Larger market areas also enable these clubs to net greater concession sales and outstrip their weaker rivals in radio and television income.

These facts are demonstrated by the following analysis of the 16 major league clubs for the 1950 season:

	Average percent of league victories [1]	Percent of league attendance	Difference	Percent of league receipts	Difference
American League:	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*
New York	15.1	22.8	+6.7	24.6	+8.5
Detroit	15.9	21.4	+5.5	16.6	+.7
Cleveland	14.7	18.9	+4.2	17.5	+2.8
Boston	14.6	14.7	+.1	13.8	−.8
Chicago	9.9	8.6	−1.3	8.8	−1.1
Washington	11.6	7.7	−3.9	7.3	−4.3
Philadelphia	8.3	3.4	−4.9	7.0	−1.3
St. Louis	8.3	2.7	−5.6	4.3	−4.0
National League:					
Philadelphia	15.0	14.6	−.4	12.9	−2.1
Brooklyn	14.5	14.3	−.2	16.6	+2.1
Pittsburgh	9.2	14.0	+4.8	13.8	+4.6
Chicago	11.6	14.0	+2.4	12.5	+.9
St. Louis	14.1	13.1	−1.0	13.2	−.9
New York	12.4	12.1	−.3	12.8	+.4
Boston	13.8	11.4	−2.4	10.8	−3.0
Cincinnati	9.5	6.5	−3.0	7.5	−2.0

[1] On June 1, July 1, Aug. 1, Sept. 1, and the closing day of the season, 1950.

In 1950, the New York Yankees received more revenue from every major source than any of their seven competitors. Their gross revenue was $4,200,000—$1,200,000 more than their nearest competitor and $3,500,000 more than the St. Louis Browns. It was no accident, therefore, that they could spend 33 percent more on their club than any rival, or that their profits were the highest in either league, or that they won the American League pennant and the world series.

Even when out of first place, clubs in rich franchises have been able to gross larger revenues and maintain higher budgets with a view toward future building. In 1946, when the Yankees finished 17 games behind the pennant-winning Boston Red Sox and 5 games behind the Detroit Tigers, they grossed 50 percent more receipts than either club and spent almost 50 percent more than either club. Their net profit almost doubled that of either Boston or Detroit.

In the National League in 1946, Brooklyn and St. Louis were tied for the pennant at the end of the season with 96 victories apiece. Gross operating income for the Dodgers, however, was $2,700,000, compared to $1,800,000 for the Cardinals. A year later, Brooklyn won the pennant. At the bottom of the 1946 National League standings were the New York Giants, but the gross operating income and operating expenses of the Giants were second only to the Dodgers. A year later the Giants finished fourth.

These examples of the competitive advantages open to clubs in the richer franchises could be multiplied ad infinitum. The inequality of playing competition, engendered by franchise disparities and the farm system, is perhaps best demonstrated by a summary of the pennant winners in both leagues, 1920–51:

American League		National League	
New York	18	St. Louis	9
Detroit	4	New York	8
Philadelphia	3	Chicago	5
Washington	3	Brooklyn	4
Cleveland	2	Pittsburgh	2
Boston	1	Cincinnati	2
St. Louis	1	Philadelphia	1
Chicago	0	Boston	1

Philadelphia and Washington won their pennants before the heyday of farm systems when they could secure new talent from the minor leagues without having substantial minor league investments. Since 1934, both clubs have been out of pennant contention. The successes of St. Louis and Cincinnati, on the other hand, are attributable to head starts in mass-production farm systems. Since World War II, both clubs have been on the decline, as all their competitors are also in the farming business. New York, Detroit, and Cleveland have won all but two American League pennants since 1934. They promise to be the "big three" over the years to come under present baseball rules relating to the farm system, territorial rights, and the division of gate receipts. In the National League, Brooklyn, New York, Pittsburgh, and Chicago may be expected to capture most of the penannts over the coming decades unless other clubs can secure outside investment to offset their poorer franchises.

II. CONFLICTING MOTIVES OF INDIVIDUAL CLUBS AND THE LEAGUE

Each club and its fans want the best team they can get. Other factors being equal, the club maximizes its share of league attendance according to the playing success of its team. Records over the past 40 years indicate that the ordinary club will draw 11.80 percent of league attendance if it averages .500 in its won-and-lost percentage throughout the season. As its playing record declines, so does its attendance. The ordinary club averaging .473 in the pennant race will draw 11 percent of league attendance; .440, 10 percent; .400, 9 percent; .341, 8 percent; and .305, 7 percent. Conversely, as its playing performance improves, attendance likewise improves. The ordinary club averaging a won-and-lost percentage of .522 will draw about 13 percent of league attendance; .543, 14 percent; .561, 15 percent; .580, 16 percent; .610, 17 percent; .620, 18 percent; and .625, 19 percent. Thereafter, the share of league attendance appears to fall off somewhat for continued playing improvement, perhaps due to the absence of strong rivals.[49]

The correlation between club playing success and club profits shows a similar trend. From 1920–50, profits averaged $82,000 per club per year. A club with an average won-and-lost percentage of .423 tended to break even for the year. Clubs with poorer playing records usually lost money, unless they sold player contracts to rival clubs to make up the operating deficit. Clubs averaging .500 in won and lost percentage reported average profits of $62,000; .550, $103,000; .600, $208,000; .650, $272,000; .700, $297,000. Thus, while share of league attendance tends to decline when a club wins the pennant without close competition, its profits tend to keep increasing. This is probably due to the fact that a club with such playing success can reduce expenditures for player replacements without fear of losing its commanding position.

Club owners desire as good a club as they can acquire for two reasons—(1) the pleasure and prestige of backing a pennant-winning team, and (2) the improved financial strength of the club which will either yield higher profits or provide additional working capital for the future maintenance of the club in a high-ranking position. That these motives vary somewhat from club to club is evident from financial

[49] Hearings, p. 1593.

records. Some club owners, notably that of the Boston Red Sox, appear to prefer immediate playing success to financial success. Others, appear to be primarily concerned with earnings, even at the cost of a certain degree of playing success. But in most cases, the twin motives of profits and pennants run hand in hand, and invariably both spur management decisions.

The fans of any particular club also want as good a team as possible not only for their own present enjoyment but also because they realize that the better the attendance, the better the team's future prospects. Earnings mean that the management can improve their comfort at the park and, acquire new players to replenish the strength of the team.

Each club owner, guided by the two motives of backing a pennant winner and maximizing his relative earnings, wants as good a ball club as he can put on the field. Obviously, however, only one club can win the pennant. The other seven contenders are left with their smaller comparative shares of league attendance. Consequently, to the degree that they trail the pennant-winning club, they are to a financial and competitive disadvantage in succeeding playing seasons.

If a league wishes to maintain equal competition among its eight members, it will be interested in equality of financial resources. But since equality of financial resources is largely dependent upon equal playing competition, the league as a whole will be motivated toward adopting measures which will promote such competition on the ball field. Playing inequality on the other hand will lead to financial inequality which in turn will tend to augment the disparity of playing competition and drive the weaker clubs to insolvency.

This analysis assumes that a league in fact desires equal playing competition among its members. This assumption is supported by a comparison of estimated major league gate receipts with the closeness of the pennant race, after eliminating variations due to fluctuating national prosperity. Such comparison reveals a high correlation between closeness of the pennant race, as measured by the winning club's average won-and-lost percentage, and league gate receipts. Under given economic conditions, a league will take in 50 percent more gate receipts if its winning club averages .575 in won-and-lost percentage than if it averages .750. If league gate receipts in a year when the pennant winner averaged .650 in games won and lost would equal $10,000,000, variations in the closeness of the pennant race would tend to yield the following results:

Pennant winners' average won and lost percentage:	Gross league gate receipts	Pennant winners' average won and lost percentage—Continued	Gross league gate receipts
.575	$12, 000, 000	.650	$10, 000, 000
.585	11, 600, 000	.660	9, 800, 000
.590	11, 400, 000	.670	9, 600, 000
.595	11, 250, 000	.680	9, 400, 000
.600	11, 100, 000	.690	9, 200, 000
.610	10, 800, 000	.700	9, 000, 000
.620	10, 600, 000	.725	8, 500, 000
.630	10, 400, 000	.750	8, 000, 000
.640	10, 200, 000		

Over-all league profits have been relatively higher in years of close pennant races. American League profits topped $1,100,000 five times in the 1920's—1920, 1922, 1924, 1925, and 1926. Each year but 1925 was marked by closely contested pennant races. During the same decade, National League profits exceeded $800,000 on seven occasions—1920, 1921, 1924, 1926, 1927, 1928, and 1930. In each season, the outcome of the pennant race remained in doubt until the closing weeks of the season.

Later years have also followed this general pattern.

The conclusion is inevitable that there are two competing motives between the individual club and the league of which it is a member. The individual club, looking to immediate pennants and profits, is interested in acquiring as powerful a team as it can. For clubs with poor franchises or weak teams, this would indicate that they would favor rules restricting the power of money to acquire new players. Clubs with the richer franchises or stronger teams would tend to favor a complete absence of restraints so that they could use their financial advantage to acquire winning teams in the future. On the other hand, the league, looking to the success of all eight of its members, would favor rules which equalized the playing strength of all its clubs.

I. METHODS OF EQUALIZING COMPETITION

Organized baseball has used several different approaches in its attempts to equalize competition. These include (1) the reserve rule, (2) player limits, (3) preference to weaker clubs in the waiver and draft rules, (4) division of gate receipts between home and visiting club, and (5) player salary limits.

The reserve rule, by giving each club exclusive right to enter new contracts with its players, inhibits the moneyed clubs from acquiring all of the best talent. Comparison of pennant races before and after the adoption of the reserve amply illustrates the initial effectiveness of this rule in achieving its purpose. The pennant winner's won and lost percentage in the 1870's averaged close to .800 reaching .899 in 1875. From 1881 to 1900, the National League champion's won-and-lost percentage was less than .700 in all but 4 years.

The restraints imposed by the reserve rule precluded competition in signing experienced major-league players, but it did not stop wealthier clubs from accumulating the better players. Richer clubs could outbid their weaker competitors for new players and keep players under contract in excess of their existing needs, depriving their competitors of these players and keeping them in "cold storage" for their own future use. The wealthier clubs could not only outbid their rivals in the acquisition of players from minor-league clubs but also purchase desirable players from weaker confederates in need of working capital.

The reserve rule tended to equalize competition on the ball field by precluding competition for players' services. But it also created a new market, a market in players' contracts in which the club with greater financial resources once more was able to secure the advantage over its weaker rivals.

To restrain competition in this artificially created market for player contracts, organized baseball established player limits which impose a ceiling on the number of players any one club could control. The impetus for these player limits is well illustrated by the following remarks of Branch Rickey at the 1921 joint major league meeting:

> We want rules that will have a tendency to equalize the strength of the teams and minimize the power of the money-making clubs. Whenever we raise the limit to where a club can purchase many players to the disadvantage of other clubs, that tends not to equalize the playing

The effectiveness of the player limits to restrain the power of money-making clubs has been vitiated by the rise of the farm system. Although originally used as a method for weak clubs to secure inexpensive player replacements (e. g., the St. Louis Cardinals and Cincinnati Reds), the farm system today provides the rich clubs with another method for acquiring control of player talent. The greater a club's resources, the more players in the minor leagues it is able to control, either directly through ownership of minor league clubs or indirectly through working agreements and optional assignments.

The draft and waiver rules also have tended to equalize playing strength to the extent that they give each club an equal chance in the acquisition of players at noncompetitive prices. With the adoption of the Ebbets plan in 1921, the weaker clubs were given first preference under both of these rules. If more than one club desires to claim a certain player on waivers, the club which is lowest in the league standings gets preference. (Major league rule 10 (h).) Likewise, the weaker clubs are given priority of choice in drafting players from the minor leagues. (Major league rule 5 (c).) The effectiveness of both the draft and waiver rules is, however, limited by the presence of numerous exceptions. Only a small part of the players in the minor leagues are eligible for the draft in any one year, and requests for waivers are revocable even after a rival club files its claim. (Major league rules 5 (f) and 10 (i).)

The earliest attempts to equalize playing competition were in the nature of rules which tended to equalize the financial strength of competing clubs. The National League in 1877 inserted a provision in its constitution by which visiting clubs were guaranteed 30 percent of gate receipts.

Because of differences in metropolitan population, clubs in the more favorable markets of New York, Detroit, Pittsburgh, Cleveland, and Chicago enjoy larger paid attendance than their competitors. If the home club could retain 100 percent of its gate receipts, the disparity in financial strength caused by chance location of clubs would be the greatest. This is true because each club plays 77 games in its own park and only 11 in the stadium of each of its competitors. Absolute equality of potential earning power through gate receipts could not be achieved without giving 100 percent to the visiting club. Neither extreme has ever been employed in the major leagues. The closest any major league has come to equal financial opportunity was in 1892, when it voted to give visiting clubs 50 percent of all 25 and 50-cent admissions. Since few clubs in that era sold many tickets at higher prices, this rule guaranteed the visiting club about 40 percent of gate receipts. This rule has remained unaltered over the past 60 years. But, since the average admission price in the major leagues has increased to about $1.35 (not including taxes), the visitors' share is much less today. In 1892, 40 percent of major league revenue came from road games. This dropped to 21 percent in 1929, 14 percent in 1950. The home club today retains over 80 percent of its gate receipts and 100 percent of all other income—radio, television, concessions, etc.

These restraints designed to promote economic and playing competition among clubs in the same league are farther from accomplishing their purpose today than at any time in the past half century.

Not only has baseball law progressively failed to accomplish equality of competition, but also it has actively thwarted this objective. The present distribution of major-league franchises has been frozen since 1903 by organized baseball's rules preserving territorial rights. In 1916, the Baltimore Federal League Club desired to buy the St. Louis National League franchise, a move which would have strengthened both leagues. The move was vetoed by other National League clubs, and the Baltimore Feds unsuccessfully took their case to the courts. In the early thirties, the St. Louis Cardinals desired to move into Detroit, a city which could better support two big league clubs. The Detroit Tigers' owner blocked the plan.[51] In 1941, the St. Louis Browns commenced plans to move to Los Angeles. The war interrupted the transfer,[52] and amendment of the baseball code made any such transfer after the war a financial impossibility. (See, e. g., major-minor league rule 1.) Any one of these moves would have tended to promote playing equality. All were thwarted in their incipiency by the progressively tightening rules on territorial rights.

The succession of breath-taking pennant races since the close of World War II is not traceable to any improvement of the baseball code. Rather it has been due to the entry of new capital into franchises formerly depressed by the vicious cycle of inferior population areas, low attendance, low receipts, poorer clubs, and still lower attendance. Notable examples of clubs revitalized, temporarily at least, by the influx of new investment are the Boston Red Sox, the Philadelphia Phillies, and the Cleveland Indians.

J. THE MINOR LEAGUES

The economic problems of the minor leagues differ from those of the majors in two important respects. The minors have been much more sensitive to changed economic conditions and shifts in consumer demand. Furthermore, their existence has usually depended upon financial help from clubs in higher classifications, especially the major leagues.

The major leagues were prosperous throughout the 1920's. The minor leagues, however, reached their attendance peak in 1923 and thereafter witnessed a gradual but steady decline which became precipitous with the depression. The increased popularity of the automobile, the motion pictures, and sports such as golf diverted consumer interest to other channels. In addition, the diversification of sports in the 1920's apparently reduced the number of investors who were interested in promoting minor league ball.

The minor leagues reached new attendance heights in the later thirties, largely as a result of the universal adoption of night baseball. Except for the wartime recession, this relative stability continued until 1949, when minor league attendance reached an all-time high of 41,895,000.

Today, however, the minor leagues face another crisis. Television has made substantial inroads on consumer demand for professional baseball games. Whereas this new media has created new income sources for the majors, its effects are all detrimental to the lower leagues. Attendance in the minors has fallen off 33 percent in the past 2 years.

[51] Hearings, pp. 95, 96, 1035, 1036.
[52] Hearings, pp. 95, 950–951, 1036–1037.

The minor leagues obtain financial assistance through two channels—(1) The sale of player contracts, and (2) the farm system. Independent minor league clubs rely chiefly on the sale of player contracts to balance their budgets. A majority of minor league clubs, however, receive financial assistance through connections with major league farm systems. If they are associated by working agreements, they retain a limited degree of financial independence. If they are owned outright by major league clubs, the parent club assumes all financial obligations.

Proponents of the farm system claim that their institution has been the savior of minor-league baseball. Actual figures cast some doubt on the accuracy of this claim. The share of major-league receipts which has subsidized the minor leagues has remained substantially unchanged over the past 40 years. Only the method of subsidization has changed. From 1909–13, major-league receipts equaled about $20,500,000. During the same period, the 16 major-league clubs spent about $1,895,000 for player replacements from the minor leagues either through the draft or through direct purchase of player contracts (annual reports, National Commission, 1910–14). This represents about 9.2 percent of major-league income. The testimony of August Herrmann, chairman of the National Commission, in the Baltimore Federal League case confirms this conclusion (record on appeal to the Supreme Court, pp. 689–690, *Federal Baseball Club of Baltimore* v. *National League* (259 U. S. 200 (1922)). In 1929, 9.1 percent of major-league income went to the minor leagues; in 1939, 7.0 percent; in 1946, 4.5 percent. In the depression years, 1933 and 1943, minor league subsidization was higher—13 to 16 percent of gross operating income. And the 1950 decline in minor-league attendance once more sent the figure above 10 percent to 12.4 percent.

Until 1950, the net cost to the major leagues of owning minor-league subsidiaries never exceeded $400,000; 1933 and 1943 appear to have been the costliest years. In normal times, however, the major leagues have operated their minor-league subsidiaries at a profit; from 1939–42, 1944–47, and 1949, the net flow of funds was not from parent club to subsidiary, but from the minor affiliates to the majors. Purchases of player contracts, meanwhile, have shown a constant decline.

The sudden reversal of minor-league prosperity has saddled the major-league clubs with substantial economic burdens. Farm losses in 1950 zoomed to $2,678,000, far in excess of any previous year; 1951 probably was just as costly.

Subsidization of the minor leagues through purchase of player contracts and through farm systems has been haphazard and in many instances disruptive of competition among clubs in the same minor leagues. Income from the sale of player contracts accrues only to minor-league clubs with major-league prospects. Likewise, minor league clubs with working agreements have readier access to player talent and a source of revenue which is not open to their rivals. The minor-league clubs in the most favorable position are those entirely owned by the major leagues. Their operating budgets generally far exceed those of independent clubs. Financial reverses which would cripple the independent club are readily absorbed by the farm club's major-league organization.

