BOOK REVIEW

THE LAW OF SPORTS. By John Weistart and Cym Lowell. Charlottesville, Va.: Bobbs-Merrill Co., Inc., 1979. Pp. xx, 1154. $37.50.

*Reviewed by Carlos Alvarez**

I. THE LAW OF SPORTS

Amateur and professional sports pervade American society to a remarkable extent. Even though sports have always been part of America's heritage, the last thirty years have seen an unprecedented saturation of sports in America's social, political, and economic fiber.

From a social perspective it has been noted, with the risk of overstatement, that

> [s]port permeates any number of levels of contemporary society and it touches upon and deeply influences such disparate elements as status, race relations, business life, automotive design, clothing styles, the concept of the hero, language, and ethical values. For better or worse, it gives form and substance to much in American life.[1]

The financial impact of sports of the seventies is staggering in comparison to the sports economics of thirty years ago. The effect of sports on local communities is illustrated by such massive, publicly funded projects as the construction of the New Orleans Superdome at a cost of $163.5 million, the renovation of Yankee Stadium at a cost of $100 million, and the $60 million investment in a new stadium that Seattle, Washington made in order to attract a professional football team.[2] The overall profitability of sports has had its impact on athletes as well, as indicated by the salaries of such stars as Bill Walton, who is reputed to earn over $800,000 per year.[3] Indeed, sports economics has

---

* Assistant Professor of Law, Southern Methodist University School of Law. B.S. 1972, University of Florida; J.D. 1975, Duke University School of Law.

THE FOLLOWING CITATION WILL BE USED IN THIS BOOK REVIEW:

J. WEISTART & C. LOWELL, THE LAW OF SPORTS (1979) [hereinafter cited as THE LAW OF SPORTS].

1. R. BOYLE, SPORT: MIRROR OF AMERICAN LIFE 3-4 (1963), *reprinted in* HOUSE SELECT COMM. ON PROFESSIONAL SPORTS, INQUIRY INTO PROFESSIONAL SPORTS: FINAL REPORT, H.R. REP. NO. 1786, 94th Cong., 2d Sess. 11 (1977).

2. H.R. REP. NO. 1786, *supra* note 1, at 9, 202, 212.

3. N.Y. Times, May 14, 1979, § III, at 7, col. 1.

affected such a wide spectrum of American society that Ralph Nader has taken a consumer interest in the matter, suggesting the need for a fans' union.[4]

Sports have even begun to affect the political process. For example, several sports personalities have successfully sought political office.[5] More importantly, Congress is devoting an increasing amount of time to various sports-related issues, including television blackouts of sporting events, athlete immigration, federal tax treatment of sports matters, and the need for congressional oversight of intercollegiate athletics.[6]

Given the considerable influence of sports on these aspects of American life, it was inevitable that the legal system would be called upon to resolve conflicts between affected participants. It is therefore not surprising that in the last thirty years, and especially in the last decade, a great number of sports-related problems have arisen in the nation's courts and legislative bodies.

The Law of Sports is an attempt to collect and analyze the law that has developed in the field of sports. It covers both professional and amateur athletics, and ranges from the less publicized aspects of federal taxation in the sports context to the highly visible areas of contracts, antitrust, torts, and public regulation as they have developed in the sports arena. The book not only provides a comprehensive compilation of the relevant, multifaceted case law, but in many areas—particularly contracts, antitrust, and amateur athletics—it provides in-depth analyses of the issues presently affecting the development of the law of sports.

It is difficult to evaluate a multi-authored book covering an area as diverse as sports law. Not surprisingly, enterprises of this type often result in works of uneven quality, unsuited for the traditional purposes of a legal treatise, and inappropriately chosen as the subject of critical review. Furthermore, it is particularly difficult to assess the analytical quality of a work that deals with such a new area of the law. *The Law of Sports* is surely a work that breaks new ground in an area of juris-

4. N.Y. Times, Sept. 28, 1977, § D, at 17, col. 1. Nader chastises club owners, stating:

> The arrogance of the owners and their lack of sensitivity toward their fans is accelerating. They never ask the fans what they think of the policies and rules these owners set. And the fans have a right to know the full costs they are paying, as taxpayers, for the muncipal [*sic*] stadiums most of them can't get into, even if they could afford a ticket.

