Outside the Lines

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Will The Supremes Revolutionize "Sports Law" And Sing The Praises Of Either NFL or MLB, or Both? In *American Needle, Inc. V. NFL et al.* U.S. Supreme Court Docket No. 08-0661, argued Jan. 13, 2010

By Lawrence W. Boes[1]

On January 13, the U.S. Supreme Court heard oral argument on a legal issue significant to the NFL, MLB and other sports leagues and allied interests in interpreting and applying the antitrust laws, specifically, whether Section 1 of the Sherman Act of 1890,[2] applies to collective business activities of professional sports leagues and their member clubs in limiting or prohibiting *intra-league* competition.

The NFL is seeking to obtain the Supreme Court's blessing of its centralized and exclusive licensing policy for the NFL member clubs' logos for use on sports apparel. This policy is based on the legal hypothesis that the NFL and its clubs are acting as a "single entity," not subject to Sherman Act § 1, which basically applies to concerted business actions among business competitors. The precise legal issue is whether a

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[2] 15 U.S.C. § 1. This federal law forbids contracts, combinations and conspiracies among business competitors resulting in unreasonable restraint of interstate commerce, for example, restraining competition, restricting output, dividing territories and fixing prices.

Arbitration Wrap-up – 2010

By Bill Gilbert and Tim Darley

During the 2010 baseball offseason, a total of 235 players were distinctly affected by the arbitration process, which has been a means for determining player salaries since 1974. Currently, this process is available to two classifications of players. The first being players with 3 to 6 years of major league service ("MLS"), plus the top 17%, based on service time, of players with at least two years of MLS (provided the player has accrued a minimum of 86 days of MLS). These players are all still under "team control," in that their rights are reserved by their current club. A total of 164 team controlled players were eligible for arbitration during 2010.

Arbitration is also available to players who are eligible for free agency. When a player accrues the necessary 6 years of MLS, he may file for free agency. Upon filing, his former club may offer to proceed with the player into the arbitration process. Typically, this offer is only extended to pending free agents who qualify their prior team for draft pick compensation. Draft pick compensation is available if the departing player qualifies as a Type A player (the top 20% of

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The Business of Segregation in Baseball

By Joe Marren

INTRODUCTION

Segregation was good for business. At least that may be what the so-called "lords of baseball" believed. Racism was blatant when the majors and affiliated minors refused to allow African Americans to play until 1946, when Jackie Robinson was assigned to the Montreal Royals, then the top farm team of the Brooklyn Dodgers. But racism didn't go away after that watershed year, or in '47 when Robinson was promoted to the Dodgers. In fact, it's more subtle but it still gets ugly occasionally. As, for example, when Al Campanis of the Los Angeles Dodgers told a national television audience on April 6, 1987, that there were no African-American executives in baseball because "they don't have some of the necessities to be … a field manager, or, perhaps, a general manager."

And it was racism that mattered in baseball business decisions right from the sport's genesis up to the present day. The 19th century alone could produce a book of essays on the topic, so most of the focus here is on the 20th century with 19th century context inserted when needed.

First, it must be understood that the press played a crucial role in defining the issue. Was deciding what to report (and how) a business decision? Well, yes and no because newspapers depend on advertising, which depends on readers. So the depth of coverage could be suspect. But no reporter, editor or publisher could ignore the overall contextual issue in the American psyche: Essentially, many in the press came to frame the story for Civil Rights as being an All-American struggle for traditional and iconic values of justice and freedom. The mainstream press didn't originally frame it that way, though a non-traditional cast of characters did. San Francisco State University history professor Jules Tygiel wrote, "Two groups that emerged in the late 1930s provided this impetus: a small coterie of young black sportswriters and the Communist party."

Most African-American newspapers, then and now, are weeklies. Yet some had (and still have) national reputations. For example, the Pittsburgh Courier was

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Rating the GMs--2009

By Bill Felber

Measuring the performance of a general manager is a lot tougher than measuring the performance of a player. That's true in large part because while the yardsticks for determining the best players are statistical in nature and generally understood, there are no readily accepted parallels for GMs.

The most obvious parallel -- victories – doesn't work because GMs work with markedly different resources and restraints. For reasons that bear both on the talent base and the financial base, it's more difficult to win with some franchises than others. The few attempts to develop a suitable formula don't really try.

A few years ago Baseball Prospectus offered what it termed a Payroll Efficiency Rating (PER) for GMs. In essence, it assessed GMs on the basis of what they were given to work with. The idea of getting away from victories as a yardstick for measuring GM performance has a certain egalitarian aspect, but it ignores the reality that GMs of even low-rent franchises must show signs of actual progress in order to maintain faith and hope among their fans. It also posits that success can be measured in financial terms. There is an element of truth to that, but it will hardly satisfy the fan of a second division team to be told that his GM won the frugality pennant.

The GM Rating System I created in "The Book On The Book" in 2004 tries to strike an appropriate balance in expectations of GMs. The GM Rating System asks a question that is central to what rich-market and poor-market general managers alike try to do: Did he improve the talent he was given to work with?

Because not all franchises operate in the same circumstances, not all the definitions of "improvement" are alike. That means the answer gets complex. In some instances, improvement is most appropriately measured over the long term. In others, it is a "what have you done for me lately?" question.

Beyond that, some teams improve based on decisions that weren't even made by their general managers, but by the guys who preceded them. The St. Louis Cardinals won the NL Central in 2009 in large measure due

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sports league or other voluntary association of competing sports clubs and affiliated business entities, such as the NFL or MLB and other sports leagues and their member clubs, may act as if a "single entity" to grant collective licenses of its member clubs' logos, without a full inquiry and trial of its anticompetitive effects.

MLB and its teams are indirectly involved in this NFL case as silent bystanders, even abstaining from filing an *amicus curiae* ("friend of the court") brief. They probably did so because MLB had similarly defeated, on the merits, an antitrust claim brought by a former licensee.[3] MLB had advanced factual and legal grounds based on a different and more complicated legal test—a comprehensive "rule of reason" test, which tests and balances the anticompetitive and procompetitive purposes and effects of MLB's collective licensing, not as the NFL did by gaining a simpler antitrust rule based on the "single entity" concept.[4] The final result of the *MLB v. Salvino* case in the 2d Circuit, from which no petition was filed for Supreme Court review, is the same as the NFL has so far accomplished in *ANI v. NFL* in the 7th Circuit, except that the lower courts in *ANI* concluded the inquiry after deciding the NFL was a "single entity" not subject to further examination of the antitrust claims.

Here, the defendant NFL member clubs acting collectively through their jointly owned corporate licensing agency, NFL Properties, Inc. (NFLP), granted the highest bidder, codefendant Reebok International, a sole and exclusive license for a ten-year term beginning in 2000 to use NFL-branded logos for use on caps and other sports apparel.