K. THE PLAYERS

By curtailing competition for players' services, the reserve rule initially reduced player salaries. Once the baseball industry stabilized, however, player salaries tended to increase. They have not, however, kept pace with the increased receipts of the game.

Since the adoption of the first reserve rule in September 1879, the share of major-league clubs' expenses going for team salaries has exhibited a continual decline. In 1874, the Boston Red Stockings spent 59.5 percent of their expenses for team salaries.[53] This increased steadily to 68 percent by 1878, dropped to 54 percent in 1880, the first year the reserve rule was in force. The Philadelphia Phillies spent 54 percent of their 1885 expenses for team salaries.

By 1929, however, team salaries accounted for only 35.3 percent of major-league expenses. This share has continued to drop, reaching 32.4 percent in 1939, 28.9 percent in 1943, 24.8 percent in 1946, and 22.1 percent in 1950.

Where have increased expenses gone if not to the players who produce the games? Initially, funds were diverted for the construction of grandstands, first wooden, later of steel and concrete. Other funds were diverted to the minor leagues for the acquisition of new players. This portion of expenses has remained fairly static at about 9–12 percent over the past 40 years. Most recently, the diversion of funds has been directed chiefly to the one free market left in obtaining new player talent—the signing of free agents. Each major league club employs a large staff of scouts to search the Nation for young talent. They hold try-out camps; they spend large bonuses, sometimes as high as $100,000, so that a promising young player will choose their farm system in preference to that of a rival club.

The testimony of Earl Nelson, treasurer of the Chicago Cubs, and A. G. Lanier, comptroller of the New York Yankees, indicates the degree to which major-league expenses are now channeled into the scramble for untested young talent.

Data submitted by Earl Nelson indicates that from 1945–50, the Chicago Cubs spent $1,200,000 on salaries and expenses of scouts, farm management, and bonuses paid to free agents. Combined team replacement expense was $454,550 per year, considerably more then was spent for team salaries.[54] A. G. Lanier reported that the New York Yankees, 1946–50, spent $1,220,000 for scouts and baseball schools, $615,000 for bonuses to free agents, and a total of $4,022,356 on team replacement.[55] Such expenditures in 1949 and 1950 were greater than the gross operating income of the St. Louis Browns and about twice the amount that was paid to the players on the New York Yankees.

The only player beneficiaries of this diversion of funds from direct player salaries to the acquisition of new players are those who receive the bonuses, only a small number of which ever succeed in reaching the major leagues.

The effects of the reserve rule and the farm system in narrowing competition for players to a select few is well illustrated by the

[53] Hearings, p. 871.
[54] Hearings, p. 871.
[55] Hearings, p. 873.

following exchange between Branch Rickey, proponent par excellence of the farm system, and subcommittee counsel:

> Mr. RICKEY. On the point of monopoly, I cannot imagine a more wild scramble in the field of competition for the service of young players or old ones. If it were to come to it eventually that 16 major league clubs owned all the players, if that were to be the case, there would be the wildest competition you could imagine, I am sure, on the part of all 16 of them for new material. It would create a competitive field in the direction of production of material for clubs even more tense than it is at the present time.
>
> * * * * * * *
>
> Mr. STEVENS. But, Mr. Rickey, in terms of acquisition of players, where would there be competition except in the signing of the free agents? You say all other players in baseball would be owned by the 16 major league clubs.
>
> Mr. RICKEY. All the players in the free agency, if that were true, if the minor leagues were owned by the 16 majors, if all of them were. Then the free agents would not go anywhere except to one of the 16 clubs, would they?
>
> Mr. STEVENS. That is right. But what I am saying is, or asking you, is it not true that the competition among the 16 major league clubs for players would be limited to the signing of free agents, the new young rookies?
>
> Mr. RICKEY. That is correct. And that has led to the greatest menace we have, perhaps, which is an admitted evil, * * * the bonus (hearings, pp. 990–991).

Territorial rights or the division of territory among clubs in organized baseball also has had its effect on player salaries. Where there is prosperity, player salaries are higher, and historically prosperity in the major leagues has been limited to the richer franchises—those in New York, Detroit, Cleveland, and Chicago, for example.[56]

Actual player salaries in the lower minor leagues (classes B, C, and D) are lower today than they were in 1929. In the higher minors and the majors, salaries have increased, but not in proportion to the growth of wages in other recreation industries, or, in fact, all industries combined.

The salary range in the major leagues in 1951 was from a minimum of $5,000 to a maximum of $90,000. The mean was $13,288; the median or average salary was $11,000.[57] Total team salaries (players, managers, and coaches) in 1950 were $6,920,900 in the major leagues, an increase of 84 percent over 1929. In comparison, wages in recreation industries other than motion pictures increased 91 percent from 1929 to 1950, and wages in all industries increased 114 percent in this period.[58] Figures for the major leagues do not, however, include the players' world series share or their benefits under the pension plan installed in recent years.

In the Triple A leagues, the average (median) salary in 1951 was $850 a month. In the Double-A leagues, it was $600 a month; in the A leagues, $350 a month; in the D leagues, $165 a month.[59] Because the average 1951 salaries in the minor leagues closely parallel the actual salary limits imposed by the National Association Agreement, the subcommittee, felt justified in using the annual salary limits as a basis for comparing minor-league salaries, 1929–50. Salaries in the AA leagues have demonstrated a 62-percent gain in that period, but in the lower leagues, present salary levels are below the 1929 level. In the A leagues, they are off 3 percent; in the B leagues, 18 percent; in the C leagues, 13 percent; in the D leagues, 7 percent.[60] These comparisons do not cover bonuses which accrue to the benefit of a few players.

[56] See table of major league salaries by clubs. Hearings, p. 1810.
[57] Hearings, p. 964.
[58] Hearings, p. 1611.
[59] Hearings, p. 965.
[60] Hearings, p. 964.

VII. The Reserve Clause

The reserve clause is popularly believed to be some provision in the player contract which gives to the club in organized baseball which first signs a player a continuing and exclusive right to his services. Commissioner Frick testified that this popular understanding was essentially correct.[61] He pointed out, however, that the reserve clause is not merely a provision in the contract, but also incorporates a reticulated system of rules and regulations which enable, indeed require, the entire baseball organization to respect and enforce each club's exclusive and continuous right to the services of its players. It is therefore clear that it would be impossible to understand the reserve clause without also making a study of the many relevant rules of baseball. Such an analysis, however, will be more meaningful if it is preceded by a review of the history of the reserve clause.

A. Historical Development of the Reserve Clause

The basic principle of the reserve clause was adopted 8 years before it ever became an actual clause in the uniform players contract. On September 30, 1879, the eight clubs in the National League secretly adopted a limited reserve rule, by which each club was granted exclusive rights to contract with five named players for the succeeding year. The original purpose of this rule was to reduce costs by curtailing competition for star players' services. Subsequently, this rationale was supplemented by the view that the rule was necessary both to equalize competition among clubs with unequal resources and to remove doubts as to the honesty of baseball contests by enforcing player loyalty to his contracting club.[62]

In 1883, the National League entered the so-called national agreement with its strongest rival, the American Association. This agreement gave clubs in both leagues the right to reserve 11 players, which was the average complement for baseball clubs of that era. This number was extended to 12 in 1885 and 14 in 1887, as the improved caliber of play required the carrying of additional pitchers and catchers.

Players had no alternative but to accept these restrictive agreements of the club owners. All player contracts contained the provision that the players should conform to and be governed by the league constitution and the national agreement. The players thereby agreed indirectly to become ineligible for engagement by any other national agreement club while under contract or while reserved for the succeeding season.

The national agreement was amended annually. Because many of these amendments concerned player-management relations, the players were obliged to read the sports pages in order to keep abreast with the precise terms of their contracts. They soon became unwilling to consent to a contract by which they were subjected to conditions not mentioned in the contract itself. They organized the National Brotherhood of Professional Baseball Players and through this union proposed that the uniform players contract be amended to give the players some protection. In November 1887, a committee represent-

[61] Hearings, p. 123.
[62] This historical summary of the reserve clause is based on pt. V, The Evolution of Organized Baseball, supra.

ing the brotherhood met with a similar committee representing National League club owners. The committees replaced the obnoxious catch-all clause with relevant portions of the national agreement affecting player rights. The players agreed to recognize the owners' agreement not to compete for reserved players in return for two guaranties: (1) That no more than 14 players would be reserved by any club and (2) that no player so reserved could have his salary reduced. The clause in the contract containing these provisions came to be known as the reserve clause (*Metropolitan Exhibition Co.* v. *Ewing*, 42 Fed. 198 (C. C. S. D. N. Y., 1890)).

After the demise of the brotherhood in 1890, the National League and other parties to the national agreement reverted to the practice of changing the uniform players contract or the national agreement at their own discretion.

The reserve clause has undergone frequent change since 1887. The provisions limiting the right of reserve to 14 players and forbidding salary reductions were eliminated shortly after the brotherhood war of 1890. Adverse court decisions which denied specific performance of the uniform players contract led to frequent changes in wording designed to give the reserve clause the indicia of an option to renew. The basic principle of the reserve clause, however, remains the same. Functionally, the clause still represents required approval from the players of the clubs' agreement not to compete for their services.

B. THE RESERVE CLAUSE IN THE PRESENT UNIFORM MAJOR LEAGUE PLAYER'S CONTRACT

The provisions of all major league player contracts are in identical form. The major league rules specify that all contracts between major league clubs and their players shall be in a standard form determined by the major league executive council, and that—

> no club shall make a contract different from the uniform contract or a contract containing a nonreserve clause, except with the written approval of the major league executive council.[63]

Each of the 16 major league clubs informed the subcommittee that it had no player contracts containing any exceptional provisions.

It is permissible for a major league club to enter into an employment contract which is by its terms binding on both club and player for more than one season. In a few isolated instances, clubs have made contracts for 2 or 3 years, but that is not a common practice.[64] When the contract is for one season only, as is customary, the provision defining the term of employment reads as follows:

> 1. The club hereby employs the player to render, and the player agrees to render, skilled services as a baseball player during the year 1951 including the club's training season, the club's exhibition games, the club's playing season, and the world series (or any other official series in which the club may participate and in any receipts of which the player may be entitled to share).[65]

This provision obviously places the player under contract for the 1951 season, or for whatever year is mentioned.

In addition the club is given the right to renew the contract on the same terms for the following year, provided only that the player's

[63] Appendix, hearings, p. 1125, et. seq., Major League Rule 3 (a).
[64] Hearings, p. 46.
[65] Uniform players contract, appendix, hearings, p. 1248.

salary may not be reduced by more than 25 percent.[66] Since the club's right to renew the contract on the same terms is itself one of the terms of the contract, the renewal clause obviously gives the club a perpetual option on the player's services.

A peculiar feature of the club's option to renew is that under the terms of the contract it may be exercised at any time up to February 1 of the following year. Thus in January of 1952 the term of a player's 1951 contract would have expired and it would seem that he might not know whether he would be under contract for 1952 until the club decided whether or not to exercise its option to renew.

The contract, however, incorporates by reference all provisions of the major league rules, including of course those which define the status of a player under reservation.[67] On or before November 20 each club must file what is commonly termed a "reserve list" with the commissioner. On this list the club may designate as many as 40 players "whom the club desires to reserve for the ensuing season * * * and thereafter no player on any list shall be eligible to play for or negotiate with any other club until his contract has been assigned or he has been released." According to this rule, even if a player should not be under contract in January of 1952, if his name had been placed on his 1951 employer's reserve list, his services for 1952 and thereafter would be reserved exclusively to that employer.

The relationship between the filing of the reserve list and the renewal clause in the contract, insofar as a determination of the status of a player for the ensuing season is concerned, is illustrated by the following colloquy between Commissioner Frick and counsel:

> Mr. STEVENS. * * * Does it not depend on whether a reserve list is filed in November of 1951 as to whether the player is under reserve in January 1952?
> Mr. FRICK. Yes; that is true. The reserve rule is, as you see in our rules, that the club must file the list of players they wish to reserve.
> Mr. STEVENS. And the question whether he is under reserve, then, depends on compliance with the rules rather than anything that would be found in just the contract itself?
> Mr. FRICK. That is right. All these sections go into what is commonly called the reserve clause. I thought I made that clear; that it is not just a contract. He does two things. He signs a contract which provides what you have mentioned. He also agrees in his contract to be governed by the rules, and the rules in turn specify certain other limitations, so that your whole reserve is dovetailed, and is a package of three different things.[68]

As Commissioner Frick indicated, there are a number of dovetailed rules which are designed to establish and protect the relationship between each club and its reserved players. Major League Rule 3 (g), the so-called tampering rule is particularly significant in this connection. It provides:

> To preserve discipline and competition, and to prevent the enticement of players, coaches, managers, and umpires, there shall be no negotiations or dealings

[66] Ibid. Clause 10 (a) of the standard contract reads as follows:
"10. (a) On or before February 1 (or if a Sunday, then the next preceding business day) of the year next following the last playing season covered by this contract, the club may tender to the player a contract for the term of that year by mailing the same to the player at his address following his signature hereto, or if none be given, then at his last address of record with the club. If prior to the March 1 next succeeding said February 1, the player and the club have not agreed upon the terms of such contract, then on or before 10 days after said March 1, the club shall have the right by written notice to the player at said address to renew this contract for the period of 1 year on the same terms, except that the amount payable to the player shall be such as the club shall fix in said notice; provided, however, that said amount, if fixed by a major league club, shall be an amount payable at a rate not less than 75 percent of the rate stipulated for the preceding year."
[67] Ibid. Clause 9 (a) of the major league contract provides:
"The club and the player agree to accept, abide by and comply with all provisions of the major and minor league rules which concern player conduct and player-club relationships and with all decisions of the commissioner and the president of the club's league, pursuant thereto."
[68] Hearings, pp. 46–47.

respecting employment, either present or prospective, between any player, coach, or manager and any club other than the club with which he is under contract or acceptance of terms, or by which he is reserved, or between any umpire and any league other than the league with which he is under contract or acceptance of terms, unless the club or league with which he is connected shall have, in writing, expressly authorized such negotiations or dealings prior to their commencement.[69]

This rule, together with the provisions quoted above, deprives every baseball player, once he has signed his first contract with a club in organized baseball and until he is given a release by his employer, of any right to elect, or even to bargain about what club he shall play for.

In addition to the substantive provisions defining the club's right to the services of its reserve players, the major-league rules also contain important enforcement provisions. Rule 21, for example, specifies a number of grounds for declaring a player ineligible. Among these grounds are such matters as throwing ball games, making gifts to persons connected with competing clubs, and betting on ball games. Paragraph (f) of this rule states that—

* * * any and all other acts, transactions, practices, or conduct detrimental to baseball are prohibited and shall be subject to such penalties including permanent ineligibility, as the facts in the particular case may warrant.[70]

Although breach of contract, or violation of a reservation, has not generally been regarded as "conduct detrimental to baseball", or as sufficient ground for declaring a player permanently ineligible, it seems clear that the commissioner of baseball would have the power to so interpret rule 21.[71]

Rule 15 (a) deals more specifically with contract or reserve "jumping". The first sentence of that rule provides:

Any player who violates his contract or reservation, or who knowingly participates in a game with or against a club containing or controlled by ineligible players or a player under indictment for conduct detrimental to the good repute of professional baseball, shall be considered an ineligible player and placed on the ineligible list.[72]

When Mr. Frick was asked by the chairman to explain in his own language the effect of ineligibility, the following colloquy ensued:

Mr. FRICK. Ineligibility in my own language would be the inability of a player to play for any club; ineligibility to play for a club in organized baseball until such time as he has been removed from the ineligibile list.

The CHAIRMAN. So that, to all intents and purposes, he is blacklisted, as we know that term. Let us not quibble about the term. That is what it means; it is not, Mr. Frick?

Mr. FRICK. I would not quibble about the term. If you think it is "blacklisted," he is blacklisted.

Mr. GOLDSTEIN. Does it not go a little further, as long as we are on the subject, to the extent that if any player in organized baseball plays in a game either opposite him or on a team with him, or if any ball-park owner who is in organized baseball allows his park to be used for his playing in that ball park, all of those actions are sanctioned against by organized baseball?

Mr. FRICK. That is right.

Mr. GOLDSTEIN. In other words, there are prohibititions against his participating with other people or using any facilities of organized baseball?

Mr. FRICK. That is right.

* * * * * * *

[69] Hearings, p. 30.
[70] Appendix, hearings, p. 1146.
[71] Hearings, p. 58.
[72] Hearings, p. 56.

The CHAIRMAN. * * * And in a certain sense, as I take it, now, from your explanation, if a man is declared ineligible for the causes you have stated, he is blacklisted; he is ineligible. Anybody who has any relations with him, baseball-wise, whether they play with him or allow him to manage a club, whether they allow him to play in a baseball park, are in turn sanctioned against, and punishments are meted out to them, and they are declared ineligible.

Mr. FRICK. That is right.

The CHAIRMAN. That is as I view it.

Mr. FRICK. That is right.[73]

The practical operation of these rules may be illustrated by their application in a specific case.

When Arnold "Mickey" Owen received his honorable discharge from the United States Navy in 1946, he was under reservation by the Brooklyn National League club. Unable to reach satisfactory terms with the Dodgers in the spring of 1946, Owen accepted an offer to play in the Mexican League. Commissioner Chandler accordingly, on April 26, 1946, notified Owen that—

you have been placed on the ineligible list and you will not be permitted to petition for return to organized baseball for a period of 5 years.[74]

Owen quickly became disillusioned with playing conditions south of the border. On July 25, he petitioned Commissioner Chandler on behalf of himself and other Mexican League ineligibles, asking that the suspension be lifted so that they could return to organized baseball. His letter was apparently never answered.

Mickey Owen quit the Mexican League in August, returned to his home in Springfield, Ill., and through an attorney repeated his plea for reinstatement. Chandler's answer came by way of a press release announcing that the request was denied.

No good reason has been shown to the commissioner why this penalty should be lessened or modified.[75]

Major league executives supported Chandler in his stand. Wrote Warren C. Giles, now president of the National League and then president of the Cincinnati Reds:

It is my own opinion that reinstatement of Owen at any time prior to the expiration of a substantial part of the 5-year period, and then only by forfeiting what he gained in a monetary way by going to Mexico, would be manifestly unfair to players who put a moral (even if not a legal) obligation ahead of money.[76]

Leslie O'Connor, vice president of the Chicago White Sox wrote to offer his congratulations. And Jim Gallagher, business manager of the Chicago Cubs, commended Chandler for his position, noting that a firm stand on the blacklisting issue would do more to prevent players jumping to outlaw leagues than all the lawsuits that could be filed from Hoboken to San Diego.[77]

Although advised that he had a meritorious case if he chose to sue for his reinstatement, Owen refused to institute legal action. For 3 years, he repeated his direct requests for reinstatement, even offering to pay a reasonable fine, but without success. In the spring of 1947, Owen sought to work out with the Leavenworth (Kans.) Club, but Chandler denied permission. Subsequently, he organized a semipro club. The success of this club led to invitations from the Missouri State tournament and the Denver Post tournament. In the

[73] Hearings, pp. 51–52.
[74] Appendix, hearings, p. 1276.
[75] Appendix, hearings, p. 1278.
[76] Appendix, hearings, p. 1277.
[77] Appendix, hearings, pp. 1279–1280.

