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THE BUSINESS OF MINOR LEAGUE BASEBALL: AMATEUR ELIGIBILITY RULES

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I. A BRIEF OVERVIEW OF KEY RULES

In this presentation, we will explore the eligibility rules of professional baseball. Generally, we will look into when and why a young man should choose to turn professional. I will begin by throwing out a few provocative rules, and then we will see how the rules line up against the reality of an individual player's ability.

The draft is covered in the official rules of Major League Baseball (MLB) under Rule 4.¹ The draft is held every June² by conference call among the thirty major league clubs, and the draft lasts fifty rounds. To be eligible for the first-year player draft, a player must be a resident of the U.S. or Canada and never have signed a major or minor league contract. A player is considered a resident if he is enrolled in high school or college regardless of where the player is from.³

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¹ Major League Rules, R. 4 (2005). Rule 4 outlines the selection process and effects of the first-year player draft.

² Currently under Rule 4(b), "One selection meeting shall be conducted each year in June The precise date and place of each First-Year Draft shall be fixed by the Commissioner." There are proposed changes, however, to move the draft perhaps to a later date at the end of June.

³ Major League Rules, R. 4(a) (2005).

A. Eligibility

Graduating high school seniors who have not yet attended college, junior college players, players attending a four-year college and have completed their third year, and players who turn twenty-one-years old within forty-five days of the draft are all eligible for the draft.⁴

A college player loses his eligibility if he reaches any kind of an agreement with an agent.⁵ A player may have an advisor during the draft process, but not an agent. The player may not use the advisor to negotiate between himself and the major league team; the advisor cannot represent that player in actual negotiations. The advisor cannot have any direct contact with the professional team; he can merely provide advice about proposed professional sports contracts.⁶

B. Draft Retention Rights

A club generally retains the rights to draft a player until one week prior to the next draft or until the player enrolls or returns to a four-year college on a full-time basis.⁷ This is known as draft-and-follow. During that draft-and-follow year, scouts from other organizations are generally not permitted to have contact with the prospect.⁸ A selected player entering a junior college cannot be signed until the conclusion of the school's baseball season.⁹ Also, a club may not select a player again in a subsequent year when he is in a draft-and-follow year unless the player has consented to the reselection.¹⁰

II. PROPOSED CHANGES TO THE DRAFT RULES

I turn to the panel with the following question: if the Rule 4 draft was changed from the time it is now to the end of June, how would that affect the likelihood of a young high school baseball player being

⁴ See Major League Baseball, First-Year Player Draft Official Rules, <http://mlb.mlb.com/NASApp/mlb/mlb/draftday/rules.jsp> (last visited May 30, 2006) [hereinafter First-Year Draft Rules].

⁵ NCAA BYLAWS § 23.3.1, reprinted in NAT'L COLLEGIATE ATHLETIC ASS'N, 2005–2006 NCAA DIVISION I MANUAL (2005), available at http://www.ncaa.org/library/membership/division_i_manual/2005-06/2005-06_d1_manual.pdf (“An individual shall be ineligible for participation in an intercollegiate sport if he or she ever has agreed (orally or in writing) to be represented by an agent for the purpose of marketing his or her athletics ability or reputation in that sport. Further, an agency contract not specifically limited in writing to a sport or particular sports shall be deemed applicable to all sports . . .”).

⁶ *Id.* § 12.3.4.

⁷ See First-Year Draft Rules, *supra* note 4; see also David Cohen, *The Major League Baseball Draft*, ABOUT.COM, http://baseball.about.com/od/newsnotes/a/draftprimer_2.htm (last visited May 30, 2006).

⁸ First-Year Draft Rules, *supra* note 4; Cohen, *supra* note 7.

⁹ First-Year Draft Rules, *supra* note 4; Cohen, *supra* note 7.

¹⁰ First-Year Draft Rules, *supra* note 4; Cohen, *supra* note 7.

drafted and, therefore, having to decide between becoming a professional or enrolling in college?

MR. FARRELL: In conjunction with the change in the draft (that I will address in a moment) what is also proposed is that a recently drafted player, or one drafted in the year the change would take effect, would not sign a contract for that given year. Instead, his contract would rollover to the subsequent year.

He would go to an expanded instructional league, rather than going the team's entry-level club. The reason being that we often get players out of the draft that are seven months into their training season. We deal with overtraining issues when a first-year player comes in and need to consider what benefits we get out of that player in the first year as well as the development that can take place.

So the following would be the ideal draft situation: Selected players would sign a subsequent year contract and then go into an expanded instructional league. Now, if you were to also take that to a college player, it becomes an incentive to sign that player. The player wants to sign and get out to a regular full-season club or even a Mahoning Valley¹¹ (for those familiar with the Indians' arrangement) to begin his time clock. A player has three years of active service to be protected on the major league roster. Otherwise, he is subject to the Rule 5 draft.¹² The proposal to move the draft to a later date is designed to place a player in an instructional setting first, rather than putting him out in a full-season league. It also allows him to maintain another year of eligibility before that protection takes place.

MR. CARFAGNA: Mr. Hazen, what would you do in this situation: you are a highly skilled high school athlete and have to decide between turning professional or going to college? What would you decide if you were set to be drafted in a middle round but you were thinking of going to Princeton? or Arizona State?

MR. HAZEN: The biggest difference would be financial. What was put on the table, or what would my estimated value be in the open market? As we have come to find out, there is a class system within the draft, because there are different types of rounds where different types of players are drafted. We allocate, maybe not overtly,

¹¹ Mahoning Valley Scrappers are a Class A affiliate of the Cleveland Indians.

¹² Major League Rules, R. 5 (2005). A player not on a team's major league forty-man roster is eligible for the Rule 5 draft if: the player was eighteen-years-old or younger when he first signed a professional baseball contract and this is the fourth Rule 5 draft since he signed, or if he was nineteen-years-old or older when he first signed a professional contract and this is the third Rule 5 draft since he signed. A player drafted onto a Major League roster in the Rule 5 draft must remain in the majors, either on the team's twenty-five-man active roster or the disabled list, for the entire subsequent season, or the drafting club must attempt to return him to his original club.

more chances to players who are drafted at higher levels. They may get more attention and more specific instruction.

With 150 potential players every season, we may not be able to devote all of our attention to players who are drafted later on. And a lot of times the player who is drafted a little higher may have a little more invested in him. They may get that attention.

