

# *Book Review*

## Diamond Justice—Teaching Baseball and the Law

BASEBALL AND THE LAW: CASES AND MATERIALS. Louis H. Schiff and Robert M. Jarvis. Durham, NC: Carolina Academic Press, 2016. ISBN - 13: 978-1-61163-502-7. Pp. 1014. \$120.00

Reviewed by Ed Edmonds\*

Authors Louis H. Schiff and Robert M. Jarvis set out to fill a void in the vast array of legal teaching materials by creating *Baseball and the Law: Cases and Materials*, the first casebook to concentrate on “The National Pastime.”<sup>1</sup> Their goal was to create a casebook that would propel the expansion of teaching law and baseball courses in law schools.<sup>2</sup> By pulling together appropriate cases and primary reading material with detailed and carefully crafted notes, the authors have

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<sup>1</sup> LOUIS H. SCHIFF & ROBERT M. JARVIS, *BASEBALL AND THE LAW: CASES AND MATERIALS* (2016) [hereinafter CASEBOOK]. For a discussion of the origins of the phrase “The National Pastime,” see PAUL DICKSON, *THE DICKSON BASEBALL DICTIONARY* 573–74 (Skip McAfee ed., 3d ed. 2009), which is another book that is useful for teachers of “Baseball Law.”

<sup>2</sup> CASEBOOK, *supra* note 1, at xxv (“[D]ue to the lack of an organizing text, only a handful of law schools have ever offered a ‘Baseball and the Law’ course. We hope this casebook helps lead to a much longer list.” (footnote omitted)). See also Diane C. Lade, ‘Baseball and the Law’: *New Book Pitches the Sport as a Legal Learning Tool*, SUNSENTINEL (Apr. 4, 2016), <http://www.sun-sentinel.com/features/fl-law-baseball-book-20160401-story.html> (“The co-authors share a common goal, however: to bring baseball into more law school classrooms.”). It is not surprising that relatively few baseball and law courses are taught in American law schools. One major reason is because most law schools do not offer multiple sports law courses nor have multiple faculty teaching with sports law as an interest or a component of their portfolio.

admirably completed this task with over 1000 pages of text to allow faculty and students in the legal academy a resource that carefully explores the intersection of baseball and the American legal system. Further, the authors prepared an excellent *Teacher's Manual* that provides in-depth advice on ways to approach the pedagogical questions that enrich the classroom experience from both sides of the podium.<sup>3</sup> But Schiff and Jarvis have accomplished an even larger result. The book is not only an excellent teaching tool, but it provides a detailed analysis of baseball law that can be read profitably beyond the classroom setting. Thus, the volume should receive a larger readership than teachers and students in a particular law school class.<sup>4</sup>

Admittedly, this is a niche publication, but it advances the teaching of sports law generally by concentrating on perhaps the richest and deepest areas of legal activity within the landscape of professional team sports in the United States.<sup>5</sup> Faculty members with an interest in teaching any course are often discouraged from even attempting to approach their curriculum committee with the idea of adding a new offering when no teaching materials exist. Schiff and Jarvis have removed that impediment in this area. Furthermore, one of the advantages of teaching the legal regulation of baseball, or sports more generally, is that nearly every aspect of the law school curriculum has a place within the course. Although the heaviest areas of emphasis are antitrust, contracts, labor law, and torts, faculty and students can explore trademark and patent law, the regulation of gambling, issues of gender and racial discrimination, taxation, construction law, and venue risk management. Indeed, Louis Schiff is one of many observers who have argued that nearly every legal topic can be taught and learned within the context of baseball,<sup>6</sup> so students taking a baseball law course

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<sup>3</sup> LOUIS H. SCHIFF & ROBERT M. JARVIS, *BASEBALL AND THE LAW: CASES AND MATERIALS TEACHER'S MANUAL* (2016) [hereinafter *TEACHER'S MANUAL*] (“We have prepared this Teacher’s Manual to give you insights into our thinking, cases choices, and teaching methods.”).

<sup>4</sup> As a career law librarian, the author recommends that law libraries add the volume to support the larger law school commitment to teaching sports law, particularly where that course requires a seminar paper.

<sup>5</sup> The big four are baseball, basketball, football, and hockey, with soccer making a move towards expanding the group. *HANDBOOK OF SPORTS AND MEDIA* 427 (Arthur A. Raney & Jennings Bryant eds., 2006); *THE OLYMPICS, MEDIA AND SOCIETY* 28 (Kim Bissell & Stephen D. Perry eds., 2013).

<sup>6</sup> Gary Blankenship, *Baseball and the Law*, *THE FLA. B. NEWS* (May 15, 2016), <https://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/8c9f13012b96736985256aa900624829/56eb591795cfcdd985257fab0049d97b> (“‘You could teach an entire law school curriculum and use nothing but baseball,’ said the judge, Louis Schiff.”).

will learn aspects of a wide array of legal topics while a faculty member has an enriching experience of exploring a multitude of legal doctrines, theories, and applications.

Coauthor Louis H. “Lou” Schiff is a county court judge for the 17th Judicial Circuit Court of Florida located in Broward County.<sup>7</sup> He is also an Adjunct Professor of Law at Mitchell Hamline School of Law.<sup>8</sup> Robert M. “Bob” Jarvis is Professor of Law at Nova Southeastern University.<sup>9</sup> The publisher is Carolina Academic Press,<sup>10</sup> long known for their decisions to offer casebooks to support limited-enrollment courses at many law schools.<sup>11</sup> Many of their casebooks, like this volume, perform the added function beyond use as teaching material by serving as a major research resource for attorneys, faculty, and students seeking information in these particular areas.

The book is structured around seven chapters: Introduction, Commissioners, Teams, Stadiums, Players, Fans, and Amateurs. The structural choice appears sound particularly considering that cases often build upon each other and cross subject matter. In the *Teacher’s Manual* the authors provide a breakdown of suggested chapters to use if teaching either a one, two, three, or four-hour course.<sup>12</sup> This is helpful both for planning for prospective teachers, and it also provides some insight into the authors’ feelings about how to approach the subject matter in the course and how to choose the appropriate number of credit hours. Unlike many casebooks, the editors have generally

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<sup>7</sup> See *County Court Judges*, 17TH JUD. CIR. CT. OF FLA., <http://www.17th.flcourts.org/index.php/judges/county-court> (last visited Oct. 31, 2016).

<sup>8</sup> *Faculty, Staff, and Administration, Louis Schiff ‘80, Adjunct/Affiliated Professor*, MITCHELL HAMLINE SCH. OF L., <http://mitchellhamline.edu/biographies/person/louis-schiff/> (last visited Oct. 31, 2016) (“He has taught a course called ‘Law and Cinema: Are Lawyers Still Our Heroes.’ In 2013 he developed [sic] a course, ‘Law and the Business of Baseball’, which he has taught each summer since 2013, in conjunction with the Minnesota Twins and the St. Paul Saints.”).

<sup>9</sup> See *Faculty and Staff Profiles, Robert M. Jarvis*, NOVA SOUTHEASTERN U. SHEPARD BROAD C. OF L., <https://www.law.nova.edu/faculty/full-time-faculty/jarvis-robert.html> (last visited Oct. 31, 2016). Professor Jarvis is a veteran law professor with a substantial list of areas of interest plus extensive experience as a casebook author and coauthor including texts on aviation law, admiralty, theater law, gaming law, art and museum law, AIDS, sports law, travel law, and notary law. *Résumé for Robert M. Jarvis*, [https://www.law.nova.edu/files/Robert-Jarvis\\_CV.pdf](https://www.law.nova.edu/files/Robert-Jarvis_CV.pdf). The author of this review participated in the theater law effort. ROBERT M. JARVIS ET AL., *THEATER LAW: CASES AND MATERIALS* (2004).

<sup>10</sup> See CASEBOOK, *supra* note 1.

<sup>11</sup> In this Author’s opinion, credit for this vision largely rests with Keith Sipe, publisher and founder of Carolina Academic Press in 1974. Professor Jarvis is a strong contributor to making this vision a reality.

<sup>12</sup> TEACHER’S MANUAL, *supra* note 3, at v.

published the entire opinion and not edited out material that they deemed unnecessary for the teaching of the case.<sup>13</sup> This decision is applauded because it allows the teacher wider latitude to consider how best to approach teaching the case while also providing the student with the complete text. Also, students who have not read complete cases need to learn how to sort out what is necessary for their research and what is merely an aside.

The remainder of this review will concentrate on the two chapters the authors chose as foundational: Chapters 1 (Introduction) and 5 (Players). The review will combine a more detailed analysis of the cases, materials, and notes in Chapter 1 with a briefer discussion of Chapter 5.

#### CHAPTER 1—INTRODUCTION

After a few short readings and some extensive and helpful notes that establish the strong relationship between baseball and the law,<sup>14</sup> the authors use the first reported baseball-specific case to reinforce the long relationship that exists between the two. The case, *Mahn v. Harwood*, involves a patent infringement battle between two inventors of leather-covered baseballs.<sup>15</sup> *Mahn* is also a valuable case at this point in the text because students and teachers might not quickly identify patent law as an important component of baseball law.<sup>16</sup> By contrast, *Metropolitan Exhibition Co. v. Ward*<sup>17</sup> is a case from one of the four core areas—contract law. The case involves Hall of Fame pitcher/infielder and Columbia Law School graduate John

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<sup>13</sup> Even casebook authors who follow a similar pattern of lightly editing cases usually discard dissenting opinions, and this is an understandable decision. In at least one instance covered in this review, this author would differ. Justice Thurgood Marshall offered a strong insight in his dissent in *Flood v. Kuhn*, 407 U.S. 258 (1972) that is worth discussing—the importance of the non-statutory labor exemption in overshadowing antitrust law beginning with the *Messersmith-McNally* arbitration decision in 1975. See *infra* text accompanying notes 113–18.

