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Antitrust - Restraint of Trade - Group Boycott - NFL College Draft

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ANTITRUST—RESTRAINT OF TRADE—GROUP BOYCOTT—NFL COLLEGE DRAFT—The United States District Court for the District of Columbia has held that the National Football League's annual college draft is a concerted refusal to deal amounting to a group boycott, and is thus a per se violation of section 1 of the Sherman Act.

Smith v. Pro-Football, 420 F. Supp. 738 (D.D.C. 1976).

James McCoy (Yazoo) Smith,[1] whose football career ended in his first year of professional play,[2] brought an antitrust action[3] against the Washington Redskins and the National Football League (NFL). Smith argued that the college draft,[4] in which he had been selected, prevented him from marketing his services in an open market, and accordingly, denied him the opportunity to negotiate a contract that would have safeguarded him economically in the event of a disabling injury.[5] He further asserted that the college draft was in

1. An All-American college football player from the University of Oregon, Smith was the first round choice of the Washington Redskins in the National Football League (NFL) annual college draft in January, 1968. He was the twelfth player in the nation to be drafted that season. Smith v. Pro-Football, 420 F. Supp. 738, 740 (D.D.C. 1976).

2. The plaintiff suffered a broken neck in the last game of the 1968 NFL season and was medically advised to discontinue playing football. Brief for Plaintiff at 2, Smith v. Pro-Football, 420 F. Supp. 738 (1976).

3. The Sherman Antitrust Act makes illegal "every contract, combination . . . or conspiracy, in restraint of trade" in interstate or foreign commerce, and prohibits monopolizing, attempts to monopolize, and combinations or conspiracies to monopolize any part of interstate or foreign commerce. 15 U.S.C. §§ 1, 2 (1970). Section 4 of the Clayton Act provides that "[a]ny person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor . . . and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee." 15 U.S.C. § 15 (1970).

4. The college draft rule, contained in the NFL constitution and by-laws, provides that a selection meeting of the NFL clubs will be held annually in January or February. Each participating club can select prospective players of its own choice; the selecting club has the exclusive right to negotiate with the selected player. Without the consent of the selecting club, no other club can negotiate with the player. *See* Kapp v. NFL, 390 F. Supp. 73, 76 (N.D. Cal. 1974). The draft gives the club with the poorest record during the preceding season the first choice from the graduating college football players, the club with the next poorest record has the second selection, and the process continues until the club with the best record picks last. *See* 420 F. Supp. at 741.

5. On May 11, 1968, the plaintiff signed a one-year contract with the Redskins, the standard player agreement which the NFL constitution and bylaws require all players to sign. The contract called for a bonus of $23,000, an additional $5,000 if he made the team, and a salary of $22,000, totaling $50,000 for the 1968 season. *Id.* at 740. *See* Kornmehl, *National Football League Restrictions on Competitive Bidding for Players' Service*, 24 BUFFALO L. REV. 613, 616 nn.1-9 (1975) for an examination of the NFL's constitution, by-laws, rules and regulations.

essence a concerted refusal to deal,[6] constituting a group boycott[7] which is a per se violation of section 1 of the Sherman Act[8] and sought treble damages under section 4 of the Clayton Act.[9]

The defendants contended that the college draft was a subject of mandatory bargaining and immune from antitrust scrutiny under the labor law exemption[10] since the NFL and the bargaining agent for the players, the National Football League Players Association (NFLPA), had reached a collective bargaining agreement.[11] Alternatively, they argued that the college draft was not a group boycott since its purpose was not to restrain competition but to maintain competitive balance among the teams collectively.[12] According to

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6. The term "concerted refusal to deal" has been defined as "an agreement by two or more persons not to do business with other individuals, or to do business with them only on specified terms." Mackey v. NFL, 543 F.2d 606, 618 (8th Cir. 1976), *citing* Note, *Concerted Refusals to Deal Under the Federal Antitrust Laws*, 71 HARV. L. REV. 1531 (1958).

7. The term "group boycott" generally connotes "a refusal to deal or an inducement of others not to deal or to have business relations with tradesmen." Mackey v. NFL, 543 F.2d 606, 618 (8th Cir. 1976), *citing* Kalinowski, *The Per Se Doctrine—An Emerging Philosophy of Antitrust Law*, 11 U.C.L.A.L. REV. 569, 580 n.49 (1964).