Is that collective action an unlawful contract, combination or conspiracy among otherwise competing NFL clubs acting through NFLP to limit output and increase revenues by restricting competition among NFL clubs in licensing logos for NFL-branded caps, hats and other apparel? According to the NFL defendants, they claim to avoid this challenge under Sherman Act § 1 by organizing and conducting their business as a "single entity" and thereby shortcut extended pretrial procedures and a trial subjecting the NFL and its clubs to intense and comprehensive "rule of reason" scrutiny?[4]

Not only did counsel for the parties but also counsel for the Office of the Solicitor General of the U.S. Department of Justice and its Antitrust Division and Fed-

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MLB HAS LONG BEEN THOUGHT TO ENJOY A UNIQUE AND TOTAL JUDICIAL EXEMPTION FROM THE ANTITRUST LAWS for professional organized baseball which was not considered within "interstate commerce" under the Sherman Act, as a result of repeated time-honored decisions in *Federal Baseball Club* v. *National League*, 259 U.S. 200 (1922) (Holmes, J., writing for a unanimous Court); *Toolson v. New York Yankees, 346* U.S. 356 (1953); *Flood v. Kuhn,* 407 U.S. 258 (1972) (Blackmun, J., writing for a majority of seven justices). It is highly doubtful, however, whether this "exemption" (limited to professional baseball among all other sports enterprises) would be extended to exempt such undoubtedly nationwide commercial activities as licensing logos for use on products sold in "interstate commerce," in which both MLB and NFL are engaged. *See, e.g., Flood v. Kuhn,* 407 U.S. at 282, in which Justice Blackmun wrote an extended paean to baseball as the "national pastime" and an apologia adhering to the Court's prior decisions, acknowledging, "*With its reserve system enjoying exemption from the federal antitrust laws*, baseball is, in a very distinct sense, an exception and an anomaly." In so limiting the "exemption" to the players' reserve system, other aspects of baseball as a business are impliedly in interstate commerce, and thus MLB and its teams no longer enjoy a blanket antitrust-law exemption. *See, e.g., MLB v. Salvino,* note 3 above.

[3] *MLB v. Salvino*, 542 F.3d 290 (2d Cir. 2008). MLB brought a case in New York against Salvino, a former licensee, for using MLB logos without a current license. Salvino then counterclaimed by challenging MLB's exclusive licensing policy, but the challenge was dismissed. Defending its licensing plan on appeal in the 2d Circuit, MLB did not raise the issue of the antitrust-law "blanket exemption" as applied to its commercial trademark licenses, but nevertheless won under the antitrust "rule of reason" which Circuit Judge Amalya Kearse wrote for a majority on the comprehensive "rule of reason" grounds as the basis for granting summary judgment (no trial was needed), whereas Judge Sonia Sotomayor concurred in a separate opinion on the ground that MLB's "collective licensing" is a lawful ancillary restraint of a sports league as a legitimate joint venture. *Id.* at 334.

[4] *See MLB v. Salvino*, note 3 above.

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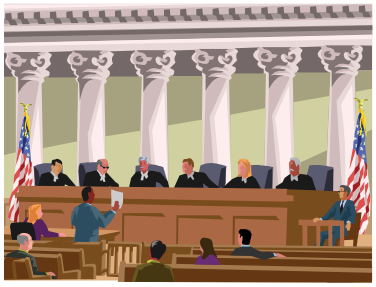
eral Trade Commission participated in oral argument, presenting sophisticated and nuanced recommendations for the nine Justices. The reported commentary in the National Law Journal and New York Times articles and blogs following oral argument reflects the considerable controversy and interest among the Justices of the Court, but fails to note that MLB had won its own case on appeal in the 2d Circuit in 2008 testing the antitrust legality of MLB's collective licensing.[5]

BACKGROUND

ANI had been one of NFL's several licensees for NFL-branded headwear until 2000, when the NFL decided on competitive bidding among prospective licensees for an exclusive contract granting the collective licensing of NFL-brand logos. Originally, beginning in the Sixties the NFL had contributed its licensing revenues to various charities, but later divided these revenues similar to its national broadcasting and cable revenue-sharing, equally to all member clubs, even though the clubs' individual logos obviously have greatly differing market values in helping sell NFL-branded apparel.[6]

Essentially, ANI claims damages caused by the exclusive licensing initiated in 2000, whereby only Reebok, as the highest bidder, may make apparel using NFL and its teams' logos. This excluded ANI from competing in this business during the ten-year term of Reebok's contract. As pointed out by Justices Breyer and Ginsburg at the oral argument, there is nothing unlawful under the antitrust laws when a single firm or entity owns valuable "IP" rights (under federal patent, copyright or trademark or state-law property or privacy-based rights) and chooses an exclusive licensee to market its branded products and that ANI's damages claim occurs basically because of this exclusivity policy, beginning in 2000.[7]



ANI initiated this case against the NFL and its licensee in 2004. Defendants applied for and won a dismissal from the U.S. District Court in Chicago on all claims in 2007, and this judgment was affirmed in 2008 by the Seventh Circuit Court of Appeals in 2008. Both courts granted summary judgment, based on undisputed facts and their legal view of the facts that the NFL and its member clubs operated as a "single entity" in this collective licensing for about fifty years and thus are not subject to ANI's claim under the "concerted action" requirement of Sherman Act § 1.[8] There was no trial, only limited pretrial discovery, and briefs, affidavits and exhibits submitted and oral argument before the District Court in Chicago and be-

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[5] Adam Liptak, *Justices Skeptical of N.F.L.'s Court Claim,* N.Y. Times, Jan. 14, 2010, at B20 (N.Y. print ed.); Tony Mauro, *Justices wary of granting NFL antitrust immunity*, National L.J., Jan. 13, 2010, http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202437923141.

[6] At the oral argument (*ANI v. NFL,* U.S. Sup. Ct. Dkt. No. 08-0661, Official Transcript of Argument, Jan. 13, 2010, p. 28, available at http://www.supremecourtus.gov/oral_arguments/argument_transcripts/08-661.pdf), ANI's counsel conceded in response to Justice Stevens's question, "[T]here is an affidavit in the record that says that the revenues that the NFLP entity receives are distributed to the teams in equal shares . . . ." Justice Stevens further questioned, "[W]ouldn't that – that affidavit support the conclusion that this is basically a procompetitive agreement because it tends to make competition stronger on the playing field, and therefore, *that's a sufficient defense under the rule of reason*, and that's the end of the ball game?" (Emphasis added.) It is typical of Justice Stevens as a former antitrust practitioner that he discerns in the lower court records significant facts that counsel and other justices may overlook.

[7] Oral Argument at 15, 27-28.

