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Baseball's Antitrust Exemption—A Corked Bat for Owners?

In July of 1994, Albert Belle[1] was on top of his game. Not only was his usually hapless team, the Cleveland Indians, challenging for the American League Central Crown, but Belle himself was among the league leaders in home runs. Later that month, however, his successes came to a screeching halt when umpires (acting on a tip from a former teammate) found that Belle had been using an illegal "corked bat."[2] The news sent a shockwave around the world of baseball. Some demanded removing Belle's earlier home runs from the record books; he had been cheating—playing by different rules. The American League President settled on a ten game suspension for Belle.[3] Most were confident that Belle would pay for his transgression when he returned and was forced to play by the same rules as his fellow players and to use a normal bat.

By the same token, according to many scholars and politicians, all of Major League Baseball (MLB) should be forced to play by the same rules as other sports leagues.[4] These commentators say MLB's unique antitrust exemption, which provides baseball owners with immunity from antitrust suits, gives the owners an unfair advantage over players. Historically, professional athletes in other sports have used antitrust laws, arguing various league practices that restrict athletes' free movement between different teams are an unreasonable restraint of

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1. Formerly known as "Joey" Belle when he played baseball for Louisiana State University.

2. A corked bat, which is illegal to use in Major League Baseball, is one with its barrel drilled and the hollow cavity filled with cork. Theoretically, the lighter barrel allows a player to generate greater bat speed. According to folklore, this bat speed allows a player to drive balls a much greater distance. Put another way, the bat supposedly hits more home runs. Of course, simple physics refutes this charge. The greater bat speed is offset by the lighter hitting mass. Some physicists claim that a corked bat actually reduces overall distance. *See* Dave Kindred, *The Bell Should Toll For All Cheaters*, The Sporting News, Aug. 1, 1994, at 7.

3. Mel Antonen, *Lighting Up Cleveland*, USA Today, July 26, 1994, at 1C.

4. For scholarly criticism of baseball's antitrust exemption, see Andrew Zimbalist, *Baseball Economics and Antitrust Immunity*, 4 Seton Hall J. Sport L. 287 (1994) (reporting 1993 Congressional Hearing); H. Ward Classen, *Three Strikes and You're Out: An Investigation of Professional Baseball's Antitrust Exemption*, 21 Akron L. Rev. 369 (1988) (calling for Supreme Court to overrule exemption).

For Congressional criticism, see Mark Maske, *Baseball's Antitrust Exemption Could Be Going, Going, Gone*, The Washington Post, September 23, 1994, at C1, where Rep. Jack Brooks, chairman of the House Judiciary Committee said of a bill that would repeal the antitrust exemption, "I have come to the conclusion that legislation is now needed to restore the principles of competitions and fair play to the business of baseball." See also Ronald Blum, *"Sad Day" for Baseball: Season Comes to Halt*, The Baton Rouge Advocate, Sept. 15, 1994, at F7, where President Clinton, after the 1994 season was canceled in the midst of a strike, said the government should consider removing baseball's antitrust exemption.

For judicial criticism, see Piazza v. Major League Baseball, 831 F. Supp. 420 (E.D. Pa. 1993) (severely limiting scope of exemption); Flood v. Kuhn, 407 U.S. 258, 288, 92 S.Ct. 2099, 2115 (1972) (Marshall, J., dissenting).

trade.[5] The athletes contend these "player restraints" prevent full competition for various positions on different teams within the league and therefore amount to an unreasonable restraint of trade in violation of antitrust laws. MLB players, because of the antitrust exemption, do not have this option. Commentators say this antitrust exemption—or "corked bat"—used by owners is the source of many of MLB's labor woes. If MLB was just forced to comply with normal antitrust laws (use a normal bat), it would pay for its past transgressions.

Perhaps corked bats and MLB's antitrust exemption do not make that much difference. Just ask Albert Belle. In his first post-suspension at bat, Belle used his "normal bat" much as he used his old corked bat—he hit a home run.[6] Similarly, the antitrust exemption may not be particularly important to the business of professional baseball. This comment argues that baseball's heralded antitrust exemption, much like Belle's corked bat, is not as powerful as popular folklore or the cries of scholars have made it seem. In fact, insofar as modern labor problems go, the antitrust exemption is quite meaningless. First, since MLB owners and players are in a collective bargaining relationship,[7] most of the restraints challenged by players now fall under a separate and distinct "labor exemption"[8] to the antitrust laws. Second, even without the separate exemption, applying antitrust laws, and their unpredictable remedies, to professional baseball's volatile labor market would be inconsistent with antitrust policies and would do little to motivate owners or players to act more reasonably.

This comment will take an empirical approach. It will directly compare the labor histories of the National Football League (NFL) and MLB, both nationally organized professional sports leagues. Since the NFL does not enjoy a blanket exemption[9] from the antitrust laws, a comparison will show what difference, if any, baseball's antitrust exemption makes.

Free agency[10] represents the ultimate lack of restraint on the professional athletes' services. Therefore, antitrust laws should have been a formidable weapon for NFL players in their struggle for free agency. This comment will

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5. *See, e.g.*, *Flood*, 407 U.S. at 258, 92 S. Ct. at 2099; McCourt v. California Sports, Inc., 460 F. Supp. 904 (E.D. Mich. 1978), *vacated*, 600 F. 2d 1193 (6th Cir. 1979); Smith v. Pro Football, Inc., 420 F. Supp. 738 (D.C. 1976), *modified*, 593 F.2d 1173 (D.C. Cir. 1978); Mackey v. NFL, 407 F. Supp. 1000 (D. Minn. 1975), *modified*, 543 F.2d 606 (8th Cir. 1976), *cert. denied*, 434 U.S. 801, 98 S. Ct. 28 (1977); Philadelphia World Hockey Club, Inc. v. Philadelphia Hockey Club, Inc., 351 F. Supp 462 (E.D. Pa. 1972).

6. Some say Belle is destined to hit home runs no matter what he uses: "[w]ielding a wet copy of THE SPORTING NEWS, Albert Belle might hit 30 home runs." *See* Kindred, *supra* note 2, at 7.

7. *See infra* part II.C.

8. *Id.*

9. Radovich v. NFL, 352 U.S. 445, 77 S. Ct. 390 (1957).

10. A free agent is a player who no longer has a contract with any one team in a sports league. Therefore, he is free to bargain with other teams. Generally, a player becomes a free agent according to the sports league's rules, collective bargaining agreement, or the player's own contract. *See* Matthew S. Collins, *Note C: C as in Cash, Cough it up, and Changes—NFL Players Score with Free Agency Following Freeman McNeil's Big Gain*, 71 Wash. U. L. Q. 1269 n.2 (1993).

illustrate that NFL players, through a lengthy and complex set of antitrust court battles, have indeed reached their ultimate aim of free agency. Without the benefit of antitrust laws, MLB players successfully gained the right to free agency sixteen years ahead of NFL players[11] essentially through collective bargaining. This comparison will demonstrate that the antitrust exemption enjoyed by baseball is now a dead letter when it comes to player restraints.[12]

I. BASEBALL'S ANTITRUST EXEMPTION

MLB's antitrust exemption amounts to nothing but a narrow application of stare decisis. Arising from an early definition of commerce, it has continued, much like the wooden bat, on pure tradition. The exemption began in 1922, when Justice Holmes established a place for himself in the world of baseball trivia by writing *Federal Base Ball Club of Baltimore, Inc. v. National League of Professional Base Ball Clubs*[13] for a unanimous Supreme Court. The Court held that the business of professional baseball was not commerce,[14] at least not as contemplated by Congress when it enacted the Sherman Antitrust Act (Sherman Act).[15] The Federal League,[16] a rival of the established National League, had argued that baseball was interstate commerce because the location of clubs in different states required "repeated traveling on the part of the clubs."[17] The Court rejected this reasoning, explaining "[t]he business is giving exhibitions of baseball, which are purely state affairs. . . . [T]he transport is a mere incident, not the essential thing."[18] Since the Sherman Antitrust Act only applies to interstate commerce, the "antitrust exemption" of MLB was born.

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11. Some would argue this characterization is unfair because Major League Baseball is much older than Professional Football. Major League Baseball began in the 1890's and became big business fairly quickly, whereas Professional Football was not organized until 1920 and did not become big business until the advent of TV revenues in the 1950's. However, this Comment deals with the players' struggle against the owners. Since the ultimate expression of a labor force's intent to counter management is union organization, exactly when professional athletes' labor unions were organized becomes especially relevant. MLB players organized their union in 1954. *See* Charles P. Korr, *Marvin Miller and the New Unionism in Baseball*, *in* The Business of Professional Sports, at 115, 121 (Paul D. Staudohar & James A. Mangan eds., 1991). NFL players quickly followed, organizing their union in 1956. *See* Soar v. National Football League Players Ass'n, 438 F. Supp. 337, 339 (D. R.I. 1975). Therefore, in terms of actual organized resistance to management, both sports have roughly the same starting point.

12. The exemption is quite broad, encompassing all antitrust concerns—from franchise relocations, to competing leagues, to player restraints. This comment is, for the most part, confined to matters pertaining to free agency and, therefore, mostly deals with the exemption's effect on player restraint claims.

13. 259 U.S. 200, 42 S. Ct. 465 (1922).

14. *Id.* at 208-09, 42 S. Ct. at 466.

15. 15 U.S.C. §§ 1-7 (1988 & Supp. V 1993).

16. *See infra* part III.B.1.

17. 259 U.S. at 208, 42 S. Ct. at 465.

18. *Id.* at 208-09, 42 S. Ct. at 466.

The Supreme Court has explicitly affirmed the exemption on two subsequent occasions. The first of these, *Toolson v. New York Yankees*,[19] reluctantly followed the *Federal Base Ball* decision, holding since Congress was well aware of the firmly established exemption, it was now up to Congress, not the Court, to make antitrust applicable to MLB. Next, in *Flood v. Kuhn*,[20] Justice Blackmun decided that baseball was even bigger than the United States Supreme Court. He rejected *Federal Base Ball*'s definition of commerce and held that baseball indeed was interstate commerce.[21] He refused, however, to overturn the antitrust exemption the earlier definition had created, once again, deferring to Congress. Justice Blackmun called the exemption an "aberration that has been with us now for half a century . . . heretofore deemed fully entitled to the benefit of stare decisis."[22] The Supreme Court, as well as lower federal courts, has held other professional sports subject to the same antitrust laws from which it has exempted MLB.[23] Baseball's exemption truly is an aberration.

II. OVERVIEW OF ANTITRUST AND LABOR LAWS

Before the ramifications of MLB's antitrust exemption can be explored, an understanding of some basic principles about antitrust and labor laws and their unique application in the professional sports arena is necessary.

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19. 346 U.S. 356, 74 S. Ct. 78 (1953). George Toolson sued the New York Yankees after MLB owners blacklisted or agreed not to hire him for refusing to report to training camp for the Yankees farm club at Binghamton. Toolson claimed the facts of his case were distinguishable from those of *Federal Base Ball*. The Court concluded it did not matter since baseball had "been left for thirty years to develop, on an understanding that it was not subject to existing antitrust legislation." *Id.* at 357, 74 S. Ct. at 78-79. The Court then summed up its holding by stating, "[w]ithout re-examination of the underlying issues, the judgments below are affirmed on the authority of *Federal Baseball*." *Id.* at 357, 74 S. Ct. at 79.

20. 407 U.S. 258, 92 S. Ct. 2099 (1972). Curt Flood, a prominent outfielder with the St. Louis Cardinals, protested his involuntary trade from the Cardinals to the Philadelphia Phillies.

21. 407 U.S. at 282, 92 S. Ct. at 2112.

22. *Id.* at 282, 92 S. Ct. at 2112 (emphasis omitted).

23. United States v. International Boxing Club, 348 U.S. 236, 75 S. Ct 259 (1955) (boxing); Radovich v. National Football League, 352 U.S. 445, 77 S. Ct. 390 (1957) (football); Washington Professional Basketball Corp. v. National Basketball Ass'n, 147 F. Supp. 154 (S.D.N.Y. 1956) (basketball); Deesen v. Professional Golfers' Ass'n, 358 F.2d 165 (9th Cir. 1966), *cert. denied*, 385 U.S. 846, 87 S. Ct. 72 (1966) (golf); Flood v. Kuhn, 407 U.S. 258, 282-83, 92 S. Ct. 2099, 2112 (1972) ("other professional sports . . . are not so exempt" from the federal antitrust laws); Philadelphia World Hockey Club, Inc. v. Philadelphia Hockey Club, Inc., 351 F. Supp. 462 (E.D. Pa. 1972) (hockey); Gunter Harz Sports, Inc. v. United States Tennis Ass'n, 665 F.2d 222 (8th Cir. 1981) (tennis).