MR. CARFAGNA: Mr. Farrell, how do you navigate your way through the fifty rounds of the draft? Why are you picking a certain player, that pivotal high school/college kid in the top fifteen rounds? And what are you looking for in rounds fifteen through fifty? Is that simply bottom fishing and hoping to get lucky?

MR. FARRELL: When you get into those later rounds and, especially, when you are talking about high school players who might be selected in those rounds, there is so much projection. You are talking about physical growth, such as improvement of arm strength, increasing velocity for a pitcher, and further development on the physical side of the game.

The one area a team can have the greatest impact is on the physical strength. The God-given ability is obviously ingrained or embedded, but you are basing those selections all on projection through the eyes of the scout.

MR. CARFAGNA: And how do you feel, Mr. Hazen, since you are probably heavily involved in the later rounds, what are you looking for in rounds twenty-six through fifty?

MR. HAZEN: You are not required to draft fifty rounds. Fifty rounds are available for each club, but clubs will drop out anywhere from thirty-five and above. So, you do not always have to draft fifty players. As we move in, we have two short-season clubs, and we fill those clubs predominantly with selections from rounds twenty or twenty-five through fifty. Those players begin playing right after the draft.

The other group that you may find in those rounds is the draft-and-follow players. The player that we would not want to come out, sign, and go play. We want to keep him under control until the following year right before the next draft when his season ends when we could sign him and play him the following year.

AUDIENCE MEMBER: Now that the scouting directors obviously approved the changes to the Rule 4 draft pretty early and thought these changes would be instituted fairly quickly, and the 2006 meeting is to determine if they are going to approve the changes to the draft, do you have any sense if they are going to be approved?

MR. FARRELL: Based on everything that we know right now, the upcoming draft will operate under the status quo. The proposed changes are being debated and there is still a lot of negotiation left. It becomes a collective bargaining agreement issue, if we get out past the June 30 or July 1. The Commissioner can unilaterally move that draft date anytime in the month of June. Once it gets past that, it becomes a collective bargaining item.

AUDIENCE MEMBER: If the rule changes are implemented, do you not feel that it will change a high school player's decision, because he is, essentially, signing a contract? He is losing and the clubs are gaining an extra year of protection. If I were a high school player, I may have gone to the team had changes not taken place. But now, I will be protected for an extra year. I might as well go to college instead of playing the year I am drafted. Next year, you are probably going to send me to a short season camp. Do you not think it will force many more high school players to go to college?

MR. FARRELL: It could. But I would not blanket all of baseball with that approach, because of what teams do in those expanded instruction league settings, from August 15 through October 15. Within those two months, a team can begin to separate itself from the pack based on the program and curriculum that it sets up, which could include enrollment in a local junior college.

Granted, we are not talking about a four-year bound student. We are talking about someone who is a borderline student, and may not have a lot of options. So if the \$150,000 or \$200,000 signing bonus in the fourth to seventh round player is attractive to a player, he may still opt to go that route.

MR. CARFAGNA: Mr. Hazen, what round and what amount of money would have been attractive enough to you for you to decide to turn pro. Or was there no amount of money that would have been attractive?

MR. HAZEN: Hypothetically, I would assume it would be somewhere—and I think it is spoken as a rule of thumb—in the area of what the overall cost of my schooling would be. So, somewhere up to \$100,000, \$150,000, \$120,000, or whatever it costs these days to go to school. But it would probably be a little higher than that, considering the importance my parents placed on education. College was, pretty much, going to be the choice for me from when I was a young kid.

So, I would probably have to say somewhere over a million dollars, which would have put me somewhere into the first round of the

draft. There, you are talking about thirty guys in the country. I would, therefore, have to be one of the top thirty players in the country.

MR. CARFAGNA: Mr. Farrell, you just went through this with your son being involved at St. Ignatius.¹³ What advice did you give him before he accepted his scholarship at the University of Virginia?

MR. FARRELL: It is difficult set a hard, cold dollar figure on a signing. We felt it was going to have to be something special. To define special, I think, you are looking at the top two rounds. Organizations may be enticing, however, because they are also going to provide a college education. They will pay for it as part of the college scholarship plan.

So, it can become a very difficult decision for an eighteen-year-old to make. I think the bottom line is what parents instruct at home and what values they place in a player from day one. I think that those who are aspiring should understand what the parents' drive is and the relationship between the parent and the player, to get to know that and understand what their motives are. That is where it all starts.

MR. CARFAGNA: Let us put it into perspective: what percentage of those who are drafted, even in the high rounds, are ever going to make the major leagues?

MR. FARRELL: Only 17 percent of all those drafted will ever make it to the big leagues.

MR. HAZEN: And that is not the percentage that becomes everyday big league players.

MR. CARFAGNA: A major league player?

MR. FARRELL: That is just to play one day in the big leagues. Then you go further down the line, probably 10 percent of the players are productive players who play anywhere from three to four years in the big leagues.

For instance, those players who play with the Lake County Captains¹⁴ are already three years into their professional career. Seven percent of that club are going to make it to the big leagues. So, maybe three players from that team each year will eventually get to the big leagues.

MR. CARFAGNA: Even in those first three years, it is pretty much slotted how much those kids are going to make, right? Unless you are going to delve in there and sign a long-term contract, it is slotted—a player cannot retire on what he is going to make in those first three years.

¹³ Saint Ignatius is a private high school located in Cleveland, OH.

¹⁴ Lake County Captains are a Class A affiliate of the Cleveland Indians.

MR. FARRELL: For the first seven years, unless he makes a big league roster, the player's salary is slotted. If he plays as a minor league player, we have a salary scale that will encompass the first seven years of his career.

MR. CARFAGNA: For example, a kid gets drafted and makes that decision and gives up the hundred thousand dollar scholarship, goes to the Captains and thinks this is as good as it gets, but for seven years the Indians can and are going to (with some exceptions) keep that player down in the minor leagues.

I am being a devil's advocate here, but that is the point that Mr. Hazen is making. It is a really important point for everybody to understand when considering should a kid do it?

MR. HAZEN: To clarify on us holding someone down, in free market terms, it is in our best interests to get that player into the big leagues as fast as possible. It is also in the player's interest to get to the big leagues as fast as possible.

If we win a championship in the New York/Penn league, we derive little benefit as a company, besides the contributions to the local economy, the local team, or to the players themselves by putting them in a winning atmosphere.