<sup>14</sup> CASEBOOK, *supra* note 1, at 3–16.

<sup>15</sup> 16 F. Cas. 494 (C.C.D. Mass. 1878), *aff'd on other grounds*, 112 U.S. 354 (1884).

<sup>16</sup> See DAN GUTMAN, BANANA BATS AND DING-DONG BALLS: A CENTURY OF UNIQUE BASEBALL INVENTIONS (1995) (providing additional information on baseball patents); PETER MORRIS, A GAME OF INCHES: THE STORIES BEHIND THE INNOVATIONS THAT SHAPED BASEBALL 396–455 (2006) (discussing innovative changes in the equipment used in baseball without a concentration on the underlying patents); Chuck Rosciam, *The Evolution of Catcher's Equipment*, 39 BASEBALL RES. J. 104 (2010) (providing specific treatment of patents and catcher's equipment).

<sup>17</sup> 9 N.Y.S. 779 (N.Y. Sup. Ct. 1890).

Montgomery Ward.<sup>18</sup> Ward, the primary architect of the Brotherhood of Professional Base Ball Players and the 1890 Players League,<sup>19</sup> was fighting a suit for an injunction sought by the National League New York Giants to prevent him from revolving<sup>20</sup> to the Brooklyn franchise in the Players League.<sup>21</sup> The case either introduces or reintroduces students to *Lumley v. Wagner*, the British personal services contract case that established the use of negative injunctions to prohibit an individual who wishes to breach a contract from working for the new employer.<sup>22</sup> Two additional cases<sup>23</sup> from the 1890–1900 era precede perhaps the best known of this series of cases, *Philadelphia Ball Club v. Lajoie*.<sup>24</sup> *Lajoie* involves the player wars between the National League and the American League at the turn of the last century.<sup>25</sup> The case contains one of the great quotations in baseball jurisprudence

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<sup>18</sup> For additional information on Ward, a truly remarkable and important figure in baseball and its many labor challenges in the late nineteenth and early twentieth centuries, see BRYAN DI SALVATORE, *A CLEVER BASE-BALLIST: THE LIFE AND TIMES OF JOHN MONTGOMERY WARD* (1999) (discussing Ward's life); DAVID STEVENS, *BASEBALL'S RADICAL FOR ALL SEASONS: A BIOGRAPHY OF JOHN MONTGOMERY WARD* (1998) (discussing Ward's life); PATRICK K. THORNTON, *LEGAL DECISIONS THAT SHAPED MODERN BASEBALL* 21–40 (2012) (focusing on the case *Metropolitan Exhibition Co. v. Ward*).

<sup>19</sup> See DAVID PIETRUSZA, *MAJOR LEAGUES: THE FORMATION, SOMETIMES ABSORPTION AND MOSTLY INEVITABLE DEMISE OF 18 PROFESSIONAL BASEBALL ORGANIZATIONS, 1871 TO PRESENT* 99–126 (1991) (providing additional information on the Players League); ROBERT B. ROSS, *THE GREAT BASEBALL REVOLT: THE RISE AND FALL OF THE 1890 PLAYERS LEAGUE* (2016) (discussing both the Player's League and the Brotherhood of Professional Base Ball Players).

<sup>20</sup> DICKSON, *supra* note 1, at 704 (explaining that the term “revolving” was commonly used in the nineteenth century for a player “moving from one league or team to another without regard to one's contract or club agreement, in search of better positions, better salaries, better teams, or changes of scenery”).

<sup>21</sup> *Ward*, 9 N.Y.S. at 779.

<sup>22</sup> 42 ENG. REP. 687 (1852). Many students will study *Lumley* during their first year contracts course. However, when teaching *Ward* in Sports Law Seminar, this author finds that students either forgot reading this case and are reluctant to admit it, or have not read it during their contracts class. For additional discussion of *Lumley*, see generally Geoffrey Christopher Rapp, *Affirmative Injunctions in Athletic Employment Contracts: Rethinking the Place of the Lumley Rule in American Sports Law*, 16 MARQ. SPORTS L. REV. 261 (2006); Sarah Swan, *A New Tortious Interference with Contractual Relations: Gender and Erotic Triangles in Lumley v. Gye*, 35 HARV. J.L. & GENDER 167 (2012); Lea S. VanderVelde, *The Gendered Origins of the Lumley Doctrine: Binding Men's Consciences and Women's Fidelity*, 101 YALE L.J. 775 (1991); S.M. Waddams, *Johanna Wagner and the Rival Opera Houses*, 117 L.Q. REV. 431 (2001).

<sup>23</sup> Balt. Baseball Club & Exhibition Co. v. Pickett, 28 A. 279 (Md. 1894); Griffin v. Brooklyn Ball Club, 73 N.Y.S. 864 (App. Div. 1902); CASEBOOK, *supra* note 1, at 24–33.

<sup>24</sup> 51 A. 973 (Pa. 1902).

<sup>25</sup> *Id.*

focusing on key elements required for the issuance of a negative injunction:

In addition to these features which render his services of peculiar and special value to the plaintiff, and not easily replaced, Lajoie is well known, and has great reputation among the patrons of the sport, for ability in the position which he filled, and was thus a most attractive drawing card for the public. *He may not be the sun in the baseball firmament, but he is certainly a bright particular star.*<sup>26</sup>

Note 2 after the case discusses how Lajoie avoided the impact of the ruling against him.<sup>27</sup> After negotiating a deal with the Cleveland Bronchos, Lajoie simply skipped games in Pennsylvania to relax in Atlantic City, New Jersey, thus remaining beyond the reach of the injunction.<sup>28</sup> The note's explanation of Lajoie's maneuvering to avoid the consequences of the court's decision is important because it reminds students that litigation is about the resolution of human conflicts, in this case an important one in what was nearly a 100-year struggle over the imbalance between owners and players surrounding the use of the reserve clause to control player mobility and depress salaries. Thus, the story behind the case that covers matters beyond the legal theories discussed in the opinion are important for students to grasp a complete meaning of what transpired in this determination of contractual rights and obligations.

The authors move to the next major interleague war for players, one that involved the Federal League's attempt to join the American and National Leagues at the pinnacle of professional baseball.<sup>29</sup> Amongst

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<sup>26</sup> *Id.* at 974 (emphasis added); see DAVID L. FLEITZ, *NAPOLEON LAJOIE: KING OF BALLPLAYERS* 78–79 (2013) (providing a detailed discussion of the trial and the Pennsylvania Supreme Court decision that reversed the lower court decision in his biography of Lajoie, including the two sentences quoted in the text above as part of a larger quotation from the court's decision).

<sup>27</sup> CASEBOOK, *supra* note 1, at 38.

<sup>28</sup> *Id.* (stating in the note that the Athletics traded Lajoie to Cleveland to avoid the injunction that was not enforceable in Ohio. A trade is a common explanation of the aftermath of the decision that kept Lajoie in the American League). However, Lajoie biographer David Fleitz relies on Norman Macht's discussion of the events in volume one of his monumental three-volume biography of Connie Mack, the manager and part-owner of the Athletics, to assert that Lajoie's contract with the Athletics was effectively voided by the courts. After negotiations with Philadelphia Phillies owner Colonel John I. Rogers broke down, Lajoie negotiated a deal with Cleveland owner Charles W. Somers. FLEITZ, *supra* note 26, at 81–83; NORMAN L. MACHT, *CONNIE MACK AND THE EARLY YEARS OF BASEBALL* 272–73 (2007).

<sup>29</sup> See NATHANIEL GROW, *BASEBALL ON TRIAL: THE ORIGIN OF BASEBALL'S ANTITRUST EXEMPTION* (2014) (discussing the history of the Federal League); DANIEL R. LEVITT, *THE BATTLE THAT FORGED MODERN BASEBALL: THE FEDERAL LEAGUE CHALLENGE AND ITS LEGACY* (2012); ROBERT PEYTON WIGGINS, *THE FEDERAL LEAGUE*

the numerous cases<sup>30</sup> involving contractual disputes similar to *Lajoie*, the authors chose *American League Baseball Club of Chicago v. Chase*, a case “won” by the Buffalo Buffeds, or Blues, to represent the development of the law in this area.<sup>31</sup> Again, the story extends well beyond the court decision. The Buffalo team failed to financially survive the 1915 season, and a group of Federal League owners negotiated a peace agreement with the American and National Leagues that satisfied all but the syndicate that owned the Baltimore Terrapins. The Baltimore owners’ dissatisfaction precipitated years of litigation resulting in the next case in the introductory chapter, *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*,<sup>32</sup> arguably the most noteworthy United States Supreme Court pronouncement on baseball and the law.<sup>33</sup> Again, the authors provide an excellent note that details Hal Chase’s post-Federal League return to the National League’s Cincinnati Reds and off-the-field activities.<sup>34</sup> Chase played for Cincinnati for three years before concluding his major league career in 1919 with the New York Giants.<sup>35</sup> As Schiff and Jarvis point out, “Chase today principally is remembered as baseball’s most corrupt ballplayer, a reputation he earned by regularly betting on, and

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OF BASE BALL CLUBS: THE HISTORY OF AN OUTLAW MAJOR LEAGUE, 1914–1915 (2009) (discussing the influence of the Federal League on the American and National Leagues).

<sup>30</sup> CASEBOOK, *supra* note 1, at 49 (listing *Weeghman v. Killefer*, 215 F. 289 (6th Cir. 1914) and *Cincinnati Exhibition Co. v. Marsans*, 216 F. 269 (E.D. Mo. 1914) as cases involving contractual disputes). The trial court style and year with the original misspelling of Chicago Whales and future Chicago Cubs owner Charles Weeghman’s name is listed in the casebook. CASEBOOK, *supra* note 1, at 49 (citing *Weegham v. Killefer*, 215 F. 168 (W.D. Mich. 1914)); *see also* *Cincinnati Exhibition Co. v. Johnson*, 190 Ill. App. 630 (1914) (involving Marsans’ Cincinnati teammate George H. “Chief” Johnson).