Id.

5. *E.g.*, U.S. Representative Jack F. Kemp from New York, former star quarterback for the Buffalo Bills, and U.S. Senator Bill Bradley from New Jersey, former star forward for the New York Knicks.

6. H.R. REP. No. 1786, *supra* note 1, at 4-7.

prudence that until recently has not prompted serious legal analysis. Despite these qualifications, it can be safely noted that no previous work in the area of sports law matches this book in the breadth of its coverage and the comprehensiveness of its analyses. The authors have successfully overcome the tendency of many writers in the sports law field to publish a finished product more closely resembling a sophisticated newspaper sports story than a piece of legal scholarship. The authors have provided an exhaustively researched work generally reflecting both depth of inquiry and accuracy of insight. The book remedies the deficiencies of previous works in the area by providing a thorough and balanced view of sports law. Further, the book is extremely readable. It is not an overstatement to note that the book signals the coming of age of the field of sports law.

As noted above, *The Law of Sports* not only serves as a valuable tool for research but also offers significant new perspectives in the field of sports law. This is especially true in Chapters 3 and 4, covering contractual relationships in professional sports, and Chapter 5, dealing with antitrust issues.[7] No other work in this field has detailed and analyzed in such a thorough fashion the fundamental contraet law principles as they apply to sports law. The range of issues covered, from the basic principles of contract formation to arbitration, and the exhaustive nature of their coverage are in the best tradition of scholarly legal writing. This analysis, together with the supplements planned for the future, should provide the basis for better reasoned case law in this area. More importantly, it should provide participants in the sports law arena with the guiding principles needed for avoidance of expensive and time consuming litigation. It is a book for lawyers, judges, management, players, and, perhaps, even the avid, inquisitive sports fan trying to make some sense out of today's law-laden newspaper sports pages.

Despite its quality research and readable style, the book is not without its limitations. Any book that breaks new ground in a relatively new area of jurisprudence is bound to have faults. For example, the book covers some areas of questionable relevance. This is particularly the case in the treatment of subject matter insignificantly affected by the sports context in which it arises. The authors, while aware of this pitfall and noting it in their preface, nevertheless allow themselves to fall prey to it. For example, Chapter 8, entitled "Liability for Injuries in Sports Activities," deals with some areas of the law that do not

7. See text accompanying notes 10-52 *infra* for a more detailed discussion of the autitrust issues treated in this book.

seem to warrant special treatment because of the sports context.[8] A more serious deficiency is that the quality of the legal analysis is uneven, with some areas such as tax receiving less valuable treatment than the areas of contracts and antitrust.

The remaining portion of this review will focus on parts of the antitrust sections of *The Law of Sports*.[9] In recent years, sports antitrust matters have been the subject of extensive legal activity, which has been extremely important in shaping the development and growth of professional sports leagues. Not surprisingly, approximately 300 pages, roughly one-third of *The Law of Sports*, are devoted to coverage of this area. Thus, sports antitrust matters provide a representative sampling of the diverse questions that have appeared in the sports law context, and the treatment the area receives from the authors is indicative of the overall quality of this work.

II. ANTITRUST IN THE LAW OF SPORTS

A. *The Baseball Exemption.*

Any discussion of antitrust in the field of sports law must begin with the controversial baseball antitrust exemption and this is where Weistart and Lowell begin.[10] The United States Supreme Court, during the last sixty years, has held on three separate occasions that baseball is exempt from the reach of federal antitrust laws.[11] Legal commentary dealing with these decisions has been extensive, and considerable criticism of the exemption exists.[12] Of particular critical interest has been *Flood v. Kuhn*,[13] the Supreme Court's latest decision upholding the exemption. This case restates the rationale of an earlier decision[14] that Congress, by failing to remove the baseball exemption, tacitly approved the first antitrust case that established the exemption.[15] Whether the rationales of these decisions are valid and whether as a matter of policy Congress should permit this exemption to stand, the fact remains that baseball is exempt from the antitrust laws. From an institutional perspective, the history of this exemption is a case study of

8. *See, e.g.*, THE LAW OF SPORTS §§ 8.04, .08.

