

A Case for Rescinding Professional Baseball's Antitrust Exemption
Senior Thesis
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Executive Summary

Professional baseball is the only for-profit business exempt from Federal antitrust law. The United States Supreme Court carved out this exemption during the early years after the adoption of Federal antitrust statutes. In the 1920's baseball was seen more as a game rather than as a marketable business that relied upon interstate commerce. By the 1950's it was evident to the courts that baseball was much more than just a game. However, under the doctrine of *Stare Decisis*, the Court was reluctant to abandon the previous decision that had granted the exemption. Instead, beginning with this second ruling, the Court repeatedly requested that the United States Congress clarify the antitrust statutes in such a way as to rescind the exemption. Although Congress has selectively rescinded parts of the exemption in the aftermath of labor disputes between Major League Baseball owners and players, Congress has thus far failed to proactively rescind the exemption in its entirety. After the Curt Flood Act of 1998 removed those aspects of the exemption pertinent to labor relations, Major League Baseball established a Political Action Committee to lobby Congress against any further restricting of the exemption. The exemption still casts a shadow over players' salaries that would increase if the exemption were to be rescinded. Furthermore, the exemption allows the owners to demand unanimous consent amongst competing owners to move a financially struggling baseball team. Players as a whole are so soured to the owners that the Player's Association will not even consent to the owners' request for steroid testing. Such a test would be in the interests of all honest players. This paper will examine the history that has led professional baseball to where it stands today, and will offer recommendations and reasoning for rescinding the antitrust exemption.

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Introduction

Baseball has had the unique opportunity to grow into a big money making business without being constrained by the Federal Antitrust Laws. In 1922, the Supreme Court refused to apply the Sherman Antitrust Act to the game of Baseball. In fact, it granted baseball an exemption to the antitrust laws. This was not an earth shattering decision. After all, why would a simple game of baseball need to be regulated by the federal government? The issue was revisited in the 1950's. Baseball was becoming a big business. In addition, other sports were becoming big business too. The Supreme Court of the 1950's recognized the growing business side of sports and held that the Sherman Antitrust Act applies to all professional sports with the exception of Baseball. How can this be? The Court held in 1953 that it was the responsibility of Congress to revoke Baseball's exemption. It is now 2004 and Baseball continues to be the only professional sport exempt from the federal antitrust laws. Numerous bills have been introduced in Congress to repeal the antitrust exemption, but the exemption remains. Like wise, the issue of the antitrust exemption is repetitively brought before the Court and there to the exemption remains. These two arms of the Federal Government are each waiting for the other to repeal the exemption. With the result that Congress' failure to amend the Sherman Antitrust Act to specifically include Baseball and the Court's finding that Congress's failure to amend the Act implies that Congress intended Baseball to be exempt, has led to unfair business practices by the Baseball team owners as well as an over zealous player's association.

A History of Antitrust Law

In response to bid rigging, monopolization and oligopolization, price fixing, proprietary lock-ins, and tying by business firms, the United States Congress passed the Sherman Antitrust Act of 1890. This federal act prohibited any contract or agreement that restrains free trade both interstate and internationally.ⁱ

- Section 1 of the Sherman Act outlaws "every contract, combination . . . or conspiracy, in restraint of trade,"
- Section 2 of the Sherman Act makes it unlawful for a company to "monopolize, or attempt to monopolize," trade or commerce.

During this same time period many states began to pass their own antitrust acts regulating the restraint of free trade within the state, defined as monopolistic behavior. However, the advent of the railroad led to a significantly larger frequency of monopolistic behavior that spanned across state lines.

Over the next thirty years, Congress strengthened their antitrust position with two additional acts. The Clayton Antitrust Act of 1914 outlawed the practice of giving an advantage to one buyer over another. It particularly prohibited a business from requiring that its buyers only buy from them and not sell competitor's products.ⁱⁱ

Section 7 of the Clayton Act prohibits mergers and acquisitions where the effect 'may be substantially to lessen competition, or to tend to create a monopoly.'

The Federal Trade Commission Act also of 1914 created the Federal Trade Commission (FTC). "An Act to protect trade and commerce against unlawful restraints and

monopolies.ⁿⁱⁱⁱ It is obvious from these three statutes that Congress wanted to foster competition and prevent a business from becoming powerful enough to control their particular market.

Application of Antitrust Law to Professional Sports

The United States Congress recognized the need for antitrust laws as early as 1890 when Congress passed the Sherman Antitrust Act. This act was purposely written in broad terms so that it could potentially be called into use when an abuse was suspected. This act, and subsequent acts, has been freely applied to professional sports and the moneymaking National Collegiate Athletic Association. However, baseball has been the one professional sport that has enjoyed exemption from the antitrust statutes.

At the time of the first antitrust laws, baseball was the leisurely activity of choice for young men: “Whoever wants to know the heart and mind of America had better learn baseball.”^{iv} There were other popular professional sports at that time such as boxing, tennis, and golf. However, baseball was unique in that it could be played on any open field without promoters, gymnasiums, or expensive equipment. It did not require an unbelievable amount of raw talent and was social in nature. Most importantly, professional sports, including baseball, were not generating considerable sums of revenue.

Meanwhile, the National Baseball League constructed contracts with its players prohibiting them from defecting to a rival team within the league. In 1901, Napoleon Lajoie attempted to circumvent this restriction by jilting the National League’s Philadelphia Phillies for the American League’s Philadelphia Athletics.^v On behalf of the National League, the Pennsylvania courts issued an injunction. The President of the National League transferred him to the Cleveland Indians, well outside of Pennsylvania’s jurisdiction. Ultimately, the dispute was settled between the two leagues in 1903.^{vi}

The owners of the teams within both leagues created a set of rules governing players' contracts and player movement. This agreement led to the first World Series in the fall of 1903. It also resulted in keeping most of the profits in the hands of the owners. Usually, only the very best players were paid. Even if an owner chose to pay it was usually for a very small amount. With wages being very low or non-existent it was common for a player to take a bribe to throw a game.^{vii}

The United States Supreme Court did not hold the same strength of conviction as that of the United States Congress in regards to the antitrust statutes. The statutes' broad wording implied intent by Congress to apply the statutes to all businesses. Although the Court recognized the Federal government's jurisdiction over interstate commerce, it chose to apply an arbitrary "reasonable test" when deciding which businesses Congress intended to target.^{viii} Since Congress did not specify which businesses the antitrust statutes applied to, the Court held that it must be up to the Federal court system to enforce the statutes reasonably. However, as pointed out by Justice John Marshall Harlan I in his partial dissent: "the injection of the rule of reasonableness or unreasonableness would lead to the greatest variability and uncertainty in the enforcement of the law. The defense of reasonable restraint would be made in every case, and there would be as many different rules of reasonableness as cases, courts, and juries."