<sup>31</sup> CASEBOOK, *supra* note 1, at 39 (discussing *Am. League Baseball Club of Chi. v. Chase*, 149 N.Y.S. 6 (N.Y. Sup. Ct. 1914)).

<sup>32</sup> CASEBOOK, *supra* note 1, at 50 (discussing *Fed. Baseball Club of Balt., Inc. v. Nat’l League of Prof’l Baseball Clubs*, 259 U.S. 200 (1922)).

<sup>33</sup> TEACHER’S MANUAL, *supra* note 3, at 13 (“Without a doubt, there is no more famous (or important) baseball case than *Federal Baseball*. At its starkest, the case is understood as meaning that baseball is not subject to the nation’s antitrust laws. As note 6 on pages 52–53 points out, however, whether this is what Justice Holmes intended remains a hot issue.”); *see* GROW, *supra* note 29, at 1–3 (summarizing the importance of the many lawsuits that preceded the United States Supreme Court decision in *Federal Baseball* and the final case as explained by Justice Holmes). For a fuller understanding, read Grow’s entire book as well as Daniel Levitt and Robert Peyton Wiggins excellent histories of the Federal League. LEVITT, *supra* note 29; WIGGINS, *supra* note 29.

<sup>34</sup> CASEBOOK, *supra* note 1, at 49–50.

<sup>35</sup> Hal Chase Player Page, *Hal Chase Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/players/c/chaseha01.shtml> (last visited Oct. 31, 2016).

throwing, games.”<sup>36</sup> The authors also use the notes after *Chase*, to explore the player’s claim that poor financial treatment by club owners was the reason for his behavior.<sup>37</sup> They also use this opportunity to guide teachers and students to the movie *Long Gone*,<sup>38</sup> in keeping with their comment in the beginning of the *Teacher’s Manual* that “a baseball law course lends itself to screening movies, hosting outside speakers, and conducting field trips.”<sup>39</sup>

The authors move from contracts law to antitrust law and include the three most important cases that help define baseball’s unique relationship with antitrust law in contrast to other professional sports and nearly every American industry.

In the first case of the trilogy, Carroll Rasin, the Baltimore Terrapins president, and Edward “Ned” Hanlon, former player, manager, major team shareholder, and member of the board of directors balked at the proposed peace agreement terms offered to them.<sup>40</sup> Baltimore was a powerful franchise in the 1890s winning three consecutive National League pennants behind Hanlon’s leadership with a roster that included Dan Brouthers, Hughie Jennings, Wee Willie Keeler, Joe Kelley, John McGraw, and Wilbert Robinson.<sup>41</sup> The city still smarted from losing its American League franchise to New York in 1903, a team that transformed its humble first decade into the powerful Yankees during

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<sup>36</sup> CASEBOOK, *supra* note 1, at 49; *see* DONALD DEWEY & NICK ACOCELLA, *THE BLACK PRINCE OF BASEBALL: HAL CHASE AND THE MYTHOLOGY OF BASEBALL* (2004) (providing additional information on Hal Chase); MARTIN DONELL KOHOUT, *HAL CHASE: THE DEFIANT LIFE AND TURBULENT TIMES OF BASEBALL’S BIGGEST CROOK* (2001) (discussing Hal Chase’s life as the biggest crook in baseball history).

<sup>37</sup> CASEBOOK, *supra* note 1, at 49.

<sup>38</sup> *Id.* at 49–50; *LONG GONE* (HBO 1987). *Long Gone* is one of this author’s favorite baseball movies, and, like Schiff and Jarvis, the author recommends the Jones article on the movie. *See* Joseph Jones, *HBO’s “Long Gone,” The Best Baseball Movie Most of You Never Saw*, BLEACHER REP. (Mar. 28, 2011), <http://bleacherreport.com/articles/647819-hbos-long-gone-the-best-baseball-movie-most-of-you-never-saw> (noting in his article that the screenplay is based on a novel by Paul Hemphill); PAUL HEMPHILL, *LONG GONE: A NOVEL* (1979). Two other movies and books explore owners and “poor” salaries and bribery to throw games. *See* *EIGHT MEN OUT* (Orion 1988) (depicting the 1919 World Series); ELIOT ASINOF, *EIGHT MEN OUT: THE BLACK SOX AND THE 1919 WORLD SERIES* (1963) (describing the fix in the 1919 World Series and the Black Sox); *THE NATURAL* (TriStar Pictures 1984) (depicting bribery of Roy Hobbs, the protagonist of Bernard Malamud’s book, by New York Knights co-owner, Judge Goodwill Banner, to lose the deciding game for the pennant); BERNARD MALAMUD, *THE NATURAL* (1952).

<sup>39</sup> *TEACHER’S MANUAL*, *supra* note 3, at v.

<sup>40</sup> *GROW*, *supra* note 29, at 152.

<sup>41</sup> *See* BURT SOLOMON, *WHERE THEY AIN’T: THE FABLED LIFE AND UNTIMELY DEATH OF THE ORIGINAL BALTIMORE ORIOLES, THE TEAM THAT GAVE BIRTH TO MODERN BASEBALL* (1999).



the 1920s. As detailed in note 2 following the opinion, in the middle of its fight for players and patrons with the American and National Leagues, the Federal League filed a lawsuit in federal court in Chicago claiming that Organized Baseball's behavior constituted a violation of antitrust laws.<sup>42</sup> Judge Kenesaw Mountain Landis concluded a speedy trial in January 1915, but he refused to rule throughout the season.<sup>43</sup> After the peace agreement was brokered with only the Baltimore situation hanging in the balance, Landis dismissed the lawsuit on February 7, 1916, as part of the accord reached between the three leagues noting that:

There was a very full argument of everything involved and a very simple proposition tendered to the Court . . . . However, from the Court's own knowledge of the subject matter, resulting from thirty years' acquaintance beginning before most of you gentlemen knew anything about any such thing as baseball, convinces the Court that a temporary injunction would have been, if not destructive, vitally injurious to [Organized Baseball].

That is the plain truth of that litigation about which these two litigants were conducting this fierce controversy, and so the question which I had to decide, in addition to the legal questions submitted, was whether or not I would enter an order that would be vitally injurious if not destructive of Organized Baseball, an order in which neither litigant could leave the Court a victor.

That is the situation I had to decide. And I decided that this Court had a right to postpone the announcement of any such order.<sup>44</sup>

The Baltimore group, however, filed two additional lawsuits in federal courts that focused on both the practices of the American and National League and the impact of the reserve system.<sup>45</sup> After altering their strategy somewhat, they filed a new case in the Supreme Court of the District of Columbia.<sup>46</sup> After winning a trial but losing an appeal to the Court of Appeals of the District of Columbia in 1920, the Baltimore group appealed to the United States Supreme Court.<sup>47</sup> On May 29, 1922, Justice Oliver Wendell Holmes delivered the court's opinion. Holmes's opinion is often cited for holding that baseball was not involved in interstate commerce, and, as such, was beyond the reach of

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<sup>42</sup> CASEBOOK, *supra* note 1, at 52.

<sup>43</sup> GROW, *supra* note 29, at 111 (arguing the criticism of Landis for sitting on the case for one year "is 'not entirely fair'").

<sup>44</sup> *From the SABR Archives: Judge Landis Dismisses 1915 Federal League Lawsuit*, SOCIETY FOR AMERICAN BASEBALL RESEARCH (Oct. 8, 2014, 7:53 PM), <http://sabr.org/latest/sabr-archives-judge-landis-dismisses-1915-federal-league-lawsuit>.

<sup>45</sup> GROW, *supra* note 29, at 112–36.

<sup>46</sup> *Id.* at 136–37.

<sup>47</sup> *Id.* at 135–205.

the Sherman Act and the newly passed Clayton Act.<sup>48</sup> In fact, as Schiff and Jarvis state in note six, “Holmes’s decision in *Federal Baseball* has been severely criticized.”<sup>49</sup> To their credit, the casebook authors offer quotations from two student comments in 1937 and 1953 in the *Yale Law Journal* to provide more contemporary legal analysis of the *Federal Baseball* holding.<sup>50</sup> Better yet, the authors provide the following statement in the *Teacher’s Manual*: “Justice Holmes understood the antitrust laws to apply to physical products. Because playing baseball does not result in a tangible product, it is not surprising that he felt the antitrust laws could not apply. Subsequent courts, of course, have been much more liberal in defining the word ‘product.’”<sup>51</sup> Indeed, in Holmes’s opinion he stated that “the exhibition . . . 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.”<sup>52</sup> The National League’s lead counsel George Wharton Pepper in his autobiography *Philadelphia Lawyer* offered his remembrance of the oral argument and the ultimate decision:

The situation was dramatic. The courtroom was full of interested onlookers[;] . . . I argued with much earnestness the proposition that personal effort not related to production is not a subject of commerce; that the attempt to secure all the skilled service needed for professional baseball is not an attempt to monopolize commerce or any part of it; and that Organized Baseball, not being commerce, and therefore not interstate commerce, does not come within the scope of the prohibitions of the Sherman Act. In due course the Court decided

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<sup>48</sup> Toolson v. New York Yankees, Inc., 346 U.S. 356, 357 (1953); STUART BANNER, THE BASEBALL TRUST: A HISTORY OF BASEBALL’S ANTITRUST EXEMPTION 63 (2013); JEROLD J. DUQUETTE, REGULATING THE NATIONAL PASTIME: BASEBALL AND ANTITRUST 31 (1999); ANDREW ZIMBALIST, MAY THE BEST TEAM WIN: BASEBALL ECONOMICS AND PUBLIC POLICY 17 (2003) (noting that the Court could have reached the opposite decision based on players crossing state lines).