[8] Chief Judge Frank Easterbrook of the 7th Circuit had written an opinion in 1996 in which he intimated that the "single entity" concept *might* apply to the jointly organized activities of sports leagues *in factually appropriate circumstances*. *Chicago Professional Sports Limited Partnership v. National Basketball Ass'n*, 95 F.3d 593, 590-600 (7th Cir. 1996) (referred to as *"Bulls II"* in the opinions and brief). The lower courts in their *ANI v. NFL* decisions relied in large part on Judge Easterbrook's reasoning. Judge Easterbrook, like his companion in the 7th Circuit, Senior Judge Richard Posner, are longtime stalwart promoters of the so-called "Chicago School" or "law and economics movement" in antitrust and other areas of the law. At the risk of over-simplifying their views, they generally favor limiting antitrust-law applications constraining business enterprises and other "free market" principles and would generally limit and not expand similar statutory and regulatory interference in economic matters, views that have suffered some public and professional disfavor in light of recent economic events.

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fore the 7th Circuit panel. Those were the first and second outs against ANI in the bottom of the ninth inning with the NFL ahead.

The Supreme Court (by vote of at least four justices of the Court) granted review on June 29, 2009, contrary to the advice the Court had earlier requested and obtained from the Department of Justice's Office of the Solicitor General and Antitrust Division. ANI's petition for review to the Supremes had, however, the unusual support of its adversaries, winning parties in the lower courts, NFL, its clubs and Reebok. The NFL and its member clubs obviously expect to obtain the Supreme Court's nationwide blessing, protecting them from repeated, risky, expensive and potentially inconsistent challenges of collective and exclusive licensing plans for NFL-branded products. MLB's 2008 victory in the federal district and appellate courts in New York on antitrust "rule of reason" grounds is not necessarily binding in other circuits, although a persuasive precedent in other courts outside the 2d Circuit, and the *MLB* v. Salvino decision may be factually distinguishable from similar collective business policies of the MLB and certainly as to similar policies of another professional sports league.

Labor unions in professional sports and various other sports and business interests filed fourteen so-called "friend of the court" (*amici curiae)* briefs,[9] either in favor of ANI or NFL's legal positions. The NFLPA, MLBPA and other players, coaches and umpires' unions, fear the implications of this "single entity" concept in collective bargaining and the players' individual bargaining with individual clubs as "free agents." Other professional sports leagues, including Major League Soccer LLC (MLS), filed a brief joining with similar sports leagues and organizations in pro golf and tennis and NASCAR, defending their own advocacy for and reliance on the "single entity" concept.[10] Major League Baseball carefully refrained from taking part in this case, either because its legal advisors fear to run the risk that their involvement and attention may again jeopardize their own exclusive licenses and disturb their contrasting "rule of reason" victory in the 2008 *MLB v. Salvino* decision.[11]

It may be said in favor of NFL's "single entity" argument, that its clubs (in contrast to MLB's) almost fifty years ago integrated many business operations under the leadership of Commissioner Pete Rozelle and the leading founders of the NFL in their New York, Chicago, Pittsburgh and Cleveland clubs, around the "single entity" concept. With the advent of exclusive national TV broadcasting contracts negotiated by the NFL, all teams would share equally in these lucrative broadcast (and cable and internet) revenues. This helped promote balanced competition on the playing fields. These exclusive nationwide broadcasting contracts were made exempt by Congress amending the antitrust laws in 1961, and again in 1966 at the time the rival American Football League combined with the NFL.[12] It is based on this concept that NFL lawyers argue that they are also a "single entity" in licensing league and team logo for caps, stocking hats and other apparel.[13]

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[9] Two opposing sets of interested economists also filed briefs. One group supporting ANI includes the well-known and respected "sports economist" and author, Andrew Zimbalist. (Available at http://www.abanet.org/publiced/preview/briefs/pdfs/07-08/08-661_PetitionerAmCuEconomists.pdf) Supporting the NFL is a group of economists, including economics professor Richard Schmalensee of MIT. (Available at http://www.abanet.org/publiced/preview/briefs/pdfs/09-10/08-661_RespondentAmCuEconomists.pdf.)

[10] Unlike the NFL and MLB, Major League Soccer negotiated and signed its players' employment contracts through the league as a single entity, then assigned players to individual teams, thus avoiding inter-team competition in bidding for players and negotiating their individual contracts. *Fraser* v. *MLS*, 284 F.3d 47 (1st Cir.), *cert. denied*, 537 U.S. 885 (2002).

[11] See note 3 above.

[12] Sports Broadcasting Act of 1961, as amended also in 1966 to exempt the combination of two professional football leagues, 15 U.S.C. § 1291. Section 1294 of this 1961 law expressly provides for its limited effect to these combined acts.

[13] To me, although long intrigued by the "single entity" idea for sports leagues, particularly the MLB, as a method of avoiding Sherman Act § 1, it is reminiscent of an earlier legal strategy hatched by lawyers for J.P. Morgan. He and another railroad tycoon of the era established Northern Securities, a corporate holding company to acquire the stock of the competing Burlington Northern and Northern Pacific railroads, so as to eliminate or minimize price and other aspects of competition for the Northwest railroad freight and passenger business. The T. R. administration brought an antitrust case against the companies. The Supreme Court held that the Sherman Act §§ 1 and 2 could be applied to condemn this corporate structure stratagem to control competing railroads, having both an anticompetitive purpose and effect. Newly appointed Justice Oliver Wendell Holmes, Jr., dissented joined by three

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Although the NFL embraced the opportunity for Supreme Court review of the lower courts' decisions, hopefully in its favor, the Obama Administration's Solicitor General, Elena Kagan, former Dean of the Harvard Law School, signed off on her Office's initial brief setting forth an argument opposing Supreme Court review, on the ground the lower court decisions were based on the particular facts of the history of the NFL's organization over the past five decades.

THE SUPREME COURT JUSTICES AND THEIR PRIOR DECISIONS

Many of the Justices have an extensive history of opinions and public participation in antitrust-law developments, even in sports cases litigated in the federal courts.[14] Justice Stephen Breyer (appointed by President Clinton) wrote an opinion in *Brown v. Pro Football, Inc.,*[15] upholding the NFL owners' decision in the late '80s, after they had reached an impasse in collective bargaining with the NFLPA, unilaterally to implement "player development squads" of six rookie players per team. The NFL owners in their capacity as a legally authorized employers' association decided they would pay these non-roster players $1000 per week. The decision in the NFL's favor relied on the "nonstatutory labor relations exemption" from the antitrust laws, allowing the NFL owners collectively to set these players' salaries, even when their union refused to agree.