So, we would not necessarily choose to keep a player down for seven years. We just have the right, under the bargaining agreement, to do that. But after two- or three-and-one-half seasons, depending whether a player is a college player younger than nineteen-years-old or older than nineteen-years-old, another club has the right to select him in the annual Rule 5 draft, which is held in December.¹⁵

Unless we choose to place them on our forty-man roster, he will become exposed to the marketplace. It is restrictive to a degree, but within certain parameters, he will be exposed to the market.

MR. CARFAGNA: Right. Why would you keep anybody down? A team wants to win the World Championship anytime it can. However, during the first three years a player is in the majors, he is still pretty much slotted to make a specific amount, unless he is a special player.

MR. FARRELL: The first three years that a player gets to the major leagues, the clubs can set his salary. His contract can be renewed if there is no agreement reached during the off-season. Once a player accrues three years of active service time—180 days constitutes a full season in the major leagues—it is accrued day-by-day because it has huge ramifications when you get to what could be called a super two player.

¹⁵ See *supra* note 7.

There is a small portion of that class that is also arbitration eligible.¹⁶ So the real key for a player is to get three full seasons in the big leagues. He becomes eligible for arbitration where he can compare his salary here in Cleveland to someone in New York.

Market size is completely stripped away. We cannot argue that we are the Cleveland Indians and we can only pay him a certain amount. That player can look at a player in the New York putting up the same performance numbers, which is based on the market five times our size, and claim that he should be paid equal to what the player in New York is paid. That is a very brief and scaled down explanation of arbitration, but that is where things really escalate for the player.

MR. CARFAGNA: And the percentage of those who get drafted and subsequently who become arbitration eligible is infinitesimal. There are very few players that are in a position to really make enough money so that they do not have to work the rest of their lives, or do not have to rely on their education to work.

AUDIENCE MEMBER: If I understand the draft, you can draft a player out of high school. If he does not want to play, he can go to junior college. If he does not get drafted, and if he still wants to, he can go to a four-year college.

MR. CARFAGNA: Correct.

AUDIENCE MEMBER: There is no issue about age. I have never heard any issue about baseball, about age, and the ability to come out and play baseball. Why is there a difference between baseball and major league basketball and football with respect to a player's age and the draft?

MR. FARRELL: I think this is where the minor leagues factor in. It is the only major sport that has a minor league system. Since its inception in 1965, the draft has always allowed teams to draft high school players.

With that being said, I do not want to just leave it to tradition, but it has been common place among baseball as opposed to the college sports of basketball and football, which is where they were funneled through and are obligated. Up until recently, a player coming out of

¹⁶ See Major League Baseball Players Association Frequently Asked Questions, <http://mlbplayers.mlb.com/NASApp/mlb/pa/info/faq.jsp> (last visited May 11, 2006) ("A player with three or more years of service, but less than six years, may file for salary arbitration. In addition, a player can be classified as a 'Super Two' and be eligible for arbitration with less than three years of service. A player with at least two but less than three years of Major League service shall be eligible for salary arbitration if he has accumulated at least 86 days of service during the immediately preceding season and he ranks in the top 17 percent in total service in the class of Players who have at least two but less than three years of Major League service, however accumulated, but with at least 86 days of service accumulated during the immediately preceding season.").

high school has had to make himself eligible for the basketball draft, but high school players have always been subject to the baseball draft.

III. LATIN AMERICAN PLAYERS

MR. CARFAGNA: Latin American players operate under different rules. Latin American players are not eligible for the first year player draft. The MLB rules allow a non-U.S. resident who is not already under contract with an MLB or minor league team may be signed by any club if he is seventeen-years-old at the time of the signing, or he is sixteen-years-old upon signing and reaches his seventeenth birthday prior to the later of the conclusion of the baseball season in which he was signed or September 1.¹⁷

The Indians have Latin American academies. There is literature describing how kids go into these academies at a very young age, at maybe age twelve- or thirteen-years-old and then at sixteen- or seventeen-years-old, they are, essentially, professionals.¹⁸ And that is not really a very good thing.

Just to stoke the fire a little bit, here is a paraphrase from an article titled "The Globalization of Baseball: Major League Baseball and the Mistreatment of Latin American Baseball Talent." Scouts take steps to prevent teams from getting near these Latin American players at the earliest possible age.¹⁹ They are recruited at the age of twelve to participate in these academies, and there is agent involvement inappropriately, and people are signed for amounts well below their talent and ability.²⁰

Miguel Tejada was one of the cases they cite. He was signed for \$2,000 at the age of seventeen. The Texas Rangers signed Sammy Sosa for \$3,500.²¹ The authors note that that is the same price that the Dodgers paid to Jackie Robinson.²²

So, I ask, are the Indians' academies a good thing and why?

MR. FARRELL: First, we should clarify the article's academy reference, because these twelve- to fifteen-year-old players are in a different program. It is important to understand that in the Dominican

¹⁷ See Murray Chass, *A New Baseball Strategy: Latin-American Bargains*, N.Y. TIMES, Mar. 22, 1998, at 1.

¹⁸ David P. Fidler & Arturo J. Marcano, *The Globalization of Baseball: Major League Baseball and the Mistreatment of Latin American Baseball Talent*, 6 IND. J. GLOBAL LEGAL STUD. 511, 542-47 (1998-1999).

¹⁹ *Id.* at 539.

²⁰ *Id.*

²¹ Marcos Bretón, *Fields of Broken Dreams: Latinos and Baseball*, COLORLINES MAG., Spring 2000, available at http://www.arc.org/C_Lines/CLArchive/story3_1_04.html.

²² *Id.*

Republic and Venezuela, the youth programs do not exist. There is no formal structure for players to play at these ages.

So they have what is called a *bascone*. A *bascone*, is somebody who oversees the programs that recruit players of this age. He actually will house, feed, and clothe players, because there is no requirement for them to go to school.

The *bascones* provide the resources for a young player to develop to an age where he can then sign a professional contract. That is where the academy that we run comes into play. So I just want to be clear on the reference to the academy first.

The *bascone* has his own loosely called academy. But once one of our players signs a professional contract and joins our system, he can spend only three years at our academy. Then, he has to either come over to the States to continue, or he is done.