9. *Id.* §§ 5.01-.12.

10. *Id.* § 5.02.

11. Flood v. Kuhn, 407 U.S. 258 (1972); Toolson v. New York Yankees, Inc., 346 U.S. 356 (1953); Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs, 259 U.S. 200 (1922).

12. See authorities cited in THE LAW OF SPORTS § 5.02, at 480-82 & n.17.

13. 407 U.S. 258 (1972).

14. Toolson v. New York Yankees, Inc., 346 U.S. 356 (1953).

15. Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs, 259 U.S. 200 (1922).

the constraints that Congress and the federal courts are subject to in reversing an obviously erroneous policy.

The authors next discuss the scope of the baseball exemption, concluding that the exemption has been more narrowly construed than originally expected. They base this conclusion on two observations. First, and most importantly, they point out that the Supreme Court has made it clear that the exemption does not extend to other sports.[16] Thus, other professional sports leagues, after some hesitancy, have had to adjust their activities to conform with the antitrust laws. Second, they note that professional baseball players, the principal actors bearing the economic burden of the exemption, have been able to obtain many of the benefits attained by players in other sports leagues falling under the protection of antitrust laws. This has occurred through several means. Baseball's reserve clause has been interpreted, through the process of mandatory arbitration, to be limited to a specific number of years.[17] Accordingly, baseball players have been able to complete their contracts and bargain for their services with other league teams without the perpetual restraint sought by the team owners. Perhaps more significantly, baseball management has come under congressional pressure either to amend some of the more oppressive player restraint practices or to face the possibility of having its antitrust exemption removed.[18] This pressure has increased in light of the responses of other sports leagues to changes in their player restraint systems. Finally, the baseball antitrust exemption may be limited to "the essential aspects of the league's sports function."[19] The parameters of this limitation, if indeed a limitation exists, remain to be defined by the courts. However, it appears that the further league restraints wander from activities directly required to bring the league's product—baseball games—to the public, the greater the possibility that the courts will remove the exemption.

B. *Player Restraint Litigation.*

As was perhaps apparent from the discussion above, the largest body of law in the sports antitrust field is found in the area of player restraint litigation.[20] Player restraints are methods used by sports league managers to prohibit or restrict player movement both inside and outside their sports league. These restraints commonly take the

16. THE LAW OF SPORTS § 5.02b.
17. *Id.* § 5.03, at 516-24.
18. *See* H.R. REP. No. 1786, *supra* note 1, at 4; 65 A.B.A.J. 537 (1979).
19. THE LAW OF SPORTS § 5.02, at 498.
20. *Id.* § 5.03, at 500.

form of reserve or option clauses, player draft systems, and the prohibition of intra-league player "tampering." These basic player restraints vary in form among the different sports leagues. The leagues justify them primarily on the grounds of the need to maintain a competitive balance between league teams and the need to retain the image of sports leagues as fair and honestly competitive.

1. *The Labor Exemption.* The authors correctly identify the "labor law exemption" to the antitrust laws as the threshold issue in the player restraint area.[21] This exemption is a judicial reconciliation of federal labor and antitrust laws whereby certain types of agreements reached between labor and management during the course of collective bargaining are exempt from the reach of the federal antitrust laws. Since sports management and player unions have been involved in collective bargaining in all the major sports leagues in the recent past, the labor exemption becomes a matter of crucial concern in the sports arena. While this exemption is presently the subject of much interest in sports law, it was not until 1971 that the issue began to surface in legal literature.[22] Before that time neither management nor players had seriously considered the availability and consequences of the labor exemption.