Justice John Paul Stevens was appointed in 1974 by President Ford, and is thus the senior Justice and unofficial leader of the "liberal" four Justices. He alone dissented in *Brown v. Pro Football* on both the labor relations exemption and antitrust law grounds. He also dissented alone in supporting a challenge to a baseball arbitration decision brought by the L.A. Dodgers' Steve Garvey as a result of MLB's disastrous "collusion" in limiting free agents' compensation.[17]

Justice Stevens is probably one of the most ardent of baseball fans presently on the Court, exhibiting a photo in his chambers of himself as a boy, a lifelong Cubs fan, attending Game 3 of the World Series held at Wrigley Field in 1932, in which Babe Ruth's and Lou Gehrig's home runs won the game for the Yankees.[18]

Justice Clarence Thomas was appointed by President George H. W. Bush and confirmed by a Democratic Senate after a controversial hearing. He wrote the Court's unanimous decision in *Texaco v. Dagher,*[19] a recent antitrust law case, in which TNI's present counsel represented the oil company defendants. There the Court had approved contracts between a joint venture producing and distributing gasoline and Texaco and

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other Justices, and was denounced by the President as having a backbone made of spineless jelly. In *Northern Securities Co. v. United States*, 193 U.S. 197, 400 (1904), Justice Holmes in his customary wisdom stated, "Great cases like hard cases make bad law. For great cases are called great, not by reason of their real importance in shaping the law of the future, but because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment. These immediate interests exercise a kind of hydraulic pressure which makes what previously was clear seem doubtful, and before which even well settled principles of law will bend." Justice Holmes later wrote the *Federal Baseball Club* opinion in 1922, see note 4 above, little realizing its extraordinary implications in the ensuing decades. See Justice Alito's recently published article in SABR's Baseball Research Journal, *The Origins of the Baseball Antitrust Exemption: Federal Baseball Club of Baltimore, Inc. v. National League of Professional Baseball Clubs,* 38(2) BRJ (Fall 2009) 86.

[14] Most pertinent is Justice Sotomayor's concurrence in the closely related *MLB v. Salvino* case, outlined in notes 3 and 4 above, which is cited with approval in the Solicitor General's two briefs submitted to the Court before review was granted and afterwards on the merits of the review. Brief for U.S. as *Amicus Curiae*, dated May 2009, pp. 15 n. 5 & 20 n. 8, as showing that, "[S]ingle-entity treatment is not the NFL['s] only means of avoiding trial."

[15] 518 U.S. 231 (1996).

[16] *Id. at 252.*

[17] *MLBPA v. Garvey*, 532 U.S. 504, 512 (2001) (Stevens, J., dissenting).

[18] Michael Kirkland, "Justice Stevens: A Legal Force at 89," published in UPI.com, Oct. 4, 2009: "Stevens not only met Babe Ruth at the [Stevens] hotel [one of a chain owned by his family], he was at Wrigley Field for Game 3 of the World Series when the Babe 'called his shot' -- after getting a merciless riding from the Cubs' bench, with the count at 2 and 2, Ruth pointed to center field and smacked a 440-foot home run into the center field bleachers. Even for a Cubbie fan like Stevens, it had to be a major thrill." The article does not comment on whether Justice Stevens endorsed the apocryphal "called his shot" story on Babe Ruth's homer that day.

[19] 547 U.S. 1 (2006).

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Shell gasoline retailers. The joint venture had been legitimately organized by Texaco and Shell to operate their separately branded gasoline stations in the Western states. The contracts contained price-fixing prescribed by the joint venture.

Justice Sotomayor, in her most renowned decision as a U.S. district court judge, had issued a preliminary injunction against the MLB owners in 1995, affirmed on appeal, that effectively ended the disastrous 1994-95 strike by ordering the MLB owners to return to the bargaining table.[20] While a Judge of the 2d Circuit only two years ago, Justice Sotomayor concurred in another case decided for the MLB involving its exclusive licensing policy, choosing separate grounds intermediate in complicated details as between the "Rule of Reason" rationale adopted by two judges in the 2d Circuit, and the simpler "single entity" concept adopted in the 7th Circuit.[21] In a third case she upheld the NFL's eligibility rules for its players' draft, as challenged on antitrust-law grounds.[22]

Justices John Paul Stevens and Anthony Kennedy were both antitrust-law practitioners. Justice Kennedy also taught antitrust law, while Justice Breyer taught the subject and wrote regulatory and antitrust law amendments, basically favoring deregulation efforts in the 70's, while advising Sen. Ted Kennedy as one of the staff members of the Judiciary Committee. It became clear in the course of the oral argument that Justices Breyer and Sotomayor professed being baseball fans for the Red Sox and Yankees, respectively, joining Justice Stevens as knowledgeable in baseball.

THE ORAL ARGUMENT[23]

With this nine-justice line-up, Chief Justice Roberts ("player-manager" on this team) has been shown to undergo problems fulfilling his announced policy to reach a definitive majority decision in most cases.

At the oral argument of the case a lively discussion ensued when the Justices questioned the parties' and Government counsel and debated indirectly among themselves, including Justices John Paul Stevens, Antonin Scalia, Anthony Kennedy, Stephen Breyer, Ruth Bader Ginsburg, Samuel Alito and Sonia Sotomayor, together with Chief Justice John Roberts.[24] As usual, Justice Clarence Thomas remained silent during oral argument.[25] Justice Samuel Alito showed his interest in Baseball and the Law in his 2008 lecture and article in SABR's BRJ (see fn. 3) which defends Justice Holmes's 1922 *Federal Baseball Club* decision as in line with then current antitrust and constitutional law doctrines.

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[20] *Silverman v. MLB Player Relations Comm.*, 880 F. Supp. 246 (S.D.N.Y.), *aff'd*, 67 F.3d 1054 (2nd Cir. 1995).

[21] *MLB v. Salvino,* 542 F.3d 290, 334, at 340 n. 11 (2d Cir. 2008), explaining that, "Under the ancillary restraints doctrine, a challenged restraint need not be essential, but rather only 'reasonably ancillary to the legitimate cooperative aspects of the venture.' [Quoting another antitrust decision]." In this case, MLB lawyers did not make a point of appeal that baseball is completely exempt from the antitrust laws.

[22] *Clarett v. NFL,* 369 F.3d 124 (2d Cir. 2004).

[23] Although counsel arguing before the U.S. Supreme Court carefully prepare their oral arguments in scripts or notes or by memory, they also rehearse in "moot courts" comprised of colleagues who interrupt the prepared argument to pose legal and factual questions typical of the justices' known predilections in similar cases. They do so anticipating that almost all oral arguments will be peppered by questions and comments of the justices.