On the other hand, in 1961, after a federal judge ruled an NFL bylaw that prevented telecasting competing games in NFL towns unreasonable, Congress exempted professional sports leagues from antitrust scrutiny for game broadcast rights agreements. *See* United States v. National Football League, 116 F. Supp. 319 (E.D. Pa. 1953); Sports Broadcasting Act, 15 U.S.C. §§ 1291-1295 (1982).

A. The Sherman Act

Antitrust law has a rich and storied history, stemming philosophically from the economic theories of Adam Smith[24] and functionally from the English common law.[25] Both emphasized protection of the private competitive market system above all else. Justice Holmes explained the principles in 1896:

> It has been the law for centuries that a man may set up a business in a small country town, too small to support more than one, although thereby he expects and intends to ruin some one already there, and succeeds in his intent. In such a case he is not held to act "unlawfully and without justifiable cause". . . . The reason, of course, is that the doctrine generally has been accepted that free competition is worth more to society than it costs, and that on this ground the infliction of the damage is privileged.[26]

Congress codified these principles in 1890 with the passage of the Sherman Antitrust Act,[27] enacted in the face of public concerns[28] over huge business "trusts"[29] that were stifling competition and controlling prices. The Sherman Act allows treble damages.[30] Violations center around one of two claims: (1) a conspiracy or combination that restrains trade in violation of Section 1;[31] or (2) an attempted monopoly or an illegal use of monopoly power in violation of Section 2.[32] Because this comment focuses on player restraints and not on

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24. S. Chesterfield Oppenheim et al., Federal Antitrust Laws 4 (4th ed. 1981).

25. *Id.*

26. Vegelahn v. Guntner, 44 N.E. 1077, 1080 (Mass. 1896) (Holmes, J., dissenting) (citations omitted).

27. 15 U.S.C. §§ 1-7 (1988).

28. Actually, there are differing opinions as to whether the Act was the result of any real public concern. Very little attention was paid to the Act until President Theodore Roosevelt's administration when he used the Act to break up railroad combinations, tobacco trusts, and Standard Oil. *See* Oppenheim et al., *supra* note 24, at 8.

29. Originating in the late 1800's, a trust was a device to combine separate companies. "Controlling blocks of stock of previously separate (and usually competing) corporations were placed in a trust under the unified control of a single board of trustees, who would then be able to control virtually an entire industry—controlling output and prices." *See* Oppenheim et al., *supra* note 24, at 7.

30. A Sherman Act claimant desiring treble damages must use the Clayton Act, 15 U.S.C. § 15 (1988).

31. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

15 U.S.C. § 1 (1988 & Supp. V 1993).

32. Every person who shall monopolize, or attempt to monopolize, or combine or

league monopoly power,[33] discussion will be limited to Section 1 claims where the majority of players' claims fall.

The Sherman Act has been called a "uniquely American approach to economic regulation."[34] One United States Supreme Court Justice summarized it as "compulsory economic non-planning."[35] Alas, modern commentators still cannot agree as to the Act's chief objectives.[36] The language of Section 1 only fuels the confusion. As Justice Stevens explained the dilemma,

> it cannot mean what it says. The statute says that "every" contract that restrains trade is unlawful. But, . . . restraint is the very essence of every contract; read literally, § 1 would outlaw the entire body of private contract law.[37]

Faced with this prospect, the Court has reread Section 1 to prohibit only "unreasonable" restraints of trade.[38] In determining the reasonableness of a given practice, the Court has developed two tests. First, if a restraint has such an effect on competition and the market that it lacks "any redeeming virtue," then the practice is declared illegal "per se" without further analysis.[39] Once

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conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

15 U.S.C. § 2 (1988 & Supp. V 1993).

33. *See* USFL v. NFL, 842 F.2d 1335 (2d Cir. 1988).

34. *See* Oppenheim et al., *supra* note 24, at 9.

35. *Id.* (quoting Abe Fortas, Portents for New Antitrust Policy, *in* Proceedings of the 3rd Annual Corporate Counsel Institute at Northwestern University School of Law).

36. As then Yale Law School Professor Robert H. Bork explained, "[d]espite the obvious importance of the question to a statute as vaguely phrased as the Sherman Act, the federal courts in all the years since 1890 have never arrived at a definitive statements of the values or policies which control the law's application and evolution." Robert H. Bork, *Legislative Intent and the Policy of The Sherman Act*, 9 J. Law & Econ. 7 (1966). For differing views, compare Herbert J. Hovenkamp, Economics and Federal Antitrust Law 1 (1985) (asserting goals of assuring competition and economic efficiency); Robert H. Bork, The Antitrust Paradox: A Policy at War With Itself 81 (1978) (asserting goal of consumer welfare); Eleanor M. Fox, *The Modernization of Antitrust: A New Equilibrium*, 66 Cornell L. Rev. 1140 (1981) (asserting goal of limiting large corporation power).

37. National Soc'y of Professional Eng'r v. United States, 435 U.S. 679, 687-88, 98 S. Ct. 1355, 1363 (1978).

38. Standard Oil Co. v. United States, 221 U.S. 1, 31 S. Ct. 502 (1911).

39. Northern Pacific Ry Co. v. United States, 356 U.S. 1, 78 S. Ct. 514 (1958) (Black, J., concurring) ("[T]here are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use"). *Id.* at 5, 78 S. Ct. at 518.

Unlawful trade practices that require per se analysis are normally grouped together. Therefore, the relevant question here is first whether a challenged action fits within one of the enumerated groups. The Court has decided the following groups deserve per se treatment:

this determination is made,[40] the practice will be illegal whenever recognized—leaving no chance for a defendant to justify it. While this test has the advantage of bright lines and ease of application,[41] its use has been limited because of its sometimes harsh results.[42]

The more flexible balancing test established by the Court is the "rule of reason."[43] A questionable practice, even though it actually restrains trade, can still be legal if its beneficial effects outweigh any harmful effects on competition.[44] In essence, this approach allows an antitrust defendant to justify his

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Group boycotts, *see* Silver v. New York Stock Exch., 373 U.S. 341, 83 S. Ct. 1246 (1963); Klor's, Inc. v. Broadway-Hale Stores, Inc., 359 U.S. 207, 79 S. Ct. 705 (1959); Fashion Originators' Guild v. FTC, 312 U.S. 457, 61 S. Ct. 703 (1941);

Price fixing, *see* United States v. Socony-Vacuum Oil Co., 310 U.S. 150, 60 S. Ct. 811 (1940); Kiefer-Stewert Co. v. Joeseph E. Seagram & Sons, 340 U.S. 211, 71 S. Ct. 259 (1951); United States v. Trenton Potteries Co., 273 U.S. 392, 47 S. Ct. 377 (1927);

Horizontal market division, *see* United States v. Topco Assocs., 405 U.S. 596, 92 S. Ct. 1126 (1972); United States v. Sealy, 388 U.S. 350, 87 S. Ct. 1847 (1967); Timken Roller Bearing Co. v. United States, 341 U.S. 593, 71 S. Ct. 971 (1951);

Tying arrangements, *see* International Salt Co. v. United States, 332 U.S. 392, 68 S. Ct. 12 (1947);

Concerted refusals to deal, *see* Paramount Famous Lasky Corp. v. United States, 282 U.S. 30, 51 S. Ct. 42 (1930).

40. Of course, nothing stops the Court from changing its mind. For example, in United States v. Arnold, Schwinn & Co., 388 U.S. 365, 87 S. Ct. 1856 (1967), the Supreme Court declared that vertical restrictions, where a manufacturer limits areas or persons with whom its product may be traded after the manufacturer sells the product, were per se illegal. Later, however, in Continental T.V., Inc. v. GTE Sylvania, Inc., 433 U.S. 36, 97 S. Ct. 2549 (1977), the Court decided because of the complex market impact of vertical restrictions and the wide variety in forms of the restrictions, concluding that they always had a "pernicious effect on competition" and lacked "any redeeming virtue was erroneous." *Id.* at 50, 97 S. Ct. at 2557 (quoting Northern Pac. R. Co. v. United States, 356 U.S. 1, 5, 78 S. Ct. 514, 518 (1958)). Therefore, a rule of reason analyses was more appropriate. *See* Oppenheim et al., *supra* note 24, at 19.

41. Justice Marshall had this to say about per se rules:

> They are justified on the assumption that the gains from imposition of the rule will far outweigh the losses and that significant administrative advantages will result. In other words, the potential competitive harm plus the administrative costs of determining in what particular situations the practice may be harmful must far outweigh the benefits that may result.

United States v. Container Corp., 393 U.S. 333, 341, 89 S. Ct. 510, 514-15 (1969).

42. The per se analysis has been said to "over deter" by forcing businesses to refrain from certain conduct which actually benefits competition. *See* William R. Anderson & C. Paul Rogers, Antitrust Law: Policy and Practice 261 (1992).

43. Standard Oil v. United States, 221 U.S. 1, 61, 31 S. Ct. 502, 516 (1911); Chicago Board of Trade v. United States, 246 U.S. 231, 38 S. Ct. 242 (1918); National Society of Professional Eng'rs v. United States, 435 U.S. 679, 98 S. Ct. 1355 (1978); Thane N. Rosenbaum, *The Antitrust Implications of Professional Sports Leagues Revisited: Emerging Trends in the Modern Era*, 41 U. Miami L. Rev. 729, 736 (1987).

44. The Supreme Court explained:

> The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition. To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and

conduct on the grounds that it helps more than it hurts competition. Courts focus on two things when applying the rule of reason. First, whether legitimate business purposes justify the imposed restraint. Next, whether the restraint is no more restrictive than necessary.[45] Obviously, with the rule of reason, courts must decide these questions case-by-case based upon the particular facts of each restraint.[46]

B. Antitrust and Player Restraints

Antitrust law issues arise in several different contexts in professional sports. Because of the exclusive nature of most professional sports leagues[47] and the inherent need for cooperation among member clubs,[48] the leagues frequently

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after the restraint was imposed; the nature of the restraint and its effect, actual or probable.

Board of Trade v. United States, 246 U.S. 231, 239, 38 S. Ct. 242, 244 (1918).

45. Courts will consider the history and purpose of the particular restraint, look to the existence of less restrictive alternatives, and then balance the pro-competitive goals of the restraint against the restraint's anti-competitive effects. Pro-competitive goals are determined considering whether the defendant is actually more efficient because he imposes the competitive restraint. Here, a court looks to prices and quality of given products. Anti-competitive effects are determined considering a producer's market power. *See* Gary R. Roberts, *McNeil Opened NFL Antitrust Door*, Nat'l L.J., Feb. 22, 1993, at 25, 26.

Perhaps these factors are best illustrated by Justice Stevens in National Soc'y of Professional Eng'rs v. United States, 435 U.S. 679, 98 S. Ct. 1355 (1978) (citations omitted):

> This principle is apparent in even the earliest of cases applying the Rule of Reason. *Mitchel* involved the enforceability of a promise by the seller of a bakery that he would not compete with the purchaser of his business. The covenant was for a limited time and applied only to the area in which the bakery had operated. It was therefore upheld as reasonable, even though it deprived the public of the benefit of potential competition. The long-run benefit of enhancing the marketability of the business itself—and thereby providing incentives to develop such an enterprise—outweighed the temporary and limited loss of competition.

Id. at 688-89, 98 S. Ct. 1363-64.

46. It is relevant here to note Justice Marshall's statement in United States v. Topco Assocs., 405 U.S. 596, 92 S. Ct 1126 (1972) stating a preference for per se rules:

> Without the *per se* rules, businessmen would be left with little to aid them in predicting in any particular case what courts will find to be legal and illegal under the Sherman Act. . . . Congress . . . can, of course, make *per se* rules inapplicable in some or all cases, and *leave courts free to ramble through the wilds of economic theory in order to maintain a flexible approach.*

Id at 609 n.10, 92 S. Ct. at 1134 n.10 (emphasis added).

47. One league services and dominates each professional sport. *See* Rosenbaum, *supra* note 43, at 733 n.12.

48. *See* Gary R. Roberts, *Sports Leagues and the Sherman Act: The Use and Abuse of Section 1 to Regulate Restraints on Intraleague Rivalry*, 32 UCLA L. Rev. 219 (1984):

> [A single sports team] has no economic usefulness because it needs at least one other team to play a game. By itself, a sports team cannot make any profit or engage in any meaningful productive activity. . . . Only sports teams, . . . regardless of how much capital, labor talent, or other resources they have at their disposal, are incapable of

employ methods that subject them to antitrust attacks. These attacks come from all directions—rival leagues[49] or disgruntled owners excluded from league participation,[50] cities and owners affected by franchise relocation,[51] or actual athletes restricted in their free movement between teams.[52] All have brought antitrust suits against professional sports leagues alleging violations of the antitrust laws. This comment deals with antitrust claims of the restricted athletes.