Missouri State tournament, Owen was stopped from playing after his club took the field in uniform and was ready to play before a full grandstand. He was denied permission to play in the Denver Post tournament a week before it started. In both instances, the prohibition emanated from organized baseball which controlled the parks.[78] In November 1947, Walter Mulbry, secretary-treasurer to Commissioner Chandler, advised Owen that to play with the outlaw Cuban League that winter—

> would close the door to your reinstatement in organized baseball in anything less than the 5-year ban presently in existence and perhaps for life.[79]

Owen apparently played no baseball in 1948, devoting his energies entirely to his farm and the solicitation of other ineligible players to join him in applying for reinstatement. In January 1949, he and seven of the other ineligibles, petitioned for another chance to play baseball, but the request was ignored. During this period, Owen also attempted "to bring about an amicable settlement" of litigation brought by Daniel Gardella and others against baseball, for which services Chandler later offered $2,500.[80] Final reinstatement did not come, however, until after organized baseball had reached peace terms with the Mexican League, and the courts had denied equitable relief to those players seeking reinstatement in legal actions.

Although most of the representatives of baseball appearing before the subcommittee seemed to feel that the punishment meted out to Mickey Owen and the other Mexican League jumpers was unduly severe, and that the Mexican League fight represented a unique situation, the incident nevertheless indicates the extent of the powers of the commissioner of baseball, under the rules of baseball, to invoke private sanctions against players who show disrespect for the reserve clause. Another illustration of the scope of the commissioner's powers is pertinent to this discussion of the reserve clause.

After 18 men "jumped" to Mexico before the 1946 season, the commissioner of baseball ruled that they should be ineligible to play in organized baseball for a period of not less than 5 years. The commissioner presumably predicated his decision on rule 15 (a) as it existed at that time.[81] The rule then merely provided that any player who violates his contract or reservation "shall be considered an ineligible player and placed on the ineligible list." No period of ineligibility was specified in the rules and there appears to have been no precedent for imposing a penalty of 5 years.[82]

After the penalty of 5 years had been inflicted, the major-league owners adopted an amendment to rule 15 (a) which, in the words of its author:

> merely confirms the commissioner's action on the players that jumped to the Mexican League.[83]

This amendment, which is now the second sentence in rule 15 (a), reads as follows:

> Any player who "jumps" his contract or reservation shall not be eligible to make application for reinstatement until a date 5 years after the date he has been placed upon the ineligible list, and he shall not be qualified to apply for reinstatement in the event he has knowingly participated in a game with or against a club containing or controlled by ineligible players or a player under indictment for conduct detrimental to the good repute of professional baseball, within 1 year prior to his application for reinstatement.

[78] Hearings, pp. 221–223.
[79] Appendix, hearings, p. 1287.
[80] Appendix, hearings, p. 1292.
[81] Hearings, p. 56, et. seq.
[82] Hearings, p. 57.
[83] Hearings, p. 60.

This rule would quite clearly prohibit a player who had violated the reserve clause from returning to organized baseball until the end of his 5 years of exile. It would seem equally clear that it would deprive the commissioner of power to exercise any discretion in the matter. Nevertheless, before the 5 years had expired, and without any change having been made in the rule, the commissioner reinstated all of the Mexican jumpers. When asked what authority there existed for this reinstatement, Ford C. Frick, who has since become the commissioner of baseball, responded as follows:

> Mr. FRICK. That, sir, I do not know, except the commissioner has very broad authority to build up or tear apart as he sees fit, and I suppose it was on that basis that he figured they should be reinstated.
> The CHAIRMAN. Thus, the commissioner, in that sense, would be a sort of a law unto himself?
> Mr. FRICK. That is right.[84]

As has been indicated by the above discussion, the so-called reserve clause is much more than a contractual provision that a player shall render services to a particular employer for a long term. It includes not only the perpetual option to renew found in the contract but also the comprehensive system of rules buttressing that option, including provisions for private sanctions to be collectively applied at the direction of a powerful commissioner. These rules of baseball, coupled with the commissioner's wide powers, are particularly important in considering whether or not organized baseball is violating the antitrust laws, whether it is in need of any exemption from such laws, and whether it is in the public interest to allow it any such exemption.

In view of these facts, it is somewhat surprising to find Mr. Frick blandly stating to the subcommittee:

> Frankly, gentlemen, I don't see why all the furor about the reserve clause. Basically it is a long-term contract which is nothing unusual where distinctive personal services are contracted for. I read by the papers that Milton Berle has just signed such a contract for 30 years. The only difference in the baseball contract is that the player's salary is renegotiated annually on the basis of the services rendered the previous season—subject to a limitation in favor of the player that the maximum reduction may not exceed 25 percent. There is no limitation on the amount of the increase which may be asked or paid.[85]

The annual renegotiation of a baseball player's salary is not the "only difference" between the baseball contract and 30-year contract Milton Berle is said to have signed. Among the important differences between them are these two: First, the many competitors who might hire Milton Berle did not enter into an agreement with each other that none of them would hire him, or any other performer, unless he signed a 30-year contract containing terms agreeable to all of them. If Mr. Berle did not want such a long-term contract, he could at least have negotiated with other prospective employers for a different type of contract. A baseball player, however, cannot practice his chosen profession by playing in organized baseball unless he accepts the reserve clause. Secondly, if Mr. Berle and his employer should have a dispute which they cannot resolve between themselves, the employer

[84] Hearings, p. 62.
[85] Hearings, p. 39.

must rely on the processes of the law for enforcement of his contract; organized baseball, however, has developed an elaborate extrajudicial system of invoking private sanctions as a means of enforcement. The concern about the legality of the reserve clause stems largely from these two differences between the contracts mentioned by Mr. Frick.

C. THE RESERVE CLAUSE IN THE MINOR LEAGUE PLAYER'S CONTRACT

All of the minor league clubs in organized baseball are also required to use a uniform player contract. The reserve clause in this contract is protected by regulations found in the National Association agreement and in the major-minor league rules, which are practically identical with the major league rules referred to in the preceding section. The reserve clause in the minor league contract gives a club the same exclusive and perpetual control over its players as does the reserve clause in the majors.

There are, however, important differences between the two contracts which are relevant to an understanding of the effect of the reserve clause on the bargaining position of the player. Before detailing these differences, it should be pointed out that over 95 percent of the players in organized baseball are in the minor leagues. Although public attention and discussion is usually directed at the major leagues, in terms of the number of players involved the problem is almost entirely a minor league problem. Father Francis A. Moore made this point in the following language:

> I feel, from the little I have been able to read of these hearings out on the Pacific coast, that too much attention has been centered on the two major leagues. I feel that the public is not permitted to realize that the use of the reserve clause affects not only the players of the 16 major league teams, but also the men on 446 minor league teams, according to the latest data I could gather from the Sporting News, which is quite a group of American men.[85]

The contrast between major and minor league baseball was also described by two former minor league players. Ross C. Horning, a graduate student at George Washington University, made this comment:

> Mr. HORNING. The general public, or baseball fan, when he thinks of baseball, thinks of major leagues. He thinks of Joe DiMaggio or Ted Williams. He thinks of huge salaries, of terrific baseball parks and beautiful lights and marvelous conditions, hotels, trains. That is baseball. Only 5 percent of baseball players in the United States play that way.
>
> * * * * * * *
>
> Major league ballplayers are the cream of the crop. They are the best. There are 400 major league baseball players. That is about 5 percent of the baseball players in the United States. If you add 600 triple-A ballplayers and 400 double-A ballplayers, they are not more than 15 percent of the baseball players that play in this country.
>
> Mr. HILLING. There are more Members of Congress than there are major league baseball players; is that right?
>
> Mr. HORNING. Yes, there certainly are. There are only 400 at one time.[87]

Cy Block, another former player who is now a life-insurance underwriter, expanded on this thought. He testified:

> There is a wide discrepancy between the major league contract and the minor league contract.
>
> Although baseball is supposed to be under one head and one contract issue, there is such a vast difference between the two contracts that it really is ridiculous.

[86] Hearings, p. 513.
[87] Hearings, pp. 372-373.

> There are actually 400 major league ball players and over 8,000 minor league players, which is over 95 percent of baseball.
>
> Today in any big corporation your corporation sees that your employer-employee relationships are on a firm basis. They look out for their employees to see that they are well satisfied in order to build up their business, but in baseball it is just the opposite. They just know that in the major leagues they are well taken care of. Everything under the sun is given to a major leaguer in his contract. It is the finest contract you want, except for one minor rule on the waiver rule, but in the minor leagues, it is just the opposite.[88]

As these witnesses indicated, it is of course quite clear that the 400 major league players are "the cream of the crop." Accordingly, it is standard practice for every player who signs the uniform major league player's contract to represent that he is a unique individual, capable of performing services of a special, unusual, and extraordinary character.[89] This standard provision is apparently designed to overcome the rule of law that a contract for personal services cannot be enforced by a court of equity unless the employee's services are of such a unique character that they cannot be duplicated. The uniform minor league player's contract contains no comparable provision. Nevertheless, if a player breaches his contract or his reserve—

> the same sanctions may be applied against the minor league player as may be applied against the major league player.[90]

Despite the fact that the minor league player is as firmly bound by the reserve clause as is the major league player, his contract does not give him comparable protection. If a major league club elects to terminate a player's contract because he is not exhibiting sufficient skill to stay on the team, the player is entitled under clause 7 of the major league contract to receive 30 days pay. There is no such clause in the minor league contract. George M. Trautman, president of the minor league organization, testified that a minor league player is not entitled to any advance notice of termination, and that the practice is not to give him any notice.

> Mr. STEVENS. He is entitled to no notice, and his contract may be terminated immediately?
>
> Mr. TRAUTMAN. That is right.
>
> Mr. KEATING. Does that usually happen when the contract is terminated? Are they fired just like that?
>
> Mr. TRAUTMAN. During the playing season, there are not very many terminated. There are usually assignments made, rather than termination.
>
> * * * * * * *
>
> Mr. STEVENS. Do you know the practice as far as giving notice when there is a termination? Do they usually give it?
>
> Mr. TRAUTMAN. Yes; they must give written notice to the player, with a copy to our office, and the reasons therefor.
>
> Mr. STEVENS. Is it given long in advance of the actual termination?
>
> Mr. TRAUTMAN. No. It is given on the date of termination.
>
> Mr. STEVENS. Just the date of termination?
>
> Mr. TRAUTMAN. That inspires the player to hustle a little all the time.[91]

[88] Hearings, p. 582.
[89] Clause 4 (a) reads as follows:
"4. (a) The player represents and agrees that he has exceptional and unique skill and ability as a baseball player; that his services to be rendered hereunder are of a special, unusual, and extraordinary character which gives them peculiar value which cannot be reasonably or adequately compensated for in damages at law, and that the player's breach of this contract will cause the club great and irreparable injury and damage. The player agrees that, in addition to other remedies, the club shall be entitled to injunctive and other equitable relief to prevent a breach of this contract by the player, including, among others, the right to enjoin the player from playing baseball for any other person or organization during the term of this contract."
[90] Hearings, p. 204.
[91] Hearings, p. 205.

Ross C. Horning, a former minor league player, made this comment on the differences between termination of the contract in the majors and in the minors:

> Imagine that Ted Williams, for example, was hitting .200 on the 1st of July. He would never lose his job. He would never be fired. He would always receive his year's contract.
>
> That is not true in a minor league case; if a man was hitting .200, he would probably lose his job on July 2.[92]

Cy Block, another player, felt that this difference was very important. He testified as follows:

> In your major leagues if you get a release, if they give you a release, you are entitled to 1 month's pay. It is a wonderful provision that gives you an opportunity to contact other major league clubs or minor league clubs, and you have got a month's salary in your pocket to at least hold you up until you get another job.
>
> In a minor league you could be playing in Podunk and get released in 24 hours, without pay, and you are stuck. You have just got to go out and get a job on your own without any pay.
>
> I do not think they should give a month or such, but at least 2 weeks' pay to give you an opportunity to find a job.[93]

Another significant difference between the major and the minor league contract is found in their provisions for compensation in the event that a player is injured playing baseball and is consequently unable to perform his contract. In the majors an injured player is—

> entitled to receive his full salary for the season in which the injury was sustained.[94]

In the minor league, however, it is merely stipulated that—

> Disability directly resulting from injuries sustained while rendering service under this contract shall not impair the right of the player to receive his full salary for a period not exceeding 2 weeks from the date of his injury. * * *[95]

Referring to these provisions, Cy Block made this comment:

> In the major leagues, if you are injured you are paid for the season.
>
> In the minor leagues they are only liable for 2 weeks' salary.
>
> In the spring training, if a fellow breaks his leg, they give him 2 weeks' pay, and he is through when the season opens.
>
> * * * * * * *
>
> I believe that if a man is injured during the season, he has signed a contract, he is entitled to that salary. It is through no fault of his own that he was injured on the ball field. And the least the club can do is to indemnify him.
>
> Most fellows have a family to support. They give their best on the field.[96]

Upon termination of his contract, a major league player is entitled to receive his reasonable traveling expenses to his home, whereas a minor leaguer has no such right. The witness explained:

> In the major league contract, when your season ends, they pay your way home.
>
> In the minor league, you can live in New York and play in California, and when it ends, you have to pay your own way home.
>
> If you have a family it costs $300, or $400, or $500. They do not have any arrangement at all.[97]

The problem of raising funds to provide minor league players with enough funds to pay their expenses back home has sometimes been met by holding special benefit games for the players. Congressman

[92] Hearings, p. 372.
[93] Hearings, p. 583.
[94] Appendix, hearings, p. 1253.
[95] Appendix, hearings, p. 1258.
[96] Hearings, p. 583.
[97] Hearings, p. 589.

Herlong, former president of a class D league in Florida, explained this practice in the following colloquy with counsel:

> Mr. GOLDSTEIN. Do they also hold benefits to help pay the traveling expenses of the boys to go home?
>
> Mr. HERLONG. Most clubs did at that time. I do not know the rule—whether they can do it now. They probably can. They have what they call a player's night at the close of the season to get a little money for them to get home on.
>
> Mr. GOLDSTEIN. To get traveling expenses for them to go home?
>
> Mr. HERLONG. Yes. Some clubs make deals where they agree to pay their expenses back home as part of the contract at the end of the season.
>
> Mr. GOLDSTEIN. Do they do that in your league?
>
> Mr. HERLONG. They have done that, but where it is done that has got to be put in the contract itself.
>
> Mr. GOLDSTEIN. In other words, it is not a standard provision?
>
> Mr. HERLONG. That is right, but they have a place in there where they can write in these provisions.[98]

Other witnesses described such benefit games in other parts of the country.

The question of paying a player's travel expenses home would not be worthy of note if there were not such a wide difference between the salary levels in the majors and in the minors. As is noted elsewhere in this report, the median salary in the majors is $11,000 per year, whereas median salaries in class D leagues are $165 per month.

There are important differences between the contractual provisions relating to salaries. While a player is with a major league team he must be paid at the minimum rate of $5,000 per season. And, as top salaries of $90,000 for the 1951 season indicate, there is no rule fixing a maximum ceiling. The converse is true in the minors. Players are not protected by any rules establishing minimum salaries, but in all minor leagues except the Pacific Coast League each club's maximum monthly payroll is prescribed by a rule of either the National Association or of the league. Since the number of players on a team is also limited by league rules, the salary limits fix the maximum average salary, though they do not prevent individual salaries from exceeding the average.

Congressman Herlong gave the subcommittee the following description of the salary limit in the Florida State League:

> These teams are limited in what they can pay a boy. Now I am sure you understaad about the salary limits of the different ball clubs. In that league they permit a team to have 15 men on their active list and 21 under control. Some class D leagues have as many as 17 on their active list, but in this league they permit them to have 15 men on their active list, and the total salary limit that can be paid to all those players, exclusive of the manager's salary, is $2,600 per month. You divide $2,600 by 15 and you get $173.33 a month, which is the average salary for each one of these players in that league.[99]

The president of the National Association described the method of computing the average monthly salary a minor league club may pay as follows:

> To arrive at the average monthly salary which any club may pay, the salary limit should be divided by the number of players available to a club during its "cut down" period. Thus, the average monthly salary in class D would be $152.94, determined by dividing $2,600 by 17.[1]

He referred, however, to three ways in which players received more compensation. First, clubs often employ player-managers whose

[98] Hearings, p. 452.
[99] Hearings, p. 445.
[1] Hearings, p. 190.

salaries are not charged against the salary limit. In such case the salary of one less player will be charged against the maximum payroll, and, as Mr. Trautman indicated, the permissible average may be increased by about $10 or $15, depending on the classification.[2] Secondly, players who are optioned down from a higher classification club to a lower classification club receive the compensation at the level of the higher classification. And thirdly, players sometimes receive bonuses for signing their first contract. In addition, several witnesses testified that independent club owners are often compelled to violate the salary limits in order to compete with farm-system clubs.[3] Despite these factors, it is plain that minor league salaries are not at all comparable to those in the majors, and that the rules, instead of guaranteeing the players a minimum salary, impose maxima in order to equalize competition among the owners.[4]

Another difference between the two standard contracts is that the salary stipulated in a major league player's contract cannot be reduced during the season,[5] whereas a minor league player's salary may be cut as a result of an outright assignment of his contract to a lower classification club. Clause 5 (a) of the uniform minor league contract, which deals with assignment of the contract, contains this sentence:

> If the assignee is any other club [not in the same classification as the assignor], the salary rate shall be the same as that usually paid by said club to other players of like ability.[6]

Cy Block's comment on the fact that a minor leaguer's salary can be reduced in midseason was this:

> If you are in a major league and sold to the minor leagues, as in the case of Joe Page, he had about $20,000 or $22,000 a year contract with the New York Yankees when he was sold to Kansas City, and he received that rate of pay for the season. That was in his contract.
>
> In the minor leagues, if you are in the International League or, in the Coast League and receiving, say, $900 a month and you are sold to a lower league, they can cut you to $500 a month. That is not fair, because when you sign a contract you figure that is the salary you are going to get. And if you are sold to a lower league, your salary should be the same as you originally signed for, because that is what you base your living allowance on and your plans for the year. And it just is not right to cut your salary.
>
> That should be worked out whereby if you sign a contract in the minor leagues that is the salary. I do not care where you go. You do not make enough to be cut. This happens every day during a season when players are sold to lower leagues.[7]

He also pointed out that in the major leagues a player is allowed $25 a week for expenses during spring training. After contrasting the salaries in the major leagues with his estimate that—

> * * * the average salary of a ballplayer throughout the minors is about $2,200—

he went on to describe the problem confronting a player in the spring:

> You can save, possibly, $1,000. I will give them the benefit of the doubt. You may have a job in the wintertime. It is very tough getting a job, because most employers will not hire you during the winter, because they know you are going away in the spring to play ball. So you have saved that $1,000 and you have got yourself a job.
>
> Spring training comes along, and you go to spring training in the minor leagues, say, around March 1.
>
> Your first payday is not until May 1. You have spent 8 weeks without pay, without anything, and your bills at home still continue to mount up, so that $1,000 that you saved up actually goes, because you have got to pay bills at home—you have to pay all of your bills, and there is no money coming in.
>
> So by the time the season starts you are starting clean again. And that is the usual run of the minor league ballplayer.[8]

[2] Hearings, p. 203.
[3] Cite Macfhail report and testimony. Hearings pp. 1060-1088.
[4] Hearings, p. 200.
[5] If the salary stipulated in a major league player's contract is less than $5,000 per year, his compensation will nevertheless be at the rate of $5,000 while he is playing with a major league club, and therefore his actual compensation may be reduced from the minimum rate of $5,000 to the lesser stipulated rate upon transfer to the minors, appendix, hearings, p. 1248.
[6] Appendix, hearings, p. 1256.
[7] Hearings, p. 586.