On the one hand, the Court seemed to favor the Federal government in its rulings. The Court went so far as to find a trade association's attempt to gather information about its industry to be a violation of the Sherman Act.^{ix} On the other hand, the Court did favor the defendant business when it held that "Whatever there was of wrong intent could not be

executed; whatever there was of evil effect was discontinued before this suit was brought, and this, we think, determines the decree.”^x

Just prior to World War I, the fledgling Federal League sued both the National League and the American League under the Sherman Antitrust Act. The suit was settled out of court.^{xi} However, the owner of the Baltimore Terrapins of the Federal League was not satisfied with the settlement. He pursued the case to the United States Supreme Court.^{xii} In 1922, the Supreme Court ruled that baseball is not a business but rather a local event. In the majority opinion, written by Justice Oliver Wendell Holmes, Jr., the court held that although the players went from state to state to play, “they are not the game.” Most importantly, the court held that baseball was not a “production-related activity” and “therefore not a form of interstate commerce subject to antitrust regulation.”^{xiii}

It was no secret that then Chief Justice William Taft had affection for baseball.^{xiv} As President, earlier in his career, he started the tradition of the President throwing the inaugural pitch of the baseball season. It was argued in the case that baseball had gained the respectability of golf and tennis by virtue of its exemption from the blue laws of many states prohibiting competition on Sundays. In addition, the appointment of a Commissioner to investigate the 1919 Black Sox Scandal, and the subsequent pledge by the leagues to be honest and forthright in the future was presented to the court as proof that baseball had shown it was capable of policing itself. It was even argued that the laws should not apply to the “national past time.” The court saw no purpose in applying the antitrust laws to an organization that appeared to be willing and able to take care of whatever problems cropped

up. The ruling specifically exempted baseball from the federal antitrust laws and has since been applied on the state level by the 11th U.S. Circuit Court of Appeals.^{xv}

Because of the 1922 Supreme Court decision, baseball was found to be exempt from Section I of the Sherman Antitrust Act based upon the rationale that the United States Congress did not specifically cite baseball within the text regarding interstate commerce. The business of baseball prospered under this exemption for approximately thirty years.

At the time of the *Federal League* case, baseball did enjoy the designation of *National Pastime*. Baseball was becoming a spectator sport. Not only were teams crossing state lines to play against each other, but also fans were beginning to cross state lines to cheer for their favorite teams at *away* games. This is in sharp contrast to golf and tennis, which enjoyed a far-more limited scope amongst mostly an upper-crust fan base. Like baseball, boxing enjoyed the support of the working class, however it remained a largely localized sport with spectators drawn largely from local areas. Unfortunately, the United States Supreme Court failed to recognize the unique circumstances that allowed baseball an unprecedented business potential. The sport began to generate large sums of money, and the owners of the professional baseball teams began to exhibit the typical behaviors of a cartel that led to the passage of antitrust statutes in the first place.

Of course hindsight is 20/20. Perhaps, it could be argued that in the 1920's it would have been impossible for the Supreme Court Justices to envision the exponential growth of the business side of professional sports. Certainly, the Justices could not have anticipated the media-fueled sports programming throughout the second half of the twentieth century. At the

time of the case, the Justices saw sports as a leisurely pastime that certainly was not within the scope of the scrutiny of the federal government.

In 1953, the exemption was again challenged in *Toolson v. New York Yankees*. A player in the New York Yankees' minor league system was blacklisted for refusing to report to the club to which he was assigned. The United States Supreme Court reaffirmed the 1922 decision without reexamining the basis of the 1922 decision. The Court recognized that the United States Congress had not intervened in the previous thirty years to specifically override the exemption that the 1922 Court had granted. Therefore, they held it remained for Congress to resolve the exemption issue by means of legislation. The Court was particularly loath to reverse the 1922 decision as:^{xvi}

The business [of baseball] has thus been left for thirty years to develop, on the understanding it was not subject to existing antitrust legislation. The present cases ask us to overrule the prior decision and, with retrospective effect, hold the legislation applicable.

In making this decision, the Court believed they were looking out for the best interests of all parties involved in the business of baseball.^{xvii} Rather than void thirty years worth of contracts by fiat, Congressional removal of the exemption would be prospective. This argument is misguided as the antitrust statutes were written broadly for the strategic purpose of regulating not only business that were in existence at the time that the statutes were enacted, but also future businesses that could not even be foreseen at the time of the enactment. It is the role of the court system to interpret this legislation and to apply those exemptions when appropriate.

As previously discussed, the Supreme Court imposed a *reasonable test* to interpret the application of the Sherman Antitrust Act to a given case. By relying on this test, the Court carved out an exemption for professional baseball in the *Federal League* case. Subsequently, such a test was also used to come to the *Toolson* decision. This time, the Court specifically recognized the breadth of the business-side of baseball and found that the Sherman Antitrust Act should apply but for the previously granted exemption. Thereafter, the Court had the responsibility to hold that although it may have been reasonable to grant an exemption to Baseball back in the 1920's, this exemption was no longer reasonable and, as such, Baseball now falls under the antitrust statutes. By the Court finding that the reasonable test was met in the *Federal League* case and that because of change in circumstances what was reasonable then is not reasonable now, the Court should have held in the *Toolson* case that their ruling would apply prospectively and on a case to case bases as per current contracts. The *Toolson* case left baseball's exemption in place leaving it to Congress to specifically include baseball under the antitrust laws. It should come as no surprise that the other professional sports that were becoming big businesses of their own assumed that they too fell under the same exemption. After all, Congress did not specifically include them under the antitrust statutes either.

In 1955, the FTC sued the International Boxing Club (IBC) Of New York for violating the antitrust statutes. The IBC responded by claiming that they were exempt from the statutes as per the *Toolson* case. The Court held:^{xviii}

Federal Baseball did not hold that all businesses based on professional sports were outside the scope of the antitrust laws. The issue confronting us is, therefore, not whether a previously granted exemption should continue, but whether an exemption

should be granted in the first instance. And that issue is for Congress to resolve, not this Court.

The Court chose to keep the scope of this case particularly narrow and to focus upon only the relationship between professional boxing and the antitrust exemption granted only to professional baseball. Therefore, the Court did not entertain the question of the legitimacy of baseball's exemption besides ruling that it did not apply to boxing.

In 1957, William Radovich sued the National Football League over its player distribution system that was very similar to that of baseball's reserve clause.^{xix} The United States Supreme Court sided with Radovich, holding that the antitrust exemption extended to baseball in 1922 cannot be further extended to the business of any other sport without Congressional action.

Doctrine of *Stare Decisis*

The Court has consistently refused to overrule its' findings of an antitrust exemption in the *Federal League* case. This is true even though it has specifically recognized in each of the subsequent cases that the exemption was erroneously granted. The Court uses as its' argument the doctrine of *Stare Decisis*:^{xx}

...When court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases, where facts are substantially the same.

However, the Court is not held to this doctrine:^{xxi}

Doctrine is one of policy, grounded on the theory that security and certainty require that accepted and established legal principle, under which rights may accrue, be recognized and followed, though later found to be not legally sound, but whether previous holding of court shall be adhered to, modified, or overruled, is within court's discretion under circumstances of case before it. Under doctrine, when point of law has been settled by decision it forms precedent, which is not afterwards to be departed from, and, while it should ordinarily be strictly adhered to, there are occasions when departure is rendered necessary to vindicate plain, obvious principles of law and remedy continued injustice... considerations of public policy demand it.