1. Player Restraints

Professional sports leagues produce a unique type of entertainment product—team athletic competition. The individual teams must compete as hard as they can on the field against one another.[53] At the same time, in order to produce a quality product, an exciting game, the leagues are interested in maintaining a competitive balance. The individual teams need quality competition in order to provide a quality product.[54] Therefore, it is in each team's interest to prevent any one team from becoming too good or too bad and thereby destroying the competitive balance of the league.

Concerns over competitive balance lead the leagues to enact various restrictions on players' movement. Theoretically, restrictions on players movement prevent the more wealthy owners from accumulating all of the talent on one team. These restrictions take various forms: a draft controlling a new player's entry into a league; a standard player's contract holding the signee/player to his specific team; a reserve clause holding a player to a team even after expiration of his contract; a salary cap discouraging free movement; and other hybrids.[55] Leagues enact all these restrictions in order to insure each team enjoys a chance at victory.

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producing anything of independent value by themselves.

Id at 227-28.

49. *See* United States Football League v. NFL, 842 F.2d 1335 (2d Cir. 1988); Federal Baseball Club v. National League, 259 U.S. 200, 42 S. Ct. 465 (1922).

50. Mid-South Grizzlies v. NFL, 550 F. Supp. 558 (E.D. Pa. 1982), *aff'd*, 720 F.2d 772 (3d Cir. 1983).

51. Piazza v. Major League Baseball, 831 F. Supp. 420 (E.D. Pa. 1993); Los Angeles Memorial Coliseum Comm'n v. NFL, 726 F.2d 1381 (9th Cir. 1984).

52. Flood v. Kuhn, 407 U.S. 258, 92 S. Ct. 2099 (1972); Powell v. NFL, 888 F.2d 559 (8th Cir. 1989).

53. The individual teams, however, do not have much interest in competing against each other off the field. *See infra* part II.B.2.b. and accompanying notes.

54. *See* North Am. Soccer League v. NFL, 670 F.2d 1249, 1253 (2d Cir. 1982) ("[T]he economic success of each franchise is dependent on the quality of sports competition throughout the league and the economic strength and stability of other league members.").

In Philadelphia World Hockey Club, Inc. v. Philadelphia Hockey Club, Inc., 351 F. Supp. 462, 503-04 (E.D. Pa. 1972), the court illustrated by analogy: "[W]ho would enjoy Vida Blue blazing strikes across home plate when the batter's box was empty, or Mark Spitz' triumphs, if he were the only one in the pool. Sports teams need competition."

55. *See generally* Shant H. Chalian, *Fourth and Goal: Player Restraints in Professional Sports, A Look Back and a Look Ahead*, 67 St. John's L. Rev. 593 (1993).

2. Players' Antitrust Suits

Problems with this system of player movement restrictions quickly arise in an antitrust context, resulting from what economists term a monopsony[56]—that is a single buyer or consumer in a given market. In a sports league, the players are the sellers of their services. Obviously, if the players cannot choose to which team they sell their services, then they have but one buyer. Understandably, professional athletes, unhappy with this situation in its purest form, bring antitrust suits. They claim these restraints on their freedom to market their services amount to an unreasonable restraint of trade in violation of Section 1 of the Sherman Act. Courts faced with these claims have several considerations.

a. Labor Exemption from Antitrust

Many of the restraints occur not from unilateral acts of the league or team owners, but from collective bargaining agreements between the leagues and players' unions. Generally, the contents of these agreements, no matter how restrictive they are, fall under federal labor law, which has goals separate from antitrust law. As long as these agreements comport with labor laws, they are exempted from antitrust scrutiny under the "nonstatutory labor exemption." Because of its importance apart from antitrust analysis, the labor exemption warrants further discussion below.[57]

b. Single Entity Theory

For player claims that are not subject to the labor exemption and therefore receive antitrust scrutiny, the first concern for courts is the Sherman Act's requirement that there be a "conspiracy or combination"[58] to restrain trade. This requirement means the internal decisions of a corporation, joint venture, or similar entity will not be subject to antitrust scrutiny. Therefore, one defense that invariably arises when players sue a sports league is the "single entity

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56. Monopsony analysis differs from monopoly analysis in that a monopsonistic buyer, unlike a monopolistic seller, could conceivably benefit consumers. A powerful buyer may force a seller to provide goods or services at a lower cost than a normal buyer would. This savings to the buyer could then be passed on to consumers. There are, however, serious questions raised regarding efficiency and whether consumers actually benefit. *See* Roger D. Blair & Jeffrey L. Harrison, Monopsony: Antitrust Law and Economics 37-42 (1993).

Additional concerns involving sports leagues concern actual consumer-welfare injury. If owners, as monopsonists, pay players less money than the players could demand from non-monopsonists, this is not necessarily the type of consumer injury contemplated by the Sherman Act. One commentator has stated the only possible consumer-welfare injury that players could claim is that because players' movements are limited, the overall quality of the sports product is decreased—i.e., the player restraints injure competitive balance between the teams. *See* Roberts, *supra* note 45, at 25.

57. *See* discussion *infra* part II.C.

58. 15 U.S.C. § 1 (1988 & Supp. V 1993).

defense." Thus, a league will claim that it is not made up of individual competitive teams except for athletic purposes.[59] For economic purposes, the league instead claims it is a single entity—much like a corporation—and therefore not subject to Sherman Act constraints.[60] Courts, generally, have not been overly sympathetic with this argument, but recent decisions suggest a willingness to revisit the area—possibly with a different result.[61] Should a court find that a sports league is a single entity, any Section 1 claim would be precluded for lack of "conspiracy or combination."

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59. See Robert H. Bork, *Ancillary Restraints and the Sherman Act*, 15 A.B.A. Sec. Antitrust L. 211 (1959):

> [t]he members of a league cannot compete in the way that members of other industries can. It is neither in the interests of the members of the league nor of the public generally that the more efficient teams should drive out the less efficient. If one team goes out of business, all are endangered. This suggests that the concept of business competition may be irrelevant as applied to the relationships between members of a league.

Id. at 233.

60. *See* Gary R. Roberts, *Professional Sports and the Antitrust Laws*, *in* The Business of Professional Sports, at 135 (Paul D. Staudohar & James A. Mangan eds., 1991), justifying the theory for the NFL:

> At a bare minimum two different teams are always necessary to produce this [entertainment] product. Every game is the product of at least a two-team joint venture. Although game tickets and television broadcasts are often marketed as, for example, "Washington Redskins football," this single reference is quite misleading. The Redskins team alone is incapable of producing any football entertainment; the proper designation is "NFL football."

Id. at 143; *see also* Roberts, *supra* note 45:

> As to whether a league is a single antitrust entity, there are good arguments both ways. League members have no innate economic power as independent entities, and league power is derived solely from a single source—the jointly owned entertainment product and good will of the league. Conversely, antitrust policy can in many instances be furthered if league members are required to act autonomously and compete against one another when they reasonably can.

Id. at 25-26.

61. Most courts have rejected the argument. *See* Los Angeles Memorial Coliseum Comm'n v. NFL, 726 F.2d 1381, 1387-90 (9th Cir. 1984); North Am. Soccer League v. NFL, 670 F.2d 1249, 1256-58 (2d Cir. 1982); Smith v. Pro Football, Inc., 593 F.2d 1173, 1177 n.11 (D.C. Cir. 1978); Mackey v. NFL, 543 F.2d 606, 616 n.19 (8th Cir. 1976); McCourt v. California Sports, Inc., 460 F. Supp. 904, 907 (E.D. Mich. 1978); Robertson v. NBA, 390 F. Supp. 73, 79-82 (N.D. Cal. 1974); Philadelphia World Hockey Club, Inc. v. Philadelphia Hockey Club, Inc., 351 F. Supp. 462, 503-04 (E.D. Pa. 1972); Denver Rockets v. All-Pro Management, 325 F. Supp. 1049 (C.D. Cal. 1971).

Some cases, however, which have suggested the possibility of a successful single entity defense. *See* Mid-South Grizzlies v. NFL, 720 F.2d 772 (3d Cir. 1983); Levin v. NBA, 385 F. Supp. 149, 152 (S.D.N.Y. 1974); San Francisco Seals v. NHL, 379 F. Supp. 966, 969-70 (C.D. Cal. 1974).

The Supreme Court considered the single entity defense in a non-sport context in Copperweld Corp. v. Independence Tube Corp., 467 U.S. 752, 104 S. Ct. 2731 (1984). In *Copperweld*, the Court held that antitrust principles do not apply with a parent corporation and its wholly-owned subsidiary. The Court considered irrelevant the parent's decision to adopt a decentralized structure, the existence of a formal agreement, and the extent of the parent's control—all of which are highly relevant for professional sports leagues and could possibly lead to a successful single entity defense for them. For a thorough discussion, see Roberts, *supra* note 48.

c. Rule of Reason Analysis

After the "conspiracy or combination" question, courts dealing with players' Section 1 claims must look to the particular restraint being challenged and decide whether it is "unreasonable."[62] The answer to this question hinges in large part on whether a court chooses to apply a per se test or the rule of reason. Because of the unique nature of the professional sports business, courts have not been entirely consistent making this determination.

Mackey v. NFL[63] provides a good illustration of the choices faced by courts. *Mackey* involved a Section 1 challenge by NFL players to the infamous "Rozelle Rule."[64] This rule was designed to limit free agency in the NFL by requiring a free agent's "new" team to agree to compensate the free agent's "old" team with money, players, or draft picks. If the teams reached no agreement, the commissioner had the power to order suitable compensation. In effect, the system created mandatory trades and severely limited players' marketability. Owners were understandably reluctant to try to sign free agents knowing they must agree to compensate another team or, worse yet, knowing the commissioner could order such compensation. The district court in *Mackey* struck down the rule, holding that the rule constituted a group boycott and a concerted refusal to deal—[65]both per se violations of Section 1.

The Eighth Circuit, in *Mackey*, agreed that the Rozelle Rule violated the Sherman Act. It disagreed, however, with the district court's per se categorization. While the rule could possibly constitute a group boycott and a concerted refusal to deal, per se analysis was normally used with agreements between true business competitors. Because of the special nature of the NFL's business, the court preferred the rule of reason, allowing an inquiry into purported justifications of the rule by the league. This logic for the rule of reason analysis was followed by other courts, with agreement from commentators.[66]

Actual application of the rule of reason to players' Section 1 claims raises complex legal and economic issues. Further complicating matters, courts have not articulated an approach to sports league issues that meaningfully applies general antitrust standards.[67] Because the rule of reason applies a balancing

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62. *See supra* part II.A.

63. 407 F. Supp. 1000 (D. Minn. 1975), *aff'd in part*, 543 F.2d 606 (8th Cir. 1976), *cert. denied*, 434 U.S. 801, 98 S. Ct. 28 (1977).

64. The rule was established by then NFL commissioner Alvin Ray "Pete" Rozelle.

65. A concerted refusal to deal is an agreement by two or more persons either not to do business with other persons or to do business with them only on particular terms. Group boycotts are refusals to deal or inducements to others not to deal or to have business relations. Walter T. Champion, Jr., Sports Law in a Nutshell 54 (1993).

66. *See* Rosenbaum, *supra* note 43, at 740 nn.41-42 (illustrating the rule of reason's acceptance); Scott J. Foraker, *The National Basketball Association Salary Cap: An Antitrust Violation?*, 59 S. Cal. L. Rev. 157 (1985) (calling the salary cap price fixing, but still advocating rule of reason).