The above comment is primarily directed at the situation of the minor league player who is married and has a family of his own. That is also true of the contrast between the allowance of moving expenses when a major league player is traded and the absence of any such provision in the minor leagues.

> In the major leagues, if you are sold or traded to another ball club, they allow you up to $500 for moving expenses, for yourself and your family.
>
> In the minor leagues you could pay for an apartment in, say, May and pay for 2 months in advance, which is the usual procedure, and they will sell you the next day or trade you to another club, and you are stuck. There is nothing you can do about it.
>
> They do not allow you a dime for moving expenses for your family. They will give you transportation to go to that club, but you have got to pay your own family's moving expenses.[9]

The assignment of a minor league player's contract may, however, work hardship on even the unmarried player. Ross C. Horning told the subcommittee about two such incidents in his career. In 1942 he was playing with the Sioux Falls Club in the Northern League. He described how his contract was transferred when his team was in Duluth, Minn.:

> * * * I had taken batting practice with the Sioux Falls team. I was playing pepper with the Sioux Falls team, and the man from the Duluth team came over to me and said, "Would you sign this contract?" and I looked at it and it was a contract for the Duluth team.
>
> Therefore, I was on the Duluth team and I went over and put on a Duluth uniform, and I took batting practice with the Duluth team, and a fellow from the Sioux Falls Club said, "What are you doing over there?" and there I was playing batting practice with the Duluth team.[10]

Despite the fact that his salary was raised from $75 a month to $90 a month, Horning objected to the transfer because a player must pay his own living expenses when his team is at home, and when Horning was traded, the Sioux Falls Club had just finished 2 weeks in Sioux Falls and the Duluth team was home for the next 2 weeks. The timing of the assignment of his contract meant that he had to pay his expenses for four straight weeks instead of two. The relationship between this type of incident and the reserve clause was brought out by Mr. Horning in the following colloquy:

> Mr. STEVENS. Did you make any objection to the Duluth management and say you did not want to play?
>
> Mr. HORNING. Yes. We argued until about 2 o'clock in the morning and I knew before he finished that he would tell me the obvious fact, that I could not play for any other baseball team in the United States, anyway, and so I may just as well play for him because if I did not play for him, he could bar me from playing baseball. So I played

[8] Hearings, p. 584.
[9] Ibid.
[10] Hearings, p. 351.
[11] Hearings, p. 352.

Mr. STEVENS. Did he tell you that?
Mr. HORNING. Yes, sir; he did.
Mr. STEVENS. And when he told you that what did you do?
Mr. HORNING. I gave up. There was not much that I could do.[11]

Mr. Horning related another incident which transpired in 1947, the season after he had been named all-star second baseman for the Northern League. In the winter of 1946 the Sioux Falls team, which held his contract, became part of the Chicago Cub farm system. After playing with Sioux Falls for about a month in 1947, Horning's contract was assigned to another club farm at Hutchinson, Kans. He explained his reactions to this transfer in the following colloquy with Congressman Keating:

Mr. KEATING. Did you object to that at all?
Mr. HORNING. Yes, sir, I did object to that. I felt I had a fairly decent year in 1946. I liked the city of Sioux Falls. I was going to college in Sioux Falls. It was at a time when Sioux Falls had quite a housing shortage. It was very hard to obtain a place to live. I had a very fine room at the YMCA in Sioux Falls, one of the nicest in the United States, and I did not go for 2 weeks.
Mr. KEATING. Was there any action taken?
Mr. HORNING. Yes, sir. They placed me on the suspended list. That is, I could not play for any other baseball team in the United States in organized baseball.
Mr. KEATING. You were suspended by the club?
Mr. HORNING. I was suspended by the Chicago Cubs for refusing to report to the Hutchinson Baseball Team, although if I had been a free agent I could have obtained a job easily within the Northern League some place. * * * And then when I went to Hutchinson, Kans., I paid rent at the YMCA in Sioux Falls and at Hutchinson, Kans., at the hotel, so that when I came back in the fall I would have a place to live, to go to college.

* * * * * * *

Mr. STEVENS. * * *. How long were you suspended?
Mr. HORNING. Two weeks. I had no income. So I finally went into Mr. Levenger's office and told him I would be willing to go.[12]

The subcommittee received evidence that other players have had objection to the assignment of their contracts, even though the assignment meant promotion for the player. In response to a question by Mr. McCulloch of the subcommittee, Congressman Herlong explained that a few players would prefer to stay in the same location rather than to advance:

Mr. MCCULLOCH. Did you ever have a young man of 18 come into your league, who gave some evidence that he was able to move up but who wanted to stay in spite of the fact that he had the opportunity to move up?
Mr. HERLONG. Yes, we have had some of them that do want to stay in the class D baseball league. That is the very rare exception, but there are a few who like the place and like the people, and who maybe have a job in the wintertime there and who would like to stay there. There are a few but it is a rather rare exception.[13]

The same point was brought out by Congressman Bryson in a slightly different way:

Mr. BRYSON. But you do find enlisted men in all the branches of the service who prefer to be chief petty officers in the Navy, for instance, rather than to be an ensign.
Mr. HERLONG. And you find those people in baseball, too.
Mr. BRYSON. And you might find a congressman who would prefer to stay in the House. [Laughter.][14]

One player even testified that he had objected to his promotion to the major leagues because he felt that he could earn more money in the minors than with the major-league club which controlled his contract. Al Widmar, player representative of the St. Louis Browns, testified as follows:

Mr. STEVENS. Well, Mr. Widmar, even though the offer was for less money than you had been making in the minors, did they not suggest to you that the prestige of playing in the major leagues might make up for that fact?
Mr. WIDMAR. Well, I told them that I had a family to support, and that the prestige was not what you support a family with, and I would rather stay in the minor leagues where I could make the money.
Mr. STEVENS. You told them you would prefer to stay in the minors than sign a contract on the terms which had been submitted to you?
Mr. WIDMAR. That is right.
Mr. STEVENS. Did you request to be permitted to stay in the minors?
Mr. WIDMAR. Yes, I did; I told them if I could not make a decent salary in the big leagues that I would want to stay in the minor leagues, where I was sure of making a lot better salary.
Mr. STEVENS. But since you were the property of the Browns they had the authority under baseball law either to sign you for the Browns or to prevent you from playing either in the majors or the minors; is that correct?
Mr. WIDMAR. Yes. They told me that if I did not want to play, why, that I could go on the voluntary retired list.[15]

The subcommittee has no way of knowing how frequently minor-league players object to being transferred. It does know, however, that these players, especially in the lower classifications, are moved from club to club with surprising frequency. George Trautman, the head of the minor league office, testified that—

more than 40,000 player contracts were approved by the national association in 1950.[16]

Since there are about 8,000 players in the minors, Mr. Trautman was asked whether the figure of 40,000 contracts indicated that each player is, on the average, assigned five times each season. He replied that—

We have had players that have been assigned ten times in one season.[17]

He acknowledged that particularly in the C and D leagues there is quite a turn-over in personnel, although "the B's are a little more stable." For purposes of comparison, it might be noted that in 1910, when there were about 7,000 players in the minor leagues, only 10,000 contracts were filed with the National Association—a turn-over of only 43 percent during the season.[18]

Minor-league players referred to other differences between their status and that of a major league. Major-league players are eligible to participate in an elaborate pension plan; there is no pension fund for minor leagues. The difference in playing conditions is suggested by one incident described by Ross Horning:

Mr. HORNING. * * * We played in Sioux City, Iowa. We used to finish a game in the evening, get on our bus, known as Stucker's Steamer——
Mr. STEVENS. Known as what?
Mr. HORNING. Stucker's Steamer. The man who owned the club was named Rex Stucker. And this was an old, beat-up Ford, a bus, in which we had bunks in the back of the bus, and we used to pile all our suitcases, baseball bats, and other things, in this bus, and then leave Sioux City about midnight and travel to Cheyenne, Wyo. It is about 600 miles away. We were to get there at 4:30 the following afternoon, and play a game in Cheyenne, Wyo., that night.
Mr. STEVENS. Did that frequently happen, that you would travel back after a night ball game on the bus?

[11] Hearings, p. 357.
[12] Hearings, p. 450.
[13] Hearings, p. 451.
[14] Hearings, p. 547.
[15] Hearings, p. 179.
[16] Hearings, p. 206.
[17] Spalding Official Guide of the National Association (1911).

Mr. HORNING. That is a common practice in all minor leagues.
The CHAIRMAN. That is a common practice?
Mr. HORNING. Yes, sir.
The CHAIRMAN. In other words, they do not allow the players to sleep in a hotel?
Mr. HORNING. Yes, sir. That is the common practice to save hotel bills.[19]

There is one other difference between the major- and the minor-league contract which should be discussed in connection with the reserve clause. Clause 9 of the minor league contract makes provision for arbitration by the executive committee of the national association or by the commissioner, as the case may be, of any dispute between a player and a club arising under the contract.[20] Mr. Trautman testified that this provision would apply to salary disputes. He indicated, however, that as a practical matter salary disputes never are arbitrated.[21]

Congressman Herlong suggested that there had never been any arbitration of salary disputes "because everybody has been satisfied." He testified:

Mr. HERLONG. * * * And if they cannot agree on next year's salary when that time comes then it may be settled by arbitration. But during the time the arbitration is going on, if the boy is to play baseball, he has got to get something, so the club sets his salary during that period of arbitration.
Mr. GOLDSTEIN. Do you know of an actual case where that has happened?
Mr. HERLONG. I do not, because everybody has been satisfied.
The CHAIRMAN. There is no case of that as far as you know?
Mr. HERLONG. I do not recall any myself. However, if he will not play for that salary or refuses to submit to arbitration, then he cannot sign with any club in organized baseball.
Mr. STEVENS. Is it that he refuses to submit to arbitration or he just does not ask for it?
Mr. HERLONG. He can ask for it if he wants to. He knows what his rights are under these contracts. If he does not want to play for the amount that they want to give him, then he cannot sign with any other club in organized baseball.[22]

Cy Block suggested, however, that the reason why players never ask for arbitration is quite different. He recognized that a player who was involved in a dispute could possibly appeal to Mr. Trautman, but he felt that——

* * * they probably would label him a troublemaker or a clubhouse lawyer and his chances of going to the major league would be pretty rough * * * a ballplayer cannot afford to put himself in the limelight * * *[23]

Mr. Block's testimony that minor-league players were afraid to be singled out as "clubhouse lawyers" or "troublemakers" finds support in the testimony of William Harridge, president of the American League. Mr. Harridge told the subcommittee how he had summarily discharged umpire Ernie Stewart after learning that Stewart and Commissioner Chandler had been discussing, with each other and with other umpires, the problem of raising umpires' salaries. Mr. Harridge explained that Stewart——

was somewhat, as I would term, a clubhouse lawyer and a disturbing element, and some of the umpires had made the request that they not be assigned to work with him in the same crew.[24]

[19] Hearings, p. 348–349.
[20] Appendix, hearings, p. 1257.
[21] Hearings, p. 206.
[22] Hearings, p. 457.
[23] Hearings, p. 588.
[24] Hearings, p. 928.

Since no charges of misconduct were brought to the attention of the subcommittee, it was apparently Mr. Stewart's interest in umpires' salaries which caused him to be regarded as "a clubhouse lawyer and a disturbing element," and eventually to lose his job.

D. LEGALITY OF THE RESERVE CLAUSE

In considering the "legality" of the reserve clause, it is necessary to distinguish between two different legal questions. First is the question whether the contract is "legal" in the sense that a club has a right to judicial enforcement of its provisions. Second is the question whether the reserve clause and the rules providing for its extra-judicial enforcement are violative of the Sherman Act. The answer to the first question by no means answers the second. There are many personal service contracts which cannot be judicially enforced but which are entirely legal under the antitrust laws. Conversely it would be possible for violation to result from private methods of enforcing a contract which is specifically enforcible in equity. Despite the difference between these two legal questions, they both merit attention in this report.

1. Enforcement of the reserve clause in equity

Generally speaking the law gives a party to a contract two types of remedies for its enforcement, one a legal right to damages for breach of contract, and two, if the damage remedy is inadequate, an equitable right to specific performance. In the field of personal service contracts, the employer's theoretical right to sue his employees for damages is seldom of any practical value. The employer is therefore usually relegated to his equitable remedies.

The possible equitable remedies would be (1) a suit against the employee for specific performance, that is to say, a request for the court to enter an order requiring the employee to perform his contract, (2) a suit for an order restraining the employee from working elsewhere, or (3) an action against competing employers to prevent them from hiring the employee. These remedies are seldom granted by the courts because they are thought to conflict with the policy against involuntary servitude. Even though a man may have signed a contract, the courts have indicated that this policy prevents them from forcing him to work against his will. It thus forecloses the first of the three possible remedies.

The policy against involuntary servitude also makes a court reluctant to grant the second or third remedies. There is, however, a doctrine that in the case of an employee whose talents are exceptional and unique, the court may grant "negative" specific enforcement; that is, it will enter an order preventing the employee from working for any competitor of his employer. This doctrine was first enunciated in the case of *Lumley* v. *Wagner*,[25] in which Miss Wagner, the famous opera singer and niece of the great composer, was enjoined from performing for a competitor of her employer. There was little doubt that the talents of Miss Wagner were truly unique.

[25] 1 De G. M. & G. 604 (1852). In the companion case of *Lumley* v. *Gye* 2 El. & Bl. 216, 118 Eng. Rep. 749 (1853) the court enjoined Gye from inducing Miss Wagner to break her contract with Lumley. A contest between a different Lumley and Wagner is found in baseball annals. In 1904 Lumley and Wagner were competing for the National League leadership in the hitting of triples, Wagner having led the league in 1903 and Lumley winning out in the following year (see Baseball Register (1954), p. 240).

Many cases have been brought in which baseball clubs sought to invoke the doctrine of *Lumley* v. *Wagner* in order to compel players to respect their reserve clause. Neither the holdings nor the grounds of decision in these cases are by any means uniform. Moreover, the facts of the cases vary widely and most of the decisions are by nisi prius courts. Nevertheless, these cases serve to indicate the type of objections which may be raised in response to an action for specific enforcement of the reserve clause.

(*a*) *The player must be unique.*—The courts have held that baseball greats like Napoleon Lajoie,[25] Willy Killifer,[27] and Harold Chase [28] were players of such "unique, exceptional, and extraordinary skill and expertness" that their loss to their respective employers would have produced irreparable injury, in the legal significance of that term. As the Pennsylvania Supreme Court said of Lajoie:

> He may not be the sun in the baseball firmament, but he is certainly a bright, particular star.[29]

Although the requirement of uniqueness is obviously satisfied by players of this type, the doctrine of *Lumley* v. *Wagner* is not necessarily confined to the great stars.[30] Nevertheless, in cases involving lesser stars, the courts have denied relief at least in part on the ground that the players involved were not sufficiently unique.[31]

It would seem clear that the less excellent the player, or the lower the classification of the league in which he plays, the less likely it would be that a court would regard him as sufficiently unique to be enjoined from violating his reserve clause. In this connection, it is interesting to note that every major league player, in signing the uniform player contract, represents that he has "unique skill and ability," whereas no such representation is contained in the minor league contract.

(*b*) *The contract must be definite.*—In order for a contract to be specifically enforcible, its essential terms must be definite and specific. In some cases the courts have refused to enjoin a player from violating his reservation because there was no agreement between the club and the player on the amount of the player's salary for the following season, and therefore the reserve amounted only to "an agreement to agree." In *Metropolitan Exhibition Co.* v. *Ewing*,[32] after describing the right of reservation as it existed in 1890, the court stated:

> * * * the right of reservation is nothing more or less than a prior and exclusive right as against the other clubs to enter into a contract securing the players' services for another season. Until the contract is made which fixes the compensation of the player, and the other conditions of his service, there is no definite or complete obligation upon his part to engage with the club * * * As a coercive condition which places the player practically, or at least measurably, in a situation where he must contract with the club that has reserved him, or face the probabilities of losing any engagement for the ensuing season, it is operative and valuable to the club. But, as the basis * * * for an action to enforce specific performance, it is wholly nugatory. In a legal sense, it is merely a contract to make a contract if the parties can agree * * *.

[25] *Philadelphia Ball Club, Ltd.* v. *Lajoie* (202 p. 210 (1902)).
[27] *Wrigham* v. *Killifer* (215 Fed. 165 (W. D. Mich. 1914)).
[28] *American League Baseball Club of Chicago* v. *Chase* (86 N. Y. Misc. 441 (1914)).
[29] 202 Pa. at p. 217.
[30] Id. 215–217.
[31] *Columbus Baseball Club* v. *Reilly* (25 Ohio Dec. Rep. 272 (1891)); *Brooklyn Baseball Club* v. *McGuire* (116 Fed. 783 (C. C. E. D. Pa., 1902)).
[32] 42 Fed. 198.

This interpretation coincides with the opinion of the reserve rules originator, A. G. Mills, who believed the provision was enforceable only against clubs parties to the National Agreement.