This doctrine serves an important purpose to society. The continuity of past decisions grants us, among other things, the certainty to enter into business arrangements with good faith and the expectation that the courts will uphold such arrangements. The notion that the exemption granted by the Court cannot include any other professional sport is understandable. After all, the Court itself has acknowledged that the exemption was erroneous. Under the doctrine of *Stare Decisis*, the Court may depart from precedent in order to remedy a continuing injustice. Baseball players entered into contracts with owners who

employed otherwise-illegal tactics such as collusion as a bargaining technique. Furthermore, the market for the service of a baseball player is negatively affected when an owner cannot move his/her team to a more profitable location because of the otherwise-illegal arrangement amongst baseball owners that requires 100% consent from competing owners to move the team. If they could freely move their respective teams, now wealthier owners could impose upward pressure upon the bidding for a player's services. Thus, some of these profits that come from relocation would likely be passed on to baseball players.

The doctrine of *Stare Decisis* is not binding upon the Court. Rather, the court may reverse its previous holding if it feels that to do so would be in the best interest of the general public, including baseball players, to correct a specific injustice. Certainly, allowing one specific business an exemption from the antitrust laws is patently unjust and is not well-considered public policy. The Court's failure to reverse the holding in the *Federal League* case has resulted in the business of baseball receiving preferential treatment at the expense of both the players and fans in cities that could better support a baseball team but are deprived of doing so.

Leaving Congress to remove the exemption arguably puts them in the position of having to identify the particular businesses that fall under the antitrust statutes. Although Congress can and has gone back and clarified statutes they have passed, it is evident that they want these particular statutes to remain as broad as possible. There is, however, no reason why Congress cannot pass an act for the sole purpose of including Baseball under the antitrust laws. It took one step in that direction when it passed the Curt Flood Act of 1998.^{xxii} However, it stopped short of repealing the exemption. Instead, it limited the Act only to the

player's contracts. Congress needs to recognize the Court's hesitance to deviate from the doctrine of *Stare Decisis*, and should remove the exemption itself.

Unfair Business Practices

An industry, given the opportunity to grow unfettered by government control, will tend to result in an oligopolistic marketplace. Recognition of this potential for monopolistic and/or oligopolistic abuse led to the formation of antitrust law in the first place.

With the Court upholding baseball's antitrust exemption, the owners of the individual teams were left with substantially greater power relative to the players:^{xxiii}

... labor/management wars are almost as old as the professional game. In the mid-1880s, players first organized a union in response to the owners imposing a reserve system that made players the property of a team forever, and a maximum player salary of \$2,000 a season. The reserve system was baseball slavery thinly disguised and sustained by owners until struck down by an arbitrator in 1975. For 90 years, then, management dominated the game's economics.

Although the players attempted to unionize as early as the late 19th century, it remained easy for the owners to squelch any organizing efforts. Player salaries remained unchanged for close to a century:^{xxiv}

... may have been what Phillies owner Bill Giles had in mind during 1994's labor negotiations. He said, 'Yes, we lied to the players for a hundred years. But now we're telling them the truth.' Well, who wouldn't believe such a truth-teller? Hall of Fame center fielder Richie Ashburn said those Phillies once offered him less money after he'd won a batting championship.

In addition, the reserve clause,^{xxv} which restricted the players' ability to switch teams upon completion of a contract, remained a part of the standard player contract for about ninety years despite numerous lower level court decisions refusing to enforce the clause. The players were not in a financial position to challenge this illegal clause because of the owners'

oligopoly. On the other hand, professional football players such as William Radovich no longer were forced through a distribution channel similar to the reserve system.^{xxvi}

The National Football League was organized in 1920, but players had no representation until more than 35 years later. Free to do as they wished, owners gave the players no benefits at all—no health insurance, no life insurance, no pension, no minimum salary, no pay for pre-season games. Even worse—no salary protection for injured players. Players started standing up for themselves in 1956. By one account, players for the Green Bay Packers requested clean jocks, socks and uniforms for two-a-day workouts. The owner refused; the players organized.

After the 1956 ruling holding the National Football League accountable to federal antitrust laws, the football team owners were compelled to offer a minimum salary, disability insurance, and reimbursement for the cost of equipment. No longer could the owners collectively conspire to deny players these benefits. Multiple subsequent lawsuits sought to ensure compliance with this decision. Baseball players had to wait about another twenty years to even begin this process.

Although the players ratified the Major League Baseball Players' Association (MLBPA) in 1954, it was not until 1968 that the owners recognized the union in baseball's first Collective Bargaining Agreement. Two years into his term as the MLBPA's second Executive Director, Marvin Miller, the former Chief Economic Advisor to the United Steelworkers of America, negotiated this two-year agreement. Thus began collective bargaining.^{xxvii} At that point in time these efforts were often ineffectual due to a collusive strategy employed by the owners that would later be ruled illegal by Arbitrator George Nicolau between the years 1986-1988.^{xxviii}

Miller's predecessor, Wisconsin judge Robert Cannon, had been so friendly to the owners that he was seriously considered for commissioner, but most owners wouldn't have offered Miller even a dinner invitation. The first CBA, covering the 1968 and 1969 seasons, was a short, relatively innocuous document. The players won an increase in the minimum salary from \$7,000 to \$10,000, as well as larger expense allowances. More importantly, the deal brought a formal structure to owner-player relations, including written procedures for the arbitration of player grievances before the commissioner.

A three-year Collective Bargaining Agreement signed in 1970, finally saw the owners cede the right to arbitration with regards to *financial matters*.

Another challenge to the antitrust exemption came from Curt Flood, an all-star outfielder for the St. Louis Cardinals, who was traded to the Philadelphia Phillies in 1969. Flood refused to report to his new team and argued^{xxix} that he should be made a free agent. Once again, the Supreme Court denied his request and suggested that Congressional legislation was necessary to amend the overall policy, even though Justice Blackmun's majority opinion went so far as to admit it to be an aberration.^{xxx}

...Acknowledged that professional baseball is a business and it is engaged in interstate commerce. We adhere once again to *Federal Baseball* and *Toolson*, and to their application to professional baseball. If there is any inconsistency or illogic in all this, it is an inconsistency and illogic of long standing that is to be remedied by the Congress and not by this Court.

This court specifically recognized baseball as a business involving interstate commerce. However, in addition to apply the doctrine of *Stare Decisis*, they found that Congress' lack of action throughout the past half-century illustrated the intention of Congress to exempt baseball from the antitrust laws. This was a 5-3 decision with two justices concurring, forming the majority opinion. Justice Thurgood Marshall, writing for the dissenters, stated

that, “Baseball should be covered by the antitrust laws beginning with this case and henceforth, unless Congress decides otherwise.”

This close decision was concerning enough to the owners that in 1972 they agreed to an arbitration clause^{xxxii} involving matters pertinent to the *integrity of the game* (e.g. the reserve clause). Arbitration^{xxxii} opened the door to the players questioning the reserve clause and how it was interpreted outside of the court system. The arbitrator is a member of the American Arbitration Association. Major League Baseball’s Commissioner appoints the particular arbitrator. Although by 1972 the owners had agreed to arbitration in both *financial matters* and those matters pertinent to the *integrity of the game*, the players were still in a disadvantageous bargaining position. These rights to binding arbitration were still subject to negotiation with the conclusion of a given collective bargaining agreement.