[24] In a rudimentary attempt to demonstrate my sabermetrics, the Official Transcript of Oral Argument contains 63 pages of 25 lines of text on each page, a total of 1575 lines. The total time elapsed was about 71 minutes. Pp. 1, 65. Justice Breyer's questions and comments total about 221 lines of text (approx. 14% of the text and time), Justice Sotomayor 128 lines (8%), Justice Stevens 69 lines (4%), Chief Justice Roberts 61 lines (4%), Justice Kennedy 52 lines (3%), Justice Ginsburg 36 lines (2%), Justice Scalia 35 lines (2%), Justice Alito 14 lines (1%), or a total of 516 lines, or about 33% of the time elapsed during the arguments. As working hypotheses, which would be difficult, if not impossible or impractical, to test from actual results in each case, one could interpret these simple statistics to indicate first and more probably true than not true, each Justices' comparative interest in the case being argued, second (probably impossible to check in the absence of public records) the probability that these same Justices were more likely to have voted for review of the decision below, and thirdly, less tenable, that they will vote for reversal or modification of the decision being reviewed. In this case, Justices Breyer, Sotomayor and Stevens and Chief Justice Roberts showed the most interest in the case on oral argument. These hypotheses have no application to Justice Thomas, who has a policy of never, or almost never, participating actively in oral arguments.

[25] Tony Mauro, *Does Justice Thomas' Silence Thwart Advocacy?*, 2/22/2010, www.law.com.

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Counsel for ANI,[26] the NFL and its member clubs and Reebok, and for the U.S. Solicitor General argued before the Court for a total of over 70 minutes.[27]

As often occurs in oral argument, Justices more inclined to favor one side will ask questions of counsel for the side they may favor that may clarify or limit the rationale of their preferred position; other Justices less inclined to favor that side may challenge counsel with hypothetical cases illustrating the limits and weaknesses of a party's position or counsel's earlier explanations. This "jousting" or "give and take" is normal in the Court and not easily discernable as "pro" or "con" a particular position. More revealing are those instances when Justices ask questions or comments more obviously pointed to persuade other justices or to rebut each others' predilections. Another, more subtle motivation is for particular justices to assert their leadership and commanding knowledge of the subject in arguing among themselves or to convince the Chief Justice to whom to assign the writing of a draft majority opinion.[28]

During counsel's argument for ANI, Justices Sotomayor, Ginsburg, Kennedy and Alito and Chief Justice Roberts strongly questioned ANI's arguments for a reversal, which would force the NFL, its clubs and Reebok to undergo a full-blown trial of ANI's antitrust claim.

One minute into ANI counsel's argument while he is discussing the Court's precedent in an antitrust case against the NCAA for collectively controlling broadcasting of college football,[29] the most junior Justice, Sonia Sotomayor, first interrupts, questioning whether that decision involved a separate "joint venture" with "the licensing of trademarks, with their quality control, et cetera . . . . Isn't that a substantial difference?" He responds cogently, echoing her own opinion in *MLB v. Salvino* in the Second Circuit, that she is raising "a point of difference that the NFL could argue in the context of . . . a rule of reason analysis . . . ." [30]

Justice Ginsburg first and then Justice Kennedy continues on this line of argument. Kennedy shifts to the point that, even though a sports league would win a "rule of reason" antitrust case dealing with the NFL's many playing rules changes, a trial on charges of "conspiracy," with treble damages, etc., could be avoided in cases of legitimate "joint action."[31]

Justice Alito, referring to an example given in ANI's brief, questions whether scheduling of sixteen regular season games per year, plus playoffs, could be attacked as antitrust violations "if one of the teams wants to play additional games . . . against a rival team where they will get more money?"[32] Alito's point is that the "single entity" concept would save the league from litigating a frivolous antitrust claim challenging a league's exclusive scheduling rules.

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[26] ANI's counsel had been hired to argue before the Supreme Court, instead of the attorney who litigated the case initially in the federal district court in Chicago and who argued the appeal in the Court of Appeals.

[27] The oral argument took place in four timed parts: first, counsel for petitioner ANI, arguing 25 minutes for reversal of the lower court judgment, so that ANI will eventually obtain full discovery and trial by jury or judge on a rule of reason inquiry on the anti-competitive purposes and effects of the NFL's collective licensing policy; second, counsel for the Solicitor General, arguing 10 minutes for a remand for an inquiry whether the NFL is a legitimate joint venture and its collective licensing policy a reasonable ancillary part of the joint venture, tracking Justice Sotomayor's opinion in *MLB v. Salvino* for the 2d Circuit; third, counsel for the NFL arguing 30 minutes in favor of affirmance of the "single entity" concept adopted by the 7th Circuit; and fourth, counsel for ANI reserved his remaining five minutes for rebuttal of opposing arguments.

[28] Only in those cases in which the Chief votes with the majority, he makes that decision; in other cases, the Justice most senior in the majority fills that role.

[29] *NCAA* v. *Board of Regents*, 468 U.S. 85 (1984) (Stevens, J., for the Court; White and Rehnquist, JJ., dissenting). Justice Stevens is the only member of that Court still sitting, but his opinion sets forth many antitrust-law considerations affecting a sports league's business operations. In addition, Judge Easterbrook of the 7th Circuit, before his appointment to the 7th Circuit argued the case for the NCAA before the Court including Justice Stevens. He authored the opinion favoring the "single-entity" concept with well-known antitrust-law views, see note 8 above, and is certainly personally familiar to Justice Stevens who is assigned as the 7th Circuit's own Circuit Justice, effectively the liaison Justice between these two courts.

[30] Oral Argument at 4-5.

[31] *Id.* at 6-7.

[32] *Id.* at 8-9.

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Justice Sotomayor chimes in with a similar hypothetical about NFL playing rules.[33] Chief Justice Roberts summarizes and elaborates further on this analysis, pointing out correctly that ANI's counsel was "beg [ging] the question" –"whether these sorts of rules and regulations are horizontal agreements between the teams or whether they are part of . . . a single entities' [*sic*] articulation of rules."[34]

This colloquy between justices of the Court and counsel is par for the course in oral argument, in which the justices seek to explore the logic and limits of counsels' arguments under various hypothetical circumstances, looking to the Court's primary function of interpreting federal statutes for a variety of pending and future legal actions. The Chief then concludes with his own view of the legal distinction between "unilateral activity [by legitimate joint ventures] under [Sherman Act] section 1" and "concerted activity" by an unlawful cartel of competitors "has consistently been the distinction between ownership integration of assets and contract integration of assets."[35]

At this point Justice Stevens, speaking for the first time, interjects a question as to a significant point of law that instigates a rejoinder from Justice Scalia. (These two Justices are currently the most senior Justices leading the two recognized wings of the Court. They actually sit immediately to the left and right of the Chief Justice from counsel's point of view.) Justice Stevens asks ANI's counsel, "Is it not part of your burden not only to argue there are multiple actors, but also that their agreement has an adverse effect on competition?" ANI's counsel answers it would normally be a necessary part of ANI's antitrust claim, but since the courts below dismissed solely on the "single entity" issue, the anticompetitive effect of the NFL's licensing pooling agreement among its clubs was not part of the issue before the Court. Justice Stevens pursues, arguing, "[B]ut it is part of your burden to say this is not a procompetitive agreement." Justice Scalia quickly rejoins it would be part of ANI's burden only if the Court disagrees with the courts below and remands to the lower courts, and ANI "would bear that burden." Justice Stevens then interrupts Justice Scalia in mid-question to play his trump card, asking what if the district court had ruled that the NFL's joint licensing agreement "was procompetitive in that it would equalize the economic strength of the teams, and therefore made them all better competitors on the playing field? . . . [A]s I understand the facts, you've – there is revenue sharing here, . . . they all share in the product of the sales of the joint product?"[36]