67. Roberts, *supra* note 45, at 26. *See* Rosenbaum, *supra* note 43, at 730. Rosenbaum,

test, problems quickly arise when attempting to compare the benefits and harms to competition. The anti-competitive features which result from owners' increased market power after imposing player restraints are not easily comparable with benefits to competition that "are not easily measurable in economic terms . . . such as the improvement of competition on the field."[68]

Another problem applying the rule of reason to player restraints is determining what form of consumer welfare[69] injury occurs from the restraints. The restraints occur in a monopsonistic context, so the only real consumers are the players selling their services. Monopsony power in the hands of owners obviously leads to lower salaries for the players (or sellers). Antitrust laws, however, do not necessarily contemplate this type of consumer injury.[70] One commentator has argued the only valid consumer-welfare injury that players could claim is that by restricting player movement between teams, allocative inefficiencies occur among the individual teams. In other words, players end up on teams where they would not normally be placed by the market, resulting in a lower quality product for consumers—poor play on the field.[71]

Definition of the relevant product market presents another relevant consideration for rule of reason analysis. A court must decide to which market to apply the rule of reason. A court could look at the picture broadly and decide professional sports belong in the category of general entertainment product. In that case, player restrictions would be justifiable since the league must establish relative parity among its teams to produce a quality entertainment product that is able to compete with other entertainment products. On the other hand, a court could also decide this issue narrower, performing the test in a market for professional athletes' services. Then, owners would be pitted against each other, trying to justify why they should be able to control players' market value between teams. In that case, owner justifications for restraining players and controlling salaries would carry much less weight.[72]

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articulating his conclusions from his research, states:

> What has remained . . . is certainly not coherence, but rather a series of vague assumptions about the nature of sports league economic organization. Without offering meaningful guidance as to the potential liability of various trade practices, these assumptions only serve to highlight the inability of courts to apply the antitrust laws in a reasoned and consistent way that recognizes the considerable consumer welfare implications that sports league entertainment provides.

Id. at 730.

68. Rosenbaum, *supra* note 43, at 737. See also Roberts, *supra* note 45, at 26, where the author claims the jury in a player restraint case must compare "apples and oranges."

69. Many experts agree that consumer welfare is the proper goal of antitrust laws. *See* Bork, *supra* note 36. Others disagree with this characterization, asserting other goals, such as economic efficiency or protection of small businesses. *See* Fox, *supra* note 36, at 1147; Hovenkamp, *supra* note 36, at 1. Obviously, a court's reliance on one of these alternate goals of antitrust law would change its analysis of this problem.

70. *See* Roberts, *supra* note 45, at 27.

71. *Id.*

72. *See* Piazza v. Major League Baseball, 831 F. Supp. 420 (E.D. Pa. 1993) (applying limited

As if the preceding were not disjointed enough, courts regularly give these matters to juries with little or no guidance,[73] assuring completely unpredictable results.

C. *Labor Exemption from Antitrust*

Professional athletes have been subject to some type of restraint throughout the history of organized professional sports. Not surprisingly, modern professional athletes have organized themselves into labor unions in an attempt to loosen these restraints. "When it was a game,"[74] professional sports leagues may have been filled with athletes who gave it their all solely for their teams, but today's professional athlete would be just as prone to lay it all on the line for his union.[75] Modern professional sports arguably feature some of the most powerful unions in the country.[76]

An inherent need by team owners of specifically skilled players[77] creates professional players' unions with tremendous bargaining power. At the same time, the owners, being the sole buyers of players' services or monopsonists,[78] also possess tremendous power. These factors definitely arise when analyzing individual player antitrust claims. Some commentators have suggested that when two powerful forces like team owners and players' unions lock horns, traditional

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market for professional baseball franchises); Mid-South Grizzlies v. NFL, 720 F.2d 772 (3d Cir. 1983) (using "major-league professional football" as relevant market); Y. Shukie Grossman, *Antitrust and Baseball—A League of Their Own*, 4 Fordham Intell. Prop. Media & Ent. L.J. 563 (1993) (comparing the Piazza and Grizzlies cases); *see generally* Richard E. Bartok, *NFL Free Agency Restrictions Under Antitrust Attack*, 1991 Duke L.J. 503, 519-25 (1991); James L. Seal, *Market Definition in Antitrust Litigation in the Sports and Entertainment Industries*, 61 Antitrust L. J. 737 (1993).

73. *See* Roberts, *supra* note 45, at 27.

74. *When It Was A Game* (HBO television broadcast, July 8, 1991) offered a nostalgic look at the early history of Major League Baseball.

75. Atlanta Braves pitcher, Tom Glavine provides one example of this attitude during the 1994-95 strike. After negotiations had broken down between MLB owners and players, Glavine, a representative of the MLBPA who, quite aware of the unpleasant ramifications of a protracted strike for baseball fans, stated: "[e]ssentially, what I think it boils down to us as players is: At what price will you sell your freedom? . . . But we haven't yet. And we won't." *See* Steve Campbell, *Baseball's Nightmare Continues*, The Times Union, December 16, 1994, at D1.

76. In 1994, the acting commissioner of baseball, Bud Selig, called the Major League Baseball Players Association the most successful union in the history of the American labor movement. *See* Claire Smith, *Popcorn, Peanuts, and Pickets*, The New York Times, September 26, 1994, at C9.

77. Some would also argue that the owners' economic and psychological need to win games makes for economically irrational decision making. *See* Chalian, *supra* note 55, at 627-29. Ultimately, this inherent need to win could lead to greater union bargaining power. Some owners will do whatever it takes, however irrational, to win games. These decisions may be driven by a need to win to become economically successful, or they may just be driven by the owners competitive spirit and pride. A union aware of such a situation possesses tremendous bargaining power.

78. *See supra* note 56.

antitrust concerns are of no real use and can only hinder economic development by giving one party an unfair advantage.[79] Regardless of whether this exact premise is accepted, organized labor matters are exempted from antitrust scrutiny in certain situations.[80]

Because the players' unions are the primary bargaining units[81] for players, it becomes of paramount importance to consider these labor exemptions from antitrust laws. These exemptions, in the professional sports context, provide immunity from antitrust suits for parties involved in an organized labor relationship. The exemptions operate with the assumption that labor matters should stay just that—labor matters.

Labor laws stem from the philosophy that the labor of a person is different from commodities that are bought and sold and that competition in the labor market over wages and working conditions should be eliminated. Congress has established a plan for achieving these philosophies through the Federal Labor Laws.[82] This plan centers around collective bargaining by parties with equal leverage, which will ideally result in wages that are fair to labor and commercially feasible for employers.[83] Labor parties, processes, and agreements should not be subject to constant antitrust attacks because these attacks would only hinder the goals of Federal Labor Laws.

Congress created a labor exemption from antitrust law by statute because of union concerns that big business could use the antitrust laws to break up organized labor.[84] This statutory labor exemption protected certain enumerated,

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79. Traditional antitrust law is concerned with the abuses of power that occur when one party is so powerful that it can impose its will on the market in a way that injures competition. However, when another powerful party, a "countervailing force," is present, the original party's will may be checked and economic development is not harmed. First, imposing antitrust law on this situation is futile, since there has been no adverse effect on economic development. Second, imposing antitrust law to the situation is potentially harmful because it could lead to an unnatural increase in the challenging party's power, which itself could hinder economic development. A countervailing force can be an "effective substitute for competition." Fredric M. Scherer, Industrial Market Structure and Economic Performance 24 (1980). *See* Barbara Ann White, *Countervailing Power—Different Rules for Different Markets? Conduct and Context in Antitrust Law and Economics*, 41 Duke L.J. 1045 (1992); John K. Galbraith, American Capitalism: The Concept of Countervailing Power (1952).

80. *See generally* Mackey v. NFL, 543 F.2d 606 (8th Cir. 1976).

81. Federal labor policy thus allows employees to seek the best deal for the greatest number by the exercise of collective rather than individual bargaining power. Once an exclusive representative has been selected, the individual employee is forbidden by federal law from negotiating directly with the employer absent the representative's consent . . . .

Wood v. NBA, 809 F.2d 954, 959 (2d Cir. 1987).

82. *See* Elinor R. Hoffman, *Labor and Antitrust Policy: Drawing a Line of Demarcation*, 50 Brook. L. Rev. 1 n.2 (1983) (specifying relevant labor laws).

83. *Id.* at 1-2.

84. Section 6 of the Clayton Act states:

> The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain

anticompetitive union activities.[85] Later, judicial decisions created a non-statutory labor exemption based on the underlying policies behind the labor laws. The exemption protected *any* union activity consistent with the goals of the National Labor Relations Act.[86] The United States Supreme Court explained: "[L]abor policy requires tolerance for the lessening of business competition based on differences in wages and working conditions."[87] This means that the policies of antitrust law, which espouse business competition, and the policies of labor law, which tolerate a lessening of competition in favor of organized unions, are inconsistent with each other.[88] The labor exemption is, in effect, a preferential nod given to labor.

The labor exemption was first used in sports league cases in the 1970's, almost simultaneously with the increased power of the players' unions.[89] The more powerful sports unions took advantage of federal labor policy that favored collective bargaining. Because the collective bargaining agreements (CBA's) were the products of this bargaining by both owners and players, they normally contained concessions by both sides. Thus, the CBA's were likely to contain some restraints on players' movements. The question for courts facing players' suits became whether the CBA's were exempt from antitrust scrutiny under the labor exemption since such agreements had been reached through a process favored by the policies of labor law. In other words, if players sued the owners for antitrust violations based on the restraints contained in the CBA's, could the owners raise the antitrust exemption as a defense?

Courts have generally answered this question affirmatively, focusing on the actual bargaining process.[90] That is, if the parties have truly bargained according to federal guidelines, then the contents of the CBA, no matter how restrictive on players, are beyond the reach of the antitrust laws. The Eighth Circuit, in *Mackey v. NFL*,[91] set out the accepted test: (1) the restraint primarily affects only the parties to the collective bargaining relationship; (2) the

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individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

15 U.S.C. § 17 (1988).

85. Raymond L. Yasser et al., Sports Law 187 (1990).

86. 29 U.S.C. §§ 151-169 (1988).

87. Connell Constr. Co. v. Plumbers & Steamfitters Local Union, 421 U.S. 616, 622, 95 S. Ct. 1830, 1835 (1975).

88. *See* Hoffman, *supra* note 82.

89. The exemption was first mentioned in the Supreme Court in its unique sports context by Justice Marshall in his dissenting opinion in Flood v. Kuhn, 407 U.S. 258, 92 S. Ct. 2099 (1972). Justice Marshall argued for overruling MLB's antitrust exemption. However, he acknowledged that even if the exemption was overturned, the plaintiff would still need to overcome the separate labor exemption from antitrust law that was "[l]urking in the background." *Id.* at 293, 92 S. Ct. at 2117 (Marshall, J., dissenting).

90. *See generally*, Kieran M. Corcoran, *When Does the Buzzer Sound?: The Nonstatutory Labor Exemption in Professional Sports*, 94 Colum. L. Rev. 1045 (1994).

91. 543 F.2d 606 (8th Cir. 1976).

restraint must be concerned with a mandatory subject of collective bargaining; and (3) the restraint must be the product of bona fide, arm's length negotiation.[92]

There has been extensive argument as to whether this test turned the labor exemption on its head. After all, the exemption had been designed to protect unions from management antitrust attacks, not vice versa.[93] The reasoning of the court, however, does make sense from a policy standpoint. As the Eighth Circuit explained in *Powell v. NFL*,[94] a case subsequent to *Mackey*:

> [T]he federal labor laws provide the opposing parties to a labor dispute with offsetting tools, both economic and legal, through which they may seek resolution of their dispute. . . . To now allow the Players to pursue an action for treble damages under the Sherman Act would, we conclude, improperly upset the careful balance established by Congress through the labor law.[95]

The labor exemption is now a mainstay in the professional sports arena. Indeed, in a case involving a Section 1 claim to the National Basketball Association's salary cap, the Second Circuit stated: "We need not . . . probe that exact contours of the so-called statutory or non-statutory 'labor exemptions,' however, because no one seriously contends that the antitrust laws may be used to subvert fundamental principles of our federal labor policy."[96]

III. COMPARING THE HISTORIES OF THE NFL AND MLB

The previous sections illustrate the difficult issues confronting judges and juries attempting to apply antitrust laws to player restraints. Perhaps more illustrative, though, is a look at the actual histories of professional football and baseball. Since professional baseball, with its complete exemption from antitrust laws, has still managed to provide its players extensive freedoms, an appreciation is gained for the ineptness of applying antitrust laws to analyze player restraints. Therefore, the impotency of an exemption from antitrust like MLB's is also illustrated.

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92. *Id.* at 614.

93. *See* Chalian, *supra* note 55, at 597 n.12.

94. 888 F.2d 559 (8th Cir. 1989).

95. *Id.* at 566-67 (citations omitted).

96. Wood v. NBA, 809 F.2d 954, 959 (1987). Judge Winter, author of the opinion, is quite aware of the issues involved having written an article on the subject. *See* Michael S. Jacobs & Ralph K. Winter, Jr., *Antitrust Principles and Collective Bargaining by Athletes: Of Superstars in Peonage*, 81 Yale L.J. 1 (1971).