8. *See* note 3 *supra* for the relevant text of the Sherman Act. A few practices or agreements such as group boycotts, price fixing, and tying arrangements are conclusively presumed unreasonable and are therefore classified as per se illegal. Because of their anticompetitive effect and lack of any redeeming virtues, the law regards these restraints as so inherently anticompetitive that they are struck down without consideration of their motives, purposes, or effects. *See, e.g.*, Northern Pac. Ry. v. United States, 356 U.S. 1, 5 (1958) (imposition of appreciable restraint on free competition in a tied product held per se illegal); United States v. Socony-Vacuum Oil Co., 310 U.S. 150 (1940) (price fixing conspiracy held per se illegal).

9. *See* note 3 *supra* for the relevant text of the Clayton Act.

10. The labor law exemption from antitrust laws is found in § 6 of the Clayton Act, 15 U.S.C. § 17 (1970), and §§ 4 & 5 of the Norris-LaGuardia Act, 29 U.S.C. §§ 104, 105 (1970). These sections provide that labor unions are not conspiracies or combinations in restraint of trade, and specifically exempt certain labor activities (such as secondary picketing and boycotts) from coverage of the antitrust laws. *See* 15 U.S.C. § 17 (1970). *See also* Connell Constr. Co. v. Plumbers & Steamfitters, 421 U.S. 616 (1975) (although union activity is inherently anticompetitive, it is favored by federal labor policy and statutorily exempted from antitrust laws). Labor unions are subject to antitrust scrutiny in limited circumstances. *See, e.g.*, Apex Hosiery Co. v. Leader, 310 U.S. 469 (1940) (antitrust laws apply to labor activities that restrain competition if either the intent or effect of the activity monopolizes the supply, controls prices, or discriminates between would-be purchasers). *See generally* E. KINTNER, AN ANTITRUST PRIMER 124-30 (2d ed. 1973) [hereinafter cited as KINTNER].

11. After a bargaining agent has been certified by the National Labor Relations Board, the employer and the union must bargain in good faith with respect to wages, hours, and other terms and conditions of employemnt. *See* C. MORRIS, THE DEVELOPING LABOR LAW 389 (1971). The plaintiff signed his contract with the Redskins on May 11, 1968. The NFLPA became the representative of the players upon execution of the first collective bargaining agreement with the NFL owners in November, 1968. 420 F. Supp. at 742.

12. Brief for Defendants at 20, Smith v. Pro-Football, 420 F. Supp. 738 (D.D.C. 1976) [hereinafter cited as Brief for Defendants].

the defendants, professional football was a unique business, each team's successful operation being dependent upon the success of the other clubs.[13] The college draft, as a means of distributing player talent to maintain competitive balance, was vital to the success of that business. If the college draft were subject to antitrust scrutiny, the draft should be governed by the rule of reason,[14] according to the defendants, rather than the per se approach[15] normally applied in traditional group boycott cases,[16] and the draft was within the permissible limits of the rule of reason as articulated by the United States Supreme Court.[17]

The court first addressed, and rejected, the defendant's argument that the draft was beyond the purview of the antitrust laws because it fell within the so-called "labor law exemption." Judge Bryant began from the premise that in order for the exemption to apply, there must have been a collective bargaining agreement in existence at the time the alleged illegal activity took place. Here, however, the plaintiff had signed his contract with the Washington Redskins before the NFL and the NFLPA entered into a collective bargaining agreement.[18] Since Smith's cause of action arose before the labor law exemption became effective, the court concluded that the claimed exemption could not be invoked.[19] Moreover, the court held that even if the exemption applied, it would not have barred Smith from recovery. The purpose of the labor law exemption was to allow unions to arrive at bargains in their own self-interest with respect to

13. *Id.* at 6.

14. The rule of reason applies where the restraints on trade and commerce have restrained competition but certain redeeming features exist which save them from being conclusively presumed unreasonable. The concerted conduct sought to be insulated from antitrust scrutiny must be no more restrictive than necessary to achieve its legitimate purpose. *See, e.g.*, Standard Oil Co. of New Jersey v. United States, 221 U.S. 1 (1911) (adoption of the rule of reason).

15. *See* note 8 *supra*.

16. 420 F. Supp. at 744-45. The defendants argued that under the rule of reason, it is for the court to decide whether the college draft procedures are reasonable or unreasonable in light of their purpose and effect in the unique business of professional football. The court should then examine the facts and assess the actual impact on competition to decide whether the draft restrictions have an anticompetitive effect on the marketplace. *See, e.g.*, White Motor Co. v. United States, 372 U.S. 253, 261-63 (1963) (analyzing vertical territorial restrictions and applying the rule of reason); Northern Pac. Ry. v. United States, 356 U.S. 1, 5 (1958) (practices lacking redeeming virtues which unreasonably affect competition held illegal per se).