<sup>49</sup> CASEBOOK, *supra* note 1, at 52–53 (citing the language of Judge Henry Friendly in *Salerno v. Am. League of Prof’l Baseball Clubs*, 429 F.2d 1003, 1005 (2d. Cir. 1970) stating, “that *Federal Baseball* was not one of Mr. Justice Holmes’ happiest days”). For a slightly different take on the correctness of Holmes’s opinion by a current Supreme Court justice, see Samuel A. Alito Jr., *The Origin of the Baseball Antitrust Exemption: Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Players*, 34 J. SUP. CT. HIST. 183 (2009). See also Gary Hailey, *Anatomy of a Murder: The Federal League and the Courts*, 4 NAT’L PASTIME 62, 73 (1985) (supporting the correctness of the *Federal Baseball* decision when written).

<sup>50</sup> CASEBOOK, *supra* note 1, at 53.

<sup>51</sup> TEACHER’S MANUAL, *supra* note 3, at 14.

<sup>52</sup> Fed. Baseball Club of Balt., Inc. v. Nat’l League of Prof’l Baseball Clubs, 259 U.S. 200, 209 (1922).

in accordance with this contention and affirmed the judgment of the court below. The opinion of Mr. Justice Holmes . . . is a model of conciseness.”<sup>53</sup>

To reinforce Pepper’s memory of the case over two decades after it took place, one should delve more closely into Holmes’ opinion and its reference noted above “as it is put by the defendants” by reading the brief presented to the Supreme Court in support of his clients. Pepper cited numerous cases in his brief concluding “it is believed that in no decided case has it ever been held that personal effort, considered apart from production, is a subject of commerce.”<sup>54</sup>

The opinion in *Federal Baseball* held steady through World War II. However, Danny Gardella, who played for the New York Giants during the war and jumped to the Mexican League after the war, sued baseball over their efforts to blacklist him. In 1949, Judge Jerome Frank of the Second Circuit stated in the court’s two-one split decision granting Gardella the right to a trial on the antitrust status of the reserve system that “no one can treat as frivolous the argument that the Supreme Court’s recent decisions have completely destroyed the vitality of *Federal Baseball* . . . , decided twenty-seven years ago, and have left that case but an impotent zombi. Nevertheless, it seems best that this court should not so hold.”<sup>55</sup> Gardella settled his lawsuit with Organized Baseball on October 7, 1949, just one month before his scheduled trial date.<sup>56</sup>

In 1953, the second case in baseball’s antitrust trilogy, *Toolson v. New York Yankees*,<sup>57</sup> reached the Supreme Court. *Toolson* was actually

<sup>53</sup> GEORGE WHARTON PEPPER, PHILADELPHIA LAWYER: AN AUTOBIOGRAPHY 359 (1944).

<sup>54</sup> Brief on Behalf of Defendants in Error at 46, *Fed. Baseball Club of Balt. v. Nat’l League of Prof’l Baseball Clubs*, 259 U.S. 200 (1922) (No. 204) (writing on behalf of the defendants were George Wharton Pepper, Benjamin S. Minor, and Samuel M. Clement, Jr.).

<sup>55</sup> *Gardella v. Chandler*, 172 F.2d 402, 408–09 (1949). In footnote 1 of his opinion, Judge Frank offers the following observation:

I reach that conclusion somewhat hesitantly. For, while the Supreme Court has never explicitly overruled the *Federal Baseball Club* case, it has overruled the precedents upon which that decision was based; and 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. This court cannot, of course, tell the Supreme Court that it was once wrong.

*Id.* at 409 n.1. Schiff and Jarvis discuss the *Gardella* case briefly in note 3 of Chapter 1. CASEBOOK, *supra* note 1, at 57. They also discuss the case and the Mexican League in more detail in notes 2–4 of Chapter 5. CASEBOOK, *supra* note 1, at 642–45.

<sup>56</sup> BANNER, *supra* note 48, at 103–04 (2013); LEE LOWENFISH, *THE IMPERFECT DIAMOND: A HISTORY OF BASEBALL’S LABOR WARS* 167 (rev. ed. 1991).

<sup>57</sup> 346 U.S. 356 (1953).

a consolidation of three cases<sup>58</sup> that were filed in part because a Congressional investigation of Organized Baseball and the Second Circuit's reluctant decision in *Gardella*. Toolson, himself, is probably the most forgotten plaintiff in baseball's legal history. The authors, together with virtually everyone who has discussed the case in over six decades since the Court presented its per curiam decision, identify the plaintiff by his given first name George.<sup>59</sup> However, he shared that name with his father, so he was known by family, friends, and teammates by his middle name Earl.<sup>60</sup> Toolson, with the initial legal help of a boyhood friend,<sup>61</sup> had sued baseball over his placement on the restricted list after his refusal to accept a demotion from the Yankees' top farm team, Newark, to a lesser team, Binghamton.<sup>62</sup> Toolson spent most of his minor league career in the Boston Red Sox farm system including four seasons hurling for the AAA Louisville Colonels.<sup>63</sup> The Court issued a short per curiam opinion that prompted a strong dissent from Justice Harold Burton.<sup>64</sup> The Court's one paragraph decision stated that

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<sup>58</sup> *Corbett v. Chandler*, 202 F.2d 428 (6th Cir. 1953); *Toolson v. New York Yankees, Inc.*, 200 F.2d 198 (9th Cir. 1952); *Kowalski v. Chandler*, 202 F.2d 413 (6th Cir. 1953). The authors cover Toolson's, Kowalski's, and Corbett's litigation and baseball careers in notes 1–3 after the presentation of Toolson's Supreme Court decision. CASEBOOK, *supra* note 1, at 56–57. For more on Walter Kowalski's career and legal legacy, see J. Gordon Hylton, *Walter Kowalski: A Forgotten Man in the Legal History of Sport*, MARQ. UNIV. L. SCH. FACULTY BLOG, <http://law.marquette.edu/facultyblog/2011/05/29/walter-kowalski-a-forgotten-man-in-the-legal-history-of-sport/> (discussing Walter Kowalski's life and death) (last visited Oct. 31, 2016).

<sup>59</sup> Even Baseball-Reference.com lists Toolson as George. George Toolson Player Page, *George Toolson Register Statistics and History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/register/player.cgi?id=tools001geo> (last visited Oct. 31, 2016).

<sup>60</sup> This Author has completed many years of research on Toolson and had discussions with his brother and son. Furthermore, three team photographs of the Louisville Colonels (1946–1947–1948) on file with the author list Toolson as Earl. The identification of Toolson by his full name can make it difficult for researchers to find information about him.

<sup>61</sup> Toolson was represented in his lower federal court decisions by Howard C. Parke, practicing in Santa Barbara, California. See Editorial, *Ex-Col Toolson Takes Suit to Court of Appeals*, COURIER-J. (Louisville), Dec. 11, 1952, at 12; Editorial, *Supreme Court Test of Reserve Clause Likely; Judge Points Way After Dismissing Player's Suit*, ST. LOUIS POST-DISPATCH, Nov. 8, 1951, at 32.

<sup>62</sup> Editorial, *Baseball Player Asks \$375,000 in Damage Suit*, L.A. TIMES, May 2, 1951, at C2.

<sup>63</sup> George Toolson Player Page, *supra* note 59.

<sup>64</sup> *Toolson v. New York Yankees, Inc.*, 346 U.S. 356, 356–65 (1953). Burton's dissent covers three pages of the casebook. CASEBOOK, *supra* note 1, at 54–56. The current editions of most of the major sports law casebooks do not reprint either *Federal Baseball* or *Toolson* but instead rely on either short summaries of the cases in a note or the summary of the cases as crafted by Justice Harry Blackmun in his opinion in *Flood v. Kuhn*. Matt Mitten's casebook, the one used by this author, provides only note summaries of *Federal Baseball*

In *Federal Baseball* . . . this Court held that the business of providing public baseball games for profit between clubs of professional baseball players was not within the scope of the federal antitrust laws. Congress has had the ruling under consideration but has not seen fit to bring such business under these laws by legislation having prospective effect . . . . We think that if there are evils in this field which now warrant application to it of the antitrust law it should be by legislation . . . . [T]he judgments below are affirmed on the authority of *Federal Baseball* . . . so far as that decision determines that Congress had no intention of including the business of baseball within the scope of the federal antitrust laws.<sup>65</sup>

Justice Burton's dissent is important for the number of questions targeting the majority opinion and the development of Organized Baseball after *Federal Baseball*. For certain, the nature of Supreme Court jurisprudence involving interstate commerce had changed dramatically since 1922. Also, with the Supreme Court disavowing its creation of Baseball's antitrust status and placing the burden on Congress to address the issue, the per curiam opinion failed to consider the extraordinarily lengthy 1952 report of the House of Representative's Subcommittee on Study of Monopoly Power.<sup>66</sup> Justice Burton cited the 1952 report extensively in his dissent and argued that the interstate nature of baseball, its heavy reliance on radio and television revenue, and the consideration of four bills "intending to give baseball and all other professional sports a complete and unlimited immunity from the antitrust laws"<sup>67</sup> should force a remand of all three cases to the appropriate district court for antitrust review.<sup>68</sup>

The authors pose a critical question in note 9 after the *Toolson* case when they state that "it is debatable whether *Federal Baseball* created

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and *Toolson*. MATTHEW J. MITTEN, TIMOTHY DAVIS, RODNEY K. SMITH & N. JEREMI DURU, *SPORTS LAW AND REGULATION: CASES, MATERIALS, AND PROBLEMS* 406 (3d ed. 2013). The Weiler/Roberts casebook relies on Justice Blackmun's discussion of *Federal Baseball* and *Toolson*. PAUL C. WEILER, GARY R. ROBERTS, ROGER I. ABRAMS & STEPHEN F. ROSS, *SPORTS AND THE LAW: TEXT, CASES, PROBLEMS* 139–41 (4th ed. 2004) (quoting the entire *Toolson* per curiam opinion but not Justice Burton's dissent). Ray Yasser's casebook also relies on Justice Blackmun's version as reported in *Flood v. Kuhn*. RAY YASSER, JAMES R. MCCURDY, C. PETER GOPLERUD & MAUREEN A. WESTON 284–86 (8th ed. 2016). Michael Cozzillio's casebook does publish the *Federal Baseball* and *Toolson* opinions including Justice Burton's dissent. MICHAEL J. COZZILLIO, MARK S. LEVINSTEIN, MICHAEL R. DIMINO, SR. & GABE FELDMAN, *SPORTS LAW: CASES AND MATERIALS* 320–25 (2d ed. 2007).