These comments by Justice Stevens clearly represent his thinking as to how this case could have been decided on the merits by the lower courts—that the NFL and its member clubs' policy of collectively pooling and marketing their trademarked logos and sharing revenues on an equal basis has a procompetitive effect on NFL's games and its business success and therefore has a legitimate business rationale.[37]

Justice Breyer introduces a new argument--contrary to ANI's antitrust claim against the collective licensing of NFL team logos—that it assumes ANI wants "the Patriots to sell T-shirts in competition with the Saints" and "the Red Sox to compete in selling T-shirts with the Yankees," whereas in the real world competition in sports-branded apparel was between the major sports, baseball, football and hockey, etc.[38] Justice Scalia again interrupts to bring the discussion back to "whether the lower court was wrong to dismiss your suit on the basis that this is a unitary operation? I think that was the only issue."[39] Justice Breyer parries, "I

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[33] *Id*. at 10.
[34] *Id.* at 11.
[35] *Id.* at 12. This point of antitrust law on joint ventures' activities is reflected in *Texaco v. Dagher,* 547 U.S. 1, 6 (2006) ("When 'persons who would otherwise be competitors pool their capital and share the risks of loss as well as the opportunities for profit . . . such joint ventures [are] regarded as a single firm competing with other sellers in the market.' *Arizona* v. *Maricopa County Medical Soc*, 457 U.S. 332, 356 (1982)."
[36] Oral Argument at 12-14.
[37] Justice Sotomayor previously demonstrated her sympathy with this argument in her concurring opinion in *MLB v. Savino, see* notes 3, 12, 15 & 22 above, and accompanying text.
[38] Oral Argument at 16-17.
[39] It is often difficult to predict Justice Scalia's vote by his typical jousting style with counsel and other justices. He often spars with Justices Kennedy and Breyer for political, oratorical and intellectual leadership.

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find it easier . . . to think about the case if I know what is going on. And, I'm not certain this is irrelevant, but given Justice Scalia's persuasive remark, I will withdraw my question." The transcript notes "Laughter" follows, but then Justice Kennedy resuscitates the points made by Justice Stevens and Breyer, "[W]hat we are doing is exploring the consequences of completely discarding the unitary theory."[40]

After counsel for ANI tries to recover his main argument, by restating Justice Scalia's point, "whether or not these agreements constitute concerted activity . . . between separately owned and controlled competing businesses," Justice Ginsburg intervenes, stating that ANI's argument tends to make every agreement between the NFL teams subject to an antitrust claim with costly discovery; however, if ANI's argument is incorrect that would mean that such cases could be dismissed "on the pleadings" without any further inquiry.[41]

Lest the other Justices miss the import of the NFL's "revenue-sharing" of the licensing proceeds, Justice Stevens forces ANI's counsel to admit "my understanding . . . that the revenues that the NFL entity receives are distributed to the teams in equal shares," from which concession Justice Stevens hypothesizes, "[T]his is basically a procompetitive agreement because it tends to make competition stronger on the playing field, and therefore, that's a sufficient defense under the rule of reason, and that's the end of the ball game?"[42] Justices Stevens and Sotomayor, the most senior and junior of the Justices, then gang up on counsel for ANI, Justice Stevens echoing Justice Breyer's point, ANI is "not just competing among the members of the League; you are competing in a market that includes all sports paraphernalia."[43]

The most serious questions posed to counsel for ANI, the antitrust plaintiff, come from Justices Stevens, Breyer, Ginsburg and Sotomayor and Chief Justice Roberts, who ask questions and make comments critical of ANI's contentions and seemingly favorable on the merits of NFL's ultimate case—to the effect that somehow they would prefer that the NFL win the case on the merits by summary judgment and avoiding a trial-- based on a simplified or full-blown "rule of reason" inquiry, as in the 2d Circuit's *MLB v. Savino* opinions.

Counsel for the Solicitor General as *amicus curiae* supports ANI's case for reversal of the decisions of the lower courts. He essentially argues for an intermediate rule of antitrust law, rejecting both parties' positions. The SG's preferred antitrust rule for "single entity" treatment was most succinctly stated previously in her brief:

> In adopting a restraint, the league and the teams act as a single entity only with respect to aspects of their operations that have been effectively merged, and *only when the restraint does not affect competition among the teams*, or the teams and the league, outside their merged operations. (Emphasis added.)[45]

Justice Breyer interrupts the SG's oral argument to state his preference that this be analyzed not as a "single entity," but as a "joint venture," subject to the

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[40] *Id.* at 17-18.
[41] *Id.* at 20-21.
[42] *Id.* at 24-25.
[43] *Id.* at 25-26.
[44] Brief for the United States as Amicus Curiae, *ANI v. NFL,* U.S. Sup. Ct. Dkt. No. 08-0661, dtd. Sept. 2009, at 16. (Available at http://www.abanet.org/publiced/preview/briefs/pdfs/07-08/08-1200_PetitionerAmCuUSA.pdf.)
[45] If the market in question is viewed as the market for buying the license to use NFL team-branded caps and T-shirts, as opposed to selling the actual caps and T-shirts, there actually would be active competition for such individual team brand licenses only for the brands of the more successful or popular teams (usually those in the more populated cities and geographic areas). This criterion of the SG's argument neglects the efficiency- and revenue-enhancing aspects of collectively licensing the NFL brands as a whole, saving transaction costs, reducing or spreading the risks of poor sales in some markets and varying sales in most markets, depending on the teams' and players' successes and declines. These factors make collective licensing of 31 teams' logos much more successful for the overwhelming number of NFL club owners and even for those in the larger or more popular markets, the NY Giants, Chicago Bears, etc., whose owners approved equal sharing of the proceeds of the national TV broadcasting contracts under the leadership of NFL Commissioner Pete Rozelle.