A. *Football*

Antitrust laws were first drafted into the NFL in 1948. Bill Radovich was a former NFL player who had been "blacklisted"[97] for breaking his contract with the NFL and playing for the rival All-American Football Conference.[98] He sued the NFL after he attempted a return to the league and was rejected. He claimed a conspiracy to monopolize interstate commerce in the business of professional football by the NFL. The appellate court dismissed the claim, holding that professional football, like MLB in *Federal Base Ball Club*,[99] was not trade or commerce for antitrust purposes.[100] In *Radovich v. NFL*,[101] the Supreme Court acknowledged that it could not distinguish the business of professional football from professional baseball. The Court, however, refused to extend MLB's antitrust exemption to the NFL because Congress had refused to do so. The Court held, "the volume of interstate business involved in organized professional football places it within the provisions of the Sherman Act."[102] Thereafter, the NFL's labor policies became fair game for antitrust attacks.[103]

The NFL's labor policy began with a perpetual reserve clause that severely limited player movement. Players were confined to one team for their entire careers unless their teams traded or released them.[104] In 1947, this perpetual reserve system was replaced by a "right of first option" plan which was included in each player contract.[105] The plan, in a sense, provided free agency to an NFL player after the expiration of his contract. The catch was that the player pursuing free agency was obligated to play for his "old" team for one more year after his contract expired at ninety percent of his original contract's salary. Only after playing out this "option year" would the player be eligible for free agency.

1. The Rozelle Rule and Its Progeny

If this system had continued operating in this manner, perhaps antitrust challenges would have been unsuccessful.[106] In 1963, however, the NFL

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97. When a player is blacklisted by a league, all teams in the league agree not to rehire him. Warren Freedman, Professional Sports and Antitrust 36 (1987).

98. Radovich had requested a trade from the NFL's Detroit Lions to a West Coast team to be near his sick father. After this was refused, he moved to the AFC's Los Angeles Dons. *Id.*

99. Federal Base Ball Club v. National League of Professional Base Ball Clubs, 259 U.S. 200, 42 S. Ct. 465 (1922).

100. Radovich v. NFL, 231 F.2d 620 (9th Cir. 1956).

101. 352 U.S. 445, 77 S. Ct. 390 (1957).

102. *Id.* at 452, 77 S. Ct. at 394.

103. The NFL has had its fair share of antitrust attacks. From 1966 to 1991, the NFL was forced to defend over 60 antitrust lawsuits. *See generally* Roberts, *supra* note 60, at 135.

104. *See* Bartok, *supra* note 72, at 508-09.

105. *Id.* at 509.

106. In Kapp v. NFL, 390 F. Supp. 73 (N.D. Cal. 1974), *aff'd*, 586 F.2d 644 (9th Cir. 1978),

instituted a restrictive companion policy called the "Rozelle Rule"[107] that severely restricted player movement. In a 1972 meeting, the National Football League Players' Association (NFLPA) Board of Directors attacked the Rozelle Rule as unreasonable and illegal.[108] This attack came despite the NFLPA's approval of the rule when it was enacted in 1963. Not surprisingly, court battles followed. In 1974, a federal court in California held that the Rozelle Rule violated Section 1 of the Sherman Act.[109] The court reluctantly used a rule of reason analysis only after recognizing that if not for the uniqueness of the professional sports business, it would have used the per se approach. In other words, the court found that the owners' restraints, in any other context, would be so harmful to competition that there would be no need to inquire into any possible benefits.

Later, in *Mackey v. NFL*,[110] the Eighth Circuit struck down the Rozelle Rule using a rule of reason analysis. More importantly for owners, the court also ruled that the labor exemption could apply to preclude players' antitrust claims.[111] The court held, however, that because there had been no bona fide arm's length negotiations between owners and players on the Rozelle Rule, the rule could not be imposed on the comparatively weak NFLPA, especially when imposition of the rule was obviously not consistent with the union's self interest. Nevertheless, the court expressed its displeasure with having to decide these tricky matters. It encouraged the players and owners to "resolve this question through collective bargaining."[112]

After this important antitrust victory, the parties did collectively bargain. Evidently, the NFLPA bargained poorly because afterwards the NFLPA found itself with the same type of arrangement that was challenged in *Mackey*. The new agreement included a team's right to match an offer made to its players by another team.[113] This "right of first refusal" restricted player movement, while theoretically allowing for the salary escalation that normally occurs with free agency. However, the plan also contained a compensation scheme requiring the signing team to provide the losing team with certain draft choices set by league statute.[114] Basically, except for stripping the Commissioner of his discretionary power to decide compensation, the agreement was the reincarnation of the Rozelle Rule,[115]

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the court did not find this option system patently unreasonable. Later, Mackey v. NFL, 407 F. Supp. 1000 (D. Minn. 1975), *modified*, 543 F.2d 606 (8th Cir. 1976), found the option system anticompetitive, but upheld it because of its nonoppressive length. *See* Chalian, *supra* note 55, at 611-12.

107. *See supra* part II.B.2.c.

108. Freedman, *supra* note 97, at 37.

109. *Kapp*, 390 F. Supp. at 73.

110. 543 F.2d at 606, *cert. denied*, 434 U.S. 801, 98 S. Ct. 28 (1977). *See supra* part II.B.2.c.

111. *See supra* part II.C.

112. *Mackey*, 543 F.2d at 623.

113. Bartok, *supra* note 72, at 510-11.

114. *Id.*

115. Sensing this result, a number of the original players in *Mackey* objected. A reviewing court, however, allowed the agreement as a valid class action agreement. Alexander v. NFL, 1977-2 Trade Cas. (CCH) ¶ 61,730, at 72,998 (D. Minn. 1977), *aff'd sub nom.* Reynolds v. NFL, 584 F.2d 280 (8th Cir. 1978).

effectively setting the stage for a later antitrust challenge. The grand antitrust victory in *Mackey* had done little for the NFLPA. Now, the union was stuck with a restrictive clause it had actually bargained for, making the clause immune from antitrust scrutiny under the labor exemption.

In 1982, the parties reached the same basic collective bargaining agreement (CBA) with only a few minor changes.[116] It was not surprising then, in 1987 when the inevitable occurred and the NFL players went on strike. The owners responded by fielding strikebreakers. The "scab teams," along with some NFLPA player turncoats, effectively broke the strike.[117] The players returned and the season ended with no new CBA. The owners again unilaterally imposed the 1982 CBA in 1988-89.[118] Negotiations continued in 1989, but the parties still reached no agreement. The owners finally settled on the infamous "Plan B"[119] and unilaterally imposed this plan for the season. It provided free agency for ten players chosen by the owner per team.[120]

The NFLPA had been doing more than mere negotiating, though. After the failed 1987 strike, the union attempted to redeem itself through the courts. Several antitrust lawsuits were filed, eventually culminating in *Powell v. NFL*.[121] The owners raised the labor exemption defense even though there had been no real CBA since the 1982 CBA had expired in 1987. The district court, to the delight of the NFLPA, held that the labor exemption only applied until two parties reached an impasse in negotiations.[122] The victory was shortlived. The Eighth Circuit reversed and held that the labor exemption did apply because the two sides were still in a collective bargaining relationship and the owners had committed no unfair labor practices.[123] The court reasoned that allowing a union to sue for antitrust violations at every impasse would "improperly upset the careful balance established by Congress through the labor law."[124]

2. Victory for the NFLPA

Undaunted, the NFLPA regrouped and decided to take one for the team. By a vote of its governing board, the union decertified itself,[125] supposedly ending

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116. *See* Bartok, *supra* note 72, at 512-13.

117. *Starting Now, Union Has Ball*, The Washington Post, July 13, 1988, at B1.

118. Michael Wilbon, *NFL Players Union Seeks Decertification*, The Washington Post, November 8, 1989, at G1.

119. Plan B was named after one of the plans submitted during bargaining.

120. *See* Chalian, *supra* note 55, at 619 n.182 (citing 61% increase in Plan B movers' salaries which by extension also increased reserved players' salaries).

121. 678 F. Supp. 777 (D. Minn. 1988).

122. The court reasoned that its standard struck a balance between competing goals of labor and antitrust law. This standard promoted collective bargaining, but not so far as to "insulate" a practice from antitrust scrutiny; it would only delay it. *Powell*, 678 F. Supp. at 789.

123. Powell v. NFL, 888 F.2d 559 (8th Cir. 1989).

124. *Id.* at 567.

125. Without a formal decertification election, the NFLPA formally announced in 1989 that it

thirty-five years of representing NFL players. The players mourned the loss of their union by filing another antitrust suit, *McNeil v. NFL*,[126] hoping this time to be free of the labor exemption shackles.

In *McNeil*, the owners contended that the NFLPA's withdrawal as the players' bargaining representative was unlawful because the union had not legally decertified itself. The owners contended that the decertification was nothing more than a refusal to bargain in good faith, as required by the labor law.[127] If accepted, this argument would have meant that players were still precluded from challenging any league rules under *Powell*. However, the district judge in *McNeil* rejected the owners' arguments and found that the union had indeed decertified.[128]

The jury trial resulted in a victory for four of the eight plaintiffs.[129] More importantly, the judge had rejected the owners' labor exemption and single entity defenses. With these key issues unresolved and waiting for appeal, the NFL settled the suit with a new CBA and recertification of the NFLPA. After a long and confusing journey, free agency made the NFL's team through settlement of an antitrust suit.

The *McNeil* case is important because it led to the new CBA that gave players free agency. Moreover, with the recertification of the NFLPA, free agency is one victory the NFLPA did not bargain away. While not directly leading to free agency in the NFL, antitrust law at least proved to be the major catalyst in the settlement. However, the actual decision in *McNeil* probably presents more problems than it solves. The jury's decision, bending and stretching both antitrust and labor laws, arguably leads to an unfair advantage for labor.[130] If followed, the decision allows a union to bargain collectively and then to decertify and bring an antitrust suit if it is dissatisfied with the CBA. As to antitrust law, one commentator has argued that *McNeil's* jury instructions and its explanations of the rule of reason create serious problems.[131] Moreover,

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was renouncing its collective-bargaining rights. Then, the union redrafted its charter to make itself a trade association for players. *See* Roberts, *supra* note 45, at 26. This move was very risky for the NFLPA. If its efforts had been unsuccessful, then unhappy NFL players could have refused to recertify the union.

126. 764 F. Supp. 1351 (D. Minn. 1991).

127. *Id.* at 1354.

128. *Id.* at 1358.

129. McNeil v. NFL, 1992 WL 315292 (D. Minn. 1992) (Jury Forms). The same-sex jury found the other four did not adequately prove their market value. They "were found to have been playing so poorly that it would have been impossible for them to have negotiated a better deal (without restrictions)." Roberts, *supra* note 45, at 26.

130. At the very least, the NFLPA's actions raise the same concerns as those in Powell v. NFL, 888 F.2d 559 (8th Cir. 1989), where the court stated that allowing a union to sue for antitrust violation at every impasse would "improperly upset the careful balance established by Congress through the labor law." *Id.* at 567.

131. As one commentator explained:

> The instructions given to the McNeil jury were far from a model description of the rule of reason. The jury was not informed of its obligation to balance pro-competitive and

because *McNeil* is only a district court decision, it lends no real guidance to players or owners for the future.

B. Baseball

MLB labor history stands in stark contrast to that of the NFL. Obviously, MLB could not follow the path of the NFL because courts and Congress refused to overturn the antitrust exemption. Yet, even without an antitrust option, MLB players gained the right to free agency. Therefore, the relevant question becomes how antitrust law could have made a difference historically, if at all.

1. Reserve Rule and Antitrust Exemption

Professional baseball, as it is organized today, was established in 1876 by William A. Hulbert. He formed the National League of Professional Base Ball Clubs (NL) after attempts at a player owned/operated league had failed.[132] In contrast to the player-owned system, the NL was owned and operated by businessmen, so accordingly, their interests prevailed over those of their players.[133] Not only did these businessmen have an interest in thwarting any competition from other leagues, but they also needed to control players. To deal with the problem of players jumping contracts, or "revolving," which had plagued the player-owned league, the NL instituted a system to restrain its players.

The NL mandated a reserve clause be added to players' contracts, allowing a team to unilaterally reserve a player's services for the following year.[134] Although the clause initially only covered five players per team and was seen as a status symbol by players, it was eventually included in every player's contract and was viewed with increasing distrust as a device to hold down salaries.[135] To make matters worse, the reserve clause was interpreted to be perpetual; i.e., it did not terminate after one year but continued indefinitely until the team decided to terminate it. The success of the "reserve rule" was, by no means, a

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anti-competitive effects . . . simply telling the jurors that they must find a "substantially harmful effect on the relevant market," in the absence of further definition, essentially punted the case to them without meaningful guidance.