There are probably other discussions that we can get into: what is included in that academy, what do we provide. We do put players into an actual curriculum. They are able to earn their GEDs once they come out of the academy. We are the only club that does that. We are going, I think, above and beyond. We realize we have some social responsibilities. But we are also dealing with players with an average education level of the fifth grade and an annual family income of about \$2,500 to \$3,000.

AUDIENCE MEMBER: Can you allow thirteen- or fourteen-year-old in your academy?

MR. FARRELL: No. We cannot. We are not allowed to by MLB which does not allow a team to sign a Latin-American player until he is sixteen-years-old.²³

AUDIENCE MEMBER: So that is when he would start?

MR. FARRELL: Yes.

AUDIENCE MEMBER: When does a major league ball club first have contact with a perspective player?

MR. FARRELL: The contact in the sense of just a subjective evaluation is in the fourteen- to fifteen-year-old range.

AUDIENCE MEMBER: When do the teams start speaking with the players' families? That is prior to sixteen-years-old, right?

MR. FARRELL: That is usually when they turn fifteen, on average.

AUDIENCE MEMBER: What about the language barrier?

MR. FARRELL: We have to make them proficient in their own language first. Many times we sign a player who is illiterate. Once a player has some understanding in his native language, we then intro-

²³ See Chass, *supra* note 17.

duce English as a second language in the academy. The training is continued throughout the first four levels in our system in the U.S.

MR. HAZEN: We provide specialization in specific instances for players that may be on the cusp of the major leagues. We have some mechanisms to do one-on-one instruction as they get older or begin to break into the big leagues.

MR. CARFAGNA: On the good side of these academies, what would these kids be doing otherwise—given the special skill these people have been identified with? Where else would they go? What else would they do? Teams are doing lots of good things for these kids who would otherwise be in the sugarcane fields.

MR. FARRELL: Depending upon what a given organization has set up in its program, the players spend most of a typical day on the field. Breakfast is at 7:00 a.m. They are on the field by 7:30 a.m. Their games begin at noontime. They are off the field by 3:00 p.m. Then, they do it all over again the next day. That is a quick overview.

The coaching staffs at the academies provide a lot of one-on-one instruction. It is baseball for each and every one of these players, essentially twenty-four/seven. They live at the complex. They play at the complex. There is strength and conditioning facilities at most facilities in the Dominican Republic.

But it is an avenue for the young players to realize a dream. We are just not playing on dreams here, but that is in a nutshell what is arranged. It is not glamorous by any means.

MR. HAZEN: Just to put the financial aspects in perspective, we pay our first year players \$1,100 per month, which is the salary for a player that goes to a short season club. A lot of the Latin American first-year players will go to a short season club when they come to the States. They are able to send portions of that money home to support their families, including their extended family.

In addition to them living in the States, where we provide a structure for them to make it less expensive than living on their own for \$1,100, they are able to send money home and provide for their families in the Dominican Republic. This illustrates the Dominican Republic's economic situation. I am not able to get into statistics necessarily.

AUDIENCE MEMBER: Can you describe the relationship between the bascone and the clubs? Once a player turns sixteen-years-old, is it a free for all amongst the teams that can sign him? Or is there some policy in place?

MR. FARRELL: There are no policies. It is referred to as the Wild West. The relationship with the bascone is nothing more than know-

ing the individual people, the bascones, that run programs. We are aware of where they are located, and what they provide players. Up to that point, it is a subjective evaluation of the individual player. It comes down to what talents that individual player shows us. And we then try to place some value on that.

Now, we have no control over what portion of the signing bonus that goes to the player or what goes to the bascone. If you watched the ESPN special,²⁴ that is where a lot of the discrepancies come in. That is where the unethical practices arise. That is where, I think, the programs or the academies get their negative connotations.

AUDIENCE MEMBER: There has been a lot of talk about age discrepancies since September 11, because the borders have changed. One now has to clearly identify himself when coming into the country. For example, there was an incident with the Texas Rangers about someone who they thought was twenty-one-years-old or twenty-two-years-old, but turned out to be twenty-eight-years-old.²⁵ Has this been an issue for you?

MR. HAZEN: We have had specific instances in our own system as well. There are situations where an agent has not verified a player's age. The player may have two birth certificates or have a birth certificate with a false name and still get into a country. We now go through a much more rigorous process to verify a particular player's name, date of birth, city of birth, parents, etc. to verify the age. So, we are hoping that these situations will become less common.

MR. FARRELL: We face the problem that the Dominican Republic has no central information system. Much of their files are in paper form. And we have encountered situations where recent hurricanes have demolished facilities, and the trail of paper is just incomplete.

MR. HAZEN: But it becomes a barrier for us if we cannot verify a player's age and he may be classified as a significant bonus player.

AUDIENCE MEMBER: You cannot sign up that player?

MR. HAZEN: Not that we could not sign. But that we would not sign him. That may vary from club to club. But if we could not verify a player's age, we would probably have a hard time giving him a half million dollars if he were to go from being sixteen-years-old to nineteen-years-old.

AUDIENCE MEMBER: Bartolo Colon was two years older than his papers showed, correct?

²⁴ See Stephen D. Mosher, *Innocence Lost? Hardly*, ESPN.COM, Aug. 31, 2001, <http://espn.go.com/moresports/llws01/s/2001/0831/1246412.html#>.

²⁵ See *Rangers Say They Knew Soriano Was 28, Not 26*, SPORTSLINE.COM, Feb. 18, 2004, <http://cbs.sportslines.com/mlb/story/7098129>.

MR. FARRELL: Yes, he is or was.

MR. CARFAGNA: This goes all the way back to Satchel Paige.²⁶

IV. PREPARING FOR THE MAJOR LEAGUES

MR. CARFAGNA: What do you tell a young man, someone who is ten-, twelve-, or fourteen-years-old? There are now baseball academies that allow a young player to stop playing for his high school or junior high team and play for the entire year.

Mr. Farrell would you suggest not to do it? Would you suggest to not play 130 games and barnstorm with an all star team? Is the player who does that playing himself out way too young? What would you tell a young man around sixteen- or seventeen-years-old? Rather than helping his high school win the state championship, should he go play for an academy team?

MR. FARRELL: I strongly encourage a teenage athlete to play multiple sports. There is such a push now to specialize and get ahead of the curve, so to speak. And this takes another step further into player selection through the draft because there is such a negative connotation towards the college pitcher who is overused, over-pitched, in terms of pitch count in a given game. So the more you know the track record and history of the usage, the more counseling you want on the selection of that player. Again, to play 130 games is way too much. Those in the academy who are seventeen- to nineteen-years-old should have a seventy-game schedule at most.