While the relevance of the labor exemption to sports is no longer in doubt, the authors indicate that the role it will eventually play remains uncertain. They advance two reasons for this doubt. First, the doctrinal foundation of the exemption has not been well defined by the Supreme Court.[23] Second, the commercial setting of the sports industry is in many ways different from the traditional commercial setting within which the labor exemption was developed.[24] A notable example of this contrast is that in the area of professional sports, management is the party seeking the shield of the exemption rather than a labor group. These two reasons for uncertainty have combined to cause the few courts that have analyzed the labor exemption in the sports context to have great difficulty in applying the inadequately defined exemption to the nontraditional commercial realities of the sports world. Not surprisingly, this has led to significant confusion in the labor exemption cases so far decided in the sports setting.

In analyzing this area, the authors hypothesize a situation in which

21. *Id.* § 5.04, at 524.

22. *See* Jacobs & Winter, *Antitrust Principles and Collective Bargaining by Athletes: Of Superstars in Peonage*, 81 YALE L.J. 1 (1971). This appears to be the first legal commentary on the labor law exemption in the professional sports context.

23. THE LAW OF SPORTS § 5.04, at 525.

24. *Id.*

management and players have in good faith negotiated a player restraint that adequately balances the interests of both players and management. The authors then extensively review the Supreme Court cases interpreting the labor exemption and conclude that they are of questionable precedential value in the situation posited.[25] This limitation results largely from the predominant factual pattern of these cases: usually the agreement between the parties to the collective bargaining results in the exertion of economic influence upon parties outside the bargaining process.[26] In sharp contrast, the question of economic influence in the player restraint situation is directed toward one of the parties to the collective bargaining agreement, the player. The authors buttress their argument that it is inappropriate to use the antitrust laws to regulate sports intramarket employment practices that have no discernable impact on outside markets by reference to *Meat Cutters Local 189 v. Jewel Tea Co*.[27] In that case the Supreme Court suggested that a balancing approach should be used to decide the validity of a collective bargaining agreement affecting outside market conditions. The factors to be weighed are the injury to business competition and the significance and immediacy of the labor group's concern with the particular restriction.[28] In so holding, the Court implied that the antitrust laws are not relevant to agreements relating solely to conditions of employment that do not affect any outside market.

The authors use this analysis as their springboard to suggest that the validity of collectively bargained player restraints should not be subject to antitrust analysis, but rather should be evaluated in accordance with labor law principles.[29] In contrast to the uncertainty posed by attempting to apply the labor law antitrust exemption to the authors' hypothetical situation, application of labor law principles supports the conclusion that the hypothetically fair bargaining agreement between players and management should be upheld.[30] The determinant issue becomes whether an individual player should be allowed to object, once the union negotiates for all the players, that the collective agreement restrains his capacity to market his services. The applicable principles include mandatory collective bargaining for terms and conditions of employment, freedom of contract, and, since the collective bargaining relationship is governed by the will of the majority, the

25. *Id.* § 5.04b.
26. *Id.* § 5.04, at 526.
27. 381 U.S. 676 (1965).
28. THE LAW OF SPORTS § 5.05, at 556.
29. *Id.*
30. *Id.* § 5.05f-h.

individual's inability to independently contract with his employer.[31] These principles support the conclusion that an individual player should not be permitted to use the antitrust laws to invalidate agreements between management and labor not affecting an outside market.

Some of the case law in the sports area has held, however, that the labor exemption is not available in the player restraint context.[32] Commentators may assert that this case law is reason to expect more caution than the authors exhibit in presenting their analysis and conclusions. The majority of these cases, however, should be distinguished on the grounds that they deal with situations in which courts were presented with excessively oppressive restraints imposed in the absence of any meaningful collective bargaining.[33] The authors' care in hypothesizing a well-balanced restraint derived from good faith bargaining is sufficiently distinguishable from this case law to justify the approach suggested in the text.