See Roberts, *supra* note 45, at 26-27.

132. David Q. Voigt, *Serfs vs. Magnates: A Century of Labor Strife in Major League Baseball*, *in* The Business of Professional Sports, at 95, 97 (Paul D. Staudohar & James A. Mangan eds., 1991).

133. The owners' interests have been described:

Enthralled by their newly created baseball "trust," the league's owners styled themselves as magnates presiding over a million-dollar entertainment industry. The magnates fully expected their monopoly league to produce unprecedented cash and glory.

1890-1920, The AL and NL Arrive, *in* Complete Baseball (CD-ROM), 1994 Microsoft Corp.

134. *See* Voight, *supra* note 132, at 99.

135. *Id.*

sure thing. The success was due, in large part, to the owners' success at driving out any competing league, thereby leaving would-be baseball players with no choice but to take whatever offer the NL owners made. NL owners used any and all tactics to ensure their exclusive economic power over players. When the American League, or "junior circuit," formed in 1901 and proved to be a formidable competitor driving up player salaries, the NL merged with it in 1903 to become Major League Baseball.[136] The reserve rule remained intact.

In 1912, the last formidable challenge to MLB's exclusivity arose with the formation of the Federal League (FL). This new league enticed some eighty MLB players to jump their contracts and sign with it.[137] MLB responded by "blacklisting" the contract jumpers; each MLB team would refuse to rehire a contract jumper in the future. MLB also resorted to legal means to enforce its contracts. In *American League Baseball Club of Chicago v. Chase*,[138] the Chicago White Sox sued its first baseman, Hal Chase, to enforce its contract with him after Chase attempted to jump to the FL's Buffalo club. Chase countered with a Sherman Act Section 1 challenge of the reserve rule as an illegal restraint of trade. Although the New York Supreme Court refused the Sherman Act claim, it ruled for Chase based on the contract claim, calling the reserve rule "peonage."[139]

Chase only served to solidify hostilities between MLB and the FL, precluding any possible merger. The hostilities and resulting escalation in salaries proved costly for the new league. In 1915, the FL sued MLB for Sherman Act violations in a last gasp for air. When the decision was delayed, however, the financially strapped FL settled with MLB for $600,000.[140] MLB also granted amnesty to former FL players who had been blacklisted.

The FL's Baltimore Terrapins refused to accept the settlement and pressed the matter to the United States Supreme Court. Seven years after the initial suit, the Supreme Court handed down *Federal Base Ball Club of Baltimore, Inc. v. National League of Professional Base Ball Clubs*.[141] With this decision came not only the complete defeat of the FL, but also the assurance to MLB of its monopolistic status with the antitrust exemption created by the decision.[142]

Ironically, the *Federal Base Ball* decision and the antitrust exemption it created assured players they would not only have no choice of a competing league, but also have no choice of a competing team within their league—at least

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136. *See* Classen, *supra* note 4, at 376-77.

137. Several big name players, such as George Stovall, Joe Tinker, Mordecai "Three Finger" Brown, and Hal Chase were among the players who signed with the FL. More common were the "flip-flops," or the players who used their FL contracts as leverage to increase their salaries at their original team. *See 1914: The Federal League*, *in* Complete Baseball (CD-ROM), 1994 Microsoft Corp.

138. 149 N.Y.S. 6 (1914).

139. *Id.* at 17-20.

140. *See* Complete Baseball, *supra* note 133.

141. 259 U.S. 200, 42 S. Ct. 465 (1922).

142. *Id.* at 200, 42 S. Ct. 465. *See also* discussion, *supra* part I.

as far as courts were concerned. With a complete exemption from antitrust for MLB, the players had no legal recourse against the reserve rule through the Sherman Act's prohibitions on unreasonable restraints of trade. Moreover, subsequent decisions also assured that any *Chase*-type state law claims were precluded by the Federal Antitrust Exemption.[143]

2. *Players' Solutions—The Rise of the MLBPA*

Despite the rejections in court, player challenges to the hated reserve clause persisted up to the 1970's. Courts, however, again and again refused to overturn *Federal Base Ball*'s exemption leaving that decision to Congress.[144] Besides providing evidence of the players' displeasure with the exemption, the almost hopeless challenges demonstrated the frustrations of players with their conditions.

Although players were frustrated, most did not feel that answers would come through organized labor. The negative public perception of unions in the 1950's and 1960's led many players to openly shun any union option for fear of alienating fans.[145] Players did form the Major League Baseball Players' Association (MLBPA) in 1954, but it dealt mostly with everyday problems such as poor lighting at night games or reduction of the number of double headers.[146]

This all changed in 1966 when the MLBPA hired former steel-labor man Marvin Miller. Players initially greeted Miller and his reputation as a hardline union leader with some distrust.[147] Miller changed the players' initial perceptions, however, when he seized upon the MLBPA's control of player pension funds. He used the fund and the owners' hostile reactions to attempts at changing it to illustrate two things to players: the union could be a viable option for accomplishing player goals and the owners were not to be trusted.[148] Players not only warmed up to Miller, but completely shifted their attitudes about the union in general.

Deep-rooted changes occurred in the very thinking of the owners and players with Miller in command of the union. The paternalistic spirit of the owners disappeared in the face of the hardline solidarity created by Miller. The owners

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143. Flood v. Kuhn, 407 U.S. 258, 92 S. Ct. 2099 (1972).

144. *See id.* at 272 nn.12-13, 92 S. Ct. at 2107 nn.12-13.

145. In 1963, Bob Friend, the National League player representative for the MLBPA, illustrated players' attitudes saying, "It would destroy baseball if fans were exposed to the spectacle of someone like Stan Musial picketing a ball park." Korr, *supra* note 11, at 116.

If picketing was a concern, one wonders what Friend might say about modern day players' union members who publicly threaten physical harm to potential strike-breakers. See *Striking Players Issue Threats to Any Potential Replacements*, The San Diego Union-Tribune, Oct. 27, 1994, at C1, where Mets pitcher John Franco warned replacement players, "I don't throw balls. I throw fists."

146. *Korr*, *supra* note 11, at 121.

147. *Id.* at 119.

148. *Id.*

reacted by replacing their "neutral" commissioner of baseball,[149] who was bound by MLB rules to act "for the good of baseball," with Bowie Kuhn, a lawyer who had negotiated against the union in 1968. This action had major ramifications for players because the commissioner had also acted as an arbitrator of any player complaints. Understandably, players had no interest in an arbitrator openly loyal to owners. The players, through their union, demanded that truly neutral arbitrators hear their complaints. And in perhaps the most important concession in professional sports history, the owners agreed.[150]

3. Free Agency Arrives

In 1975, just three years after the Supreme Court had again rejected a professional baseball player's antitrust challenge to the reserve clause,[151] one of these neutral arbitrators did what a century's worth of players, lawyers, and judges could not—he slayed the dreaded reserve clause.[152] In the "*Messersmith and McNally Arbitration*," as the case was known, arbitrator Peter Seltz decided the reserve clause in player contracts was not perpetual, but only binding for one year. Although this reasoning was supported by the language of the clause, it is probably not supported by basic principles of contract interpretation. No matter what the language said, all parties to these contracts understood, or reasonably expected from almost 100 years of practice, that the reserve clause was quite perpetual.

This arbitration decision was only binding on the actual parties involved—here, the players and their respective clubs.[153] The decision had no precedental value, and other arbitrators were unlikely to follow the questionable logic from *Messersmith and McNally*.[154] Despite this, MLB owners, their fighting spirits kindled by labor tensions, pressed the matter to a federal appellate court knowing its results would be binding on all. The Eighth Circuit, perhaps in an apology to one hundred years worth of professional baseball players, affirmed the arbitration decision.[155] Free agency had arrived in MLB.

IV. IMPLICATIONS FROM HISTORY

MLB, however, has not lived happily ever after. Free agency has continued since the *Messersmith and McNally Arbitration*. Players' salaries have increased,

149. *Id.* at 130-32.
150. *Id.* at 131-32; *see also* Walter T. Champion, Jr., Fundamentals of Sports Law 434 (1990).
151. Flood v. Kuhn, 407 U.S. 258, 92 S. Ct. 2099 (1972).
152. *In re* Professional Baseball Clubs, 66 Lab. Arb. Rep. (BNA) 101 (1975).
153. Messersmith had played for the Los Angeles Dodgers, McNally, the Montreal Expos. *Id.* at 101.
154. *See* Chalian, *supra* note 55, at 607-09.
155. Kansas City Royals Baseball Corp. v. MLBPA, 532 F.2d 615 (8th Cir. 1976).

as has their ease of movement.[156] Owners, however, contend that salaries have increased beyond affordable to dangerous levels. Continued attempts by owners at some types of controls have only led to increased labor troubles. Since the *Messersmith and McNally Arbitration*, there have been four strikes by players, a lockout of players by owners, and an arbitration decision finding the owners guilty of colluding to hold down player salaries.[157] These events do not indicate healthy labor relations. The question for this comment becomes whether the availability of antitrust remedies for MLB players could help solve any of these problems. The answer, in light of current practices and policies, is no.

It is a mistake to assume any of MLB's labor woes could be solved simply by subjecting MLB to antitrust scrutiny. Because MLB affects so many and its labor problems are played out in public forums, understandably some are inclined to think something should be done beyond the natural bargaining process.[158] It is not understandable, however, to attempt a solution by subjecting MLB to the confusion of sports league antitrust scrutiny. Indeed, the development of the NFL's business practices indicates exactly this premise. MLB players, possessors of free agency sixteen years ahead of NFL players, cannot be said to have required the guidance of the judicial system in their struggles. The same reasoning applies even more strongly to future struggles.

A. Antitrust Laws Would Not Have Helped MLB Players

The histories of MLB and NFL clearly show the divergence of two paths. NFL players, who had the option of asking the judiciary to declare restraints unreasonable, ended up with more restraints for a longer period. Conversely, MLB players, who certainly had no options under antitrust laws, still managed to rid themselves of virtually all restraints. These histories simply do not suggest antitrust laws mean anything substantively to player restraints.

MLB players, for whatever reasons, decided to concentrate on using labor laws in their fight[159]—perhaps because they realized the ineptness of antitrust laws in dealing with sports leagues. Of course, one could argue that MLB players had no other recourse—they could not bring an antitrust suit given the antitrust exemption. This argument is rather simplistic. It fails to take into

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156. *See* Collins, *supra* note 10, at 1270 n.8 (graphing increases in player salaries).

157. *1988 Season Summary*, *in* Complete Baseball (CD-ROM) 1994 Microsoft Corp.

158. In 1995, in the midst of the player strike, President Clinton obviously felt that something else needed to be done when he ordered federal mediators to intervene and threatened to impose binding arbitration on both parties if no agreement was reached. *See* George F. Will, *Baseball's Silly Season*, The Washington Post, Feb. 12, 1995, at C7.

On a theoretical level, one commentator has cried out for repeal of the antitrust exemption, claiming it "promotes inefficiency and infringes upon the constitutional rights of professional baseball players to freely market their talents." Classen, *supra* note 4, at 369.

159. Some claim this stems from MLBPA chief Marvin Miller himself. They say Miller purposely drove a wedge between players and owners in order to further labor objectives. *See* Korr, *supra* note 11, at 130-31.

account that MLB players continued bringing antitrust suits against the owners—i.e. *Flood v. Kuhn*. The truth is, baseball players were using any and all weapons available. Regardless of whether they realized the ineptness of antitrust laws, they did realize the potential potency of organized labor and added it to their arsenal with powerful effects. Once MLB players began to effectively use their union and the accompanying labor laws, their march to free agency was accomplished in a relatively short period of time, flying directly in the face of the supposed "injustice" of the antitrust exemption.

The NFL's history, on the other hand, presents a rather muddled picture. NFL players did have the option of using antitrust laws against owners and, after *McNeil*,[160] no serious argument can be made against the theory that antitrust laws were effective in propelling the NFL toward free agency. Professional football players, however, had serious problems with their labor route perhaps because there was never truly a labor route. Instead, NFL players' labor concerns appear as lagniappe[161] to their true focus on antitrust. The prominent football labor victories were always the result of antitrust-based court decisions—from *Mackey* to *McNeil*. When NFL players left the courtroom and moved to the bargaining process, they always left something on the table. After *Mackey*, the NFLPA settled on a CBA that essentially returned players to the position they had occupied before the case.[162] Even after *McNeil*, NFL players were subjected to a salary cap about which many players openly complained.[163] These examples suggest the real power of players lies not in the ability to sue in antitrust, but in the ability to bargain.