MR. CARFAGNA: Mr. Hazen, you would agree?

MR. HAZEN: A lot of the training that takes place in the academy should be far more general, not specific to baseball. Perhaps some sort of speed training, weight training, full body motion, agility or things of that nature, as opposed to just going out and taking three hundred or four hundred ground balls every single day.

MR. CARFAGNA: Suppose a parent's goal is to get his or her son a Division 1 scholarship. Is it better to showcase him through one of those academies or let him play for the high school team?

MR. FARRELL: Because a showcase provides such a short glimpse, an observer cannot measure the team concept. For example, competitiveness and knowledge during the game. A player may fool a scout during a three- or four-hour sitting by just showing his arm

²⁶ See Satchel Paige Web site, <http://www.satchelpaige.com/bio2.html> (last visited May 11/2006) ("It is estimated that Leroy 'Satchel' Paige was born on July 7, 1905. The mere idea that his birthday is an estimate provides perfect evidence to the mystery that was Satchel Paige.").

strength and straight away speed. But how does that talent translate to executing inside a game?

MR. HAZEN: Along with getting to know the player, we must also evaluate that player's opportunities. There are players from the Ivy League getting drafted and making millions of dollars with multimillion-dollar signing bonuses. They were able to do both. What would you advise a player who is twelve- or thirteen-years-old, if he were also a good student, or if education was that important to him?

If a player is good enough to generate interest, we will find that player, no matter where his high school is. We pride ourselves on that. If we missed that player, then we did not do our job. I think it would be inaccurate to say that a player has to go to a showcase in order for us to see him.

V. THE BUSINESS OF BASEBALL

MR. CARFAGNA: Let us track through the business of minor league baseball. Suppose we are tracking a great young Indians' talent who just did all these things we just talked about, and he is now three years into the system, and now we are going to talk about the Rule 5.²⁷ The team has a decision to make, the go/no-go. Teams obviously lose some good players to the Rule 5 draft pick, but it is more like, yes, that player, what investment are you making in that player, Mike and John, up to that point? I know it is millions of dollars in total, but in that individual player and why at that point when he gets to the Rule 5 draft, what is the go/no go on that?

MR. FARRELL: We invest in three attributes for each player: the mental, the physical, and the fundamentals. Each player has his own individual plan. A lot of resources, time, and energy are invested in those three domains. Those who appear on a AAA roster are subject to the Rule 5 draft, which is on December 8.

The selection process is in reverse order. Teams that finish in last place during the season, have the first pick on December 8 and the players who will be drafted have already gone through the system. They have already had some AAA experience at Buffalo. To select a player, the selecting team has to pay \$50,000 to the team that holds the rights to the player.

He has to stay in the major leagues for the full season the following year. If he does not, he is offered back to the original club for half of that purchase price. A team can benefit by playing a player right away. The team will receive some contribution by paying only a

²⁷ See *supra* note 7.

minimum salary, rather than spending money out on the open market, which is really escalating, particularly for pitching.

We have the scouting system that allows us to draw the line between players that we protect versus players that we do not. The system is a role system: two through eight. A role eight player is a superstar, the best of his class or position. We will typically protect a role five player, which means he is an every day major league player. If the player is a role four, which is a bench player or a middle reliever, we have to determine if we have roster problems or space to protect him. We will likely roll the dice and omit that player, not protect him from the Rule 5 draft.

If we know that an unprotected player will get drafted, we will ask ourselves, "Can he stick with that drafting team the next year?" If not, we will roll the dice and hope to get that player back.

MR. CARFAGNA: How many millions of dollars do the Indians invest in their player development system year to year?

MR. FARRELL: We spend anywhere from \$25,000,000 to \$28,000,000 a year. That money is used for operating budgets in those two departments, as well as signing bonuses for that year's class of drafted players.

MR. HAZEN: I will break that down: For a player that we would not protect, the sum cost of investment into that player will be different from the players selected in the first round. For first round players, today's average signing bonus is about \$1.8 million dollars. The costs include the staff salary, the player salary, transportation costs, and any player injuries. If a minor league player has surgery, that may amount to another hundred thousand dollars we have invested into that player on the path to the major leagues. Injuries happen all the time.

That is why we invest so aggressively in our strength and conditioning and our training staff. There are a lot of different factors. A player's performance may not indicate that he should be placed on the roster, but if we have invested a significant amount in him, then it would not behoove us to lose him in a Rule 5 draft.

AUDIENCE MEMBER: How do you insure yourselves when another team takes one of your players in the Rule 5 draft? I know last year the Boston Red Sox had Adam Stern who was with the Atlanta Braves, and he had these recurring injuries. It was as if they were trying to not have him on the roster but at the same time have him count against the number of days he is supposed to be on the team. Is there any mechanism or compensation that a team that loses a player to the Rule 5 draft may then seek out?

MR. FARRELL: No. Over the past three years, we have had twelve players selected through this process. We have only actually had three who have stuck.

The player has no remedy if he is placed disabled list for a “phantom injury” to abide by that full year service the following year. As long as the team retains that player through the first year and it can manage its roster with him as either an active or inactive player, they are free to send him down to the minor leagues in the following year after he has fulfilled his first year.

MR. HAZEN: There are significant loopholes to the rule.

MR. FARRELL: This is one that they are trying to close.

Another example is when a team puts a Rule 5 drafted player on the disabled list for the whole year. The team has roster problems, so cannot offer the player a contract on December 20,²⁸ and attempt to resign him to a minor league creation contract.

And typically the team will outbid every other team for the player, because they have already invested the minimum salary in him. The team will pay him \$15,000 a month to go back to Double A. No other club would pay that during the time needed to develop that player for the big leagues.

MR. CARFAGNA: I do also want to ask about Cuban players. There is the landmark case of Rolando Viera,²⁹ who sued MLB to be treated as a non-U.S. resident. He had defected from Cuba to the U.S. and He, therefore, became eligible for the draft by taking U.S. residence.

Most Cubans, however, defect to other countries to avoid being drafted. Viera sued MLB to stay out of the draft, because he wanted to be like El Duque.³⁰ The Middle District of Florida found for Major League Baseball, stating that because he did not face irreparable harm, he had to go on the draft. He signed in the seventh round.³¹

How do you scout and how do you treat Cuban players generally?