<sup>65</sup> *Toolson*, 346 U.S. at 356–57.

<sup>66</sup> *Fed. Baseball Club, Inc. v. Nat'l League of Prof'l Baseball Clubs*, 29 U.S. 200 (1922); H.R. REP. NO. 82-2002 (1952).

<sup>67</sup> H.R. REP. NO. 82-2002, at 230.

<sup>68</sup> *Toolson*, 346 U.S. at 361–62, 365.

baseball's antitrust exemption and *Toolson* merely confirmed it, or whether *Toolson* created the exemption but blamed *Federal Baseball*.<sup>69</sup> They cite Villanova University Charles Widger School of Law Professor Mitchell Nathanson's article as helping readers to ponder the question.<sup>70</sup> Based on the discussion in the notes after *Toolson* and a reading of the Nathanson article, a strong argument exists that the importance of *Toolson* is substantial because it is, indeed, the case that created the exemption. Prior to *Toolson*, the Court could have easily eschewed using stare decisis to reinstate *Federal Baseball's* shaky stature when the legal precedents supporting the 1922 case had been severely compromised by 1953.

Baseball continued for another decade and one-half while professional boxing, football, and basketball<sup>71</sup> were turned aside by the Supreme Court in their attempts to expand baseball's antitrust exemption to their sports. The turbulent 1960s, however, would produce the third in the trilogy of baseball cases.<sup>72</sup> In October 1969, St. Louis Cardinals all-star center fielder Curt Flood was traded to the Philadelphia Phillies in a seven-player deal that also included Tim McCarver and Dick Allen.<sup>73</sup> Flood, who never forgot his early career trade from the Reds to the Cardinals, balked at moving to Philadelphia. After consulting with relatively new Players Association Executive Director Marvin Miller,<sup>74</sup> Flood decided to send Commissioner Bowie

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<sup>69</sup> CASEBOOK, *supra* note 1, at 60.

<sup>70</sup> *Id.*; see Mitchell Nathanson, *Who Exempted Baseball, Anyway? The Curious Development of the Antitrust Exemption that Never Was*, 4 HARV. J. SPORT & ENT. L. 1 (2013) (concluding that that, "contrary to popular opinion, the Supreme Court's 1922 *Federal Baseball Club* decision did not exempt Organized Baseball from federal antitrust laws," but was "much more limited in scope").

<sup>71</sup> *Haywood v. Nat'l Basketball Ass'n*, 401 U.S. 1204 (1971); *Radovich v. Nat'l Football League*, 352 U.S. 445 (1957); *United States v. Int'l Boxing Club*, 348 U.S. 236 (1955).

<sup>72</sup> *Flood v. Kuhn*, 407 U.S. 258 (1972).

<sup>73</sup> For additional information on Curt Flood, see ALEX BELTH, *STEPPING UP: THE STORY OF CURT FLOOD AND HIS FIGHT FOR BASEBALL PLAYERS' RIGHTS* (2006); CURT FLOOD & RICHARD CARTER, *THE WAY IT IS* (1971); ROBERT M. GOLDMAN, *ONE MAN OUT: CURT FLOOD VERSUS BASEBALL* (2008); ABRAHAM IQBAL KHAN, *CURT FLOOD IN THE MEDIA: BASEBALL, RACE, AND THE DEMISE OF THE ACTIVIST-ATHLETE* (2012); BRAD SNYDER, *A WELL-PAID SLAVE: CURT FLOOD'S FIGHT FOR FREE AGENCY IN PROFESSIONAL SPORTS* (2007). For additional information on Dick Allen, see MITCHELL NATHANSON, *GOD ALMIGHTY HISSELF: THE LIFE AND LEGACY OF DICK ALLEN* (2016).

<sup>74</sup> For a discussion of Marvin Miller and the Major League Players Association's involvement in the case, see MARVIN MILLER, *A WHOLE DIFFERENT BALL GAME: THE SPORT AND BUSINESS OF BASEBALL* 170–202 (1991); see also ROBERT F. BURK, *MARVIN MILLER: BASEBALL REVOLUTIONARY* 140–53, 163–64 (2015) (discussing Marvin Miller's involvement in the case). For Commissioner Bowie Kuhn's perspective, see BOWIE KUHN, *HARDBALL: THE EDUCATION OF A BASEBALL COMMISSIONER* (Martin Appel ed., 1987).

Kuhn a letter declaring that “[a]fter twelve years in the Major Leagues, I do not feel that I am a piece of property to be bought and sold irrespective of my wishes. I believe that any system which produces that result violates my basic rights as a citizen and is inconsistent with the laws of the United States and of the several states.”<sup>75</sup> When Kuhn answered that Flood would not receive his request to negotiate with other Major League teams, Flood, with the support of the Players Association, filed suit.<sup>76</sup> After Judge Irving Ben Cooper ruled against Flood in the Southern District of New York,<sup>77</sup> and the Second Circuit affirmed largely on grounds of *stare decisis*,<sup>78</sup> Flood’s case was argued in the Supreme Court by former Justice Arthur Goldberg.<sup>79</sup> His first claim was that the reserve system constituted an unreasonable restraint of trade in violation of the Sherman Antitrust Act, 15 U.S.C. §§ 1 and 2.<sup>80</sup> His second and third claims were “state law claims for violations of the antitrust laws and common law respectively where jurisdiction is based on diversity of citizenship.”<sup>81</sup> His fourth cause of action alleged that this system subjected him to a condition of involuntary servitude in violation of the Thirteenth Amendment and certain federal civil rights and labor statutes.<sup>82</sup>

The opinion was assigned to Justice Harry Blackmun and, writing for the majority, Justice Blackmun quickly tipped his hand in Part I of the decision by writing a laudatory reflection on the National Pastime including a hand-picked list of baseball greats.<sup>83</sup> Law professor and

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<sup>75</sup> STUART BANNER, *THE BASEBALL TRUST: A HISTORY OF BASEBALL’S ANTITRUST EXEMPTION* 189 (2013); FLOOD, *supra* note 72, at 194–95; MILLER, *supra* note 74, at 190–91.

<sup>76</sup> See JOHN HELYAR, *LORDS OF THE REALM: THE REAL HISTORY OF BASEBALL* 109 (1994) (discussing suits the union was peppering the owners with); MILLER, *supra* note 74, at 191–92 (quoting Bowie Kuhn’s letter to Curt Flood); SNYDER, *supra* note 73, at 101–07 (discussing Flood’s decision to file suit).

<sup>77</sup> *Flood v. Kuhn*, 316 F. Supp. 271 (S.D.N.Y. 1970). For a discussion of the trial, see NEIL FLYNN, *BASEBALL’S RESERVE SYSTEM: THE CASE AND TRIAL OF CURT FLOOD V. MAJOR LEAGUE BASEBALL* (2006). Judge Cooper also rendered two preliminary decisions that were published. See *Flood v. Kuhn*, 309 F. Supp. 793 (S.D.N.Y. 1970); *Flood v. Kuhn*, 312 F. Supp. 404 (S.D.N.Y. 1970).

<sup>78</sup> *Flood v. Kuhn*, 443 F.2d 264 (2d Cir. 1971), *aff’d*, 407 U.S. 258 (1972).

<sup>79</sup> For Marvin Miller’s reflections on the selection of Arthur Goldberg to represent Curt Flood, see MILLER, *supra* note 74, at 187–92.

<sup>80</sup> *Flood v. Kuhn*, 309 F. Supp. 793, 796 (S.D.N.Y. 1970), *aff’d*, 443 F.2d 264 (2d Cir. 1971), *aff’d*, 407 U.S. 258 (1972).