In *Philadelphia Ball Club, Ltd.* v. *Hallman*,[33] the court also held that the reservation was too uncertain to warrant enforcement, even though it was conditioned on the player's salary being not less than a specific amount. In the Lajoie case, where injunctive relief was granted, the contract specified the exact amount of the salary for each of the three seasons covered by the reserve clause.[34] Other cases do not fit into any definite pattern on this point, but again it seems evident that the more flexibility that there is in the determination of a player's salary for future seasons, the more likely a court would be to regard the reserve clause as a mere "contract to make a contract if the parties can agree."

The option clause in the present major league contract states that the club shall have the right:

> * * * to renew this contract for the period of 1 year on the same terms, except that the amount payable to the Player shall be such as the Club shall fix in said notice; provided, however, that said amount, if fixed by a Major League Club, shall be an amount payable at a rate not less than 75 percent of the rate stipulated for the preceding year.[35]

The renewal clause in the minor league contract leaves the question of salary completely open for the following season. It merely provides that the club or its assignee may renew the contract for the succeeding year "except that the salary rate shall be such as the parties may then agree upon." [36]

(*c*) *There must be mutuality.*—Another ground on which specific enforcement of the reserve clause has been denied is that the contract lacked mutuality. In most of the cases in which the question of mutuality was raised, the club had the right to terminate the contract on 10 days' notice to the player. In considering the effect of the 10-day cancellation clause, one court stated:

> In thus considering the obligations which, under the plaintiff's construction of the contract each has assumed, we have the spectacle presented of a contract which binds one party for a series of years and the other party for 10 days, and of the party who is itself bound for 10 days coming into a court of equity to enforce its claim against the party bound for years.[37]

In *Philadelphia Ball Club, Ltd.* v. *Hallman*, the court expressed the opinion that a contract giving a club virtually permanent control over a player and the player no more than 10 days notice before release is lacking in mutuality, and is unconscionable and unenforcible in equity.[38] See also *Cincinnati Exhibition Co.* v. *Johnson* (190 Ill. App. 630 (1914)), *Brooklyn Baseball Club* v. *McGuire*, 116 Fed. 783 (C. C., E. D. Pa., 1902), *American League Baseball Club of Chicago* v. *Chase*, 86 N. Y. Misc. 441, 455–456 (1914).

In the Lajoie case, however, the court rejected the argument that the contract lacked mutuality because of the 10-day cancellation clause. It should be noted, however, that the reservation of Lajoie was not perpetual, but instead was expressly limited to 3 years. The court stated:

[33] 5 Pa. Cu. Co. 57 (1889).
[34] See 202 Pa. at 213.
[35] Appendix hearing, p. 1252.
[36] Appendix, hearing, p. 1257.
[37] *Metropolitan Exhibition Company* v. *Ward* 24 Abb. N. C. 363, 411 415 (1889).
[38] 5 Pa. Co. Ct. 57 (1890).

We are not persuaded that the terms of this contract manifest any lack of mutuality in remedy. Each party has the possibility of enforcing all the rights stipulated for in the agreement. It is true that the terms make it possible for the plaintiff to put an end to the contract in a space of time much less than the period during which the defendant has agreed to supply his personal services; but mere difference in the rights stipulated for, does not destroy mutuality of remedy. Freedom of contract covers a wide range of obligation and duty as between the parties, and it may not be impaired, so long as the bounds of reasonableness and fairness are not transgressed.[39]

As has been pointed out before, the major-league contract now in use gives the player the right to 30 days' notice before release, whereas the minor-league player is entitled to no notice. The difference between a contract guaranteeing the player his full salary for the season in the event of injury and a contract giving him the right to only 2 weeks' pay in such event, might also indicate a difference between the "reasonableness and fairness" of the two contracts. (Cf. *Niemac* v. *Seattle Ranier Baseball Club*, 67 F. Supp. 706 (W. D. Wash., 1946)).

(d) *The contract must not be an unreasonable restraint of trade.*—Another ground sometimes urged to deny specific enforcement of baseball contracts containing the reserve clause is that they are void and unenforcible either because they are unreasonable restraints of trade at common law or because they violate the Federal antitrust laws. Restraints on the free exercise of one's trade, ancillary to an employment contract, are unenforcible at common law if they impose unreasonable restraints on the employee. To restrain an employee from playing for another professional baseball club in violation of his contract or reserve clause, common law decisions indicate that a club would have to show that the restraint did not impose an undue hardship on the employee and was no wider in scope, both as to limits of time and space, than is reasonably necessary for the protection of the business of the employer.[40]

Witnesses representing organized baseball testified that the reserve clause was a perpetual option on the player's services and restrained the player from playing anywhere in the world, including Afghanistan. They resented, however, that this broad restraint was essential to the preservation of baseball as a successful business.

Only one court has faced this issue of whether the reserve clause is an unreasonable restraint of trade at common law. In the Chase case, supra, the court stated that the uniform players contract and the National Agreement resulted in—

a species of quasi-peonage unlawfully controlling and interfering with the personal freedom of the men employed * * *. "Organized baseball" * * * is in contravention of the common law in that it invades the right of labor as a property right; and in that it is a combination to restrain and control the exercize of a profession or calling.[41]

This court also held that the uniform players contract did not then contravene the Federal anti-trust laws, on the ground that organized baseball was not in interstate commerce.

The types of objections which can be raised to the judicial enforcement of the reserve clause are indicated in the above discussion. These objections obviously apply with substantially more force to the minor-league contract than to the major-league contract.

[39] 202 Pa. at p. 219.
[40] *Boy* v. *Holding*, 140 Me. 103, 34 A. 2d 479, 149 A. L. R. 630.
[41] 86 N. Y. Misc. 443, 461 (1914).

Before its revision in 1946, the major leagues used a form contract which was much like the present minor-league contract. At that time the threat of unionization of the players, the competition from the Mexican League, and the unusual degree of discontent among the players, brought the problem of revising the contract into sharp focus. Accordingly, the major-league owners appointed a steering committee to recommend changes which would improve the contract. In the draft report prepared by Larry MacPhail, the chairman, for submission to the steering committee, it was stated that the reserve clause then in effect was unenforceable. This draft report read in part:

In the well-considered opinion of counsel for both major leagues, the present reserve clause could not be enforced in an equity court in a suit for specific performance, nor as the basis for a restraining order to prevent a player from playing elsewhere, or to prevent outsiders from inducing a player to breach his contract.

The present option or reserve clause might be successfully attacked in the courts on the grounds that: (1) The terms of renewal are indefinite, in that (*a*) the amount of the salary does not appear on the face of the option and (*b*) no time is fixed for the club to exercise its right to fix the salaries; (2) the option and the circumstances under which it is obtained is inequitable, because a provision that the player shall accept a salary fixed by the club is an unreasonable restraint upon a player.

There are a number of actions now pending in the courts in which the legality of the option or reserve clause may be attacked. In the opinion of your committee the raids upon our players by interests outside professional baseball will probably continue. For both reasons we believe it is extremely urgent and desirable that the option clause of the present contract be strengthened, if possible to do so without concessions which unduly hamper and prejudice our present operations.[42]

Counsel for both major leagues emphatically denied that they had ever rendered any such opinions. They pointed out that they had recommended that this section of MacPhail's preliminary draft be deleted from the report of the steering committee. Mr. Carroll, counsel of the National League, made the following explanation of his position:

Mr. CARROLL. Mr. Fiery, I am sure, concurs with me that we did not give an opinion, and have never given an opinion, that the reserve clause could not be enforced in equity.

Of course, there are cases in which it has not been enforced in equity, in which the player contract has not been enforced in equity.

There are other cases, such as the Lajoie case, which is the only one that I know of, that has gone to the highest appellate court, where it has been enforced. That is one of the reasons why this section on legality was stricken from the report, because when we saw it on the evidence of these meetings, saw it for the first time, we realized that it had gone much further in characterizing our opinions than we had ever gone.

We had advised the committee, of course, that there were certain things they could do to strengthen the contract and the reserve clause.

Mr. GOLDSTEIN. Just to clarify, with reference to the Lajoie case, that was a case in which the contract was limited to three renewals, 3 years; is that not a correct statement of the facts of the case?

Mr. CARROLL. I believe that is so. I am not certain of that. It was the standard type of reserve clause that was in force at that time.[43]

The discussion of the legality of the reserve clause was not contained in the final report of the steering committee which was submitted to the major leagues on August 27, 1946. The report did contain, however, a number of recommendations for changes in the major-league contract, and urged their adoption for the purpose,

[42] Exhibit 32-A, hearings, p. 479.
[43] Hearings, p. 511.

among others, of removing objections to the validity of the reserve clause. The final report contained the following:

> If a uniform contract can be adopted which is in general satisfactory to both parties to the contract, and if the players' representatives agree (as they do) that the reserve clause is necessary for the protection of the industry and benefits the player—your counsel and your committee believe the courts will be inclined to recognize this fact and uphold the validity of the option clause. In other words, we believe the revised option clause would have a very good chance of meeting any court test of its legality.[44]

Practically all of the recommended revisions in the uniform players' contract were in fact adopted by the major leagues. No comparable changes were made in the minor-league contract. To the extent, therefore, that there was doubt in 1946 about the enforceability of the major-league reserve clause, that doubt still obtains with respect to the minor-league contract.

The changes in the major-league contract made in 1946 are sufficiently important to merit quotation of the following section of the steering committee's report which describes the recommended revisions:

> 1. REVISIONS IN UNIFORM PLAYERS' CONTRACT
>
> A. TERMINATION
>
> Revise the present clause covering contract termination to include specification of the causes which would give both clubs and players the right to terminate. In the event the club elects to terminate the contract on account of the failure of the player, in the opinion of club management, to exhibit sufficient skill or competitive ability to qualify or continue as a member of the club's team, provide that the player shall be entitled to receive 30 days' instead of 10 days' separation pay with transportation to his home.
>
> In the event a club desires to release a player unconditionally, establish a waiver price of $1 instead of $7,500, and provide that in the event the player is claimed on such waiver request he shall have the option either of accepting assignment to the claiming club or accepting his unconditional release.
>
> B. ASSIGNMENT
>
> Revise the present clauses permitting assignment of player's contract to provide that the payment stipulated in any contract so assigned shall not be diminished by any such assignment except for failure to report promptly, and that any player whose contract is assigned to another major- or minor-league club during the regular season be entitled to his reasonable and actual moving expenses, not to exceed in any contingency the sum of $500.
>
> C. DISABILITY
>
> Change the disability clause in the regulations so that disability will include accident or injury in the course of and within the scope of the player's employment, instead of disability only as a result of playing in the games. Provide that players disabled within the scope of their employment shall receive full salary for the season or during the period of their disability, whichever is shorter, and shall receive reasonable necessary hospitalization and medical services at the expense of the club.
>
> D. SUBMISSION OF CONTRACTS
>
> Provide that contracts shall be submitted to players on or before February 1 of each year (beginning in 1948 this would mean that contracts would be submitted at least 1 month prior to the beginning of the training season).
>
> E. SPRING TRAINING PERIOD AND EXPENSES
>
> Provide in the regulations for an allowance of $25 per week payable in advance, in addition to housing, meals, and transportation, to all major-league players, to cover all incidental expenses of the player during spring training. Provide for

[44] Exhibit 34, hearings, pp. 500-501.

> limitation of the period in which players are required to report for spring training to a period beginning not earlier than February 15 in 1947 and not earlier than March 1 in 1948 and subsequent years.
>
> F. PROMOTIONAL ACTIVITIES
>
> Add provisions to the uniform players' contract to require players to cooperate with clubs and participate in promotional activities including public meetings, radio broadcasting, and advertising, for the purpose of promoting the welfare of the club and/or professional baseball.
>
> Add a provision in which player agrees that his picture may be taken for publicity and advertising purposes of the club and a provision that during the playing season player will not make public appearances, participate in radio or television programs, or write or sponsor newspaper or magazine articles or commercial products without the club's consent.
>
> G. PHYSICAL CONDITION
>
> Add a provision to the contract in which the player agrees to keep himself in first-class physical condition and obey club training rules.
>
> H. BREACH OF CONTRACT
>
> Add a provision under which the player agrees that the club shall be entitled to injuctive relief to prevent breach of the contract by the player, including, among others, the right to enjoin the player from playing baseball for any other person or organization during the term of the contract.
>
> 2. REVISIONS IN MAJOR-LEAGUE RULES AFFECTING PLAYER-CLUB RELATIONSHIPS
>
> A. MINIMUM SALARY
>
> Amend the major league rules to provide for a minimum major league payment at the rate of $5,000 per year.
>
> B. BARNSTORMING
>
> Amend Major League Rule 18 (b) to permit players to engage in post-season exhibition games, with the written consent of the commissioner, for 30 days after the close of the major league championship season. Provide that player conduct on and off the field in connection with such post-season exhibition games shall be subject to the discipline of the commissioner and that the commissioner shall not approve participation in any such games of more than three players of any one club.
>
> C. PLAYER REPRESENTATION
>
> In connection with the proposed creation of a Major League Executive Council (and, if concurrence of the minors is secured, a Major-Minor League Executive Council), include provision for the representation of players (to be elected annually by the players of each major league and, in the case of the Major-Minor League Executive Council, to be elected annually by the players of each major league and the national association) for consideration of all matters which concern the standard form of player contract or its provisions and regulations, or other matters of club-player relationship.
>
> Provide further that at the third-quarter meeting of such executive council, all matters of player grievance, player relationships, and contractual matters affecting players should be considered by the council with representatives of the players.[45]

The report went on to discuss the possibility of a pension fund for major-league players. As has been stated above a pension plan was eventually adopted for major-league players but there is no pension plan for minor leaguers.

2. Validity of the reserve clause under the antitrust laws

There are no recent cases settling the many difficult questions involved in any analysis of the antitrust implications of the present

[45] Exhibit 34, hearings, pp. 501-502.

reserve clause. Moreover, there are a number of cases now pending in the courts in which these questions are, or soon will be, sub judice. It would be inappropriate for this subcommittee to influence pending litigation by expressing an opinion on the answers to these questions. It is, however, necessary to review these antitrust questions in order to determine whether there is sufficient doubt about the legality of the reserve clause to indicate that legislative protection is necessary to enable it to survive.

Briefly stated the antitrust questions are (*a*) whether organized baseball, or more particularly the reserve clause, is subject to the antitrust laws, and (*b*) if so, whether organized baseball, as it is presently conducted, is in violation of either section 1 or section 2 of the Sherman Act.

(*a*) *Applicability of the antitrust laws to organized baseball.*—In order to determine whether the antitrust laws apply to organized baseball, it is first necessary to consider whether or not there is a basis for Federal jurisdiction. The Sherman Act was enacted pursuant to Congress' power to regulate interstate commerce. It therefore does not apply to any business unless that business is either conducted in interstate commerce or substantially affects interstate commerce. In 1922 the United States Supreme Court held that organized baseball was not such a business.

In his opinion in the case of *Federal Baseball Club of Baltimore* v. *National League et al.*[46] Justice Holmes, speaking for a unanimous court, stated two grounds for the conclusion that baseball was not subject to the antitrust laws. First, he ruled that the business of giving exhibitions of baseball was purely a local matter. And second, even though the exhibitions were made for money, he felt that they should not be regarded as "trade" or "commerce" within the meaning of the Sherman Act. The heart of this decision is contained in the following paragraph:

> The business is giving exhibitions of baseball, which are purely State affairs. It is true that, in order to attain for these exhibitions the great popularity that they have achieved, competitions must be arranged between clubs from different cities and States. But the fact that in order to give the exhibitions the Leagues must induce free persons to cross State lines and must arrange and pay for their doing so is not enough to change the character of the business. According to the distinction insisted upon in *Hooper* v. *California* (155 U. S. 648, 655), the transport is a mere incident, not the essential thing. That to which it is incident, the exhibition, although made for money would not be called trade or commerce in the commonly accepted use of those words. As it is put by the defendants, personal effort, not related to production, is not a subject of commerce. That which in its consummation is not commerce does not become commerce among the States because the transportation that we have mentioned takes place. To repeat the illustrations given by the Court below, a firm of lawyers sending out a member to argue a case, or the Chautauqua lecture bureau sending out lecturers, does not engage in such commerce because the lawyer or lecturer goes to another State.

It is interesting to note that even in this decision baseball was referred to as a "business." There is no issue as to whether baseball is a sport or a business. Obviously, it is both. Having determined that it is a business, however, it is still necessary to decide whether it is an interstate business, and in addition, whether it is the type of business which should be considered "trade" or "commerce" as those terms are used in the Sherman Act.

[46] 259 U. S. 200 (1922).

The Supreme Court's decision in the Federal League case has not been over-ruled. Nevertheless, as the various opinions in the recent case of *Gardella* v. *Chandler*[47] demonstrate, it may be seriously doubted whether baseball should now be regarded as exempt from the antitrust laws. Since 1922 there have been important changes both in the operations of organized baseball and also in the Supreme Court's interpretation of the scope of statutes enacted pursuant to Congress' constitutional power to regulate interstate commerce.

Only in recent years has it been possible for millions of baseball fans to watch baseball being played through the medium of television. This fact together with the development of radio broadcasting, which has largely taken place since the decision in the Federal League case, affords the principal ground for contending that baseball now has an interstate character which it did not have in 1922. Each of the three judges who participated in the decision of the Gardella case expressed a different opinion of the significance of this fact.

Judge Chase noted that even in 1922 telegraphic reports of baseball games were transmitted across State lines. He felt that the difference between such transmissions and television was a difference of no legal significance. He stated:

> This record is with the possible exception of the allegations as to the sale of broadcasting rights for radio and television, not different in any essential from that before the Supreme Court in *Federal Base Ball Club* v. *National League* (259 U. S. 200, 42 S. Ct. 465, 66 L. Ed. 898, 26 A. L. R. 357) in which it was held that major league ball clubs were not engaged in interstate trade or commerce within the scope of the antitrust laws. Even the possible exception just mentioned exists only if the sale of these radio and television broadcasts rights differs in some material way from the sale of the exclusive right to send "play-by-play" descriptions of the games interstate over telegraph wires, for that feature was present in the previous case before the Supreme Court. In each instance by what is called the sale of rights the appellees made it possible for others to transmit information interstate. The playing of baseball games then created the subject-matter concerning which information was sent by symbols carried by telegraph wires and translated into words just as such play now creates the subject-matter concerning which information is sent through the air by impulses which are transformed either into words or pictures. So far as I can perceive, the difference in the method of transmission is without significance.[48]

Judge Learned Hand viewed the differences between the telegraphing at the time of the Federal League case and present-day radio and television as a difference "so great as for practical purposes to make a difference in kind." He felt, however, that it would be necessary for the plaintiff at the trial to prove that—

> the interstate activities of the defendants—those, which were thought insufficient before, in conjunction with broadcasting and television—together form a large enough part of the business to impress upon it an interstate character.