17. *See* note 14 *supra*.

18. *See* note 11 *supra*.

19. 420 F. Supp. at 742.

wages, hours, and other conditions of employment, and Judge Bryant determined that the NFLPA did not bargain in its own self-interest in regard to the college draft.[20]

The court then addressed the primary issue of whether the college draft, in restricting a football player's ability to market his services, unreasonably restrained competition in interstate commerce,[21] thereby constituting the kind of group boycott that historically has been held to be a per se violation of the antitrust laws.[22] Noting that the applicability of the antitrust laws to professional football is undisputed,[23] the court viewed the restrictions attending the college draft as a naked restraint of trade—a flagrant refusal to deal—which constituted a group boycott "in its classic and most pernicious form."[24] The college draft's sole purpose was to stifle competition in the marketplace, and such direct and purposeful anti-competitive practices were per se illegal.[25] The plaintiff was therefore awarded treble damages under section 4 of the Clayton Act for losses arising from the imposition of the college draft in violation of section 1 of the Sherman Act.[26]

Although the court's determination that the college draft was a

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20. *Id.* at 744.

21. *See* note 3 *supra* for the relevant text of the Sherman Act. Today almost any activity which involves interstate commerce comes under antitrust scrutiny. *See* KINTNER, *supra* note 10, at 19.

22. *See* United States v. General Motors Corp., 384 U.S. 127 (1966) (location clause held per se illegal); Radiant Burners, Inc. v. Peoples Gas Light & Coke Co., 364 U.S. 656 (1961) (boycott to suppress competition); Klor's, Inc. v. Broadway-Hale Stores, Inc., 359 U.S. 207 (1959) (public injury not essential for per se illegality); Fashion Originators' Guild v. FTC, 312 U.S. 457 (1941) (purpose of particular boycott unimportant).

23. *See* Radovich v. NFL, 352 U.S. 445 (1957) (professional football not exempt from antitrust scrutiny).

24. 420 F. Supp. at 744-45, *citing* White Motor Co. v. United States, 372 U.S. 253 (1963). The court cited *White* for the proposition that concerted refusals to deal constitute group boycotts and are therefore per se illegal. In rejecting the defendants' contention of necessity for the college draft, the *Smith* court referred to the Supreme Court's rejection of a necessity argument:

> [The] exclusion of traders from the market by means of combination or conspiracy is so inconsistent with the free-market principles embodied in the Sherman Act that it is not to be saved by reference to the need for preserving the collaborators' profit margins or their system [of organizing their distribution operation].

420 F. Supp. at 745, *citing* United States v. General Motors Corp., 384 U.S. 127, 146 (1966).

25. 420 F. Supp. at 745.

26. *Id.* at 747-49 & nn.7 & 8. The court found that damages suffered by Smith could not be calculated exactly since there was no free market to measure the value of players' services. The court made a reasonable estimate of damages in the amount of $276,600, plus costs and attorney's fees.

per se violation of the antitrust laws arguably should have fully disposed of the case, the court went on to analyze the draft under the rule of reason. Judge Bryant concluded that the college draft in its present form would not pass muster even under a rule of reason analysis,[27] which focuses on whether the restraint imposed is a reasonable and justifiable means of pursuing legitimate business interests and does not unreasonably restrain competition.[28] The court declared that even if the college draft served legitimate business interests, it did not survive a rule of reason analysis since the college draft as presently structured was not the least restrictive means of effectuating those interests.[29]

An analysis of the *Smith* court's determination that the draft was a per se violation of antitrust law must begin by examining the court's characterization of the draft as a group boycott. The concept of per se illegality developed from the courts' confrontation with recurring antitrust problems arising under section 1 of the Sherman Act. Experience with various business practices eventually led federal courts to identify certain agreements and practices which were considered so inherently anticompetitive as to warrant a conclusive presumption of illegality.[30] Group boycotts are one such practice, and to support its decision that the plaintiff was the victim of a group boycott, the *Smith* court cited four classic boycott cases that involved restrictive trade agreements between business competitors.[31]

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27. *Id.* at 745. *See* note 14 *supra.*

28. *See generally* Standard Oil Co. of New Jersey v. United States, 221 U.S. 1 (1911) (only unreasonable restraints declared unlawful).