In any other professional sport, because the owners are subject to antitrust laws, the players would begin to bargain for a collective bargaining agreement with minimum parameters such as the right to negotiate a new contract on one’s own terms at the conclusion of a contract. This right prevents owners from colluding to suppress salaries and to control player movement. For example, the owners of the National Hockey League had no choice but to negotiate with the players a collective bargaining agreement that kept the reserve clause for minor league players while ceding to major league players the right to free agency because the courts would strike down any restrictive clauses.^{xxxiii} The court system fails the baseball players by refusing to extend a ruling that is good enough for the athletes of all other professional sports to those of baseball.

In 1975, Marvin Miller persuaded players David McNally and Andrew Messersmith to request arbitration concerning the contractual bonds that they had to their respective teams.

Arbitrator Peter Seitz stated in his decision that:

The grievances of Messersmith and McNally are sustained. There is no contractual bond between these players and the Los Angeles and Montreal clubs, respectively.^{xxxiv}

In the years following this decision, players became free agents after their one-year contractual obligation. The ability of the players to collectively enter into collective bargaining agreements and to become free agents resulted in players' salaries increasing substantially.^{xxxv} Competing owners would bid against each other for the services of free agent players, with the player usually signing with the owner offering the highest salary. Although baseball arbitration is usually binding the very nature of arbitration means that a third party is determining the rights of both parties as opposed to the law of the land. A less sympathetic arbitrator, who is appointed and can be fired by the Commissioner, can overturn current arbitration rulings in the future. Under the doctrine of *Stare Decisis*, however, any findings of violation of the antitrust laws are all but set in stone.

Through arbitration, the players now have control over most aspects of their contracts. However, the owners' oligopolistic structure of their industry allows only one rival owner to dictate whether a current team may be moved, and where a new team may be established. This directly affects baseball fans in cities without a baseball team; it also affects non-fans in cities with subsidized stadiums built for a local baseball team. Since the owners can powerfully restrict the ability of a team to move to another community, competing communities must bid against one another to maintain or to acquire a baseball team.

Having the ability to demand 100% approval from fellow owners to relocate a team, the owners are in the enviable position to legally extort significant concessions from communities that either want to maintain a local baseball team or want to lure away another community's local baseball team. One of the purposes to having antitrust laws in the first place is to prevent this type of manipulative behavior.

Major League Baseball Player's Association

Prior to 1966, the Major League Baseball Players' Association (MLBPA) was ineffective. The players were loosely associated with the owners holding all the leverage. Since the owners were not subject to the antitrust laws, they were able to keep most of the revenues from baseball for themselves. This all changed in 1966 when Marvin Miller was elected head of the MLBPA:^{xxxvi}

...he brought a wealth of experience garnered in the tough steelworkers' union to bear on baseball labor relations, and his knowledge, organizational ability, and resolve completely overmatched the owners and their representatives... In a time of baseball prosperity which saw manifold increase in the value of franchises, his tough tactics finally got the players not only a "bigger piece of the pie" but also greater, if grudging, respect for their wishes in regard to trades and other matters.

As a result, the MLBPA developed in to a tough union conceding as little as possible:

He may be reviled for having made baseball a business, but it had been since 1876; he made the business pay off for the 600-odd players active each year instead of just their 26 bosses.

This non-bending mentality is understandable under the circumstances that the players had to fight for everything they got since their business was not covered by the antitrust laws. Unfortunately, this tough stance has led to a serious problem plaguing baseball today. There appears to be wide use of performance-enhancing drugs in baseball and the MLBPA refuses to permit random testing of the players:^{xxxvii}

Remember, the MLBPA had for years fought drug testing, even to the absurd point where its executives first doubted the presence of steroids then questioned the medical community's conclusions that the use of dangerous drugs is dangerous.

The MLBPA believes it is fighting drug testing for the good of the players. However, their stance actually leads to potential health problems, pressure on the players to keep breaking records, and the likelihood that in the end many of the records will be disqualified. Congress is now holding hearings regarding the drug issue. Younger players who are clean have no incentive to stand in unison with colleagues who may outperform them because of steroid-induced muscles. Thus, these clean younger players have a strong incentive not to join the Player's Association that is resisting drug testing. Also, older players who are clean have every incentive to come forward so that their accomplishments are not viewed with suspicion. It certainly can be argued that if baseball were subject to the antitrust laws, the MLBPA would not feel compelled to fight each and every restriction purposed by the owners.^{xxxviii}

History also preserves the image of Bowie Kuhn crying out in righteous indignation after the arbitrator's 1975 ruling ended the reserve system and gave players the right to become free agents. Commissioner Boo-Hooie declared that two teams in the National League and perhaps all in the American League would go bankrupt... Small wonder, then, that players today are in no rush to embrace change in an economic system that, after 100 years, finally has been tilted their way.

Some of these restrictions are actually in the best interests of the MLBPA, or at least many of the players who compose it. In particular, many of the restrictions not applying to the economic system should be evaluated on a case-by-case basis rather than automatically opposed.

Antitrust Exemption: Pro and Con

Advocates of baseball's antitrust exemption argue that the business of baseball would suffer irreparable damage if the exemption were removed. The current partnerships between major league baseball teams and minor league baseball likely would be ruled illegal under antitrust law. At present, minor league players are still subject to the initial reserve clause. Therefore, a minor league player may conceivably spend his entire career never having been called up to the major league team that owns his rights. Perhaps this player could be of service to another major league team. The minor league player has no control over his potential major league destiny. If the exemption were to be removed, minor league players would also become free agents after their initial contract expires. Such a scenario could pose a potential problem to the competitive balance of the major leagues. Wealthier teams likely would target the top minor league prospects of less-wealthy teams. This potential problem could be dealt with by Major League Baseball through collective bargaining with the players as the National Hockey League has done. It is worth noting that the National Hockey League currently employs a minor league system structured in virtually the same manner as that of Major League Baseball. Professional football and professional basketball, the two other major professional sports in the United States, do not have organized associations with minor leagues.

According to those who favor that the antitrust exemption be left as is; in a competitive market, the rogue owner would be free to relocate his/her team without the permission of his/her fellow owners. They argue that frequent relocations would be bad for the game of baseball because it would alienate the fans in jilted communities. Opponents of

baseball's antitrust exemption feel that this restriction on team relocation is bad for the game of baseball because it forces struggling teams to stay in unprofitable markets. Baseball teams, if free to relocate, would move to cities with larger television markets and a sufficient fan base to support them without being subsidized by their fellow teams.

The antitrust exemption is not even a benefit to the majority of owners who would see the value of their investment (the teams) increase substantially after relocation (or a more credible threat of relocation). Team relocations are common today in the three other major professional sports leagues. Meanwhile, the last baseball team to relocate was the Washington Senators who became the Texas Rangers in 1971.

Additionally, the exemption has given the owners the ability to unilaterally make decisions that affect the players. Since early 2002 Major League Baseball itself has owned the Montreal Expos organization. The team has remained in limbo for over two years while the owners haggle over where to relocate the team. Any decision must be unanimous, even though owners in different geographic markets naturally have different interests. While the fate of the team remains up in the air, players do not know if they should sell their residencies in Montreal, and if so, where to buy new residencies.