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same criteria quoted above from the SG's brief for a lawful "single entity."[46] Justice Breyer recognizes he was only arguing about "terminology," fearing that the terminology used in prior case law relating to parent and subsidiary corporations as a "single entity" under the antitrust laws was being "transferred to a place where it does . . . not belong."[47] In a colloquy with Justice Stevens, counsel effectively admits that the "exclusivity" of the license granted by the NFL to Reebok challenged by ANI was a "red herring" in this argument—that it made no difference to the NFL's contention that it be considered as a "single entity."[48]

Counsel arguing for the NFL, its member teams and Reebok starts by pointing out there was no question but that the NFL is a legitimate joint venture and therefore the NFL's business decisions are necessarily unilateral venture actions, not "concerted actions of . . . the venture's members." Justice Kennedy asks for a factual and legal clarification whether the NFL's collective licensing was part of its original formation as a joint venture and whether that would make a legal distinction. Counsel for the NFL clarifies that the record shows NFL Properties was formed in 1963 as "a single entity to produce and promote NFL Football." He cites another recent and unanimous precedent of the Court, written by Justice Thomas which "… confirmed the general principle [that] if the venture is lawfully formed, the venture's decisions about how to produce and promote its products are venture decisions, not [those] . . . of the venture members."[49]

Justice Sotomayor, continuing her intense interest and reflecting her decision in *MLB v. Savino*, asks whether "the NFL Properties or some centralized entity always exploit[ed] the trademarks of all the franchises, or was there a long period of time in which they individually franchised their products?" Counsel confirms, "[T] here was very little exploitation of intellectual property of the franchise prior to the creation of NFL Properties [in 1963]."[50]

Justice Breyer comes back to the fray, arguing with the 7th Circuit's conclusion that "[T]he NFL teams are best described as a single source of economic power when promoting NFL football through licensing," which he points out is denied by ANI. He then explains that truly "independent vendors can't get together . . . [to] fix prices, a "*per se"* violation, but "joint ventures are in the middle, we apply a rule of reason."[51] When counsel argues, "[N]one of them can produce the product of the venture on their own. No NFL club can produce . . . a single game," Justice Breyer asks, "What does the game have to do with this? I thought we were talking about T-shirts and helmets . . . ."[52] After some further banter by Justice Breyer followed by laughter, the NFL's counsel repeats, "[T]he purpose of licensing here is to *promote the product*." (Emphasis added.)[53]

At this obvious pretense, Justice Scalia bursts out: "Well, the stated purpose is to promote the game. The purpose is to make money. . . . [B]ut don't tell me there is not – absent this agreement, there would not be an independent, individual incentive for each of the teams to sell as many of its own – of its own shirts and helmets as possible." After counsel contests this statement, Justice Scalia counters, "[T]hat issue could be tried."[54] Thus, Justice Scalia appears to favor the conclusion that the courts below erred in granting the NFL summary judgment, without a trial to determine the economic purposes and effects of the collective licensing program.

Justice Sotomayor then joins in forcing the NFL's counsel to the extreme limit of his argument by, for example, hypothesizing an NFL joint program among

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[46] *Id.* at 28-29.
[47] *Id.* at 31.
48 *Id.* at 32-33. Chief Justice Roberts and Justice Sotomayor continued to press the SG's deputy on their proposed rule without clarification of the issue as applied to *ANI v. NFL*. *Id.* at 33.
[49] Oral Argument at 38-40.
[50] *Id.* at 41-42.
[51] *Id.* at 42.
[52] *Id.* at 43-44, referring to *Texaco Inc.* v. *Dagher*, 547 U.S. 1 (2006). Justice Alito abstained, having taken office after the oral argument.
[53] Oral Argument at 44.
[54] *Id.* at 45.

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members to hire secretaries at the same $1,000-a-year salary as a "joint venture," and concluding, "[Y]ou are seeking through this ruling what you haven't gotten from Congress: An absolute bar to an antitrust claim."[55] In response, NFL's counsel attempts to summarize, "[A]s long as the NFL clubs . . . compete as a unit in the entertainment marketplace . . . they should be deemed a single entity and not subject to Section 1 . . ."[56]

Justice Breyer, echoing points made by others, questions whether counsel was weighing the economic pros and cons of the NFL's collective licensing versus those of permitting individual team licensing. Going back to the record in the district court, he questions whether "I will discover that there is lots of information showing economic benefit to this venture of promoting together . . . so it's clear [without needing a trial] that this is a reasonable agreement."[57] He seems to be arguing for affirmance of the dismissal of ANI's antitrust claim, but on undisputed facts and legal grounds apart from the disputed "single entity" contest.

Although NFL counsel expressly disagrees with Justice Breyer on this alternative argument for dismissing ANI's claim, the Justice goes on at length to explain, "[T]here is . . . a joint venture here to play football, but there isn't a joint venture to build houses . . . this is such a different activity, the playing of football versus the promotion of a logo, that we ought to go and look under a rule of reason as to whether a joint venture in promoting a logo is justified in terms of competition's harms and economic benefits."[58] Justice Stevens then rejoins on this same point and Chief Justice Roberts questions counsel further whether there is a factual issue as to the NFL clubs' economic purpose in pursuing a collective licensing program.[59] Justice Sotomayor advocates the same point as Justice Breyer, "[W]hat's the need to . . . label it [a] single entity, as opposed to label it what it is, reasonable [under the rule of reason]?" thus silently referring to her concurring opinion for baseball in *MLB v. Savino*.[60]

Counsel for the NFL then brings out in the open what this debate is about: "The answer, Your Honor, is inherent in the rule of reason. In the modern era, defending a claim like this on the merits involves an investment of tens of millions of dollars, thousands of hours of executive time, hours and hours of court time. In the [*MLB v.*] *Salvino* case, there were three years of discovery spent on rule of reason issues…."[61] Justice Scalia attempts to see if there were any limits to the NFL's argument—whether it would justify the NFL clubs "can agree to fix the price at which their . . . franchises will be sold, by concerted agreement, because, after all, they are worthless apart from the NFL?" NFL counsel directly takes the bait, "Yes, I assume they could agree because they are not independent sources of economic power." Justice Scalia counters, "I thought I was reducing it to the absurd."[62]

After laughter, NFL counsel goes on to complete his argument for the "single entity" concept by analogizing the NFL's scheme to that of his law partnership, Covington & Burling, in collectively agreeing on its partners' billing rates.[63]

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[55] *Id.* at 47.
[56] *Id.* at 48-49.
[57] *Id.* at 49.
[58] *Id.* at 50-51.
[59] *Id.* at 53-57.
[60] *Id.* at 57.
[61] *Id.* at 57-58. The author of this article refers to his participation in an antitrust case under Sherman Act § 1 in the computer industry, *Data General Corp. v. Digidyne Corp.*, 473 U.S. 908 (1985) (Justices White and Blackmun dissenting), *denying cert. from* 734 F.2d 1336 (9th Cir. 1984), *rev'g In re Data General Antitrust Litigation,* 529 F. Supp. 801 (N.D. Cal. 1981) (granting judgment for Defendant notwithstanding jury verdict for plaintiffs), in which the plaintiffs claimed their attorneys' fees alone up to the appeal cost over $50 million by 1984 and their eventual settlement barely exceeded that amount. Twenty years after this case was settled, the Court (Stevens, J.) overruled the prime legal theorem of this *Data General* case in Illinois Tool Works v. Independent Ink, 547 U.S. 28 (2006).
[62] Oral Argument at 61.
[63] *Id.* at 62-63. This argument is reminiscent of Justice Holmes's point in the 1922 baseball decision that a lawyer sent by his firm to argue a case or a lecturer sent out of state by the Chautauqua lecture bureau to give a speech is not engaged in "interstate commerce." *Federal Baseball Club* v. *National League*, 259 U.S. 200, 209 (1922).