He reasoned as follows:

> The contracts with the companies are mutual arrangements in which each contributes its share to a common venture; the defendants furnish the spectacle and give the companies leave to enter and set up their apparatus on the grounds, by means of which they transform for transmission the air and light waves, which come from the playing grounds and the players, or from the narrator who reports the game, and the transformed waves they send abroad either in a form for direct reception or otherwise. This interposition is of course necessary when the auditory is at a distance; but for our purposes the result seems no different from direct transmission; and the situation appears to me the same as that which would exist at a "ball park" where a State line ran between the diamond and the grand-

[47] 172 F. 2d 402 (C. A. 2, 1949).
[48] 172 F. 2d at p. 404.

stand. Nor can the arrangements between the defendants and the companies be set down as merely incidents of the business, as were the interstate features in *Federal Baseball Club* v. *National League*, supra. On the contrary, they are part of the business itself, for that consists in giving public entertainments; the players are the actors, the radio listeners and the television spectators are the audiences; together they form as indivisible a unit as to actors and spectators in a theater. I am therefore in accord with my brother Frank that the defendants are pro tanto engaged in interstate commerce.

On the other hand, I cannot go along with his opinion, if I understand it, that these features of the business, no matter how insignificant they may prove, necessarily subject it as a whole to the Antitrust Acts. The plaintiff is asking damages for excluding him from his calling; and to succeed he must show that the defendants' conduct, by which he was injured, was itself subject to the law that he invokes. I do not mean that he must show that he was injured by the broadcasting and television; but he must show that those activities together with any other interstate activities mark the business as a whole.[49]

Judge Frank agreed with Judge Hand that the advent of radio and television served to distinguish the Gardella case from the Federal League case. He did not, however, feel that there was any need for plaintiff to prove that the defendants' interstate activities represented a substantial proportion of their total activities.[50]

Another important development since 1922 is the extensive growth of farm systems. Now each major league baseball club exercises control, by means of either stock ownership or contract, over the activities of several minor league clubs located in various States. There may be no legal difference between the geographic dispersal of farm clubs which exists today, and the geographic distribution of the major league clubs at the time of the Federal League decision. If, however, the extensive farm systems do not afford a sufficient ground for distinguishing the Federal League case, they nevertheless serve to point up the question whether the Supreme Court might now be inclined to overrule that case. On this point there is also a divergence of opinion among the judges who decided the Gardella case.

Judge Frank regards the Federal League case as an "impotent zombi." It is his view that the Supreme Court "has overruled the precedents upon which that decision was based," and further that—

> the concept of commerce has changed enough in the last two decades so that if that case were before the Supreme Court de novo, it seems very likely that the Court would decide the other way.[51]

Judge Chase expressed a contrary point of view. He stated that the Federal League case—

> has never been expressly overruled, and I do not think it has been overruled by necessary implications * * *.[52]

There is no need to review here the authorities discussed by these jurists. It is sufficient to state that their disagreement discloses a substantial possibility that the Federal League case would no longer be regarded by the Supreme Court as controlling.

Even assuming, however, that organized baseball should be regarded as an interstate business, it is still necessary to determine whether the statute applies specifically to the reserve clause. Section 6 of the Clayton Act provides that—

> the labor of a human being is not a commodity or article of commerce.[53]

[49] Id., pp. 407–408.
[50] Id. at p. 415.
[51] Id. at p. 403.
[52] Id. at p. 406.
[53] 38 Stat. 730.

It can be argued that the reserve clause is a device by means of which club owners obtain control of, and regulate, the labor of various human beings; that the whole controversy over the reserve clause and its many ramifications is basically a problem of labor-management relations and therefore that it is not covered by the Sherman Act. Judge Chase expressed this point of view as follows:

> The Supreme Court has never, so far as I know, applied the Sherman Act in any case unless it was of the opinion that there was some form of restraint upon commercial competition in the marketing of goods and services in interstate commerce which was within the category of restraints which were illegal at common law, though expressions may be found in opinions which seem to make adherence to this concept somewhat elastic.
>
> * * * * * * *
>
> Whatever the activity and how it may be conducted, it is not within the prohibition of the antitrust laws unless in some substantial way the prices of goods in interstate commerce are controlled to the detriment of the purchaser or consumer.
>
> The complaint in this case shoots wide of that mark. The wrong alleged as the end result of the monopoly, or conspiracy to create a monopoly, in restraint of trade or commerce is the deprivation of the appellant of the opportunity to play baseball as a means of earning his livelihood. His services, or ability to work, are not subjects of trade or commerce within the antitrust acts. Indeed, in section 6 of the Clayton Act (15 U. S. C. sec. 17), it is stated that, "The labor of a human being is not a commodity or article of commerce." Although this, to be sure, was inserted for a purpose not here germane it shows nevertheless that Congress did not intend in the antitrust acts to cover restraints upon employment. Moreover, Congress has expressly dealt with that subject in other statutes like the National Labor Relations Act (29 U. S. C. A. sec. 151 et seq.) and the Fair Labor Standards Act (29 U. S. C. A. sec. 201 et seq.).

On the other side of this issue it is to be noted that the purpose of the exemption in section 6 of the Clayton Act was to encourage the development of labor organizations, that the reserve clause certainly does not facilitate trade-unionism, and that in recent years the act has been held applicable in situations where the commerce involved was essentially the labor of human beings.[54] Judge Frank expressed the opinion that even though the playing of baseball involved personal services, that nevertheless services should be regarded as "trade or commerces, as those words are used in the Sherman Act." He cited late Supreme Court cases concerning medical services and motion pictures to support his point of view.[55]

Judge Hand made the following terse comment on this issue:

> Be that as it may, whatever other conduct the Acts may forbid, they certainly forbid all restraints of trade which were unlawful at common-law, and one of the oldest and best established of these is a contract which unreasonably forbids any one to practice his calling.[56]

(*b*) *Is baseball violating the antitrust laws?*—The two provisions of the antitrust laws which are directly involved are sections 1 and 2 of the Sherman Act. The operations of baseball raise questions under both of these sections.

The question whether organized baseball is violating section 1 of the Sherman Act can be broken down into three parts:

(1) Is a contract which gives an employer permanent and exclusive control over his employees itself an unreasonable restraint of trade?

[54] See *U. S.* v. *National Association of Real Estate Boards*, 339 U. S. 485; *American Medical Association* v. *U. S.*, 317 U. S. 519.
[55] *Gardella* v. *Chandler*, 172 F (2d) at p. 412.
[56] Id. p. 408.

(2) Are the agreements among the various clubs to respect each other's contracts and reservations illegal agreements among competitors?

(3) Is the system of extra-judicial sanctions which baseball applies against not only clubs but also players who violate their reservations illegal?

Although the Sherman Act applied to "every contract" as well as to conspiracies in restraint of trade, it would seem unlikely that it would be held applicable to the reserve clause if nothing more than a contract between the employer and employee were involved. Since the baseball contract is merely a part of a much more comprehensive system of regulating the relations between the clubs and their players, there is little point in dwelling on the first of the three questions noted above. The second question is largely a problem of determining the reasonableness of rules such as the so-called tampering rule, adopted by baseball to protect the reserve clause. An application of the rule of reason to baseball requires a thorough examination of the industry. As Justice Brandeis stated the issue:

> * * * the legality of an agreement or regulation cannot be determined by so simple a test, as whether it restrains competition. Every agreement concerning trade, every regulation of trade, restrains. To bind, to restrain, is of their very essence. The true test of legality is whether the restraint imposed is such as merely regulates, and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition. To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, are all relevant facts.[37]

The problem of determining the reasonableness of the tampering rule probably cannot be adequately answered without studying its history, purpose, and effect. In other words, a consideration of the entire subject-matter of this report might well be necessary to determine the legality of a rule such as the tampering rule. It would be hard to predict with assurance the conclusions which different judges might reach as a result of such a study.

With respect to the sanctions which are imposed against a player who violates his reservation, an additional issue is involved. Besides determining whether the sanctions are reasonable or unreasonable, there is the problem of whether the rule of reason applies at all. The sanction of declaring a player ineligible to participate on any team in organized baseball might well be regarded as a boycott. There are cases under section 1 of the Sherman Act which suggest that the concerted action of a group of competitors in refusing to deal with a particular person may be illegal per se, that is to say, a boycott may be unlawful regardless of its economic justification. (See e. g. *Fashion Originators' Guild of America* v. *Federal Trade Commission*, 312 U. S. 457 (1941); *Eastern States Retail Lumber Dealer's* v. *United States*, 234, U. S. 600 (1914).) Thus it is possible to argue that even if it would be legal for baseball to enforce the reserve clause and the tampering rule by means of sanctions, applicable only to clubs, it is nevertheless a violation of section 1 to blacklist a player who breaches his contract and agrees to play for a team completely outside of organized baseball. The subcommittee is not now concerned with the validity of such an

[37] *Board of Trade of the City of Chicago* v. *United States*, 246 U. S. 231, 238 (1917).

argument but merely points to its availability to indicate the danger that a rule such as rule 15 (a) designed to enforce the reserve clause might be held illegal under the antitrust laws.

It is not unreasonable to regard organized baseball as a monopoly. It has been so described by important officials of the game. For example, Larry MacPhail's draft of a report to be submitted by the so-called steering committee to the major league owners in August of 1946 contained the following language:

> * * * we are in business with 7 (and sometimes 15) active partners. This partnership, and the agreement among the partners to cooperate in the business of baseball, constitutes a monopoly. Our counsel do not believe we are an illegal monopoly (because our partnership arrangement and cooperative agreements are necessary in the promotion of fair competition and are therefore for the best interests of the public) but we are a combination, and as such the policies and rules and regulations adopted control every one of us in the operation of our individual businesses.[38]

The fact that baseball may be called a monopoly, however, does not necessarily mean that it is violating section 2 of the Sherman Act. That section does not prohibit monopoly per se.

The question is whether baseball is an illegal monopoly. If the reserve clause is merely used for the purpose of promoting competition among the various clubs in organized baseball and is necessary for the successful operation of the game, it would seem unlikely that its use would be regarded as an abuse of monopoly power. To the extent, however, that the reserve clause has been used as a war measure to stifle competition from leagues completely outside of organized baseball it might well be contended that it was being used by baseball to monopolize a part of interstate commerce in violation of section 2.

In addition, the opinion was expressed at the hearings that the unrestricted growth of the farm systems had enabled major league clubs to monopolize the player talent in America.

The subcommittee need not resolve any of these issues of legality. It is important, however, to stress the fact that if the legal issues are determined adversely to baseball, the courts must enforce the law even though they may believe that organized baseball cannot exist without the reserve clause, and that millions of Americans would lose a desirable form of diversion if it is held illegal. Judge Frank stated this point concisely in his opinion in the *Gardella* case. He said:

> Defendants suggest that "organized baseball," which supplies millions of Americans with desirable diversion, will be unable to exist without the "reserve clause." Whether that is true, no court can predict. In any event, the answer is that the public's pleasure does not authorize the courts to condone illegality, and that no court should strive ingeniously to legalize a private (even if benevolent) dictatorship.[39]

VIII. Safeguards to the Reserve Rule

A. Desirability of Safeguards

The reserve rule, if carried to its logical extreme, would transform all players into baseball serfs of the club first signing them. Major-Minor League Rule 3 (a) prescribes that all players must sign a uniform contract. Under the uniform contracts used in the minor leagues and in the major leagues until 1947, the contracting club or

[38] Hearing, p. 474.
[39] *Gardella* v. *Chandler*, 172 F. 2d, 402, 415 (1949).

its assignee, has the sole right to renew the contract. When he signs, the player gives prior consent to any assignment of his contract. And because he is not free to offer his services to the highest bidder, he must accept the salary offered him or retire from organized baseball.[40]

If there were no safeguards in either the contract or the rules to protect the players, such mandatory consent to both reservation and the future assignment of his services would make him be forever subject to the almost unlimited direction of his employer. If his first employer were a class D club, the player theoretically could be forced to stay with that club for the rest of his playing days at a salary just high enough to keep him from leaving the profession. If the class D employer were unwilling to assign his contract to a league of higher classification, the player could be prevented from advancing in his profession, even if a major league club considered him to be of major league caliber. Conversely, a major league club, with impunity, could assign one of its players to any club within organized baseball, even if that club were the poorest-paying club in the class D leagues.

If the rules of organized baseball and the player's contract are to be equitable to the player, it is clear that safeguards to the reserve rule are necessary for the benefit of the player.

Opponents to the reserve rule frequently cited its potential abuses as one of their reasons for opposition.[41] Witnesses who believed that professional baseball could not survive without the reserve rule unanimously agreed that safeguards were both necessary and desirable if the reserve rule is to be given the stamp of approval by the law. They disagreed only as to the adequacy of the present safeguards.

The testimony of Mr. Leslie O'Connor is especially pertinent to the question of the desirability of safeguards to the reserve rule. He also explained the type of safeguards he considered essential.

Mr. O'Connor. * * * [If the reserve rule] were properly safeguarded and the player were protected as completely as possible against any abuse of it, I would see no objection to it.

* * * * * * *

Now, the safeguards that I think are essential are, first, the situation should be created as to all rules, because all the rules are part of the contract, and it's the renewal of that contract we are talking about—the situation should be such that under all of the rules the player is retained in the highest service for which he is capable at all times. In other words, if he is capable of major league service, he should be in major league service. If he is capable of class AAA service, he should be in class AAA service, with the player at all times having the right to improve himself and advance higher.

Mr. Keating. Well, we had a case yesterday of a fellow who was in the minor leagues and he was getting $8,000 a year, and they offered him a contract to come back to the major league, which controlled the minor league club, at $6,000 a year. In other words, when you say he should have any opportunity to serve in the highest echelon * * * that he is capable of, you mean, I assume, at a salary at least equal to what he got the year before?

Mr. O'Connor. I assume more than that. I assume that the higher the classification, the higher his salary would be. That is what it should be, normally.

The Chairman. Who would determine what you spoke of as his right to perform the highest echelon at all times? Who would determine that, the player himself, the club only, or both, or would you have some forum wherein the player or the club could correct the controversy by way of arbitration or otherwise?

[40] The uniform contract of the major leagues is the same except that the salary may not be less than $5,000 and may not be reduced in any year by more than 25 percent.

[41] Hearing, p. 913.

Mr. O'Connor. It necessarily couldn't be determined by the player himself, and neither ought it to be determined by the club itself.

Now, baseball has had for many years a rule which is directed exactly to that purpose of determining whether or not the player is of that caliber. I am speaking now of the waiver rule.

If you have a satisfactory waiver rule, you there have the judgment of all the other clubs of your league or of your classification that the player does not measure up to the requirements of that classification as expressed in the terms of a fair sum as the value of his contract. In other words, in the major leagues you have major league waivers.

If the St. Louis American League Club, for example, decides that a player is not worthy of major league retention, they will ask waivers from the other 15 clubs. They must ask them before they can send them to the minor league clubs. And the judgment of the other 15 clubs—I am assuming, of course, an honest, uninfluenced judgment—will determine as best as is humanly possible whether or not that player at that particular time is capable of major league ball.

* * * * * * *

The Chairman. Well, baseball is tinged with some elements of business. Business is tinged with some elements of profit. The profit motive is important. Could we therefore reasonably expect in almost all the cases, a reasonable number of cases, that selfishness would not prevail, and personal interest on the part of the club owners would not prevail, above the general interest here, so that the player would not get a fair deal?

Mr. O'Connor. The selfishness of the clubs would prevail, and that is a big asset. There are 15 other selfish clubs that are anxious to get ballplayers, and they would seize upon the opportunity to get them. The selfishness there works out for the benefit of the player, to keep him up higher.

* * * * * * *

The first thing that I think would improve the reserve clause, as I say, is to have rules which would keep the player in the highest service in which he is able to play. The second necessity, as I see it, is that no club should be allowed to control more players than are actually needed by that club. The major leagues in their rules set forth that 40 players are the total that a major league club may control through contract or otherwise. There is no major league club which does not control several hundred ballplayers.[42]

Both the uniform players contract and the rules of organized baseball are prescribed by the club owners themselves. As intimated above by Mr. O'Connor, safeguards for the player may also be in the self-interest of the owners themselves. It is not surprising, therefore, that almost without exception safeguards to the reserve rule have been adopted not primarily with the players' welfare in mind but in order to maintain an open supply of players for the collective benefit of all clubs. These provisions have tended to prevent the holding down or the monopolization of player talent and thus have worked indirectly to the benefit of the players themselves. Safeguards of this nature include the player draft, the waiver rules, player limits, and the no-farming rule.

Safeguards not in the direct interest of the clubs themselves have seldom progressed beyond the stage of speculation. These include salary arbitration, minimum salaries, consent to assignment, and the opportunity to enter contracts without the reserve clause. Occasionally, the players themselves have taken the initiative in establishing safeguards to the reserve rule through collective bargaining.

[42] Hearings, pp. 632-640.

B. LIMITATIONS ON THE RESERVE RULE WHICH BENEFIT BOTH PLAYERS AND CLUBS

1. The player draft

Ford C. Frick, present commissioner of baseball, testified that the draft originated in 1901:

> With the avowed purpose of protecting the players' interests while at the same time providing an instrument for the movement of players between major and minor leagues, two far-reaching rules were established. First was the selection or draft rule.[61] This rule, instituted voluntarily by the clubs and the leagues themselves, provides the right of a club of a higher classification to select at the end of the season, the contract of a player in a lower classification and to move that player to as high a classification as his abilities would permit.

Mr. Frick's statement of the effect of the draft rule is correct. As to the time and purpose of the rule, he appears to be in error.

The first draft rule was incorporated into the national agreement, March 1, 1892, as a compromise between the major and minor leagues. The National League refused to extend the privilege of reserving players to the minor leagues unless it could force the sale of minor league player contracts at the end of each year. Consequently, the minors were divided into two classes—A and B. Between October 1 and February 1, clubs in the major and class A leagues had the right to draft an unlimited number of players from class B clubs for $500 apiece. Major league clubs also could draft an unlimited number of players from class A clubs at $1,000 (New York Times, March 2, 1892, p. 6: 1892 National Agreement, arts. 5-6, appendix, pp. 1400–1401).

The player draft has remained a fundamental principle of "baseball law" for 60 years, but not without material changes which have ameliorated the players' chances for advancement.

Prior to 1892, minor league players generally were not bound by the reserve rule. Therefore, they were free to leave their clubs and seek better employment at the end of each season. The unrestricted draft of 1892 did not foreclose the advancement of players. It merely foreclosed their freedom to contract. Any club of higher classification desiring a player of a lower classification could draft that player for a nominal sum.