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Flood v. Kuhn*, 407 U.S. 258, 260–64 (1972); CASEBOOK, *supra* note 1, at 74–76. Schiff and Jarvis provide a lengthy note after the publication of the *Flood* opinion quoting

former dean Roger Abrams wrote of this effort that “[t]here is nothing like Blackmun’s list anywhere else in the hallowed tomes of American judicial opinions.”<sup>84</sup> Justice Blackmun concluded that “baseball [was] a business and it [was] engaged in interstate commerce;”<sup>85</sup> it was an “exception and an anomaly”<sup>86</sup> due the benefit of stare decisis; the lack of other professional sports not being exempt did not require a change in baseball’s status; radio and television, despite their effects on the interstate nature of baseball, did not require overturning of *Federal Baseball* and *Toolson*; Congress had not shown an inclination to subject baseball’s reserve system to the antitrust laws; and confusion would have been created by the retroactive effect of overturning *Federal Baseball*.<sup>87</sup>

Justices William O. Douglas, William Brennan, and Thurgood Marshall dissented. Justice Douglas noted that

[t]his Court’s decision in *Federal Baseball* . . . is a derelict in the stream of the law that we, its creator, should remove . . . . While I joined the Court’s opinion in *Toolson v. New York Yankees, Inc.* . . . . I have lived to regret it; and I would now correct what I believe to be its fundamental error.<sup>88</sup>

Justice Marshall started by acknowledging the difficulty of balancing stare decisis with the decisions in *Federal Baseball* and *Toolson* that “are totally at odds with more recent and better reasoned

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extensively from *The Brethren*. BOB WOODWARD & SCOTT ARMSTRONG, *THE BRETHERN: INSIDE THE SUPREME COURT* (1979) (discussing Justice Potter Stewart’s assignment of writing the majority opinion to Justice Blackmun). The authors also list an important rebuttal to Woodward and Armstrong’s assertion that Justice Blackmun had omitted African-American players from his list prompting a rebuke from Justice Thurgood Marshall. Compare BOB WOODWARD & SCOTT ARMSTRONG, *THE BRETHERN: INSIDE THE SUPREME COURT* (1979), with Ross E. Davies, *A Tall Tale of The Brethren*, 33 J. SUP. CT. HIST. 186 (2008). Harold Hongju Koh, currently the Sterling Professor of International Law and a former Blackmun clerk, interviewed Justice Blackman as part of an oral history project sponsored by the Manuscript Division of the Library of Congress as part of their Harry A. Blackmun Papers. In the first session Professor Koh discusses the mementos in Justice Blackmun’s Office. The first item they discuss is a Mel Ott model bat with a plaque stating “I will never forgive myself,” memorializing Blackmun’s “mistake” in leaving off the name of Mel Ott in his list in Part A of the *Flood* decision. Oral History, *The Harry A. Blackmun Papers*, MANUSCRIPT DIVISION, LIBRARY OF CONGRESS, Session 1, July 6, 1994, Part 1 at 2:00–3:59, <http://memory.loc.gov/diglib/blackmun-public/stream.html?SERIESID=D10&FOLDERID=p0001>. For a biography of Professor Koh, see *Our Faculty*, YALE LAW SCHOOL, <https://www.law.yale.edu/harold-hongju-koh> (last visited Oct. 31, 2016).

<sup>84</sup> Roger I. Abrams, *Blackmun’s List*, 6 VA. SPORTS & ENT. L.J. 181, 186–87 (2007).

<sup>85</sup> *Flood*, 407 U.S. at 282.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* at 287, n.1; CASEBOOK, *supra* note 1, at 72–73.



cases” before offering that “[w]e do not lightly overrule our prior constructions of federal statutes, but when our errors deny substantial federal rights, like the right to compete freely and effectively to the best of one’s ability as guaranteed by the antitrust laws, we must admit our error and correct it.”<sup>89</sup> Justice Marshall’s reasoning could not persuade enough of his colleagues, and, thus, the *Flood* decision authored by Justice Blackmun reinforced baseball’s peculiar antitrust status. Although that antitrust exemption status is still important in major ways,<sup>90</sup> Justice Marshall correctly forecast that labor law and the collective bargaining process would soon become more significant in the ongoing relationship between management and players:

This does not mean that petitioner would necessarily prevail, however. Lurking in the background is a hurdle of recent vintage that petitioner still must overcome. In 1966, the Major League Players Association was formed. It is the collective-bargaining representative for all major league baseball players. Respondents argue that the reserve system is now part and parcel of the collective-bargaining agreement and that because it is a mandatory subject of bargaining, the federal labor statutes are applicable, not the federal antitrust laws. The lower courts did not rule on this argument, having decided the case solely on the basis of the antitrust exemption.<sup>91</sup>

The first chapter effectively establishes a strong foundation for the other six chapters. It focuses on two of the four primary areas in the legal regulation of baseball—contract and antitrust law. An analysis of the five contract cases and accompanying notes forces students and readers to look at the century-old treatment of the most important relationship at the core of professional baseball—management and players. Beginning in the late 1960s, the Major League Baseball Players Association would use the power of collective bargaining to provide greater balance to this relationship.<sup>92</sup> Following up this material with the trilogy creating Organized Baseball’s antitrust exemption provides for an understanding of probably the most important legal contribution to the game’s basic business model.

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<sup>89</sup> *Flood*, 407 U.S. at 290, 293–94; CASEBOOK, *supra* note 1, at 73.

<sup>90</sup> See *City of San Jose v. Office of the Comm’r of Baseball*, 776 F.3d 686 (9th Cir. 2015) (finding that Organized Baseball’s judicially granted antitrust exemption applies to franchise relocation).

<sup>91</sup> *Flood*, 407 U.S. at 293–94. The authors chose to edit this statement out of the published version in the casebook. This decision is supportable in this part of Chapter 1 because it focuses on antitrust law, but the prediction of the ultimate triumph of labor law is worthwhile for teachers and students to ponder and to link this dissent to material elsewhere in the book.

<sup>92</sup> See ROBERT F. BURK, *MUCH MORE THAN A GAME: PLAYERS, OWNERS, & AMERICAN BASEBALL SINCE 1921* (2001).

Without an appreciation for this aspect of the game's history, students and readers lack a complete knowledge of how and why the game was structured as it was for much of the twentieth century and how that history is still reflected in the current nine-billion-dollars-per-year modern game.

#### CHAPTER 5—PLAYERS

Chapter 5 focuses on players, and it is subdivided into three major parts: discrimination, compensation, and injuries. The compensation part includes cases and materials on salaries, endorsements, taxes, asset protection, and agents.<sup>93</sup> The breadth and depth of legal issues facing players might initially strike teachers and readers as more complex than originally expected. As with all of the chapters, this is accurate. The selection of basic cases coupled with the richness of the notes reinforces the authors' goals of highlighting the many facets of the law's interaction with playing the game.

The initial case offering in the section on discrimination is *Niemiec v. Seattle Rainer Baseball Club, Inc.*<sup>94</sup> The litigation was prompted by the Pacific Coast League team's decision to cut returning World War II veteran Al Niemiec near the beginning of the 1946 season.<sup>95</sup> Thirty-four-year-old Niemiec had not played minor league baseball since his 174-game effort for the 1942 Rainiers.<sup>96</sup> Niemiec claimed that the Selective Training and Service Act of 1940 guaranteed him his job for at least one full year.<sup>97</sup> The case allows for a discussion of the unusual contractual nature of sports that allows a team to terminate an employee based on what, at times, appears to be a subjective evaluation of one player's ability to contribute to team success versus a substitute player's capabilities to improve team performance. The post-World War II setting is an unusual one, and Niemiec understood that his skills were diminished by three years away from the game and his "advanced" age for a baseball player. Niemiec still felt he should receive his salary under the section of the federal legislation passed to reintroduce military personnel into the workforce.<sup>98</sup> Judge Lloyd L.

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<sup>93</sup> CASEBOOK, *supra* note 1, at 651–778.

<sup>94</sup> 67 F. Supp. 705 (W.D. Wash. 1946); CASEBOOK, *supra* note 1, at 609.

<sup>95</sup> See Al Niemiec Register Player Page, *Al Niemiec Register Statistics & History*, BASEBALL-REFERENCE.COM, <http://www.baseball-reference.com/register/player.cgi?id=niemie001alf> (last visited Oct. 31, 2016).

<sup>96</sup> *Id.*

<sup>97</sup> *Niemiec*, 67 F. Supp. at 706.

<sup>98</sup> *Id.* at 707.

Black, in a lengthy opinion, agreed with the plaintiff that he “be given [a] *bona fide* and sincere opportunity to practice to rehabilitate himself for a reasonable time and an opportunity to prove himself in actual competition.”<sup>99</sup> Judge Black, as is often the case, preceded this holding with a discussion of the special place that baseball occupies in American life by writing that “since it has been argued—and correctly—that baseball is the American game, certainly, then baseball ought to bear its share of any burden in being fair to service men.”<sup>100</sup>

The notes following *Niemiec* move beyond the age discrimination issue to consider mental and physical disabilities, sexual orientation, and gender discrimination, before establishing a foundation to consider racial discrimination.<sup>101</sup> The next primary case, *Moran v. Selig*, is a class action suit that considers the differential treatment accorded players regarding medical and pension benefits based upon when they played, as well as if they were accorded different treatment when Major League Baseball put together a program for former Negro League players who were deprived an opportunity to play Major League Baseball prior to 1947.<sup>102</sup> Ninth Circuit Judge Stephen Reinhardt ultimately determined that “appellants were never the victims of discrimination and were never deprived, during any portion of their playing years, of an opportunity to acquire the longevity necessary to become eligible for MLB benefits; rather, they simply failed to do so.”<sup>103</sup> Faculty and students are provided an opportunity to consider the escalation of both salaries and benefits because collective bargaining has continually improved all of these areas of compensation as Baseball’s revenues have increased.<sup>104</sup> The notes after *Moran* provide an excellent synopsis of the history of racial discrimination in Organized Baseball from 1867 through 1947.<sup>105</sup> As the authors state in

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<sup>99</sup> *Id.* at 713 (emphasis added); CASEBOOK, *supra* note 1, at 616.

<sup>100</sup> *Niemiec*, 67 F. Supp. at 713; CASEBOOK, *supra* note 1, at 615.

<sup>101</sup> CASEBOOK, *supra* note 1, at 616–23.

<sup>102</sup> 447 F.3d 748 (9th Cir. 2006); CASEBOOK, *supra* note 1, at 623.

<sup>103</sup> *Moran*, 447 F.3d at 757; CASEBOOK, *supra* note 1, at 626.