The fact that the labor exemption is available in the sports context may be of little comfort to management if the player restraints or other practices having market effect are not part of the collective bargaining agreement.[34] This is especially important because present case law indicates that the mere fact that management brings up the topic for bargaining does not automatically grant immunity to that particular practice. The cases appear to require more.[35] Courts are likely to apply the labor exemption only to agreements resulting from good faith, give-and-take collective bargaining where both parties have shaped the content of the player restraint in question.

This last point serves to underscore one of the two major effects of the labor exemption on professional sports. The labor exemption has produced a shift in bargaining power. As sports franchise owners have consistently contended, owners need some type of player restraint in order to provide a marketable product. Assuming this assertion is correct, and given the antitrust difficulties of these restraints, the owners have recently been willing to concede certain other benefits to the players in order to fall under the labor exemption umbrella. Thus, the bar-

31. *Id.* § 5.05, at 557-58.

32. *See, e.g.*, Smith v. Pro-Football, Inc., 420 F. Supp. 738 (D.D.C. 1976), *modified*, 593 F.2d 1173 (D.C. Cir. 1979); Mackey v. National Football League, 407 F. Supp. 1000 (D. Minn. 1975), *modified*, 543 F.2d 606 (8th Cir. 1976); Robertson v. National Basketball Ass'n, 389 F. Supp. 867 (S.D.N.Y. 1975); Kapp v. National Football League, 390 F. Supp. 73 (N.D. Cal. 1974); Philadelphia World Hockey Club, Inc. v. Philadelphia Hockey Club, Inc., 351 F. Supp. 462 (E.D. Pa. 1972). *See also* THE LAW OF SPORTS § 5.06a.

33. *Id.* § 5.06, at 588.

34. *Id.* § 5.06, at 590.

35. *Id.*

gaining position of the players has been substantially improved.

The second effect is the lessening of antitrust problems for the owners of sports franchises. Owners do not need to be concerned whether player restraint systems will pass antitrust scrutiny if they can successfully invoke the labor exemption. This does not imply that owners should not expect to see themselves engaged in litigation on antitrust matters. The labor law exemption has not yet had a clear judicial review. Also, other antitrust issues remain unresolved in the professional sports area. Yet to the extent that the labor exemption has been acknowledged and accepted in the sports field by both union and management, and given the relatively large volume of past litigation in this area, it is likely that there will be less sport antitrust litigation in the future.

2. *Player Restraints Without the Labor Exemption.* If the labor law exemption is, for whatever reason, not available to the player restraint practices, then the issue becomes whether such restraints are inconsistent with violations of federal antitrust laws.[36] The litigation on these issues in the 1970s has been extensive.

Certainly there can be no argument that the initial consideration in this area remains whether the per se approach or rule of reason analysis in antitrust cases should control. At first blush many of the player restraint practices fall under the traditional per se violation of the antitrust laws. For example, draft or reserve clauses can be characterized as a group boycott or price fixing. Both of these practices have traditionally run afoul of antitrust laws under the per se approach.[37]

Analysis of this antitrust issue, like the analysis of the scope of the labor exemption, is hampered by uncertain doctrinal guidelines and the unique economic setting of sports leagues. While the per se rule has been a mainstay of antitrust jurisprudence, cracks in the doctrine appear to have been made by recent Supreme Court cases that allow for speculation as to the doctrine's applicability in the sports context. In *Silver v. New York Stock Exchange*[38] the Court recognized that under certain exceptional conditions there may be a "justification derived from the policy of another statute or otherwise" to allow what would be

36. *Id.* § 5.07, at 591.

37. The four most common violations of the per se rules are price fixing, divisions of markets between competitors, tying arrangements, and group boycotts. *See, e.g.*, United States v. Topco Assocs., Inc., 405 U.S. 596 (1972); Fortner Enterprises v. United States Steel Corp., 394 U.S. 495 (1969); Klor's, Inc. v. Broadway-Hale Stores, 359 U.S. 207 (1959); United States v. National Ass'n of Real Estate Boards, 339 U.S. 485 (1950); United States v. Socony Vacuum Oil Co., 310 U.S. 150 (1940). *See also* THE LAW OF SPORTS § 5.07, at 593-94 & nn. 653-56.