Gains by the players through arbitration, significant though they may be, do not change the nature of baseball's aberrant antitrust exemption; these gains ameliorate symptoms of the problem rather than eliminating it altogether. Since unanimous approval of owners is required for the elimination or relocation of franchises, the owner of a large-market profitable franchise, such as George Steinbrenner of the New York Yankees, can preserve his economic advantage at will with his single dissenting vote. The antitrust exemption ensures

that both players and less successful owners will not be treated fairly^{xxxix}, and the Supreme Court's firm refusal to alter the 1922 ruling has all but guaranteed the maintenance of this injustice. Congress will not act because if a team relocates after the exemption is rescinded, the Commissioner could place the blame for the relocation on the jilted community's Congressman/Congresswoman if he/she voted to rescind the exemption.

Labor discontent has led to multiple player strikes, the longest during 1995 and 1996, which lasted almost nine months. Central to that dispute was an attempt by the owners to unilaterally impose a salary cap upon the players. Likely, a salary cap would not have had much of an effect upon the average player's salary. Rather, it would lead to a more even distribution of salaries amongst all the players. The players' union, led by the highest-salaried players, balked at any salary cap altogether. Although the owners ultimately backed down, the resulting strike led to the cancellation of the 1995 World Series. This cancellation was so unpopular with fans that both game attendance figures and television viewership figures have yet to recover. Ironically, the exemption that the owners insist on preserving in part bolstered by baseball's status as the *National Pastime* directed the owners down this path that caused baseball irreparable harm.

The business of baseball has matured under the protection of the antitrust exemption. Meanwhile, professional athletics has evolved from a novelty to a multi-billion dollar enterprise. At least three other major professional sport leagues have flourished without an antitrust exemption. Instead, market forces have forced the team owners within these leagues to reach innovative collective bargaining agreements with their respective players' unions. For example, the National Basketball Association employs a complicated collective

bargaining agreement that covers both player distribution and player contracts. Balancing the competing interests within an enterprise the size of baseball, by means of arbitration, is both inefficient and ineffectual.

With the advent of television, networks began broadcasting baseball games nationally. Suddenly, owners had the luxury of dividing large sums of television royalties amongst themselves. Certainly if there was any question as to whether the business of baseball constituted interstate commerce, national television royalties should have put it to rest. The three other major professional sports leagues in the United States largely came into being after the phenomenon of national broadcasting. Given these circumstances, the courts had no choice but to hold that the other sports are a form of interstate commerce. Thus, federal antitrust laws regulated them. This dramatic change of environment within which baseball has operated justifies the Court to put aside *Stare Decisis* and to extend the antitrust laws to all sports (all businesses) equally. It is easier to sympathize with the Court's reluctance to act than that of Congress. From the Court's perspective, Congress must desire professional baseball to have this exemption. After all, Congress has not rescinded the exemption despite the many cases over roughly 50 years that have ended with the Court encouraging Congress to do so. For the Court to simply remove the exemption when Congress' inaction has theoretically implied that it desires such exemption could arguably be judicial activism.

Managing the large and complex baseball economy by command, as is necessary in an antitrust law vacuum, has consistently resulted in a series of short-term solutions to real problems that would be optimally resolved by market forces. Without the artificial

environment created by the exemption, the players and the owners would be able to negotiate on equal footing. It is possible that there would be disruption, caused by the introduction of market forces long held at bay. Unprofitable teams might move or fold, but would do so of their own volition. Were owners to seek legitimate restrictions on players' salaries, perhaps by trying to work with middle-salaried and lower-salaried Players' Union members, they could do so within a true market environment and from a much more just position.

Market forces should also play a role in selecting the *National Pastime*, or even choosing to select no *National Pastime*. Efforts to maintain baseball's antiquated status can cause as much harm to the sport as good. The question remains as to why the United States Congress has been reluctant to apply nothing more than a line-item amendment to the antitrust exemption. Congress hides behind the folklore of the *National Pastime*, when in fact baseball owners aggressively lobby Congressional members of all parties. Baseball is the only professional sport whose league owners are represented in Washington by a Political Action Committee (PAC).

Professional baseball is the only business in the United States that is exempt from the antitrust laws without being subject to alternative regulatory supervision. The Supreme Court did not intend its 1922 decision to result in abuse, failing to prognosticate the long-term profitability of baseball as an enterprise. Either the United States Congress must pass legislation that revokes baseball's antitrust exemption; or the United States Supreme Court must strike down the exemption prospectively, as suggested by Justice Marshall in his 1972 dissenting opinion.

Antitrust laws are, "...designed to insure the free flow of commerce chiefly by the preservation of competition."^{x1} Owners of businesses are prohibited from setting prices or policies that would prevent competition under the law. No one firm is supposed to be able to gain an unfair advantage over another firm. The intention of antitrust laws is to put employees on an equal footing with their employers. Finally, antitrust laws are on the books to look out for the interests of the public, which benefits from the innovation that grows from the efficient functioning of capitalism. The only logical argument for granting the antitrust exemption would be if the particular business could not survive without such an exemption, and it was in the best interests of the public that the business survives. Perhaps the Court, in 1922, found that it was in the best interest of the public to grant this exemption because baseball was the *National Pastime*. Such an assessment was subjective in 1922, and certainly today is questionable. Over the years, the United States Congress has whittled away baseball's antitrust exemption on a specific issue by specific issue basis. The owners of the teams still have the ability to demand unanimous approval of any franchise relocation, and to structure a "farm system" relationship between Major League franchises and official Minor League franchises.

By judicial ruling and congressional inaction, baseball has an antitrust exemption bestowing upon it the opportunity to survive without subjecting it to the typical antitrust laws that may mortally wound it. The sport of baseball, on its most basic level, is a game to be played for the sheer purpose of amusement. However, the players of baseball have chosen to play the game primarily for financial wherewithal rather than for amusement. Instead, the generated amusement is reserved for the public in the form of fans. The baseball fans that

make up the public must be ensured their rightful share of amusement. Communities such as Washington, D.C., composed of baseball fans that pay taxes and thus part of the public, have been denied the right to have a Major League team. The conspiracy by the owners of the Major League Baseball teams against any fellow owner who would move his team to Washington, D.C., would have violated federal antitrust law had baseball not been exempt. As a specific result of baseball's antitrust exemption, Washington, D.C. has been denied a Major League team while Montreal, Quebec continues to have a baseball team despite any discernable interest in the team amongst the local population.

A majority of the owners continue to delude themselves that the antitrust exemption is in their best interests during negotiations with players. However, because of the exemption, arbitrators have historically decided a great majority of disputes, between Major League Baseball and the Major League Baseball Players Association, on behalf of the players. These arbitrators are left with no choice but to protect the interests of the players. The players could never be on an equal footing with the owners, so long as the owners remain exempt from federal antitrust law. The possibility of arbitration creates a lottery mentality where players have the incentive to bring any petty complaint to arbitration, as the worse that could happen is that they will lose. Often, the owners will reach a settlement with the players before the arbitrator renders a decision. Even if the owners truly believe themselves to be in the right, it is in their interest to avoid possible precedent setting decisions.