MR. FARRELL: Major League Baseball typically notifies us that a player is involved in a tryout, either in Honduras or some other foreign country from which he has defected, to be able to showcase his talents.

And much like we talked about before, teams can get fooled in those showcases. But the idea of interviewing a Cuban defector

²⁸ December 20 is the last day an MLB team can tender a contract.

²⁹ See Fred Goodall, *Cuban Pitcher Denied Request for Free Agency*, USA TODAY, June 5, 2001, available at <http://www.usatoday.com/sports/baseball/01draft/2001-06-04-viera.htm>.

³⁰ Orlando “El Duque” Hernandez.

³¹ Tom Farrey & Willie Weinbaum, *Cuban Defector Comes to Contract Terms with Red Sox*, ESPN.COM, July 23, 2001, <http://espn.go.com/mlb/news/2001/0720/1229077.html>.

piques a lot of interest. Teams have to be able to separate that emotion. They have to understand that there are going to be challenges for the assimilation of that player who had no real structure coming in and is plugged right in to the minor leagues.

We went through it with Danny Baez, who became a very successful pitcher for us. But teams should proceed with caution. Many times we are investing a lot of signing dollars to an unknown in these cases, because we have not seen them in competition back in their country—as an amateur back in Cuba.

MR. CARFAGNA: And then there is the El Duque case on the raft, too. I guess he was better advised to get on the raft rather than defect because he became a free agent. That is sort of what the case would tell us, but what do you use as your touchstone? How can you tell who is the next El Duque and who is the next flop?

MR. FARRELL: With a pitcher, it is more readily seen. We can measure a pitcher in one performance much better than we can measure a position player. That is just from a scouting standpoint. We can watch arm motion, measure velocity, see action to pitches, and see deception on the delivery. Because of that, it is much easier to evaluate pitchers than it is to evaluate hitters in four at-bats. I think that is why you see so many pitchers because it is a game of attrition for one. It is more of a known commodity, and you can evaluate it much more accurately than hitters.

MR. CARFAGNA: How much money is available to a team like the Indians who personalize it so much, given MLB Baseball's anti-trust exemption developed as a result of combination of judicial decisions and Congressional inaction, silence? It goes all the way back to 1922. The United States Supreme Court first exempted MLB in the landmark case of *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs*,³² and there was a short opinion issued by Justice Holmes.

He concluded that, "[t]he business is giving exhibitions of baseball, which are purely state affairs."³³ In short, the ruling stated that players' personal effort is not the subject of interstate commerce. The Court concluded that the federal antitrust laws, therefore, did not apply to the sport of professional baseball. The decision was widely criticized over the years. Criticized, but not overruled. In fact, the Supreme Court twice faced the same question of whether to overturn this decision, and in both cases, the Court expressly affirmed the decision.

³² 259 U.S. 200 (1922).

³³ *Id.* at 208.

The first was in *Toolson v. New York Yankees, Inc.*³⁴ The second was the ultimate landmark case *Flood v. Kuhn*,³⁵ in which the Court continued to say, we do not agree, but this is an issue for Congress.³⁶

I talked to Bowie Kuhn³⁷ once about this. I was lucky enough to interview him. He felt this was perhaps one of the most important things he did as a commissioner. Curt Flood (commissioner of MLB from 1969–1984) fought that battle and lost. Ultimately Congress spoke. Thank God for the *Flood* case that led Congress to pass the Flood Act.³⁸

The Flood Act revoked the baseball antitrust exemption, but only as it related to “the conduct, acts, practices, or agreements of persons in the business of organized professional major league baseball directly relating to or affecting employment of major league baseball players to play baseball at the major league level.”³⁹

The Flood Act otherwise implicates an exemption for the rest of the business of baseball from the antitrust laws. As a result, the major league club owners can still proceed in virtually all non-labor related aspects of their business unimpeded by antitrust concerns. This is in contrast to what the NFL and other major sports leagues have to deal with.

They do not enjoy the same antitrust protection for their operations. For example, the Oakland Raider’s Al Davis successfully sued the NFL for antitrust violations when they tried to block his proposed move from Oakland to Los Angeles.⁴⁰ And we all know what happened with the Cleveland Browns and the Art Modell case.⁴¹

The Flood Act exemption, therefore, has been a valuable tool available to certain major league club owners in certain markets. The owners, themselves, can pursue alternatives, such as relocation or elimination of underperforming teams, without antitrust scrutiny.

They can manipulate the schedule to force teams to play in places like Puerto Rico, Japan, or Mexico to prime the pump for potential franchise relocations, so as to develop a worldwide market. These

³⁴ 346 U.S. 356 (1953).

³⁵ 407 U.S. 258 (1972).

³⁶ *Id.* at 273.

³⁷ Bowie K. Kuhn was the defendant of *Flood v. Kuhn* and the Commissioner of MLB from Feb. 4, 1969 until Sept. 30, 1984. Wikipedia Entry on Bowie Kuhn, http://en.wikipedia.org/wiki/Bowie_Kuhn (last visited May 30, 2006).

³⁸ Curt Flood Act of 1998, 15 U.S.C. § 26b (2004).

³⁹ 15 U.S.C. § 26b(a).

⁴⁰ *L.A. Memorial Coliseum Comm’n v. NFL*, 726 F.2d 1381 (9th Cir.), *cert. denied*, 469 U.S. 990 (1984).

⁴¹ See Katherine C. Leone, *No Team, No Peace: Franchise Free Agency in the National Football League*, 97 COLUM. L. REV. 473 (1997).

alternatives are generally not available to any other business. It might seem collusive, monopolistic, anticompetitive, or restrictive, because they can effectively control franchise relocation.

The different market sizes for different clubs has led to the most obvious structural cost revenue disparities. Local media revenue that is available to the Yankees through their YES network, or the Red Sox through their NESN network, provides these teams with significantly more money.

Despite the penalties, the penalty tax, and the luxury tax, the media revenue is still yielding them a net profit. They have the ability to spend a lot more money, because they can get a better media contract. They can get other things, like an owner-friendly stadium deal. The Washington Nationals, by the time it is all said and done with a bigger media market, probably will have a friendlier stadium deal. They are going to have a lot more money to spend than the Indians. How do the Indians address these economic disparities given the limitations of media and the other market limitations in Cleveland?