Continuous minor league opposition to the player draft has resulted through the years in the creation of numerous exceptions to the original rule.

The first such exception came with the drafting of a new national agreement in 1903. By this time, the minor leagues were divided into four classifications—A through D. The major leagues could draft players from these leagues for the following amounts:

Class A	$750	Class C	$300
Class B	500	Class D	200

The one exception to the universal draft was created in favor of the top minor leagues. No more than two players could be selected from any class A club in any one year.

Since 1903, the draft prices have been steadily increased and so have the exemptions. On January 11, 1906, the National Commission reduced from two to one the number of players the majors could draft from any one class A club (decision 188, January 11, 1906).

[61] The other rule, Mr. Frick asserted, was the waiver rule.

In January 1919, the minor leagues withdrew from the national agreement. Temporarily, therefore, all players were exempt from the draft. Two years later, the national association and the major leagues entered into a new pact, the major-minor league agreement. The draft system was optional for all minor leagues. Leagues which consented to the draft were subject to the same rules as previously in force: The draft was unrestricted for class B, C, and D leagues, restricted to one player from any club in class A or AA leagues.

Five leagues chose to exempt themselves from the draft provisions in the 1921 Major-Minor Agreement. These included the American Association, the International League, the Pacific Coast League (all class AA), the Western League (class A), and the Three-I League (Class B). Although these leagues could not draft players from lower classifications, they considered it to be to their advantage to acquire and lose players by purchase only. Such draft exemption harmed both the players and the major leagues. The players of lower classification had fewer channels for advancement, and players in the exempt leagues could advance only if their employers were willing to sell their contracts. Moreover, the major leagues were forced to pay huge sums if they wanted desirable players from these draft-exempt leagues.

Many clubs in the draft-exempt leagues reaped fantastic profits from their isolated position. The most notable example was the Baltimore Orioles of the International League. The Orioles assembled a team in the early twenties which would have fared well in either major league. From 1919 to 1925, they won seven consecutive International League pennants. Attendance averaged 250,000 a year. The wealthier major league clubs bid high for the Baltimore players, many of whom were of recognized major league ability. Pitcher Robert Grove, who won 108 games in five seasons for the Orioles, was sold to the Athletics for $100,600. Pitcher Jack Bentley netted $72,500 from the Giants; Pitcher George Earnshaw, $70,000 from the Athletics; Shortstop Joe Boley, $65,000, also from the Athletics. Total sales by the Orioles during the twenties were estimated at close to $1,000,000. Many players, ultimately sold, were ready for a trial in the major leagues from 3 to 5 years before they received the opportunity. Others not sold never did get the chance.[64]

In 1930, the major leagues threatened to sever all relations with the draft-exempt leagues unless they accepted the universal draft.[65] The result was another compromise between the majors and minors, mutually satisfactory to both parties, perhaps, but another retreat from the principle of the draft insofar as the players were concerned.

Under the new arrangement, minor league players were not eligible for the draft until they had played a stipulated number of years in organized baseball—from 2 years in the class D leagues to 4 years in the highest minor leagues.[66]

The latest impediment to the advancement of players by the draft was created in 1951 with the establishment of a new "open" classification for the Pacific Coast League. Players in leagues of this classification may not be selected until they have completed 5 years' service.

[64] John H. Lancaster, Baltimore, A Pioneer in Organized Baseball, Maryland Historical Magazine (1946) pp. 50–54.
[65] New York Times, July 10, 1930, p. 20.
[66] Major-Minor League Rule 5 (g) appendix, hearings, p. 1168.

Increased draft prices, though benefitting the minor leagues, have also reduced the efficacy of the draft system to promote players. This can best be demonstrated by a comparison of the major league draft prices of 1951 with those of 1927 and 1903.

Classification	1903	1927	1951
Open			$15,000
AAA			10,000
AA		$5,000	7,500
A	$750	4,000	6,000
B	500	2,500	4,000
C	300	1,500	2,500
D	200	1,000	2,000

Draft prices within the minor leagues have increased correspondingly. The present range is from $6,500 for the selection of a player by class AAA from AA to $700 for the selection of a player by class C from class D.[67] In 1903, class A (then the highest minor league classification) could select from class B for $300; and class C from class D for $100 (National Association Agreement (1903), art. 12, sec. 1).

George Trautman, president of the national association, testified that under existing rules almost 50 percent of all minor league players were subject to selection in 1950.[68] This estimate appears to be illusory. As many as 30 players on a club in the higher minors may be "subject to selection," but once one player has been selected, the remainder are no longer eligible to be drafted. Article VI, section 3 of the Major-Minor League Agreement says:

> One player's contract may be selected each year from each class AAA club; class AA club, * * * and class A club; and a class AA, * * * or a class A club from which a player's contract has been selected by a major league club shall not be subject to further selection by minor league clubs of higher classification.[69]

Thus, only 70 out of approximately 2,000 players in the higher minor leagues are in fact eligible to be drafted each year.[70]

In the lower minors, only players with two or more seasons of service are eligible for selection.

The draft need work no harm on minor league clubs even if they have players worth several times the draft price. The selection period is limited to a few days each autumn. This enables clubs to sell their eligible draftees to clubs of higher classification. This point was explained by Congressman Herlong, former president of the class D Florida State League:

> If a ballplayer is good enough to be drafted, some club is going to go in and offer a little more money than the draft price for him * * *. They can pay what they want to for a player above the draft price. For instance, if the New York Yankees wanted to draft a fellow from our league, they had better buy him, because if he is good enough for the Yankees, the St. Louis Browns could draft him and they would get him because they are lower in the league standings.[71]

[67] National Association Agreement, 27.06 (k), appendix, hearings, pp. 1228-1231.
[68] Hearing, p. 191.
[69] Appendix, hearings, p. 1254, p. 1257.
[70] Major-minor League Rule 5 (g) also provides that "Any club may designate one or more players who shall be subject to unrestricted selection. Prior selection of any player on such unrestricted list shall not preclude the selection of any one player as provided in the Major-Minor League Agreement." It may safely be presumed, however, that no minor league club will put players on the unrestricted list whose ability warrants advancement.
[71] Hearings, pp. 455-456.

The pressure created by the draft to sell players before the selection date gives rise to bitter complaints from the Pacific Coast League. Aspiring to eventual major league status, the Pacific Coast League recognizes that it is unable to build up teams of top caliber so long as even one player is eligible for selection by the American or National Leagues. Clubs in that league face two alternatives, neither one compatible with their eventual ambition. They must either take their chances of forfeiting a player worth several times the selection price or else sell the contracts of all their players worth more than the selection price before the draft period arrives.

No witnesses appearing before the subcommittee contested the principle of the draft as a necessary instrument to promote the advancement of players. Some, however, felt strongly that the present draft rules are so restrictive that the safeguard for the players is virtually non-existent. They urged that return to the universal draft would have no harmful effects. Illustrative of this view is the following colloquy between Congressman McCulloch and Mr. Leslie M. O'Connor, a veteran of over 30 years with organized baseball:

> Mr. McCulloch. Mr. O'Connor, would not some of the objections which you have mentioned against the farm system be destroyed if the draft rule were changed?
>
> Mr. O'Connor. If you had a universal draft that applied to every ballplayer on the ball club at a reasonable figure, certainly that would destroy any incentive whatsoever to have a farm system merely for the purpose of avoiding rules and controlling players.
>
> Mr. McCulloch. Do you think if that draft rule would be changed as you have described it, it would result in the destruction of minor league teams from time to time?
>
> Mr. O'Connor. Not if every club were strictly held to the number of players that they need. In other words, if a major league club could not under any conditions control more than 40 players, a class triple-A club, for instance, would have full access to all of the players down below it, with no ability of a major league club to prevent them from getting them. I do not think it would hurt the class triple-A clubs in the least.[72]

The frequent modifications attached to the principle of universal draft have substantially reduced its effectiveness as a method of assuring rapid advancement of players in their profession. This is highlighted by a comparison of the number of players drafted by major league clubs prior to World War I with the 1920's and today:

	Drafted	Draft prices		Drafted	Draft prices
Year—			Year—		
1907	117	$131,475	1924	24	$76,500
1912	68	103,500	1948	21	200,000
1913	88	117,358	1949	21	192,500
1922	21	36,500	1950	28	209,500
1923	16	40,000	1951	18	169,000

Source: Reach, Spalding, and Spink baseball guides; Sporting News, Dec. 12, 1951, p. 7.

As this table indicates, from three to five times as many minor-league players obtained a chance for advancement through the draft prior to World War I. Today, no more players are being drafted than in the early twenties, when five of the largest minor leagues were immune from major league selection.

Each club in the higher minor leagues may lose no more than one player each year. Major league clubs owning minor league farms are

[72] Hearings, p. 647

able to turn this restriction to their further advantage by packing all of their draft-eligible players upon one minor league roster. If the farm operator left his players on the minor league clubs with which they played during the season, he might lose from five to seven during the selection period. But by placing major league prospects on one roster, is able to keep all but one of his draftable farm hands in the minor leagures for another year.

An example of this player shuffle to minimize draft losses is the Brooklyn Dodgers in 1951. Prior to the selection period, the Dodgers transferred 13 eligible draftees from St. Paul, Elmira, Hollywood, Mobile, Fort Worth, and Pueblo to their Montreal Club in the International League. Of the 37 players on the Montreal roster after these transfers, 30 were eligible for advancement to the major leagues. On the roster were 20 pitchers, 16 of whom had winning records during the 1951 season.[73] The first minor-league player to be selected by the major leagues was George Schmees, a Montreal outfielder hitting .328, who was drafted by the St. Louis Browns. That selection closed the door for all other Montreal players. Unless Brooklyn was willing to sell their contracts or to use them on the Dodgers, they had missed their chances of going to the major leagues for another year.

The major leagues forced the universal draft upon the minor leagues as a condition precedent to granting the minors the right of reservation. Any player in organized baseball was thus assured that if any major league club wanted his services the succeeding year, that club could get him. As the concept of reservation changed from a right growing out of contract among clubs and leagues to an inalienable property right, the minor leagues have demanded and obtained a series of restrictions on the draft rule which materially limit its value as a safeguard to the players. The major leagues, too, have contributed to the near elimination of the draft as a method of assuring player advancement. By owning several minor league clubs, major league clubs are able to manipulate several hundred minor league players, so that they lose only one by the draft each year. Sixty years ago the draft was considered an essential limitation if the reserve rule was to be extended to the minor leagues. Today, the draft is so riddled with loopholes that it is doubtful whether it serves as an adequate substitute for free competition to assure the advancement of players with ability.

2. The waiver rule

The waiver rule, like the draft rule, is designed to enable players to be in the highest classification and salary bracket for which they are qualified. Like the draft rule, it permits the self-interest of the club owners to determine the level at which a player will be employed. Under the universal draft, a player could advance to a better club desiring his services, even if his former employer objected. Under the waiver rule, the player is assured that he will not be sent to a poorer club unless no club of the higher classification desires his services. As explained by Ford C. Frick—

> So long as any one of 16 major league clubs feels that a player has major league ability that player cannot be sent outright to the minors. The same waiver rule also appears in the National Association Agreement and grants to minor league players the same privilege and the same right which is granted under the major league rules.[74]

[73] Montreal roster prior to the selection period is reprinted in appendix, p. 1639.
[74] Hearings, p. 39.

The waiver rules applicable to the major leagues are contained in Major League Rule 10:

> (a) No assignment of a player shall be made by a major league club after June 15 to the close of the championship season to another club of the same league, or at any time to a club of the other major league, except after all clubs of proposed assignor's league shall have had an opportunity to take an assignment of such contract at the waiver price. * * *
>
> (b) Before a club may assign a player's contract to a minor league club, each major league club must be given an opportunity to take an assignment of such contract; and only when no such club accepts the assignment may the assignment to the minor league club be consummated.[75]

Optional assignments of player contracts to the minor leagues are excepted from the waiver rule (Major League Rule 10 (c)). If waivers are requested and another club claims the player's contract, the first club is entitled to withdraw its request for waivers unless it has withdrawn waivers for that player twice previously in the same calendar year (Major League Rule 10 (i)). The usual waiver price is $10,000 (Major League Rule 10 (k)). If a major league desires to release a player unconditionally, other major league clubs may claim that player for $1, provided the player consents to the transfer (Major League Rule 8). Whenever more than one club claims a player on waivers, priority is given first to the clubs in the same league and then to clubs in reverse order of their standing in the pennant race (Major League Rule 10 (h)).

The waiver rules in the minor leagues are of very limited application. Waivers generally are not required for the release or assignment of players in class B, C, and D leagues. In the higher minors, waivers must be obtained only from clubs in the league of the assignor or releasing club.[76]

Judge Landis, early in his 24-year tenure as commissioner of baseball, inserted the following footnote to the waiver rules, which has since been incorporated into the major league rules as rule 10 (f):

> The waiver rules are for the benefit of the players, as well as the clubs. No club, therefore, should solicit another club, directly or indirectly, not to claim a player on waivers, or to withdraw a claim that has been made. Penalties will be imposed by the commissioner for so doing, or for acceding to such solicitation.[77]

As this statement would indicate, the waiver rules were adopted by the clubs in their own self-interest. The purpose behind the adoption of the waiver rules was to keep clubs from sending players to lower or competing leagues without permitting rival clubs to employ such players. Leagues felt it was in their interest to retain a player in that league if any member club desired him.

The development of the waiver rules is closely associated with the development of the assignability of player contracts. Originally, major league clubs could reserve a player for succeeding seasons but they could not transfer him to another club. Because personal service contracts were not assignable at law, the only mechanism to transfer a player was for the assignor club to "release" the player and the assignee club to sign him to a new contract. Such a procedure was quite hazardous, however, because there was nothing to keep the player from ignoring a gentleman's agreement and signing with a third club.

The first National Agreement of 1883 provided that on the release

[75] Appendix, hearings, p. 1125 at p. 1136.
[76] National Association Agreement, sec. 23.01, 23.02 (a), 23.02 (b), appendix, hearings, p. 1128, et seq.
[77] Appendix hearings, p. 1125, et seq.

of a player from reservation, any club a party to the agreement could sign such player after a 20-day waiting period.[78] Subsequently, this period was cut to 10 days. This waiting period was intended to give all clubs an equal opportunity to compete for the released player's services. That was exactly what some releasing clubs did not want. In 1885, Manager Charles Hackett of the Cleveland National League club agreed to transfer his best players to the Brooklyn Club in the American Association when the Cleveland Club resigned its membership from the National League. To accomplish this, he hid seven Cleveland players in a small town on the Canadian border to keep them free from temptation during the 10-day waiting period. When the eleventh day arrived, he signed them to Brooklyn contracts and brought them out of hiding. This action angered other National League clubs about as much as earlier action by John B. Day had angered the American Association. In 1884, Day, who owned both the New York Giants (National League) and New York Metropolitans (American Association) released two of his star players from the Mets and signed them to contracts with the Giants.

Both the National League and the American Association, desiring to retain their player strength, agreed to an amendment to the National Agreement in 1885 which gave clubs in the same league first option to sign released players (New York Times, October 18, 1885, p. 2). This new section read:

> V. Upon the release of a player from contract or reservation with any club member of either association party hereto, the services of such player shall at once be subject to the acceptance of the other clubs of such association, expressed in writing or by telegraph, to the secretary of such Association, expressed in writing or by telegraph, to the Secretary thereof, for a period of 10 days after notice of said release, and thereafter, if said services be not so accepted, said player may negotiate and contract with any other club * * *.[79]

Following this amendment to the national agreement, the National League adopted its first crude waiver rule, establishing the machinery for claiming players released by its clubs (New York Times, November 20, 1885, p. 8).

The effect of this new rule was to stop the transfer of star players from one league to another. Since rival clubs had a 10-day advantage over clubs of another league in signing released players, an effective transfer of a player to a club outside the league by gentlemen's agreement was extremely hazardous, if not impossible.

Before a club in either major league could assign a player to the other major league or to a minor league, it had to secure "waivers" or promises from its competitors not to sign the released player. Through trial and error, the National League developed a waiver rule which presumed all clubs waived their claims to a released player unless they indicated to the contrary.

The rule giving clubs in the same league first chance to sign released players was readopted in article XIII of the 1892 National Agreement and in article VI, section 3, of the 1903 National Agreement.[80]

[78] 1883 National Agreement, art. V, exhibit 6, hearings, p. 141 at p. 142.
[79] 1889 National Agreement, art. V, appendix, hearings, p. 1397 at 1398.
[80] Exhibit 38, hearings, p. 521 at 522, the wording was changed slightly in 1903: "When a major league club serves notice of release on one of its players, he shall be ineligible to contract with a club of another league if, during 10 days after the service of such notice of release, a club in the league in which he has been playing shall demand his services."

Actual waiver rules were considered intra-league matters until, 1905, when the so-called interchange-of-waivers rule was adopted by the national commission:

> Whenever a minor league player has been purchased by a major league club such a player cannot revert back to any minor league club during the year following such purchase, unless all major league clubs of both the National and American Leagues shall have waived claim to his services, and if such waiver cannot be secured, then the player shall either remain with the club having purchased him or be transferred to the club refusing to waive claim to him, by sale to such club; and in such instances, the purchase price shall be the same as is now fixed by the National and American Leagues in like cases, to wit, $1,000 (rule 37, adopted, September 1, 1905, Second Annual Report of the National Commission (1906), p. v).

According to the national commission, the purpose of this interchange-of-waiver rule was—

> to prevent the covering up of players by major league clubs and the disposing of players to minor league clubs, who had been purchased by major league clubs, without giving every major league club an opportunity to secure the services of such players (decision 392, June 22, 1908).

Minor league clubs wishing to keep their players out of the draft sometimes "sold" their players to a major league club with the expectation of repurchasing the players after the end of the draft period. By requiring waivers of 15 clubs instead of 7, the national commission hoped it could eliminate this practice of covering up players. Also, clubs in the American and National Leagues frequently desired to hire players released and unclaimed by the other major league. Prior to this rule, a major league club could purchase or draft a minor league player with the bona fide intent to use him, find the player wanting in ability, secure waivers from its seven competitors, and send him back to the minor leagues even though one or more clubs in the other major league desired that player's services.

The national commission's interchange of waiver rule was incorporated into the National Agreement in 1912 (1912 national agreement, art. VI, sec. 11). Two years later, the national commission ruled that interleague waivers were necessary for all players assigned to the minor leagues, not only to players purchased or drafted during the preceding year.[81]

The waiver rule applied to all major league players until January 1921, when with the adoption of the new Major League Agreement, the present exception for optional assignments was added:[82]

Later in the twenties the standard waiver price was fixed at $7,500, and preference was given in case more than one club in the same league claimed a player to the club lowest in the league standings (Major League Rules, H (11) (d) and (g) (1928)).