Although the two sports used different means, both sports have now obtained substantially less restraints on players than when they started. Given this, the antitrust exemption has given MLB owners no true "unfair advantage." The two histories suggest that future problems should be solved in the realm of the labor laws. That NFL players may be unhappy with their current settlement suggests that antitrust law is not a solution to sports league labor problems. Future problems could be handled more effectively not by hiring better antitrust lawyers, but by hiring better labor negotiators. The two histories certainly do not suggest that MLB would have been in any better position with the availability of antitrust remedies.

B. MLB Owners Would Not Act More Reasonably Toward Players If Subjected to Antitrust Laws

Because the Sherman Act prohibits unreasonable restraints on trade, many contend MLB owners without fear of antitrust suits and accompanying treble

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160. McNeil v. NFL, 764 F. Supp. 1351 (D. Minn. 1991).

161. "Lagniappe," a word of Louisiana French orgin, means "[a]n extra or unexpected gift or benefit." The American Heritage Dictionary 711 (Margery S. Berube et al. eds., 1985).

162. *See* discussion *supra* part III.A.2.

163. *See* Lonnie White, *Pro Football Daily Report*, The L.A. Times, Sept. 8, 1994, at C2.

damages have no incentive to act reasonably in their dealings toward players.[164] The evidence does not support this contention. First, MLB owners must still contend with the fear of violating the labor laws and accompanying damages in court. Second, since owners feel their antitrust exemption provides them advantages in areas apart from player restraints, they must also fear the possibility of losing their antitrust exemption. Perhaps more importantly though, no evidence exists that such abstract fears produce any economic consequences, much less motivate owners to act reasonably.

1. Motivations of MLB Owners to Act Reasonably

If motivation to act reasonably comes from fear of possible court results, MLB owners should already have plenty. MLB owners have been found guilty of colluding to keep free agents' salaries down, suffering a $280 million decision in damages to players.[165] Moreover, a recent change in the owners' basic agreement with the MLBPA makes an unfavorable labor decision even more potent. In 1990, the basic agreement was changed to allow for treble damages for labor violations.[166] The fact that these damages directly correspond with antitrust damages is no mistake.

Besides fear of treble damages, MLB owners also face the fear of actually losing their antitrust exemption. Owners feel the exemption provides much more than just immunity from player suits. It arguably provides protection for owners' control over franchise movements and minor leagues, making the exemption precious.[167] The fear of possibly losing the exemption is fueled by constant

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164. *See* Classen, *supra* note 4; Zimbalist, *supra* note 4.

165. Complete Baseball, *supra* note 157.

166. *See* Zimbalist, *supra* note 4, at 307. The effectiveness of this provision is clearly illustrated with the resolution of the 1994-95 MLB strike. In response to an NLRB claim, Federal Judge Sonia Sotomayer ruled that MLB owners had committed unfair labor practices in attempting to unilaterally impose new terms to the expired labor agreement. Judge Sotomayer granted the NLRB's requested injunction, restoring the original agreement. With this ruling, the owners faced the menacing prospect of treble damages if players were not allowed to return to work. Not surprisingly, the owners then voted down a lockout proposal, and the strike ended. *See It's a Tied Ballgame*, Labor Trends, April 8, 1995, *available in* Westlaw, 1995 WL 2268654.

167. The NFL was unable to prevent the relocation of the Oakland Raiders to Los Angeles after it lost an antitrust suit brought by Raiders' owner, Al Davis. The Ninth Circuit, however, did not rule the NFL could never restrict franchise movements, only that its procedures for doing so were unreasonable. Los Angeles Memorial Coliseum Comm'n v. NFL, 726 F.2d 1381 (9th Cir.), *cert. denied*, 469 U.S. 990, 105 S. Ct. 397 (1984). MLB, because it is not subject to the antitrust laws, was able to prevent the San Francisco Giants from moving to Tampa/St. Petersburg. However, MLB has lost a decision in a lower Federal Court brought by the jilted St. Petersburg owner. *See* Piazza v. Major League Baseball, 831 F. Supp. 420 (E.D. Pa. 1993) (preventing application of antitrust exemption to franchise relocation case). For a thorough discussion, see Grossman, *supra* note 72, at 564-65, 581-92 (discussing *Piazza*); *see generally* Daniel E. Lazaroff, *The Antitrust Implications of Franchise Relocation Restrictions in Professional Sports*, 53 Fordham L. Rev. 157 (1984).

Congressional inquiries,[168] occasional judicial meddling,[169] and even threats by the MLBPA.[170] This fear itself serves as a powerful incentive for owners to act reasonably.

2. NFL Owners Do Not Act More Reasonably

A simple look to the NFL provides another answer to the question of whether MLB owners would be motivated to act more reasonably if subjected to antitrust laws. NFL owners, living in the shadows of antitrust suits since *Radovich*[171] in 1957, have not acted more reasonably. A glance at the NFL's history, littered with judicial declarations of unreasonable restraints on trade, provides ample evidence of this.[172] In fact, the NFL's history provides evidence that antitrust laws, in this context, produce very few economic consequences.

In both the NFL and MLB, owners and players are positioned as labor adversaries. Each side is trying for the best deal it can get, with its own self interest in mind. The labor laws just provide a substantive and procedural structure for a "battle of interests" between the parties.[173] Much like an actual court proceeding, the labor laws do not guarantee fairness of results.[174]

At a bargaining table faced with their enemies in the midst of this battle, owners will not be prone to stop and think about possible antitrust implications anymore than the players would. In a bargaining relationship, both sides follow their own self interests. Once this bargaining relationship is solidified between the parties, "antitrust policy can never play a serious role in shaping employment terms."[175] This discussion helps to explain why NFL owners have acted

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168. *See* Flood v. Kuhn, 407 U.S. 258, 281 n.16, 92 S. Ct. 2099, 2111 n.16 (1972) (detailing Congressional proposals to repeal exemption). Recent proposals include: S. 500, 103d Cong., 1st Sess. (1993); S. 15, 104th Cong., 1st Sess. (1995); S. 415, 104th Cong., 1st Sess. (1995); S. 416, 104th Cong., 1st Sess. (1995); H.R. 45, 104th Cong., 1st Sess. (1995); H.R. 105, 104th Cong., 1st Sess. (1995); H.R. 106, 104th Cong., 1st Sess. (1995); H.R. 120, 104th Cong., 1st Sess. (1995); H.R. 365, 104th Cong., 1st Sess. (1995); H.R. 386, 104th Cong., 1st Sess. (1995); H.R. 735, 104th Cong., 1st Sess. (1995); H.R. 749, 104th Cong., 1st Sess. (1995).

169. Most recently, in *Piazza*, 831 F. Supp. at 420, MLB's antitrust exemption was severely restricted. The federal judge in *Piazza* held that since the antitrust exemption historically only applied to player restraints, it could not be used to defend an antitrust suit against owners who allegedly unlawfully blocked the sale of the San Francisco Giants to a Florida entrepreneur.

170. The players are aware of this fear and have used it to threaten the owners on numerous occasions. In 1966, Marvin Miller used a threat on the exemption to increase the power of the MLBPA—thereby making this fear directly instrumental in actually gaining arbitration rights and ultimately free agency. Korr, *supra* note 11, at 123. Threats continued up to the 1994-95 strike.

171. Radovich v. NFL, 352 U.S. 445, 77 S. Ct. 390 (1957).

172. *See* discussion *supra* part III.A.

173. *See* Randall Marks, *Labor and Antitrust: Striking a Balance Without Balancing*, 35 Am. U.L. Rev. 699, 707 (1986).

174. *Id.* at 707-08.

175. *See* Gary R. Roberts, *Reconciling Federal Labor and Antitrust Policy: The Special Case*

roughly akin to their brothers in MLB regarding the reasonableness or unreasonableness of their dealings with players. It also further solidifies that subjecting MLB owners to antitrust scrutiny would not give MLB owners additional motivation to act reasonably toward players.

C. *An Antitrust Opportunity Would Not Improve Current Options for MLB Players*

In the midst of the 1994-95 MLBPA strike, one popular theory for repealing MLB's antitrust exemption was that it would allow players to bring an antitrust suit against the owners, thereby obviating the need for economic pressures, such as a strike.[176] This assumption, while appealing as a quick-fix, is mistaken. As one commentator explained to Congress, repealing the antitrust exemption would do little except add a few procedural advantages for players.[177] This commentator concluded that the only substantive advantage a repeal of the exemption could add to the labor situation is to "give the MLBPA recourse to the remedy obtained by the NFL players in *McNeil*; namely, if the owners attempt to bust the union and vitiate free agency rights, the MLBPA's ability to sue the league on unnecessary restraint of trade in the labor market would exist."[178] However, *McNeil* may not clearly provide this option. Moreover, even if *McNeil* does provide players with an opportunity to circumvent the labor exemption and bring an antitrust suit, the players have no guarantee of a win after a trial on the merits.

1. McNeil *Does Not Lift the Labor Exemption*

If a court were to follow the *McNeil* decision dealing with the labor exemption, then the MLBPA, by decertifying itself, could get around the labor exemption and bring an antitrust suit against any owner-imposed conditions (after an impasse in negotiations) or any CBA with which the union was not pleased. *McNeil*, however, was only a district court decision. Thus, no binding precedent was set by *McNeil*. Perhaps owners and players were a bit unwary about a possible precedent, and both cashed their chips in early with a settlement. Whatever the case, for any court faced with a similar situation in the future, *McNeil* could only be persuasive.

For such a court, the policy implications that support following *McNeil* are not persuasive.[179] As established by *Powell* and supported by subsequent cases, allowing a union to sue for an antitrust violation at every impasse in negotiations would "improperly upset the careful balance established by Congress

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of Sports League Labor Market Restraints, 75 Geo. L. J. 19, 87 (1986).

176. *See* Blum, *supra* note 4.

177. *See* Zimbalist, *supra* note 4, at 307.

178. *Id.*

179. *See* discussion *supra* part III.A.2.

through the labor law."[180] The fact that a union has "decertified" itself for the sole purpose of bringing an antitrust suit should not change the policy arguments from *Powell*.

McNeil allows a union to use a technicality to override important and well-established policy considerations. No one, except perhaps the NFLPA, seriously contends that the NFLPA's "decertification" was anything more than a technicality. The NFLPA did not relinquish its status as bargaining representative of the players, it just put this status on hold until after the antitrust suit. After the *McNeil* verdict, upon settlement, the NFLPA immediately recertified without so much as changing its name. This action borders on bad faith. Without a firm showing that a union is actually making a bona fide decertification, *Powell* should control and the labor exemption should still apply.

2. *No Guarantee of Victory for Players Even Under Antitrust Merits*

Even if a court allowed a union to circumvent the labor exemption under *McNeil* and agreed to consider baseball players' claims of owners' Section 1 violations, whether such claims would have merit remains uncertain. First, players would have to overcome the inevitable single entity defense asserted by owners.[181] Second, if this defense did not apply, a court would almost certainly apply the rule of reason to analyze the alleged violations.[182] The rule of reason does not support holding modern player restraints illegal.

a. Single Entity Defense

Since recent decisions suggest a willingness of courts to reconsider whether sports leagues are inherently joint ventures and therefore incapable of conspiracy as required by Section 1,[183] a good possibility exists that a reviewing court could find MLB a single entity and never consider the actual restraints on players under Section 1. All relevant factors for single entity consideration with other sports leagues should be relevant to MLB.[184]

Two factors add greater support for a court to hold MLB a single entity. The first is the sheer length of the professional baseball season when compared to the seasons of other sports. MLB teams play more than ten times as many

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180. Powell v. NFL, 888 F.2d 559, 567 (8th Cir. 1989). This policy has been upheld in two subsequent decisions involving professional sports. The Second Circuit held the labor exemption applied, after impasse was reached, to allow National Basketball Owners to continue imposing an expired CBA. National Basketball Ass'n v. Williams, 45 F.3d 684 (2d Cir. 1995). The D.C. Circuit followed suit in another NFL case, holding NFL owners were free to "take unilateral action after impasse (just as the NFLPA was free to strike), because the action was a legitimate economic weapon." Brown v. NFL, 1995 WL 115729, *2 (D.C. Cir. 1995).

181. *See* discussion *supra* part II.B.2.a.

182. *See* discussion *supra* part II.B.2.b.

183. *See supra* note 61.