MR. FARRELL: We certainly operate on a budget. It is driven by what our ballpark can generate. We feel very fortunate to have the budget we do. Some people may think it is restrictive, but it forces us to be creative.

We follow a financial model for allocating salaries among the twenty-five-man roster. We have research showing that no club with one player making more than 15 or 20 percent of the total payroll has ever made the playoffs.

So we have to spread our salary budget out, plug in where needed. That goes back to the player selections. When we can find value, it will drive all of our player selections.

MR. HAZEN: And then couple that with the fact that we are not restricted in any way, shape, or form with our scouting or development budgets. We are free to spend. Our ownership group and our organization, in general, consistently spends in the top five of Major League Baseball on both of those areas.

What we do rely on is a scouting and developing process and getting those players to the big leagues. We rely on those players playing for us in the zero to three, or the three to six years prior to becoming a major league free agent. So that increases the pressure on scouting and development in our market. We are forced to be productive.

AUDIENCE MEMBER: A lot is made of the NFL and NBA's age eligibility restrictions, but no one ever makes anything of the baseball age restrictions because you are allowed to go to college.

Would you agree that the baseball rules are actually the rules that most provide the most disincentives for someone to stay in college for four years? In basketball, a player can come out after his sophomore year, look at the market, and determine whether he will be drafted. Maybe he could go back for his junior year, get drafted higher, and make more money. In baseball, there is no incentive for a player to wait for his senior year, because he will make less money. Even though the player may be drafted in a higher round, his signing bonus is less than it would have been the previous year. Is there a problem with not providing incentives to stay?

MR. HAZEN: Well, again, not to blanket because there are players who do come back for their senior year, especially the upper half of the first round, a player who, regardless of whether he is a senior or junior, if he comes back in the upper half of the first round, probably is going to get an increase, especially if he was, for example, drafted in the second or third round.

Most college juniors likely have two semesters left of school if they are completing on time. If a high school player were to be drafted, he has four years, if he has never enrolled in school. The probability of that player going back and finishing his education is fairly low. Whereas, if he is a college junior, it is a lot easier, because he has a shorter path to completing his education with only two more semesters.

A player may be able to go to college while playing. We have multiple players doing this, whether they go to Notre Dame or other places. Actually, we have one player returning to Vanderbilt who will leave his season early, because he has only one year left. We have only two minor league seasons, so these players can complete their four-year education.

For a high school player, the situation might be a little different. But the junior in college may see it as he is accomplishing both. He is making more money as a senior, but he is also going to be able to finish his college education in a short period of time.

AUDIENCE MEMBER: Is there a preference in the Indians organization or a small market team for kids that have had some sort of college experience, because you might have a better understanding of their abilities against greater competition? Unlike the Yankees, you cannot afford to miss on a player's status.

MR. FARRELL: That is a great question, because the college player is going to give us more of a track record. We have a better chance to predict whether that player will become a major league

player. Setting aside the field performance, we will also get a player who is a little bit more socially adept.

But the measurements and tests we use for every player are subject to the draft. As far as written testing, we will be able to red flag players who are college players as well as high school players. So it is more profiling in that sense with the initial selection process.

It is a little bit of an unfair comparison because you are talking about either basketball in some cases where there are only two rounds in the draft, and that might be upwards of sixty players total, whereas the reference to the fourth round pick in baseball is the 125th or 130th picked in the country.

So it is all the demand for the talent. If that player is that talented and he is a first round draft choice and he chooses to go back to school, his market is still probably going to be there because he is that much better of a player talent wise.

MR. CARFAGNA: It would be unfair to any presentation on the business of baseball not to talk about the book *Moneyball*,⁴² which depicts the way the Oakland Athletics handle their problems. *Moneyball* describes is the system Billy Beane⁴³ espouses, suggests placing a premium on the talent and maximizing the first three years before the players become arbitration eligible.

The quantitative approach in *Moneyball* emphasizes things like on-base percentage and slugging percentage. And it disfavors foot speed, fielding, or just raw power. The system takes advantage of a marketplace inefficiency, because the new-age front offices using the system will not draft statistically unproven high school pitchers. They rank pitchers only by data, such as the number of strikeouts, his walk percentage, and, certainly, the number of home runs he gives up. It is a defensive approach to scouting and drafting.

For example, the book suggests a team should never allow a runner to try to steal a base because it has only twenty-seven outs, and it should not risk an out by trying to steal a base. Billy Beane would contend that by using these measurable statistical data he has been able to make Oakland competitive within a very limited budget by playing *Moneyball* over the last few years.

Do you play *Moneyball* in Cleveland?

MR. FARRELL: We will definitely use statistical analysis as a tool. We do not select a player by using only one equation. But I think anytime the scouts provide subjective evaluations, a certain amount of

⁴² MICHAEL LEWIS, *MONEYBALL: THE ART OF WINNING AN UNFAIR GAME* (2003).

⁴³ Billy Beane is the current general manager of the Oakland Athletics, both of which are the subject of *Moneyball*.

emotion will ultimately attach to the selection. The statistical analysis allows us to eliminate that emotion and, hopefully, make the right choice more often than not.

MR. CARFAGNA: If there is a close call, do the statistics drive the decision? Or does what is between the ears count?

MR. HAZEN: I think that is a case-by-case situation. We would agree with some of the tenets of *Moneyball*, but I do not think we would select a player based on some of the statistical trends he has shown. On the whole we try to take it as on individual basis. We try to strike a balance within our draft.

As seen by last year, we will take a couple of college players, maybe players that have performed up to that standard. But we mix them with a couple of high school players immediately after that. Again, we try to strike a balance within the draft.

AUDIENCE MEMBER: In *Moneyball*, I read about the inefficiency of the market. Who do you think is being overpaid the most now? Do you think it is the power hitters, the base stealers, or power pitchers? What do you look for when you have to get the most bang for your buck? What kind of player do you think gives that to you?

MR. FARRELL: Power by a pitcher enamors baseball people. It is the most measurable. It can take the onus off the scout who puts his name on that player and says, "This is the guy we need." If a player does not perform well, however, he is still showing us the stuff we measured when he was having success. It is up to him now to execute.

Conversely, when a pitcher throws eighty-five miles-per-hour and has some sink and change of speeds, it is hard for a scout to stick his neck out and say, "This is the guy that will get us over the top."