Perhaps the negotiations between Major League Baseball, the owners, and the Major League Baseball Players Association would no be so acrimonious without the specter of the antitrust exemption hanging over the heads of the players. In a truly market-oriented

economy, owners would have very little reason to seek arbitration that is so clearly stacked against them. Furthermore, the owners of teams within small markets would benefit financially from the right to move to more lucrative markets.

As the Minor Leagues are setup now, any two given minor league teams have less of a relationship with each other than with their perspective Major League parent. The Major League Baseball Player's Association does not represent Minor League baseball players. Minor League players would also benefit from an end to baseball's antitrust exemption. They would be in a better position to organize into a union themselves, and to fight the legacy of the reserve clause that ties them to a certain Major League team's "farm system." The reason that they would be in a better position is that a more horizontally organized system of Minor Leagues would allow the players to organize a common negotiating partner, thus, leading to the possibility of unionizing.

An end to baseball's antitrust exemption would best serve baseball fans throughout the United States. Presently, either tax revenues or bond issues fund most baseball stadiums. In addition, tax revenues are also used to build roads to the new stadiums and to deploy police in the neighborhood of the stadium. Cities that are supportive of their team are more than willing to support the initiatives necessary to keep the owner of a team happy. However cities with little relative interest in baseball are reluctant to use tax money or limited bond issues for the purpose of renovating a current stadium or building a new one. If owners were free to move their team to another city, those cities that want a baseball team would be more than likely offer the financial incentive necessary to lure the team to them.

Congressional Responsibility to Amend Laws

The players have achieved a number of gains since the original concord between the National and American Leagues at the turn of the century. In 1966, they formed the Major League Baseball Players' Association after several failed attempts to unionize, and in 1975 won an arbitration case allowing players to enter into collective bargaining agreements and to become free agents pending the termination of their contracts^{xli}. As a result, contracts such as those of Alex Rodriguez and Manny Ramirez are unrivaled by those in any other sport^{xlii}. However, there was major contention between the owners and the players' association each time the collective bargaining agreement expired. Since 1972 the players have participated in eight work stoppages. The players went on strike during the 1994-1995-baseball season. As a result, the players and the owners lost money and the fans lost some of their enthusiasm for the game.

In an effort to prevent future strikes, Congress stepped up to bat in 1994 by enacting the *Major League Play Ball Act* that imposes binding arbitration between the owners and the players:^{xliii}

IN GENERAL- Effective February 1, 1995, the dispute between the owners of major league **baseball** and the labor organization representing the players of major league **baseball** shall be subject to binding arbitration by the arbitration board established under subsection (b).

In 1998, Congress enacted the *Curt Flood Act*.^{xliv} This act provides that baseball players are covered under the antitrust laws just like any other professional athlete, or for that matter any other American worker. As a direct consequence of this act, the players have gained significant leverage over the owners in future negotiations:^{xlv}

Without that exemption, the owners need the union and a mutually-agreed upon collective bargaining agreement to band together in ways that would limit player salaries. Otherwise, the players could bring lawsuits charging that they are being hurt by anti-competitive actions by the owners, and if they won, would be entitled to three times their proven economic damages.

The players could decertify their union, much like National Football League players in 1992, and individual players then could choose to sue Major League Baseball for the violation of antitrust law.

The scope of the *Curt Flood Act* was restricted to the players, leaving the other aspects of the business of baseball exempt. However, in 2001, the late Senator Paul Wellstone proposed *The Fairness in Antitrust in National Sports (FANS) Act*.^{xlvi}

The conduct, acts, practices, or agreements (conduct) of persons in the business of organized professional major league baseball directly relating to or affecting the elimination or relocation of a major league baseball franchise are subject to the antitrust laws to the same extent that such conduct would be subject to such laws if engaged in by persons in any other professional sports business affecting interstate commerce.^{xlvii}

The events of 9/11 took place soon after the bill was submitted, and became a much greater concern to Congress. Senator Wellstone passed away soon thereafter, robbing the bill of its major supporter, and the issue was dropped in short order.^{xlviii}

A milder approach was taken by H. Res. 326, entitled ‘Encouraging more revenue sharing among major league baseball teams as an alternative to team eliminations,’ which simply urged owners to ‘give serious consideration to the increased sharing of broadcast revenues on a league-wide basis as an alternative to eliminating franchises by reason of their lack of revenue.’

Congress failed to enact Wellstone's legislation, but instead offered an official endorsement of a substantial increase in revenue sharing amongst baseball teams (H.R. 326 of 2002), and the use of binding arbitration to settle labor disputes:^{xlix}

Federal Election Commission reports show that the PAC gave to 40 House candidates and 25 Senate candidates, about 60 percent to Democrats and 40 percent to Republicans. Baseball also contributed \$170,000 in unregulated "soft money" to the national parties in the last election, \$95,000 to the Democrats, \$75,000 to the GOP.

Baseball, the only sport with a PAC, formed the committee last year, when the House and Senate judiciary committees were considering legislation that would partially rescind the sport's antitrust exemption. Among other things, that exemption has given baseball the authority to prevent teams from moving from city to city, as has happened in other sports.

Baseball lobbied to preserve the exemption and made contributions to committee members in both houses of Congress. It also dropped plans to eliminate two teams, the idea that sparked the bill. The legislation never made it out of committee.

The campaign contributions of Major League Baseball's PAC surely serve as an incentive to Congressmen/Congresswomen to do no more than talk of further limiting or rescinding professional baseball's antitrust exemption. Also, the PAC could contribute to electoral opponents that run against legislators who seek to rescind the exemption.

The Acts passed by Congress have helped to stabilize the business of baseball. However, why should it be that Congress has to get involved with each issue in baseball? It is 2004 and Congress is now holding hearings on drug use in baseball. All the other professional sports have been able to somehow put a drug policy into force. Only baseball needs Congressional hearings. Congress needs to extradite itself from being the overseer of

baseball. The first major step would be to specifically include all aspects of baseball under the antitrust laws. This would allow the owners and players to negotiate with each other on a more equal footing. The owners would no longer be able to collude with each other and, knowing this, the MLBPA could let its guard down enough to recognize that some of their positions are not what is best for the players.

Literature Review

Baseball's antitrust exemption has been a hot topic of debate since its inception during the 1920's. Numerous books have been written on the subject, starting with *Baseball Economics and Public Policy* by Jesse W. Markham and Paul V. Teplitz and published by Lexington Books in 1981. Their book employs a model of welfare economics to outline a series of six standards based intended to assess the "structure, conduct, and performance of industry." These six standards are:¹

1. An appreciable number of sellers in each market, preferably as many as are consistent with scale economies.
2. The absence of artificial barriers to entry.
3. No collusion among producers on price, output, or sales.
4. Evidence of vigorous rivalry among competing sellers in terms of their response to opportunities for profitable expansion, product improvement, and cost-reducing techniques.
5. The absence of abnormally high profits that cannot be explained in terms of superior performance.
6. A sufficiently high degree of knowledge on the part of consumers to permit them to exercise rational choice.

It is notable that baseball, in its current form, is unable to abide by any of these standards. It would seem as though this failure, in addition to the previously mentioned evils perpetuated by the antitrust exemption, provide more than a fair indication of the urgent need for the removal of the outdated and aberrant exemption.