29. 420 F. Supp. at 747. The court declared that the college draft was the most restrictive alternative imaginable. It then suggested two possible alternatives to the present college draft: (1) a draft consisting of only two rounds instead of seventeen, which would allocate the most talented players but would permit competition for the services of all others; and (2) a draft allowing more than one team to select each player while limiting the number of players any one team could sign. *Id.* at 747 n.6.

30. *See* Northern Pac. Ry. v. United States, 356 U.S. 1, 5 (1958).

31. The four cases were United States v. General Motors Corp., 384 U.S. 127 (1966) (agreement designed to eliminate competition among dealers selling GM cars); Radiant Burners, Inc. v. Peoples Gas Light & Coke Co., 364 U.S. 656 (1961) (conspiracy not to supply gas to a manufacturer); Klor's, Inc. v. Broadway-Hale Stores, Inc., 359 U.S. 207 (1959) (agreement between department store and its suppliers not to do business with the store's competitor except on discriminatory and unfavorable terms); Fashion Originators' Guild v. FTC, 312 U.S. 457 (1941) (agreement among competing clothing designers to destroy all competition from manufacturers producing copies of their products). In all four cases, the Supreme Court held the practice in question per se illegal.

The difficulty with applying these cases to the activity in *Smith* is that in all four cases, the agreements or conspiracies were among horizontal competitors and the intended victim of the boycott was the horizontal competitor of one or more of the conspirators. The conspirators in each case acted for the sole purpose of eliminating their competitors from the marketplace. These cases support the *Smith* court's holding only if the college draft can be characterized as an agreement between horizontal competitions—that is, involving competitors on the same level in the market structure.[32]

In *United States v. National Football League*,[33] the District Court for the Eastern District of Pennsylvania determined that the National Football League (NFL) member teams are not horizontal business competitors. This court recognized that professional football teams are more akin to joint venturers in that each member club has a stake in the operating success of the other.[34] The unusual extent to which the member clubs of a football league are dependent upon each other for their business and economic survival distinguishes professional football from other businesses which do not depend upon competitors for their economic survival. The objective of other businesses is to weaken their competitors, or to eliminate them altogether, from the marketplace. The NFL's college draft, on the other hand, is designed primarily to replenish the league with fresh talent by spreading talent evenly among the teams, thus maintaining a competitive balance throughout the league by strengthening weaker competitors. This fundamental distinction was glossed over by the *Smith* court, and arguably supports the position that it misapplied precedent in citing the group boycott cases as determinative of the antitrust issue. Moreover, assuming the NFL is more akin to a joint venture rather than a conspiracy among horizontal competitors, the court would have had to apply the rule of reason rather than conclude that the draft was per se illegal. The Supreme Court has specifically held that joint ventures are governed by the

32. "Horizontal restraint" denotes restraint on the same level in the market structure, for example, manufacturer to manufacturer or owner to owner, whereas "vertical restraint" denotes restraint on different levels in the market structure, for instance, manufacturer to distributor or owner to player. *See* United States v. Topco Assocs. 405 U.S. 596, 608 (1972).

33. 116 F. Supp. 319 (E.D. Pa. 1953).

34. *Id.* at 323. *See also* Brief for Defendants, *supra* note 12, at 20: "[P]rofessional teams in a league . . . must not compete too well with each other in a business way . . . or . . . the stronger teams would be likely to drive the weaker ones into financial failure."

rule of reason and not the per se rules when found to have a lawful business purpose with restraints ancillary thereto.[35]

If the NFL draft can be said to involve any restraint it would be a "vertical" one, since the restraint is imposed by team owners against another "level" of competition, the players.[36] Were the draft held to be a vertical restraint, it does not follow a fortiori that it constitutes a per se violation of section 1 of the Sherman Act. In *White Motor Co. v. United States*,[37] the Supreme Court was confronted with the issue of whether vertical territorial restrictions[38] should be declared per se illegal. The Court refused to apply the per se rules to such restrictions, opting instead for a rule of reason approach.[39] It reasoned that since the case involved a relatively new business practice, it should look to the effects of the activity and its impact upon the marketplace before making a judgment whether it was so anticompetitive, and so lacking in any redeeming virtue, as to be classified as per se illegal.[40] In *United States v. Arnold, Schwinn & Co.*,[41] the Supreme Court held that vertical restrictions upon "outright sales," where the manufacturer had parted with title and dominion over the goods, were per se illegal. Restraint on "agency sales," however, where the manufacturer retains all the indicia of ownership—including title, dominion and risk—were to be governed by the rule of reason.[42] *Schwinn* thus squarely holds that not all vertical restraints are per se illegal. It would be difficult to conceptualize the draft as involving any kind of outright sale necessary according to *Schwinn* to constitute a per se violation.[43]

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35. *See* United States v. Penn-Olin Chem., 378 U.S. 158 (1964) (joint undertaking with lawful purpose should be judged by the rule of reason).