AUDIENCE MEMBER: What about A.J. Burnett, who has never really come together? Do you feel that you want to stay with him and hope he can get it together, or do you think that is too much of a risk? The fact the Indians' payroll is lower, you cannot go for him?

MR. FARRELL: I think he is outside of our capabilities just by the financial model we talked about before. But he has always been the one with promise and potential. That word "potential" gets a lot of people fired up when it does not lead to performance on the field. Again, people measure potential. They see it. They are enamored with the idea of what could be if it all clicks and comes together for him. But you cannot get past the actual performance his track record indicated.

I mean, Burnett is just below a .500 pitcher. He is probably going to get \$50,000,000 over five years.

MR. HAZEN: I think you hit the one word as risk, and that is what we are doing every day. What is the balance between finances and years, health and performance? We balance those things every day when we evaluate a player's risk.

MR. FARRELL: There is a part of our analysis that we have that we factor in almost mortality rates. A player is usually in a drastic decline after thirty-two-years-old. A pitcher who logs three years at two hundred or more innings has an injury threshold that goes through the roof in year four. The ones who break through that and make it past their fourth year, they usually go on for about another six or seven years.

MR. CARFAGNA: Two other questions: (1) How important is psychological profiling, because *Moneyball* does talk about this as being important? And (2) what, if any, ballpark effect do you factor in? In other words, how will he play at the Jake?⁴⁴

MR. HAZEN: With respect to psychological profiling, we evaluate all players in three domains: mental, physical, and fundamentals. Psychology is, therefore, one third of our process of evaluating a player. We do some testing throughout with our team psychologist.

We also have subjective evaluations conducted in the minor leagues and the major leagues. Getting to know the person is one of our biggest advantages, something that money will not necessarily affect. We can get to know our players as well as the New York Yankees get to know their players. What ultimately happens on an open market situation when \$50,000,000 is placed on the table as opposed to \$25,000,000? Nothing.

But if the choice is between \$50,000,000 for five years and \$45,000,000 for four years, the player may feel comfortable to walk in here and play. Maybe the personal relationship will make a difference for a player who we are trying to sign before he becomes a free agent and is exposed to the market. That is where the mental element becomes important to us.

MR. CARFAGNA: Do you have any study on the effects of playing at the Jake?

MR. HAZEN: Yes. We study that in our statistical models. We have not yet found anything firm. It is something in progress. There are probably two statistics that are staying outside the grasp of our statisticians' models. Those would be statistically evaluating a player's defensive ability and ballpark factors that you can read anywhere in baseball perspectives or any of those Web sites, trying to accurately gauge how much effect a ballpark will have on a player,

⁴⁴ Jacobs Field, home of the Cleveland Indians.

whether it be at Coors field in the National League and Texas in the American league or conversely, the National League West parks of San Francisco and San Diego as opposed to Washington and East Division Stadiums.

MR. FARRELL: We have found that Jacobs Field is probably the third most difficult ballpark in the American League to hit a home run. So, it gives us the ability to sign a fly ball pitcher, because we have cold weather in the early portion of the season.

We have gone back and tracked game time temperatures and wind direction to give us an indication of how consistent our ballpark is from one year to the next. So, we do factor a lot of that in.

Pitchers who throw ground balls and strike people out go on the top of everyone's list. You keep the ball out of the air. You cannot control it once it goes in the air.

MR. CARFAGNA: Going back to the player's first three years, making sure we get the most out of those first three years. Is that what prompted the three-year contract extension for Travis Hafner, for example?

MR. FARRELL: I think anytime you can sign a player through his arbitration year, and typically, you are going to ask a player to give up a year of free agency in return for the security, most of the multiyear contracts in these years, three to six, have been close to the market value for that player if he was to continue that performance.

It allows us is to be able to plan. It eliminates the year to year salary spikes in the arbitration process. So, the contract extension is more about planning than anything.

MR. HAZEN: From the player's perspective, if during those three years the player gets hurt, he is guaranteed a salary. However, in arbitration, that will affect what he can get on the open market.

MR. CARFAGNA: What does that mean we are going to do with everybody's new heart throb, Grady Sizemore, as he comes into his second and third years?

MR. FARRELL: I cannot speak for Mark Shapiro⁴⁵ and the Dolans,⁴⁶ but I can say that if there is a player who we would look to extend the long-term contract to, Grady Sizemore is at the top of the list for all the reasons stated before.

If we are looking at him objectively, mentally, physically, and fundamentally, he is probably our poster child in every one of those areas. We are fortunate to have him, I can tell you that.

⁴⁵ Current general manager of the Cleveland Indians.

⁴⁶ Current owners of the Cleveland Indians.

AUDIENCE MEMBER: What is the value of those summer leagues, those Connie Mack leagues and the teams the kids join in high school? Do profession teams recruit anybody from those, or are they just for college teams?

MR. FARRELL: It depends on the player's age.

AUDIENCE MEMBER: I know St. Ignatius had a good kid throwing a ninety-five mile-per-hour fast ball a couple years ago.

MR. CARFAGNA: Probably John's son.

AUDIENCE MEMBER: Are the parents just going crazy with that kid?

MR. FARRELL: To clarify, the team or the league they are playing in, if it is a youth league team where there are fifteen A Teams in the junior or senior year of high school, it is definitely more exposure. You are going to be in front of either college recruiters or potentially professional scouts. But then there is another set of leagues, collegiate summer leagues, such as Cape Cod, the Northeast League, and Alaska. It is all about repetition. It is all about exposure for the given player to be involved. It goes back to that if you do not use it, you do not see it.

So you have got to get out, and you have got to play.

VI. CONCLUSION

MR. CARFAGNA: Let us close and let these guys get back to winning a World Championship. I would like to finish with this quote from wonderful book by Christopher Evans called *The Faith of 50 Million: Baseball, Religion, and American Culture*.⁴⁷ He says what captures how we all feel about what you guys do and why we thank you for it.

For those who love the game, we hope, and perhaps we even pray, that for just one moment the impossible will become the possible, and that we can experience through a game the awe that comes through encountering the sacred. To connect faith and the national past time is not to argue that baseball is something more than a game; it is to affirm that baseball is a game.⁴⁸

⁴⁷ CHRISTOPHER H. EVANS & WILLIAM R. HERZOG, II, *THE FAITH OF 50 MILLION: BASEBALL, RELIGION, AND AMERICAN CULTURE* (2002).

⁴⁸ *Id.* at 221.