184. *See* discussion *supra* part II.B.2.a.

games as the NFL.[185] Thus, even greater cooperation among member teams is required to ensure effective competition on the field.[186] The second factor, directly related to the first, is the control of MLB over the minor leagues. Unlike other sports leagues that are fed talent from the collegiate ranks, MLB has a complex system of farm leagues which supply players to MLB. This system requires oversight and cooperation among the different franchises in MLB for effective operation. These two factors, along with the other policy considerations for single entity status, present strong evidence in support of the single entity defense.

b. Rule of Reason

Because of the special nature of the business of professional sports leagues, a reviewing court would almost certainly apply the rule of reason analysis to a Section 1 claim against MLB.[187] Such a court must balance a restraint's alleged pro-competitive effects with its anti-competitive effects. Courts must then consider all standard antitrust concerns that arise in player restraint claims—which consumers are to be benefitted, which market to analyze for injury, and how to measure economic benefits of essentially non-economic justifications.[188] The confusion created by courts attempting to analyze these claims makes any prediction of outcomes merely a guess. However, in the NFL cases of *Mackey* and *McNeil*, player restraints were analyzed and struck down, thereby providing possible guidance for a future MLB players' claim.

Mackey and *McNeil* both involved direct restraints on players' movements.[189] Modern restraints on player movements after free agency, such as salary caps, are not analogous to these direct restraints and would require a different analysis. As the *Mackey* court explained, "[w]e note that our disposition of the antitrust issue does not mean that every restraint on competi-

185. MLB's regular season encompasses 162 games; the NFL has 16 regular season games. *See* Michael S. Jacobs, *Professional Sports Leagues, Antitrust, and the Single-Entity Theory: A Defense of the Status Quo*, 67 Indiana L.J. 25, 58 n.131 (1991).

186. *See* Grossman, *supra* note 72, at 573.

187. *See* discussion *supra* part II.B.2.c.

188. *See* discussion *supra* part II.B.2.c.

189. In *Mackey*, the Rozelle Rule provided a team could not sign a player without agreeing to some sort of compensation for the player's old team. Mackey v. NFL, 543 F.2d 606 (8th Cir. 1976); *see* discussion *supra* part II.B.2.c. In *McNeil*, Plan B involved the lack of free agency for all but 10 players per team, selected by the owners. McNeil v. NFL, 764 F. Supp. 1351 (D. Minn. 1991); *see* discussion *supra* part III.A.2. The *Mackey* court denied the owners' purported justifications for the Rozelle Rule, which included: competitive balance of the league, need for team continuity, and recoupment of player development costs. 543 F.2d at 621-22. The *Mackey* court also denied that the Rozelle Rule was "no more restrictive than necessary." 543 F.2d at 620. Therefore, the *Mackey* court rejected both prongs of the rule of reason analysis. In *McNeil*, however, the jury accepted the owners' competitive balance justification for Plan B. The jury rejected the idea that Plan B was reasonably necessary for achieving those goals. McNeil v. NFL, 1992 WL 315292 (D. Minn. 1992) (Jury Forms).

tion for players' services would necessarily violate the antitrust laws. . . . It may be that some reasonable restrictions relating to player transfers are necessary for the successful operation of the NFL."[190] MLB owners would have an easier time arguing one of these less drastic restraints on player movement is reasonably necessary for maintaining the competitive balance of MLB.

In *McNeil*, the jury accepted as a justification for Plan B that it significantly contributed to the "competitive balance" of the league.[191] While MLB would certainly have this option, the modern restraints on player movements have justifications other than being necessary for competitive balance of the league. MLB owners could argue a restraint such as a salary cap is necessary not only to maintain competitive balance of MLB, but also to ensure its continued economic success. Simply presenting financial statements of the teams as evidence may be sufficient to persuade a court that the restraint challenged is reasonably necessary to accomplish this goal.[192]

3. Antitrust Suits Are Uncertain

For several reasons, the application of antitrust laws to sports league claims by courts has been erratic, to say the least. Courts and commentators cannot agree on proper goals of antitrust law in general. Given this lack of agreement, complex player claims in antitrust become very difficult to analyze. Courts dealing with sports league issues have not made things easier, articulating no meaningful tests. The inconsistency of jury decisions on these issues further complicates matters.

More importantly, unions and owners, with their armies of lawyers, are aware of this confusion no matter why it has occurred. Perhaps this erratic application of antitrust laws is the reason NFL owners and players made concessions after *McNeil*, rather than risk an undesirable result and precedent on appeal. The MLBPA is no different. Its chief negotiator, Donald Fehr, provides an illustration.[193] In the midst of the 1994 players' strike, Congress was offering to repeal MLB's antitrust exemption in return for a promise by the players to return to work. Fehr realized that there was no way to predict whether this possibility, which included the right of players to sue for antitrust violations, would do players any good. He, therefore, held out for more from Congress. A repeal of the antitrust exemption would be nice for a slap in the face to the owners, but Fehr really wanted an injunction prohibiting owners from imposing

190. *Mackey*, 543 F.2d. at 623.

191. *McNeil*, 1992 WL 315292, *1.

192. *See* Jeffrey E. Levine, *The Legality and Efficacy of the National Basketball Association Salary Cap*, 11 Cardozo Arts & Ent. L.J. 71 (1992) (arguing that financial justifications for the NBA's salary cap pass rule of reason analysis).

193. News Broadcast, Sept. 29, 1994 (Sports Network, transcript in Computer Information Network on LEXIS).

a salary cap. Without this injunction, Fehr knew it was anyone's guess as to whether players could use antitrust laws successfully against the salary cap.

V. THE BATTLE OVER THE EXEMPTION

A conclusion that MLB's antitrust exemption means little with respect to labor problems is troublesome when owner and player attitudes toward the exemption are considered. The relevant questions become why players and their sympathizers are so concerned with attacking the exemption, and reciprocally, why baseball owners are so concerned with defending the exemption. For players, the answer depends not so much on legal reasoning as on the players' awareness of public opinion and their attempts at harnessing it. The owners cite their motivations to protect the antitrust exemption and its benefits beyond the labor arena.

Professional sports are unique in that they are completely dependant on public opinion for their economic value. Unlike a refrigerator, professional baseball games, as entertainment products, are not necessities for any consumer. Thus, consumers are free to reject baseball entirely. Any economic success enjoyed by MLB, therefore, depends on a public that is actually entertained. If fans do not care who wins a given game or do not care if a game is even played, then the game, indeed the business itself, has no economic value. MLB owners can pay players millions because the public chooses baseball games as an entertainment product it values.[194] Owners and players alike need to retain this value by the public.

A. Players' Attacks

Along with the high public value needed to maintain MLB's riches necessarily comes intense public attention. Every player facing an autograph-seeking mob is aware of this attention. During labor struggles, such as the 1994-95 strike, players have found the antitrust exemption a convenient way to shift public attention away from mere autograph-seeking to the business aspects of MLB.[195] Public sympathy can usually be invoked by a simple reminder that players have been subjected to a judicially created, congressionally maintained

194. MLB competes with other sports for the public's entertainment value. An argument may be made that MLB should just provide a quality product—good athletes and competition—and the economic success would follow. However, in a market where the public is free to choose or not to choose, this factor is obviously not determinative. For example, consider the sport of curling—a sport resembling ice shuffleboard seen mostly during the olympics. While curling may provide talented athletes and cutthroat competition, to date, no curler has signed a multi-million dollar contract. *See* Ray Turchansky, *Curlers Set to Formalize Association*, The Edmonton Journal, March 5, 1995, at E2 (illustrating the players' attempt to organize, citing offer made by the Canadian Curling Association to individual teams of a meager $8,500 per team). This is not because curling is an inferior sport, but because the public does not value this sport to the same degree as MLB.

195. Historically, player threats to the exemption have played a key role. *See supra* note 170.

antitrust exemption that allows wealthy MLB owners to impose unfair labor restraints on their players.[196] The focus is then shifted from individual players who earn more than many corporations to the greedy owners with an unfair advantage over these players. Players are then free to explain their bargaining positions to a more friendly public. Fans are more sympathetic to the plights of striking millionaires when they are told the only reason for the strike is an unfair lack of a legal remedy for the athletes.

What is not focussed on with this scrutiny are the actual merits of players' antitrust claims. Absent is the question of whether lifting the antitrust exemption would actually accomplish anything. As illustrated by Fehr's rejection of the congressional offer to repeal the exemption,[197] players themselves do not care much about repealing the exemption. They care about the public sympathy an attempted repeal brings with it. Indeed, a major part of the MLBPA's strategy during the 1994-95 strike was "to attempt to weaken the owners' bargaining position by lobbying Congress to repeal or limit the antitrust exemption."[198] The MLBPA was not attempting to repeal the exemption for the advantages the exemption provided to owners. Instead, the MLBPA used the threat of a possible repeal and the accompanying public opinion advantage to strengthen its own bargaining position.

B. Owners' Defense

These tactics by the MLBPA make the owners' reactions all the more puzzling. Owners realize the repeal attempts are probably only a ploy for attention by the MLBPA. One attorney for the owners called attempts at repeal a "distraction on Capitol Hill," explaining "[b]aseball is under the same laws as football, basketball and hockey in its labor negotiations."[199] Later confirming the owners' realization that the exemption does not provide them with advantages in labor negotiations, he said, "the baseball union is not disadvantaged in negotiations because baseball is exempt from the antitrust laws."[200]

While these statements are expected from a party involved in an ongoing labor struggle, they raise interesting questions as to why owners continue to go through these motions. An easier path for owners would be to let the antitrust exemption fall, instead of consistently defending it and suffering the accompany-

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196. This sympathy can be quite vocal. For example, in 1994, early on in the strike, 3,000 fans in New York organized into the Sports Fans United. The group combined with the Consumer Federation of America (50 million members) to launch a campaign to repeal MLB's antitrust exemption. Sports Fans United's founder said, "I think there is a tremendous feeling of anger, resentment, and people want to channel that toward some positive action." *See* Athelia Knight, *The Fans Go to Bat vs. Strike*, The Washington Post, August 18, 1994, at B04.

197. *See supra* part IV.C.3.

198. Mark Maske, *Owners See Good News in Ruling*, The Washington Post, January 26, 1995, at D06.

199. *Id.*

200. Mark Maske, *Two Days of Talks: Nothing*, The Washington Post, March 22, 1995, at D01.

ing negative public opinions. If owners truly believe the exemption provides them with no labor advantages, there must be other reasons for defending it.

Several reasons are cited by owners to suggest the exemption is worth defending. The owners contend that the exemption provides them greater controls over franchise movements.[201] They also contend the exemption allows the continued existence of MLB's minor league system.[202] While there is some merit to these contentions, neither reason is altogether persuasive, especially since other ways of accomplishing these goals exist. When these two reasons are taken together and are added to MLB's strong adherence to history and tradition, they explain the perception by owners that the antitrust exemption is worth defending. Given the illogic that comes from following *Federal Base Ball*, a decision which distinguishes baseball because it is not commerce, the owners' explanation is as logical an explanation as any.

VI. CONCLUSION

As the NFL illustrates, players can win a fight for free agency using antitrust laws. Therefore, regardless of whether MLB was exempt from antitrust laws, professional baseball players would probably still possess free agency rights. Albert Belle also hit home runs whether he used a corked bat or not. Similarly, baseball's antitrust exemption and the difference it makes to player restraints are moot questions. Baseball's bat, corked or not, led to free agency. The inherent reasonableness of modern player restraints beyond free agency and the continued acceptance of the labor exemption and its policies leave any future claims by players with little antitrust merit. Moreover, in light of current practices and agreements, MLB owners are sufficiently motivated to act reasonably toward players. Much to the chagrin of many scholars and politicians, removing baseball's antitrust exemption would change little for player restraints, except perhaps further confuse all involved.

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201. *See supra* part IV.B.1. and accompanying notes. While MLB owners continue to contend that the exemption is necessary to prevent franchise relocations, others contend that an exemptionless MLB could still prevent relocations as long as the prevention was reasonable, pointing to Los Angeles Memorial Coliseum Comm'n v. NFL, 726 F.2d 1381 (9th Cir.), *cert. denied*, 469 U.S. 990, 105 S. Ct. 397 (1984) which held the NFL was unreasonable in preventing the relocation of the Raiders. *See* Zimbalist, *supra* note 4, at 302. However, for a claim that the evidence from other leagues shows that sports leagues subject to the exemption cannot prevent franchise relocation, see Julie Dorst, *Franchise Relocation: Reconsidering Major League Baseball's Carte Blanche Control*, 4 Seton Hall J. Sport L. 553 (1994) (discussing moves by teams in the NFL, NBA, and NHL).

202. *See* Zimbalist, *supra* note 4, at 303.