<sup>104</sup> SCOTT R. ROSNER & KENNETH L. SHROPSHIRE, *THE BUSINESS OF SPORTS* 345 (2011); PATRICK K. THORNTON, *SPORTS LAW* 211 (2011); Paul D. Staudohar, *Baseball’s Changing Salary Structure*, COMPENSATION & WORKING CONDITIONS 2 (1997), <http://www.bls.gov/opub/mlr/cwc/baseballs-changing-salary-structure.pdf>; Kurt Badenhausen, *Average Baseball Salary Up 20,700% Since First CBA in 1968*, FORBES (Apr. 27, 2016, 11:48 AM), <http://www.forbes.com/sites/kurtbadenhausen/2016/04/07/average-baseball-salary-up-20700-since-first-cba-in-1968/#7bcd1928e641>.

<sup>105</sup> CASEBOOK, *supra* note 1, at 627–37.

the *Teacher's Manual*, this area of discussion provides an excellent opportunity to use media clips from the movie *42*.<sup>106</sup>

The next case, *Camacho v. Major League Baseball*,<sup>107</sup> provides an opportunity to explore the different rules involving the entry of foreign-born players into Major League Baseball. *Camacho* involves a Mexican scout, trainer, and agent working on behalf of a Mexican-born prospect who sued various major league and minor league official entities claiming a conspiracy to prevent the prospect from playing in the United States and depriving the agent of his commission.<sup>108</sup> Judge James Lorenz dismissed the case on federal procedural grounds for failure to join necessary and indispensable parties.<sup>109</sup> The notes following the case provide a framework for students to consider the operation of current draft rules on American high school, junior college, and collegiate players, the posting system for Asian players, and the academy system for Latin American players that currently leaves them outside of the MLB first-year draft.<sup>110</sup> Note 8 addresses the decision by President Barack Obama to normalize relations with Cuba and the changes that should impact the harrowing experience that many top Cubans players have endured to play Major League Baseball in the United States.<sup>111</sup>

Schiff and Jarvis shift their attention in the next section of Chapter 5 (Part B.1 (Compensation—Salaries)) to the critical Eighth Circuit opinion in *Kansas City Royals Baseball Corp. v. Major League Baseball Players Ass'n*.<sup>112</sup> In *Kansas City Royals Baseball*, the circuit court upheld arbitrator Peter Seitz's written decision for a three-person arbitration panel.<sup>113</sup> Seitz's opinion established that Dave McNally and Andy Messersmith had fulfilled their contractual obligation to their respective baseball teams when they played a complete season under

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<sup>106</sup> TEACHER'S MANUAL, *supra* note 3, at 143; 42 (Warner Brothers, 2013). Another good selection would be any number of clips from Ken Burns' *Baseball*. BASEBALL (PBS, 1994).

<sup>107</sup> 297 F.R.D. 457 (S.D. Cal. 2013); CASEBOOK, *supra* note 1, at 637.

<sup>108</sup> *Camacho*, 297 F.R.D. at 459–60.

<sup>109</sup> *Id.* at 463. Judge Lorenz felt compelled to make a baseball reference near the end of the opinion when he stated, "if Plaintiffs want to record an earned run against the absent pitchers, Plaintiffs need to face them." *Id.*; CASEBOOK, *supra* note 1, at 642.

<sup>110</sup> CASEBOOK, *supra* note 1, at 642–50.

<sup>111</sup> *Id.* at 650.

<sup>112</sup> *Id.* at 651.

<sup>113</sup> *Kan. City Royals Baseball Corp. v. Major League Baseball Players Ass'n*, 409 F. Supp. 233, 257–58 (8th Cir. 1976).

the renewal of their reserve clause without signing a new contract.<sup>114</sup> Judge Gerald Heaney<sup>115</sup> provides a succinct statement of the holding in the second paragraph of his opinion: “We hold that the arbitration panel had jurisdiction to resolve the dispute, that its award drew its essence from the collective bargaining agreement, and that the relief fashioned by the District Court was appropriate. Accordingly, we affirm the judgment of the District Court.”<sup>116</sup>

Organized Baseball was shocked at the outcome of the arbitration and litigation surrounding the reserve clause. For years the owners had argued that it was absolutely essential to the professional game; they felt that the Seitz panel lacked jurisdiction to even hear the grievances, and they were sure that the federal courts would side with them if the arbitrators took the bold step of accepting the players and the Players Association’s position.<sup>117</sup> However, courts are extraordinarily deferential to arbitrators.<sup>118</sup> This case provides the teacher with an opportunity to explore with students the importance of these decisions in altering significantly the balance of power between the players and ownership. It also helps to explain how the Players Association created

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<sup>114</sup> Professional Baseball Clubs, 66 Lab. Arb. Rep. (BNA) 101 (1975) (Seitz, Arb.). This review’s author explored the numerous resolutions of players who began the season without signing a new contract containing a new reserve clause. Until McNally and Messersmith, all of these players ultimately signed a new contract precluding them from bringing a grievance similar to the ones filed by those two pitchers that ultimately gained a measure of free agency for Major League Baseball players. Ed Edmonds, *At the Brink of Free Agency: Creating the Foundation for the Messersmith-McNally Decision—1968–1975*, 34 S. ILL. U. L.J. 565 (2010).

<sup>115</sup> For a fuller understanding of the remarkable life and career of Judge Heaney, see the *Memorial Biographical Booklet* created by The Historical Society of the United States Courts in the Eighth Circuit. U.S. Courts Library 8th Circuit, Judge Gerald W. Heaney: 1918–2010, Liberty and Justice for All, [http://www.lb8.uscourts.gov/pubsandservices/histsociety/heaney\\_booklet\\_final.pdf](http://www.lb8.uscourts.gov/pubsandservices/histsociety/heaney_booklet_final.pdf) (last visited Oct. 31, 2016). One of the highlights in the *Booklet* is a review of his service in the Second Ranger Battalion including leading his unit onto Omaha Beach as part of the first invading troops during D-Day, June 6, 1944. *Id.* Judge Heaney also played a substantial role in desegregating the St. Louis public school system in the *Liddell v. Board of Education* litigation detailed in a 2004 book coauthored with Susan Uchitelle. GERALD W. HEANEY & SUSAN UCHITELLE, UNENDING STRUGGLE: THE LONG ROAD TO AN EQUAL EDUCATION IN ST. LOUIS (2004).

<sup>116</sup> *Kansas City Royals v. Major League Baseball Players Ass’n*, 532 F.2d 615, 617 (8th Cir. 1976).

<sup>117</sup> ANDREW ZIMBALIST, IN THE BEST INTERESTS OF BASEBALL: THE REVOLUTIONARY REIGN OF BUD SELIG 83 (2006).

<sup>118</sup> *Nat’l Football League Mgmt. Council v. Nat’l Football League Players Ass’n*, 820 F.3d 527, 532 (2d Cir. 2016) (“The basic principle driving both our analysis and our conclusion is well established: a federal court’s review of labor arbitration awards is narrowly circumscribed and highly deferential—indeed, among the most deferential in the law.”).

such a strong bond with its membership during the late 1960s and 1970s.

The history of labor unions in baseball is a long and interesting one. Schiff and Jarvis lay out the basic failed attempts to unionize prior to the hiring of Marvin Miller as executive director of the Major League Players Association in note 1 after *Kansas City Royals*.<sup>119</sup> This can serve as an introduction to labor law depending on how the instructor decides to approach the order of chapters in the book.

Following the notes after the *Kansas City Royals* case,<sup>120</sup> the authors present the 1981 district court and the 1995 Second Circuit opinion that both involve Daniel Silverman, the Regional Director of the National Labor Relations Board's Second Region in New York City from 1981 to 2000.<sup>121</sup>

*Silverman I* was an outgrowth of the December 31, 1979, expiration of the 1976 collective bargaining agreement, the first one negotiated after the Seitz arbitration and *Kansas City Royals* decision.<sup>122</sup> The Players Association was dissatisfied with the compensation proposal for signing free agents offered by Ray Grebey, the Director of Player Relations of the Major League Baseball Player Relations Committee.<sup>123</sup> The Players Association filed an unfair labor charge against Major League Baseball for failure to release financial information to support Marvin Miller's request for data to support assertions by Commissioner Bowie Kuhn, and team owners Ted Turner and Ray Kroc about the financially ruinous consequences of free agency.<sup>124</sup> District Judge Henry F. Werker turned aside Silverman's request for injunctive relief in support of Miller's position.<sup>125</sup> Grebey claimed that financial consequences were not behind the proposal nor the refusal to turn over financial data, and Judge Werker agreed with him.<sup>126</sup> The result was a 50-day strike that caused the cancellation of

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<sup>119</sup> CASEBOOK, *supra* note 1, at 665.

<sup>120</sup> *Id.* at 665–72.

<sup>121</sup> Daniel Silverman is currently an adjunct faculty member at Benjamin N. Cardozo School of Law. For biographical information see Daniel Silverman, *Directory*, BENJAMIN N. CARDOZO SCHOOL OF LAW, <http://www.cardozo.yu.edu/directory/daniel-silverman>. He is the coauthor of the second edition of *Winning at the NLRB*. MATTHEW M. FRANCKIEWICZ & DANIEL SILVERMAN, *WINNING AT THE NLRB* (2d ed. 2009).

<sup>122</sup> *Silverman v. Major League Baseball Player Relations Comm., Inc. (Silverman I)*, 516 F. Supp. 588 (S.D.N.Y. 1981).

<sup>123</sup> *Id.* at 590–94.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.* at 589.

<sup>126</sup> *Id.* at 598.

713 games and led to a split season.<sup>127</sup> The discussion of this case allows the faculty member to detail the basic structure of actions under the National Labor Relations Act<sup>128</sup> and introduces the students to the dominant form of dispute resolution in labor negotiations. Thus, the third of the four core legal areas forms a critical part of Chapter 5.