36. *See* note 32 *supra*.

37. 372 U.S. 253 (1963).

38. Vertical territorial restrictions occur where the manufacturer of products assigns certain territories to his wholesalers or retailers. *See* KINTNER, *supra* note 10, at 43.

39. 372 U.S. at 263. White Motor Company sold its trucks to dealers who agreed to resell them only to customers who were not reserved to White Motor and had a place of business or purchasing headquarters within the assigned territory. The Court concluded that not enough was known without full presentation of evidence and trial on the merits to justify a conclusion that this practice was per se illegal. *Id.*

40. *Id.* at 263-64.

41. 388 U.S. 365 (1967).

42. *Id.* at 379-82. *Schwinn* has been referred to as the "bicycles built for two" case since the Court applied both a per se and rule of reason analysis. It has been one of the most criticized cases in the antitrust field because the *Schwinn* per se rule is inconsistent with legal standards applicable to comparable vertical restraints. *See* Pollock, *The Schwinn Per se Rule: The Case for Reconsideration*, 71 NW. U.L. REV. 1 (1976).

43. The Supreme Court has recently reconsidered *Schwinn* in Continental T.V., Inc. v.

Professional football's yearly draft is a unique device, designed to insure the continued existence of the league. It is well established in antitrust law that where special industry or business circumstances exist, the challenged business practice is measured by the rule of reason.[44] Such special industry or business circumstances have been characteristically recognized where the challenged practice is necessary to the survival of the business or industry involved.[45] The draft is, at the very least, arguably necessary to the survival of the league. Accordingly, this unique scheme perhaps should have been analyzed solely under the rule of reason in determining whether it transgressed antitrust laws.

Both the *Smith* court's holding that professional football is amenable to the same antitrust analysis as ordinary businesses, as well as its finding that the draft is a *per se* violation, are not in accord with recent federal decisions which have considered the same issues. In *United States v. National Football League*,[46] the district court pointed out that professional football is unlike ordinary businesses and is unique in its basic structure. The district court was not alone in recognizing the uniqueness of this sport.[47] In cases recognizing the peculiar nature of professional athletics and procedures for spread-

GTE Sylvania, Inc., 97 S.Ct. 2549 (1977), refusing to apply the per se rule to certain vertical territorial restrictions. In essence, the Supreme Court in *GTE Sylvania* returned to the rule of reason approach of *White Motor*. *See* notes 37-40 and accompanying text *supra*. As a result of this Supreme Court decision, it seems clear that the rule of reason approach is appropriate to govern the legality of certain vertically inposed restrictions.

44. *See* Maple Flooring Mfrs. Ass'n v. United States, 268 U.S. 563 (1925) (dissolution of trade association for disseminating price information without identifying sellers or buyers held not price fixing and per se rule not applicable); Chastain v. American Tel. & Tel. Co., 401 F. Supp. 151 (D.D.C. 1975) (restraint held to be technologically necessary and per se application thus unsuitable). *Cf.* Worthen Bank & Trust Co. v. National BankAmericard, Inc., 485 F.2d 119 (8th Cir. 1973), *cert. denied*, 415 U.S. 918 (1974) (per se rule inapplicable to by-laws prohibiting member banks from joining other national bank credit card systems). *But cf.* United States v. First Nat'l Pictures, Inc., 282 U.S. 44 (1930) (per se rule applicable to agreement to deal only with buyers who meet prescribed credit standards). *See generally* KINTNER, *supra* note 10, at 21.

45. *See* Worthen Bank & Trust Co. v. National BankAmericard, Inc., 485 F.2d 119 (8th Cir. 1973), *cert. denied*, 415 U.S. 918 (1974) (rule of reason applicable in recognition of the need for banks to join together to produce the product being sold since bank acting alone could not do so). *See also* Chicago Bd. of Trade v. United States, 246 U.S. 231 (1918) (purpose of "call-rule" found legitimate and the restraint ancillary).

46. 116 F. Supp. 319 (E.D. Pa. 1953).