In his book Baseball and Billions: A Probing Look Inside the Big Business of our National Pastime, Andrew Zimbalist identifies five "extant problem areas confronting MLB today":^{li}

1. Labor relations
2. Revenue inequality among the teams
3. Relations with the minor leagues

4. Relations with the host cities
5. The future of television and radio broadcasting

All of these issues are a modern legacy of the exemption. The relationship between owners and host cities would be volatile regardless of whether or not the exemption was in place^{lii}, however the other issues cited by Zimbalist are the most salient faced by the game today.

In terms of labor relations, Zimbalist is quick to point out that: “Since 1972, every time the Basic Agreement between the Major League Baseball (MLB) Player Relations Committee and the Major League Baseball Players’ Association (MLBPA) was renegotiated, there has been either a strike or a lockout.”^{liii} This is symptomatic of the animosity that lingers today between the players and owners at the bargaining table.

In the present day, players have gained greatly expanded rights, as any player with between two and six years of major league service can request salary arbitration, and players with six years of experience at the major league level become free agents.^{liv} Thus, average salaries have greatly increased since the 1976 Basic Agreement.^{lv} Nonetheless, the system is still greatly stacked in favor of the owners; they tend to win salary arbitration hearings, which put significant emphasis on pure statistics in order to determine a player’s value to his team and often leaves the player psychologically affected.^{lvi}

The players must often argue for the retention of rights they have won rather than negotiating for new benefits,^{lvii} and the simple fact that the owners are dealing from a fundamental and long-standing position of power from which they are able to grant or to withhold privileges creates a situation that cannot be ameliorated so long as the exemption stands.

Revenue inequalities and radio and television broadcasting comprise another issue that Zimbalist acknowledges must be addressed in the near future. The disparity between the revenues received by large market and small market teams is increasing in spite of the luxury tax and league-wide sharing of national television revenues.^{lviii} National media and licensing revenues have grown considerably in recent years. Zimbalist makes the point that:^{lix} “In 1991 the average AL team received and estimated 36.5 percent of its income from shared sources; the average NL team received 34.9 percent.” Still, this sharing does not touch local television contracts, and most other initiatives specific to a single team such as profits derived from the sale of concessions and luxury boxes:^{lx}

While the Yankees generated an annual \$50 million from their local cable contract, four clubs - Seattle, Kansas City, St. Louis, and Milwaukee - began 1992 without firm local TV deals of any kind... The majors derived \$615 million, roughly half their revenue, from broadcast sources, but fully \$250 million of it did not have to be shared.

The purpose of revenue sharing is to ensure a roughly equal amount of funds for each team to draw on in its quest to field a competitive team, and it is clear from these statistics that many changes have to be made to the system, as it exists before it accomplishes the intended result.

As for minor league baseball players, they remain largely bound by the reserve clause that their major league colleagues struggled under for so many years. As players for the minor league affiliate of a major league baseball team, they are then the essential property of

that major league team's owner unless he/she decides to trade or release them. Baseball prospects are "drafted by one team with which they must sign or stay out of professional baseball for at least one year" and after signing a contract they "can be reserved by one club for up to seven years in the minors."^{lxi} Very few players when drafted are immediately ready for the major leagues, and it is arguable that baseball players must make a greater investment in time to develop the fine skills of the game than do football players and basketball players, whose physical maturity is often enough to get them drafted into the National Football League and National Basketball Association respectively.^{lxii} Therefore, a drafted high school or college basketball player has little incentive to waste any time before reporting to the minor leagues should he wish to play in the major leagues.

Zimbalist argues that an effective solution to this problem would be a "policy of expansion," adding four teams to the major leagues every third year until twelve teams are added to the present thirty so that more minor leaguers can find a professional home.^{lxiii} This proposal suffers from many drawbacks. Most importantly, it dilutes the overall talent level within major league baseball, making it easier for large market owners to field a dominant team by hoarding most of the talented players. Furthermore, it does not address the astronomical financial cost of procuring a baseball team. A prospective owner would have to be present in forty-two cities with the means to buy and support a team. Finally, the proposal creates a greater number of "mouths to feed" for a revenue system that is already inadequate. Realistically, the only viable way to restructure the minor leagues is to remove the antitrust exemption contracting them to the major leagues; it is only then that they would be able to succeed or fail on their own merit or to form a new and legal settlement with their parent

organization in a manner similar to that of the National Hockey League and minor league hockey.^{lxiv}

Conclusion

Emotions play a large role in the continuation of baseball's exemption from antitrust law. No legislator wants to pass a bill that threatens the *National Pastime*. No Congressman/Congresswoman wants to cast a vote they may later be criticized as leading to the relocation of their constituents' beloved baseball team. It is no coincidence that President Taft was such a strong supporter of baseball. He came from New York City, which was home to three of the only sixteen teams of that era. Senator Wellstone represented Minnesota, the very state that was about to lose its baseball team, the Minnesota Twins, under a proposed contraction scheme. Finally, perhaps no image is more memorable than New York Senator Hillary Clinton donning a New York Yankees hat even though she was born in Chicago. To exclude a business from the law based on the idea that it represents a *National Pastime* seems to be an idea better suited to the pretentious governments of Western Europe that has no place in the New World. Perhaps baseball is the *National Pastime* in the eyes of its many fans and their actions are reflected in the open market, but that does not mean that the government needs to officially recognize it as such. Additionally, allowing the *National Pastime* to circumvent the nation's antitrust laws seems rightfully counterintuitive, and sends an elitist message to more-humble entrepreneurs. No other *fan favorite*, as reflected by success in a competitive market environment, is recognized by the government as a *National* phenomenon. For example, fried chicken is a quite popular and tasty fast food, but there is certainly no place for government to declare it the *National Lunch*. Kentucky Fried Chicken, for example, is expected to abide by the same antitrust law standards, as would Burger King.

It appears that Congress is still resisting the notion of removing the antitrust exemption because the exemption has allowed Congress to be the final arbitrators between the owners and the players of baseball. This role consumes much of Congress' valuable time, however Congress relishes it. Thanks to modern technology, almost anyone can watch senators and Congressmen/Congresswomen on CSPAN. Any viewer could attest to the super-interest that these legislators exhibit during hearings that concern baseball. These meetings allow Congressmen/Congresswomen to feel as though they a part of the national pastime.

Likewise, the Court will always be reluctant to overrule a previous decision, especially one that has been left standing for over eighty years. It is easier for them to hide behind *Stare Decisis*. Only in a case of the utmost importance, such as *Brown v. Board of Education of Topeka Kansas*, will the Court acknowledge past error. The Court has made it clear to Congress that it desires them to rescind the exemption. Congressional refusal to do so can only be interpreted by the Court as a specific intention to maintain the exemption. While it is easy for Congress to publicly ignore the unjust effect of the exemption upon Major League Baseball's mostly millionaire players that does not make it right. The players are entitled to the same protections from unfair business practices, as are any other workers. It is time for Congress to step up to the plate and remove the professional baseball antitrust exemption that has been in place for almost a century. If Congress continues to shirk responsibility, as is likely, then the Court must sock the exemption out of the park as a pinch hitter.

Acknowledgements

Thank you to Professor Waldman who mentored me over the past four years and in particular prepared me for the writing of this thesis in his Senior Seminar of Fall 2003.