In the *Teacher's Manual*, Schiff and Jarvis provide an interesting reflection by Silverman and fascinating information from the obituary of Administrative Law Judge Melvin Welles, who heard the initial Silverman presentation.<sup>129</sup> As mentioned previously, these types of stories help to reinforce to students the human dimension surrounding legal proceedings. The authors also provide an excellent chart explaining Major League Baseball's first four labor stoppages between 1972 and 1980.<sup>130</sup>

The *Silverman II*<sup>131</sup> case centers around the eighth work stoppage in Major League Baseball history, which was the most devastating stoppage because it cancelled the 1994 World Series.<sup>132</sup> Judge Ralph Winter wrote the Second Circuit panel opinion that affirmed Judge Sonia Sotomayor's temporary injunction for unfair labor practice in unilaterally implementing rules that differed from the expired collective bargaining agreement.<sup>133</sup> As noted by Schiff and Jarvis, "Judge Sotomayor became known as 'the woman who saved

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<sup>127</sup> Ronald Blum, *Ray Grebey, Led MLB During 1981 Strike, Dead at 85*, U.S. NEWS & WORLD REP. (Sept. 4, 2013, 3:46 PM), <http://www.usnews.com/news/sports/articles/2013/09/04/ray-grebey-led-mlb-during-1981-strike-dead-at-85>. See generally JEFF KATZ, SPLIT SEASON: 1981: FERNANDOMANIA, THE BRONX ZOO, AND THE STRIKE THAT SAVED BASEBALL (2015) (detailing the entire 1981 baseball season, including the strike and game cancellations).

<sup>128</sup> 29 U.S.C. §§ 151–169 (2012).

<sup>129</sup> TEACHER'S MANUAL, *supra* note 3, at 152–53. The authors quote Patricia Sullivan's obituary for the *Washington Post* about Welles stating that he "missed only one Senators game against the New York Yankees between 1946 and 1971, the year the Senators left town." Patricia Sullivan, *NLRB Chief Judge, Baseball Fan Assigned Self to '81 Strike Talks*, WASH. POST (Feb. 10, 2009), <http://www.washingtonpost.com/wp-dyn/content/article/2009/02/09/AR2009020903529.html>.

<sup>130</sup> CASEBOOK, *supra* note 1, at 681.

<sup>131</sup> *Silverman v. Major League Baseball Players Relations Comm., Inc. (Silverman II)*, 67 F.3d 1054 (2d Cir. 1995).

<sup>132</sup> See Eric I. Long, *The 1994 Baseball Strike Revisited: A Better Impasse Analysis*, 22 S. ILL. U.L.J. 117 (1997) (providing additional information on the 1994 strike); CASEBOOK, *supra* note 1, at 689.

<sup>133</sup> *Silverman v. Major League Baseball Players Relations Comm., Inc.*, 880 F. Supp. 246 (S.D.N.Y. 1995).

baseball.’”<sup>134</sup> Judge Winter is no stranger to faculty and students versed in the larger realm of sports law. Judge Winter is the judiciary’s strongest proponent of the dominance of labor law over antitrust law, particularly in the sports law context. He established his position in a coauthored *Yale Law Journal* article<sup>135</sup> in 1971 and reinforced his stance in his opinions in *Wood v. National Basketball Association*<sup>136</sup> and *Caldwell v. American Basketball Association*.<sup>137</sup>

The last of Chapter 5’s arbitration cases is *Major League Baseball Players Association v. Garvey*, a case that grew out of the controversy created by the three arbitration decisions by Tom Roberts (1985) and George Nicolau (1986 and 1987) involving collusion by owners in signing free agents.<sup>138</sup> Steve Garvey, the former Dodgers and Padres player, was seeking \$3 million for the 1988 and 1989 seasons from the \$280 million Global Settlement Agreement fund.<sup>139</sup> This fund was created for players who were damaged by owner behavior during the three years of collusion when they refused to deal with numerous free agents.<sup>140</sup> Such collective behavior was forbidden under the terms of the collective bargaining agreement.<sup>141</sup> Interestingly the collusion provision in the agreement was the result of a decision by Los Angeles Dodgers pitching greats Don Drysdale and Sandy Koufax to jointly holdout before the 1966 season.<sup>142</sup> When owners expressed strong displeasure at this tactic in collective bargaining negotiations, the Players Association Executive Director agreed to anti-collusion language focused on players copying Drysdale and Koufax’s tactics if

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<sup>134</sup> CASEBOOK, *supra* note 1, at 692 (mentioning that President Barack Obama cited only her decision in *Silverman II* when he introduced Judge Sotomayor as his nominee to replace Justice David H. Souter).

<sup>135</sup> Michael S. Jacobs & Ralph K. Winter, Jr., *Antitrust Principles and Collective Bargaining by Athletes: Of Superstars in Peonage*, 81 YALE L.J. 1 (1971).

<sup>136</sup> 809 F.2d 954 (2d Cir. 1987).

<sup>137</sup> 66 F.3d 523 (2d Cir. 1995).

<sup>138</sup> 532 U.S. 504 (2001); CASEBOOK, *supra* note 1, at 694.

<sup>139</sup> *Garvey*, 532 U.S. at 506.

<sup>140</sup> *Id.* at 505.

<sup>141</sup> WILLIAM B. GOULD IV, BARGAINING WITH BASEBALL: LABOR RELATIONS IN AN AGE OF PROSPEROUS TURMOIL 90 (2011); CHARLES P. KORR, THE END OF BASEBALL AS WE KNEW IT: THE PLAYERS UNION, 1960–81 63 (2002); ROGER I. ABRAMS, LEGAL BASES: BASEBALL AND THE LAW 146 (1998).

<sup>142</sup> See Ed Edmonds, *The Great Dodgers Pitching Tandem Strikes a Blow for Salaries: The 1966 Drysdale-Koufax Holdout and Its Impact on the Game*, in THE COOPERSTOWN SYMPOSIUM ON BASEBALL AND AMERICAN CULTURE: 2007–2008 248–62 (William M. Simons ed., 2009) (exploring the Drysdale-Koufax controversy in a presentation and this resulting article at the 19th Cooperstown Symposium on Baseball and American Culture in 2007).



the language would also prevent similar collusive behavior by owners.<sup>143</sup> Again teachers and students can consider the limited judicial review of the merits of an arbitrator's decision: "It is only when the arbitrator strays from interpretation and application of the agreement and effectively 'dispense[s] his own brand of industrial justice' that his decision may be unenforceable."<sup>144</sup>

The remainder of Chapter 5 provides students an opportunity to consider endorsements and the rights of publicity and privacy by examining *Pirone v. MacMillan, Inc.*, a case involving the daughters of Babe Ruth;<sup>145</sup> two primary tax cases accompanied by significant note material;<sup>146</sup> three recent cases involving asset protection;<sup>147</sup> *Speakers of Sport, Inc. v. Proserv, Inc.*, an important opinion involving agent behavior authored by Seventh Circuit Judge Richard Posner;<sup>148</sup> before completing the treatment of players with injury cases *Maddox v. City of New York*<sup>149</sup> and *Brocail v. Detroit Tigers, Inc.*<sup>150</sup>

### CONCLUSION

Lou Schiff and Bob Jarvis have created a meticulously detailed and exhaustive account of baseball and the law. The painstaking research is supported by adroit selection of primary cases that underscore significant consideration of the pedagogical goals of a classroom teacher. One need examine only a few of the extensive notes following

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<sup>143</sup> *Id.* at 259; ROGER ABRAMS, THE MONEY PITCH: BASEBALL FREE AGENCY AND SALARY ARBITRATION 29 (2000).

<sup>144</sup> *Garvey*, 532 U.S. at 509 (citing *United Steelworkers of Am. v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960)); CASEBOOK, *supra* note 1, at 696.

<sup>145</sup> 894 F.2d 579 (2d Cir. 1990).

<sup>146</sup> *United States v. Strawberry*, 892 F. Supp. 519 (S.D.N.Y. 1995); *Backman v. Dep't. of Revenue*, No. 980924, 1999 WL 1567108, at \*1 (Or. T.C. Oct. 25, 1999); CASEBOOK, *supra* note 1, at 725–40.

<sup>147</sup> *In re Marriage of Bonds*, 5 P.3d 815 (Cal. 2000); *Cordero v. Mora*, No. FM-04-1844-93, 2009 WL 290538, at \*1 (N.J. Super. Ct. App. Div. Feb. 9, 2009); *J.H. v. Brown*, 331 S.W.3d 692 (Mo. Ct. App. 2011); CASEBOOK, *supra* note 1, at 740–70.

<sup>148</sup> *Speakers of Sport, Inc. v. Proserv, Inc.*, 178 F.3d 862 (7th Cir. 1999); CASEBOOK, *supra* note 1, at 771. Another great baseball and the law quotation is Posner's declaration that

[t]here is in general nothing wrong with one sports agent trying to take a client from another if this can be done without precipitating a breach of contract. That is the process known as competition, which though painful, fierce, frequently ruthless, sometimes Darwinian in its pitilessness, is the cornerstone of our highly successful economic system.

*Speakers of Sport*, 178 F.3d at 865; CASEBOOK, *supra* note 1, at 771.

<sup>149</sup> 487 N.E.2d 553 (N.Y. 1985); CASEBOOK, *supra* note 1, at 778.

<sup>150</sup> 268 S.W.3d 90 (Tex. Ct. App. 2008); CASEBOOK, *supra* note 1, at 788.

any of the primary cases to be amazed at the effort in putting this volume together. Beyond the use as a classroom teaching tool, any reader with an interest in the application of the law to baseball will find this book engaging and enjoyable. The breadth of legal topics covered by the authors is substantial and supports Lou Schiff's observation that all aspects of law can be taught within the framework of baseball. The casebook is easily adaptable to two, three, or four-hour courses in a seminar requiring a paper or a traditional examination-based offering. One can only hope that the goal of expanding the number of courses on baseball and the law results from the creation of this outstanding book.