47. In Nassau Sports v. Peters, 352 F. Supp. 870 (E.D.N.Y. 1972), the court enjoined the defendant from moving to another club while under contract with one club, stating that "the unique character of the business . . . and the need for some form of protective system to insure the recoupment of investments" is widely recognized. *Id.* at 879.

ing available talent, under circumstances probably more restrictive of its participants than the college draft, courts have eschewed the per se analysis in favor of an inquiry into the reasonableness of the restraint.[48] In *Mackey v. National Football League*,[49] the Eighth Circuit Court of Appeals recently concluded that because the business of professional football is unique in nature, it is inappropriate to mechanically apply per se principles.[50]

It is perhaps due to this contrary authority that the *Smith* court, in what could be accurately characterized as pure dictum, analyzed the college draft under the rule of reason test and concluded it was nonetheless illegal.[51] Employing this test, anticompetitive practices between teams would be found illegal unless the practices were found to be both essential to the viability of the league and the least restrictive alternative available.[52] The college draft, it follows, would not violate antitrust laws if the purposes underlying it were necessary to the continued viability of the league and placed no more restrictions on players than were necessary.[53] Reasonable restraints have been upheld despite some risk of anticompetitive effects.[54] Certainly, some reasonable restrictions are necessary for otherwise weaker teams to maintain a competitive balance and thus they are necessary to the successful operation of the league.[55] Judge Bryant may have been correct in concluding that the draft was

48. In Flood v. Kuhn, 309 F. Supp. 793 (S.D.N.Y. 1970), the district court rejected the per se illegality approach to professional baseball's reserve clause which contractually obligated the player to a team for his entire professional career unless traded. That court stated that the rule of reason should apply since some form of reserve system is essential to the maintenance of the joint venture of professional baseball. *Id.* at 801 n.26.

49. 543 F.2d 606 (8th Cir. 1976).

50. *Id.* at 619. The trend has been to reject the per se approach not only in the professional sports field but also in other businesses having a unique economic structure as well. *See* note 43 *supra*.

51. 420 F. Supp. at 745-47.

52. *See Hearings Before the House Select Comm. on Professional Sports*, pt. 2, 94th Cong., 2d Sess. 289 (1976) (testimony of Joe Sims, Deputy Assistant Attorney Gen., Antitrust Division, United States Dep't of Justice).

53. *Id.* at 289-90.

54. *See, e.g.*, Chicago Bd. of Trade v. United States, 246 U.S. 231 (1918), where the Court upheld the adoption of Chicago Board of Trade's "call-rule" which prohibited its members, until the opening of the next session, from purchasing or offering to purchase grain at a price other than had been quoted at the close of business. The call-rule was designed not only for the personal convenience of members but also to break up a monopoly acquired by some warehousemen. The Court found the purpose of the call-rule legitimate, and the restraint of minimal duration with no adverse effect on prices. *Id.* at 238.

55. *See* Mackey v. NFL, 543 F.2d 606, 623 (8th Cir. 1976).

illegal under a rule of reason analysis, since it probably could be conducted in a manner less restrictive of competition. The court should have implemented the rule of reason from the start, however, rather than analyzing the draft under this rule as an afterthought to holding the draft to be a naked restraint of trade and per se illegal.

The impact of the *Smith* decision could be considerable. *Smith's* elimination of the college draft will require the owners to bid in an open market for player services. This, in turn, will result in inflationary "bonuses" and "salaries" to attract blue chip players. The more talented players will probably gravitate to the highest bidders and the more attractive cities. The effect may be the ultimate deterioration of team equalization and competitive balance of the league, since there will be no restriction whatsoever on player mobility.

The *Smith* court's determination that the college draft was illegal under a rule of reason analysis may have been proper; it seems likely that the available talent could have been fairly distributed in a manner less restrictive of the players' ability to market their services.[56] But Judge Bryant's characterization of the draft as a group boycott, and as a naked restraint of trade, evidences a fundamental misunderstanding by the court of the unique aspect of a professional football league and the attendant need to maintain some semblance of balance among its member teams. The possibility exists that this misunderstanding colored the court's examination of the draft under the rule of reason, rendering it analytically suspect: deeming the alleged restraint a "naked restraint of trade" arguably predetermined the result under any antitrust analysis. The complexities of professional sports militate against such a finding, however. It would be unfortunate if the future of professional football is jeopardized by courts which take inflexible stances on the scope and applicability of federal antitrust laws.

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56. *See* note 29 *supra*.