38. 373 U.S. 341 (1963).

a per se violation under other circumstances.[39] Consequently, sports leagues have contended that the unique setting of the sports industry, requiring economic cooperation to provide a product, justifies the group boycott or price-fixing aspects of player restraint practices.

Considerable confusion exists in the decided cases whether the per se rule or rule of reason approach is warranted. Decisions can be found supporting both positions.[40] From some of these cases it is apparent that the Supreme Court was correct when it concluded that "courts are of limited utility in examining difficult economic problems."[41] Compounding the problem is the fact that some courts have had a difficult time even comprehending the applicable antitrust doctrines in the unique economic setting of professional sports.[42]

The authors conclude, as have some courts,[43] that the special economic circumstances in sports leagues warrant a closer look at the particular player restraints than provided by the per se approach. A recent Supreme Court case,[44] decided after the publication of *The Law of Sports*, supports the authors' conclusion. According to the Court, the characteristics of a particular industry may legitimize activities traditionally labeled per se violations.[45] The authors suggest an approach that utilizes the rule of reason test yet retains the per se approach. They recognize that the per se approach, which eases the litigation burden of

---

39. *Id.* at 348-49.

40. See cases cited in THE LAW OF SPORTS § 5.07b-c.

41. United States v. Topco Assocs., Inc., 405 U.S. 596, 609 (1972).

42. THE LAW OF SPORTS § 5.07, at 617-18.

43. *Id.* § 5.07d; *see, e.g.*, Mackey v. National Football League, 543 F.2d 606 (8th Cir. 1976).

44. Broadcast Music, Inc. v. CBS, Inc., 99 S. Ct. 1551 (1979).

45. In *Broadcast Music;* the Supreme Court was squarely faced with allegations of price fixing in the field of blanket licenses for copyrighted musical compositions. Organizations set up by copyright owners were used as clearinghouses to sell blanket licenses to users of such copyrighted material. The Court noted that to characterize particular conduct under the per se rule, the courts must determine if

> the purpose of the practice is to threaten the proper operation of our predominantly free market economy—that is, whether the practice facially appears to be one that would always or almost always tend to restrict competition and decrease output, and in what portion of the market, or instead one designed to "increase economic efficiency and render markets more rather than less competitive."

Id. at 1562 (quoting United States v. United States Gypsum Co., 438 U.S. 422, 441 n.16 (1978)). In *Broadcast Music* the Court found that the unique area of copyrighted material necessitated blanket licensing arrangements and such arrangements were not merely a "naked [restraint] of trade with no purpose except stifling of competition." *Id.* at 1562 (quoting White Motor Co. v. United States, 372 U.S. 253, 263 (1963)). In short, the Court found a need in this particular industry for such price-fixing arrangements and thus held that this activity was not merely to curtail competition. Accordingly, the Supreme Court remanded the case to the court of appeals to determine whether the blanket licensing arrangement as employed by the clearinghouses was unlawful under a rule of reason inquiry. *See also* Hayes v. National Football League, 469 F. Supp. 247 (C.D. Cal. 1979).

plaintiffs and creates clear categories of prohibited action, can be beneficial in the sports context. Accordingly, the authors suggest that the courts utilize the rule of reason approach until there are enough decisions delineating a pattern of common characteristics in player restraint practices that are clear violations of antitrust laws. Thereafter, when a player restraint action is brought, it can proceed under the per se approach if the case falls within a category of restraints that have been found to be clear violations. Further, a "factual inquiry" would be allowed in these per se cases to decide if the particular league does have a "truly extraordinary" need for such a practice.[46]

At first blush this proposal has appeal. It permits courts to recognize that the economic behavior of the sports industry is different than the general economic model of the free enterprise system. Furthermore, it attempts to develop gradually guidelines in the antitrust area for the sports industry to follow. Nevertheless, the practicality and viability of such an approach is questionable.