Except for a few years prior to 1921, requests for waivers have been revocable. Unwilling to risk the loss of "player assets," clubs have insisted upon the privilege of revoking requests for waivers if another

[81] Rule 29, as amended, February 25, 1914 (decision 1351): * * * Interleague waivers, which may be requested at any time, shall be secured on every major league player before he shall be released to a club of lower classification, clubs of the league of the club soliciting waivers to have the preference in his allotment. Such player, if claimed, may be retained by the club applying for waivers on withdrawal of its waiver request within 2 days after receipt of notification of such claim. The waiver price of a player other than a drafted player shall be fixed by negotiations between the interested clubs or, in the event of their failure to agree, by the national commission, whose decision shall be final.
[82] The contract of a player assigned by a minor to a major league club otherwise than by selection or the exercise of right of recall may be reassigned to a minor league club within the year under an approved optional agreement without giving opportunity to the other 15 major league clubs to take such assignment through the regular waiver channels. [Major Leagues Rule, H (7) (a) (1928)]

club refuses to waive. Because of this revocability feature, the waiver rule has assumed a secondary function, namely, to discover what clubs desire players for the purpose of planning trades or sales of player contracts. In actual practice, this byproduct of the waiver rule has proved to be inconsistent with the alleged purpose of the rule.

Mr. Philip K. Wrigley, president of the Chicago Cubs, described this second function of the waiver rule in the following colloquy with counsel:

Mr. STEVENS. There was testimony by Mr. O'Connor yesterday that there should be * * * just one waiver which would be irrevocable. Do you see any reason why that should not be done?

Mr. WRIGLEY. Yes. Listening to that yesterday, I thought maybe it could be clarified a little bit further.

* * * Your waivers have always been trial balloons or tests. You ask for waivers on your players, and then you can check with the clubs who claim them, and that gives you a pretty good idea who is interested in whom and to what extent.

Mr. STEVENS. In other words, the first time you list them you are merely trying to find out who might want to purchase them in the event you want to do some trading?

Mr .WRIGLEY. That is right. It gives you a lead as to where to go, where you think you can get the best deal.[32]

This revocability feature permits requests for waivers to serve as a method of engineering sales or exchanges of player contracts. But another result of this revocability is that many major league clubs are able to railroad players into the other major league or the minor leagues. Clubs receiving a waiver list from another club have no way of knowing which players, if any, that club really intends to release to the minors or the other major league. Sometimes, clubs fail to claim a player they might otherwise desire in the belief that the asking club would never sell that player at the $10,000 waiver price. Perhaps for this reason, National League stars have been waived such as Pitcher John Sain, First Baseman John Mize, and Outfielder John Hopp, out of that league and have been sold to the New York American League Club. Similarly, a player may be shuttled to the minor leagues, although other major league clubs gladly would have claimed him for $10,000 had they not known that such a claim would have prompted revocation of the waiver request for that player.

Several witnesses were of the opinion that club owners actively solicited other clubs not to claim players on the waiver list. Cy Block, a former major and minor league player, asserted that "the waiver rule is the farce in baseball." He described a "gentlemen's agreement" which he witnessed in the office of a Pacific Coast League Club:

Mr. BLOCK. * * * I was present in 1946 in the Los Angeles baseball office and was just about to sign my contract when the president of the Los Angeles ball club was speaking on the telephone. It seemed that the Seattle ball club had claimed a catcher from Los Angeles, I believe his name was Bill Brennan, and the president of the Los Angeles club had the Seattle ball club on the phone and was talking to them and trying to get them to withdraw waivers so they could send this boy out to the Western International League. And the final outcome was this. He said, "Well, if you waive on this boy, I will waive on one of your ball players. I want this boy to go to the Western International League." And Bill Brennan was sent to that league.

Mr. STEVENS. This conversation was had in your presence?

Mr. BLOCK. That is right, sir.

[32] Hearings, pp. 732-733.

Mr. STEVENS. What would be necessary to prevent gentlemen's agreements of that kind—what modification, if any, should be made?

Mr. BLOCK. If a ball player is placed on the waiver list and he is claimed, he has to be sold. And you do away with all of these gentlemen's agreements, because there would be too much trouble for the club owners, every time they placed six or seven men on the waiver list, to call up all of the club owners. The other way they know what clubs are claiming them because they have two or three withdrawals on waivers. This way, if they submit a player on the waiver list and he is claimed, they have to sell him.

In this way the ball player's major league career will be prolonged, and also it would help baseball itself because the second division club that claimed him would benefit by this particular ball player. It could help them.

Mr. STEVENS. In other words, you are suggesting that the right of a club which asked for waivers to withdraw its request should be taken away?

Mr. BLOCK. Absolutely.[33] * * *

Mr. Block's view that requests for waivers should be irrevocable is shared by players. Mr. Wrigley testified on this point as follows:

Well, I was on that committee to draft a new contract of which Larry MacPhail was chairman. I was very much impressed in our meetings with the representatives of the players. I can't remember that there was any question at all about the reserve clause or any time spent talking about it.

I was rather impressed by the fact that the one thing they objected to was the waiver * * *. And it was a result of their objection that it was changed from unlimited waivers to two waivers which could be withdrawn, and on the third waiver the player has to go.[34]

Will Harridge, president of the American League, and Larry MacPhail, former major league executive, testified that they had no knowledge of any gentlemen's agreements to waive players out of a major league.[35]

Leslie M. O'Connor, former administrative official in organized baseball, however, testified that he knew of actual violations of the rules:

Mr. STEVENS. Mr. O'Connor * * *. A witness yesterday testified that in his belief the waiver rule is violated by so-called gentlemen's agreements, whereby one club agrees not to claim waivers on a player in exchange for a similar agreement from another club. * * * I wonder if it is your impression that such gentlemen's agreements are common.

Mr. O'CONNOR. * * * I think there are undoubtedly an extreme number of cases in which the player is convinced that there was such a gentlemen's agreement as you mentioned.

Now, I personally have never known of one that actually reached the stage of a gentlemen's agreement, but I have known of cases where clubs have called up and said, "Now, won't you please waive on this player? We would like to use him down in this club. Won't you please waive on him?"

Mr. STEVENS. Would not that violate the rule, which I think is part of the waiver rule, which provides that no club shall attempt to induce another club not to claim waivers?

Mr. O'CONNOR. That was put in by Landis just because of this situation that you talked about. He directed attention to the fact that the waiver rules were not merely for the benefit of the other clubs; they were primarily for the benefit of the ball players, and any agreement or solicitation of action of that kind would be penalized.

Mr. STEVENS. But would you not say that if one club executive called another club and said, "Please do not claim waivers on this particular player," that would be a violation of this rule?

Mr. O'CONNOR. It certainly would, in my judgment. And I do not by any means say that it has not been done. I think there probably have been quite a few instances in which the understanding will be that, "I will kiss you today and you kiss me tomorrow." [36]

[33] Hearings, pp. 594-595.
[34] Hearings, p. 732.
[35] Hearings, pp. 956 and 1668.
[36] Hearings, p. 66.

In the opinion of Mr. O'Connor, the present waiver rule needs two changes if it is to serve as an adequate safeguard to the reserve rule. First, it must apply to all players. And second, the request for waivers should be irrevocable. Mr. O'Connor summarized these two recommendations in the following discussion:

Mr. STEVENS. Mr. O'Connor, in your general comments, you stated that you felt that one doubt you had about the present reserve clause * * * was that perhaps it did not sufficiently guarantee that the player would be retained in the highest service of which he was capable. And you stated that the waiver rule was designed to fulfill that purpose. I wonder if you could tell us whether you think the waiver rule, as now on the books and as now in force, does adequately perform that function.

Mr. O'CONNOR. No, I do not.

The CHAIRMAN. Give us your reasons.

Mr. O'CONNOR. The waiver rule in itself, I think, is a very perfect device for ascertaining the selfish judgment about keeping a man in the highest classification he is capable of playing in. But in order that it may do that, you must have a genuine waiver that takes effect. Now, the objections that I have to the present waiver rules are these. I am speaking particularly of the major league waiver rules, because I do not know much about minor league waiver rules.

In the first place, I think it is a mistake for the waiver rules not to apply for 3 years, as they are at present. If a major league club purchases a player's contract from a minor league club, he can be sent out for 3 years without waivers of any kind unless he is sent outright. They can send him out optionally without waivers of any kind * * *. The only protection there is that 1 year is deducted for each year of major league service and each year that he has already been out under optional assignment. But in the great majority of cases, the net result is that a purchased player can be sent out for 3 years, on option, without waivers.

Now, in connection with drafted players, the drafted player must be retained for 1 year before he can be sent out on option without waivers. But at the end of his first year, he can then be sent out on option for 2 years without waivers.

The second objection that militates against the perfection of the waiver rules is that the waiver request can be withdrawn unless it is the third request. That in itself is a satisfactory improvement on the rules that we originally had. I said, "originally had." They are an improvement on the rules that were in effect for many years, which enabled a club to withdraw the waiver request at any time. Now they can ask waivers twice during a year and can withdraw the request if the player is claimed. The third time they must let him go.

Mr. STEVENS. Do you mean to imply, Mr. O'Connor, that they should be irrevocable the first time?

Mr. O'CONNOR. I think that they should not be withdrawable at any time. In other words, I do not think that you should ask waivers unless you really mean what you are saying, namely, that you do not think this player is capable of major league service.[38]

3. *The player limit*

The oldest limitation on the reserve rule is the player limit. Player-limit rules prescribe the maximum number of players a club in organized baseball may employ during the season or reserve for a subsequent season. Although intended to equalize competition among clubs with unequal resources and to prevent the engrossing of the player supply, player limits are also a safeguard for the players. A club, being limited in the number of players it may control, will not retain indefinitely a player it does not need. Of necessity, the clubs will release its players of lesser ability to make room for newcomers, giving the released player an opportunity to play regularly on another club.

Mr. George Trautman, president of the national association, described to the subcommittee the present rules regarding player limits:

* * * the clubs of the various classifications have agreed by rule that no club shall be entitled to have under control or reservation the services of more than

[38] Hearings, pp. 638-640.

a designated number of players. The number varies from a total of 40 by major-league clubs to a total of 21 by class D clubs. These totals are reduced for the period commencing 30 days after the opening of each championship season and ending 20 days before the close thereof to the active list limits which range from a total of 25 for major-league clubs to 17 for class D clubs.

Take the class D classification where they are allowed 21 players. They must reduce to 17. Therefore, they have four that they may option to other class D clubs.

It may be asked why are such limitations necessary. The basic reason is that the supply of baseball players of professional caliber is limited and in order that the standard of competition may be maintained it is essential that each club be limited as to the number of players it may have under contract or reservation.[39]

Two major league executives, Clark Griffith, of the Washington Senators, and Branch Rickey, of the Pittsburgh Pirates, emphasized the necessity of player limits to equalize competition among clubs. According to Mr. Griffith:

The principal reason (for adopting player limits) was to keep (clubs with) a lot more money from having more ballplayers than the other fellows * * * (The wealthier clubs) could get more players under their wing, if you know what I mean, to call on. In case of accidents and things like that, they would have more chance of keeping a club up in the race than the poorer clubs would if there was not a player limit during the playing season. That was the real purpose of it.[40]

During a discussion of the player limit at the 1921 joint major-league meeting, Mr. Rickey stated the purpose of the rule in these terms:

We want rules that will have a tendency to equalize the strength of the teams and minimize the power of money-making clubs. Whenever we raise the limit to where a club can purchase many players to the disadvantage of other clubs, that tends not to equalize the playing strength of the big clubs.

Mr. Rickey informed the subcommittee that he still subscribed to this view:

I have always believed that all rules affecting baseball should have in mind the minimizing of the power of money to make great winning teams, and place the emphasis upon work and program and planning and good judgment, labor basically, and this thing you just read has in it the idea that if you expanded the player limit from whatever it was at the time to five more, which I think was the proposition, that that would work hardship on certain clubs in the league who could not afford * * * the additional five.[41]

There are two types of player limits. The first is a limit on the number of players a club may control. The second is a limit on the number of men a club may have on its active playing roster during the season. From the first National Agreement in 1883 until the 1912 National Agreement, these two types of player limits were synonymous. For the past 40 years clubs have been able to control players in addition to their active player limits by optioning such players to clubs in other leagues.

When the first reserve rule was adopted by the National League in 1879, clubs were limited to reserving five players. The 1883 National Agreement extended the reserve rule to two other leagues and expanded the player limits from 5 to 11, which was the average number of players carried by most clubs in that era. Subsequent amendments to this agreement increased the player limit to 12 in 1885 and 14 in 1887. From 1887–90, the uniform players' contract

[39] Hearings, pp. 188-189.
[40] Hearings, p. 526.
[41] Hearings, pp. 997-999.

stated that the reservation of no more than 14 players was a condition precedent to the exercise of the right of reservation.

After the Players League war of 1890, the major leagues temporarily discarded player limits. Although the 1892 National Agreement purported to reenact the 14-player limit (1892 National Agreement, art. 9), this provision was either repealed or not enforced. All National League clubs reserved 16 or more players for 1898; one, Cincinnati, reserving 33.

The 1903 National Agreement contained no mention of player limits. By 1909, the more wealthy clubs were controlling twice as many players as their poorer competitors. Some clubs controlled more than 60 players.

A reaction against the attempts by some clubs to engross the player supply led in 1912 to a reinsertion of player limits in the National Agreement. The new limits ranged from 35 for major-league clubs to 22 for class D clubs. During the championship season, the active list limits ranged from 25 in the majors to 14 in class D (1912 National Agreement, art. VII sec. 3). The 1921 Major League Agreement raised the control limit to its present level of 40.

Like the draft and waiver rules, the player-limit rule is not without its exception which contravenes the very purpose of the rule. Clubs may control an unlimited number of players indirectly through minor-league subsidiaries or working agreements with independent minor-league clubs. This exception is not spelled out anywhere in the rules of organized baseball. Rather it is the result of over 30 years' failure to enforce the letter and the spirit of the player limit. This fact was brought out in the following colloquy with Mr. Branch Rickey:

"Mr. GOLDSTEIN. * * * The theory of invoking or setting up the player-limit rule was to prevent the cornering of players through the use of the reserve clause?

* * * * * * *

Mr. RICKEY. I think that is correct.

* * * * * * *

The CHAIRMAN. Is it not well at this point to read the player-limit rule? It reads as follows. It is found in the Major League Rules, Rule No. 2:

"Since the supply of skilled players is not equal to the demand, no club shall have title to or under its control at any one time more than 40 players, exclusive of nonplaying manager, coaches, and players who have been promulgated as ineligible or voluntarily retired, or who have been placed on the national defense service and Government lists."

Mr. RICKEY. Major-league clubs shall not have title to more than 40 players at any time.

The CHAIRMAN. Now, it also says that you not only cannot have title to more than 40 players, but you cannot exercise control over more than 40 players * * * I would say that is pretty broad language, is it not, Mr. Rickey?

Mr. RICKEY. It is broad, in the sense that if you lose the entity of the major-league club and the minor-league club to which the player is transferred, then you have to say that the player is under the control of the two clubs. But in the sense that you have access to the reacquirement of his contract, to that extent you do control that player. * * *

The CHAIRMAN. Yes. But if you control the player, then you violate the rule?

Mr. RICKEY. I do not believe that you do control the player in the sense that that rule is meant to be interpreted.

The CHAIRMAN. How did Judge Landis feel about this?

Mr. RICKEY. For twenty-odd years, * * * he was cognizant of this situation. * * * If the interpretation was permitted under the rule for him to make a decision against it, for 22 years he failed to do it.

* * * * * * *

The CHAIRMAN. I can't get it out of my crop * * * that the farm system violates the player-limit rule.

Here you are opposing the increase of the player limit in one breath, and then you say, "All right, I will oppose the increase of the player limit and then I will go out and circumvent that player limit rule by getting control of players through the farms."

Mr. RICKEY. I am pleased with the challenge.

The CHAIRMAN. I can't get away from that.

Mr. RICKEY. I will labor as best I can, I would love very much to have you see the facts as I see them.

In the one case the raising of the player limit and increasing expenses to everybody equally hurts the poor club, for it is expense out that it can't afford.

In the other case you are affording the poor club the only vehicle in which it can rise possibly to favorable competition. It is the only means it can employ. It can go into the farm system and produce players here and there, if it can take the time to develop them.[32]

Mr. Leslie M. O'Connor took issue with Mr. Rickey on the practical necessity of poor clubs circumventing the player limits with farm systems:

Mr. O'CONNOR. * * * I do not think that anybody can question the correctness of Mr. Rickey's statement that rules are needed to equalize the strength of teams through minimizing the power of the larger clubs. You can never have a league in which all clubs are equal as to population and drawing power and all the things that go to producing revenue. And it is necessary that the rules, so far as is legitimate, should equalize that strength.

The CHAIRMAN. Mr. Rickey, then, opposed this increase (in the player limit) to 50?

Mr. O'CONNOR. He opposed the increase to 45 from 40.

The CHAIRMAN. On the other hand, he circumvented the rule by having his farms, did he not?

Mr. O'CONNOR. That is right.

The CHAIRMAN. So, did he really mean what he said then?

Mr. O'CONNOR. His personal picture changed. He was able to get control of his farm system and consequently he saw no objection in it.

I think Mr. Rickey was entirely correct in his statement that when you increase the ability of clubs to control players, you increase the difficulties of competing for the clubs that do not have as much money, and I think the prize example of all on that is the farm system, because farm system operations cost an awful lot of money. Although they are not of financial benefit to the minor league clubs, they do involve very big expenditures on the part of the major league club.[33]

Some witnesses were highly critical of the trend in organized baseball toward the virtual elimination of player limits through the farm system. Said Russell G. Lynch, sports editor of the Milwaukee Journal:

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I would like to make one point * * * why so many baseball men were telling you here that there are not enough players.

They are always thinking of their own interests, and if there are not enough players to satisfy them, it is because originally they started out by reserving five men way back in the beginning when they got the idea of having a reserve list, I think it was 5, then made it 11, and then made it 14, and finally found out they were in a peach orchard and said, "Let's make it 40," and it has been 40 for about 30 years now.

How can you expect those men who want, some of them, to put their fingers on 500 ball players—how do you expect them to admit they can part with some? They want all they can get for now, next year, and 5 years from now, because for their particular business that is desirable, but the general effect on baseball is undesirable.[34]

Not a club now exists in the two major leagues which does not control several hundred players through its farm system. The most successful farm operators have so successfully engrossed the player

[32] Hearings, pp. 985-986 and 999.
[33] Hearings, pp. 648-649.
[34] Hearings, pp. 822-823.