Fellow student Aris Dutka brainstormed this subject with me for our co-written research paper on professional baseball for the Senior Seminar.

Research Librarian Margaret Schaus provided an invaluable service to me by refreshing my knowledge of how to utilize electronic resource databases.

Throughout my four years at Haverford College, numerous social science professors have helped to shape the writing style that I employ today.

My parents and roommates offered support during the process of writing this thesis for which I am grateful.

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ⁱ Labaree, Robert V. *The Federal Trade Commission: A Guide to Sources*. November 2000

ⁱⁱ Labaree, Robert V. *The Federal Trade Commission: A Guide to Sources*. November 2000

ⁱⁱⁱ The Federal Trade Commission Act (1914)

Title 15 U.S.C. §§ 41-51

^{iv} *A Jacques Barzun Reader: Selections from His Works*

by Jacques Barzun

^v <http://en2.wikipedia.org/wiki/Major+League+Baseball>

^{vi} Diamonds are Forever

^{vii} http://en.wikipedia.org/wiki/Black_Sox_scandal

^{viii} STANDARD OIL CO. v. U. S. (1911)

^{ix} AMERICAN COLUMN & LUMBER CO. v. U. S. (1921)

^x U. S. v. UNITED STATES STEEL CORPORATION (1920)

Sherman Act, Sections 1 and 2

^{xi} Scully, Gerald W. The Business of Major League Baseball.

^{xii} *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs et al* 259U.S.200

^{xiii} Justice Oliver Wendell Holmes, Jr. 259U.S.200

^{xiv} Zimbalist, Andrew S. Baseball and Billions: A Probing Look.

^{xv} 11th Circuit Extends Baseball Antitrust Shield

Jonathan Ringel, Fulton County Daily Report 05-29-2003

^{xvi} *TOOLSON v. NEW YORK YANKEES* 346 U.S. 356 (1953)

^{xvii} Burk, Robert Fredrick. Much more than a game: players, owners.

^{xviii} U.S. v. International Boxing Club of New York (1955)

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^{xix} *RADOVICH v. NAT. FOOTBALL LEAGUE*, 352 U.S. 445 (1957)

^{xx} *Black's Law Dictionary*: Revised Seventh Edition. 2002.

Stare Decisis.

^{xxi} *Black's Law Dictionary*: Revised Seventh Edition. 2002.

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^{xxii} The Curt Flood Act 15 U.S.C. Section 27

^{xxiii} Kindred, David. *The Sporting News*. "Baseball owners can't escape their past:" June 17, 2002

^{xxiv} Kindred, David. *The Sporting News*. "Baseball owners can't escape their past:" June 17, 2002

^{xxv} American Heritage Dictionary of the English Language: Fourth Edition. 2000

Reserve Clause: A clause formerly included in the contract of a professional athlete that allowed the automatic extension of the contract for a year beyond its expiration, thus binding the player to the organization until release, retirement, or a trade.

^{xxvi} <http://www.nflpa.org/AboutUs/main.asp?subPage=History>

^{xxvii} <http://www.dictionary.com>

Collective Bargaining [n.]

Negotiation between organized workers and their employer or employers to determine wages, hours, rules, and working conditions.

^{xxviii} <http://espn.go.com/mlb/columns/bp/1427632.html>

^{xxix} *Flood v. Kuhn* 407 U.S. 258 (1972)

^{xxx} <http://faculty.oxy.edu/whitney/classes/csp/notes/content/iiid.htm>

^{xxxi} *Black's Law Dictionary*: Revised Seventh Edition. 2002.

Arbitration Clause

A clause inserted in a contract providing for compulsory arbitration in case of dispute as to rights or liabilities under it; ineffectual if it purports to oust the courts of jurisdiction entirely.

^{xxxii} <http://www.dictionary.com>

Arbitration [n.]

Negotiation to resolve differences conducted by some impartial party.

^{xxxiii} <http://www.hickoksports.com/history/reservsec.shtml>

^{xxxiv} <http://espn.go.com/mlb/s/2000/1120/891700.html>

^{xxxv} <http://www.dictionary.com>

Free Agent [n.]

A professional athlete who is free to sign a contract with any team.

^{xxxvi} http://www.baseballlibrary.com/Marvin_Miller

^{xxxvii} New York Post. Sports Section. March 5, 2004

^{xxxviii} Kindred, David. *The Sporting News*. "Baseball owners can't escape their past:" June 17, 2002

^{xxxix} Of course the less successful owners still benefit overall from the exemption and many want it to remain in place, even if they are hurt by it on occasion.

^{xl} Henn, Harold G. Corporations, Cases, and Materials. West Publishing Company: 1975

^{xli} <http://espn.go.com/mlb/s/2000/1120/891700.html>

^{xlii} Rodriguez, 10 years, \$252 million...Jeter, 10 years, \$189 million...Ramirez, 8 years, \$160 million

^{xliii} 103d CONGRESS 2d Session H. R. 5095 Major League Baseball Act of 1994

^{xliv} The Curt Flood Act 15 U.S.C. Section 27

^{xlv} Money Magazine. July 19, 2002

^{xlvi} Wellstone's proposal attended directly to the Twins' and Expos' situations by arguing for the limitation of the antitrust exemption's allowance for moving or eliminating teams

^{xlvii} H.R. 3288 Fairness of Antitrust in National Sports Act of 2001

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Originally published in the Summer 2002 issue of Outside the Lines, the SABR Business of Baseball Committee newsletter.

^{xlix} <http://espn.go.com/mlb/news/2003/0513/1553096.html>

^l Markham and Teplitz p. 10

^{li} Zimbalist, Andrew Baseball and Billions: A Probing Look Inside the Big Business of our National Pastime p. 169

^{lii} Certainly an owner can make no greater threat to a city than to relocate his or her team. This paper has illustrates the difficulty of relocation and chronicles how the relationship between teams and cities is such a terrible problem.

^{liii} Zimbalist p. 169

^{liv} Sommers, Paul M. Diamonds are Forever: The Business of Baseball p. 2

^{lv} Sommers p. 3

^{lvi} In the arbitration process, both the team and the player submit a salary figure that they think the player deserves. Then, team representatives argue why the player doesn't deserve the money he requested while the player's representative must convince the arbitrator otherwise. It is easy to understand how hearing one's own team argue that his own contributions to team success are minimal is disheartening. This offensive statistic-driven process is also very unfair to players employed primarily for their defensive talents. A slick-fielding shortstop whose defensive prowess eliminates runs the other team would otherwise score can be just as critical to a team's success as a first baseman who hits 30 home runs.

^{lvii} Zimbalist provides the example of the entire salary arbitration process p. 171

^{lviii} Zimbalist p. 173

^{lix} Note the Yankees' profit-generating devices mentioned in the paper for examples

^{lx} Burk, Robert F. Much More than a Game: Players, Owners, & American Baseball since 1921 p. 276

^{lxi} Zimbalist p. 171

^{lxii} This would be generally done at the minor league level. Very rarely will a player with minimal minor league experience be promoted to the major leagues unless there is a tremendous shortage at his position or the major league club is terrible.

^{lxiii} Zimbalist p. 172

^{lxiv} Portions of the literature review are adapted from a Senior Seminar paper on the same subject co-written with Aris Dutka.