It is doubtful that such a body of law can be developed within a reasonable period of time. Given the different federal circuits, the numerous sports leagues, the different player restraint systems, and the unlikely event that many of these cases will reach the Supreme Court, it could be decades before a per se line of cases would develop in this area. It is important to realize that the per se approach as it now exists developed over several decades and is still in need of considerable refinement. Further, it may not be sound policy for professional sports leagues to be subject to a different antitrust approach than other market systems. Other market systems with unique characteristics might also demand a body of law peculiarly their own. A final and perhaps more compelling argument against the suggested approach is that present antitrust doctrines may provide a partial solution for dealing with the peculiar economic setting of the sports industry.

It can be argued that applying the per se rules developed in more traditional contexts to the sports industry is economically naive. Sports leagues simply do not operate under a free market system; they have special problems dictated by the need for balance in competition. However, to develop a whole new set of per se rules would take too much time. The use of the rule of reason also presents drawbacks: it places a great burden on plaintiffs to develop their cases and forces the courts to make difficult economic judgments. Perhaps a modified approach, modeled after the one the Supreme Court suggested in *Silver*,

46. THE LAW OF SPORTS § 5.07, at 621.

would better alleviate these varied concerns.[47] Under *Silver*, the case for plaintiff could be made under the traditional per se approach. Defendant would then be allowed to present a defense that the particular nature of the market system dictates that such a practice be used. Under such a system, plaintiffs would not be burdened, at least initially, with having to develop their case. The court's burden would be similarly lessened since the decision would shift to whether the particular practice, which is presumptively deemed improper, could be justified given the unique market conditions. This approach seems more practical than that put forth by the authors while at the same time ameliorating some of the concerns in the area.

Perhaps the most ironic point about the per se rule/rule of reason debate is that in the decided cases, the choice of approach has not affected the outcome: under both standards the courts have found the player restraint practices violative of antitrust principles.[48] Nevertheless, the authors argue for some type of player restraint, at least until it can be empirically demonstrated that, despite the uniqueness of the sports industry, player restraints are unnecessary.[49] This position is supported by case law suggesting that some type of player restraint may be necessary in the sports industry. Exactly what type of player restraints are proper remains subject to debate. The authors correctly note that there are at least three concerns that decided cases have focused on: whether the restraint is perpetual in nature; the amount of discretion given to the management under the player restraint practice; and the need for competitive balance within a league.[50]

C. *Other Sports Antitrust Problem Areas*

Player restraints are not the only area of possible antitrust problems for sports leagues. A number of related provisions affecting demand for player services may also be subject to antitrust scrutiny.[51] Generally, these provisions deal with such aspects as player eligibility, game standards, and discipline of players. Additionally, more complex antitrust issues exist in the area of ownership and location of sports franchises.[52] These issues are extensively analyzed in *The Law of Sports*. Generally, the antitrust concerns in these areas have been less

47. *See* Broadcast Music, Inc. v. CBS, Inc., 99 S. Ct. 1551 (1979); Silver v. New York Stock Exch., 373 U.S. 341 (1963).

48. THE LAW OF SPORTS § 5.07c, e.

49. *Id.* § 5.07, at 625, 629.

50. *Id.* § 5.07, at 625-27.

51. *Id.* §§ 5.08-.10.

52. *Id.* § 5.11.

prevalent in sports litigation and legal literature than those antitrust issues previously discussed. Nevertheless, this pattern may reverse in the future, especially in the area of ownership and location of sports franchises.

III. CONCLUSION

Antitrust laws have had a major influence on the format of professional sports leagues in the 1970s and on the economic relationship between players and owners. The resolution of presently unresolved antitrust issues will no doubt continue to affect these matters substantially in the 1980s.

"The crest of the future of baseball," said Joe Garagiola, Jr., "will be ridden by lawyers."[53] For those of us who used to watch Willie Mays defy the impossible, that statement may be rather discomforting. Yet the realities of the sports field suggest that the statement is probably correct for all sports. *The Law of Sports* provides a valuable tool with which those riding on that crest may provide a better quality legal product.

53. National Law Jonrnal, Jan. 1, 1979, at 1, col. 2.