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The Chief Justice asks for ANI counsel's response to the NFL counsel's law firm hypothetical. He answers by reference to Justice Thomas's 2006 opinion of the Court in *Texaco v. Dagher,*[64] "[I] f you had a wholly integrated joint venture, . . . a complete pooling of relevant capital, a complete sharing of profits and losses and an enforceable non-compete agreement, in those circumstances the . . . owners of that joint venture . . . were like the share holders in a publicly held company, because their only interest at that point is in their investment. . . . And at that point they could be treated as one."[65] This echoes his earlier response to the Chief Justice that a legitimate joint venture created to avoid antitrust scrutiny includes "ownership integration," "not contract integration," of revenue-producing assets.[66]

CONCLUSIONS AND SPECULATION

It is probable that the usual "conservative/ liberal" split among the nine Supreme Court justices (now 5-to-4) will not occur in this case. It may happen that the justices will, as sometimes occurs in these "sports law" cases, take idiosyncratic positions (which are often influenced by their personal preferences as sports fans divorced from the judicial politics prevalent in the Court). Judges, like we ourselves, become "sports fanatics" on our Moms' and Daddies' knees so that legal and economic arguments involving their beloved teams tend to fly out the window when a Ball Game is in play.

Based on the 25-year history of opinions written by the current justices and their repeated and emphatic comments during the oral arguments, it is probable that the Court will reverse, vacate or modify the judgment of the 7th Circuit and District Court in dismissing ANI's antitrust claim on an erroneously applied "single entity" concept as applied to the NFL and its member clubs. Although the exact direction of the Court's opinion and order is "up for grabs," it may either (1) vacate the judgment and remand the case to the 7th Circuit to review the record to determine whether there are sufficient facts to re-grant summary judgment for the NFL based on the alternative grounds recommended by the Solicitor General's brief and as ruled in *MLB v. Savino, namely,* that collective licensing of team logos by a legitimately organized sports league is a reasonable ancillary restraint of the "joint venture"; (2) affirm the judgment of dismissal and grant such a judgment on its own review of the whole record in the case, as suggested by Justice Breyer; or (3) order that the case be further remanded to the District Court for further discovery of material issues on the "reasonableness" of the NFL's policy in light of the fact that discovery and argument of these issues was aborted by order of the District Court limiting discovery to evidence bearing on the "single entity" concept.

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[64] Oral Argument at 64-65.
[65] *Id.* at 12.
[66] *Id.* at 24-25. See text accompanying note 42 above.

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The vote will probably be 7-to-2 or 6-to-3 in favor of that decision, with Justices Kennedy, Breyer or possibly Sotomayor or Chief Justice Roberts writing the Court's opinion. The dissenters may possibly be Justices Thomas or Alito, opining that the 7th Circuit's "single entity" rationale appropriately compelled rejection of ANI's antitrust claim.

From the NFL's point of view, they have little to lose from an adverse Supreme Court decision, except the additional time and expense of further proceedings. None of the Justices ever intimated on oral argument that the NFL and its clubs should lose the case on the merits to ANI. At worst, a trial could be required to try factual issues.

Justice Stevens's view may eventually be tested in this case on remand whether procompetitive and efficiency-and-revenue-enhancing purposes and effects of collective licensing with revenue-sharing actually prevail over the anticompetitive purposes and effects of preventing thirty-two separate licensing competitions conducted by the different clubs and likely produce a more competitive game on the playing field, or as Justice Stevens queried, "[T]hat's the end of the ball game?"

In answer to the question posed by the title of this article, Major League Baseball's traditional antitrust defense against the challenge to collective licensing of its club's logos will win over the NFL's preferred defense based on a concept improperly applied to its collective logo-licensing program.

Arbitration Wrap-up–2010 (Continued from page 1)

similarly positioned players) or Type B player (the second 20% of similarly positioned players). Free agent Type A players who decline arbitration can net their former club two draft picks, a compensatory pick at the end of the first round and a high draft pick from the team player's new organization. Free agent Type B players net their former club only a compensatory pick.

The process works similarly for both sets of players and in both cases requires the consent of both parties. If a pending free agent declines arbitration, he enters the free agent market. Of the 23 free agents who were offered arbitration, only three accepted. Those three, Colorado's Rafael Betancourt, Minnesota's Carl Pavano, and Atlanta's Rafael Soriano, all eventually avoided an arbitration hearing by agreeing to a contract with their club.

The arbitration process is designed to promote a settlement at a salary in line with that of other players with comparable performance and service time. Players eligible for arbitration for the first time receive a large increase in salary since they have no leverage in their pre-arbitration years when their salaries are under control of the clubs. Players who have been through the process before also generally receive salary increases depending on their performance in the preceding year.

Of the 164 team-controlled players, the club agreed to pursue the arbitration process in 125 cases. The remaining 39 players were not offered a contract by their former club and immediately became free agents. While a number of factors influence a team's decision to non-tender a player, the most important factor, especially in these uncertain economic times, is the salary increases which arbitration often affords. In-

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Arbitration Wrap-Up--2010 *(Continued from page 14)*

cluded amongst these "non-tenders" were:

- Chien Ming Wang, a two time 19 game winner for the Yankees;
- Kelly Johnson, who started over 300 games for the Braves in the last 3 years;
- Garrett Atkins, who hit .291 and averaged just under 20 homers and 100 RBI's in his five full seasons with the Rockies; and
- Jack Cust, who led the AL in walks and was 6th in homers in 2008.

Those players were among the 14 non-tendered players who were able to sign a major league deal for 2010. Twelve of those had been through the arbitration process before, but only one player, Matt Capps, was able to negotiate a contract with a salary increase of more than $300k. Additionally, none of the 14 players was able to negotiate a multi-year contract. The chart below shows the 14 players with their current and former teams and salaries:

Several significant names appeared on the list of players who were only able to find a minor league deal for 2010, including a former All Star (Mike MacDougall), three former first round draft picks (MacDougall, Adam Miller and Lance Broadway) and three pitchers with at least 50 big league starts (Tim Redding, 144; Anthony Reyes, 52; and Seth McClung, 51).

The 125 players who were tendered a contract by their club and the three pending free agents who accepted arbitration formally entered the arbitration process. During this process, the player is considered under contract and negotiations continue between the player and club. Players that settle prior to hearings have the option to sign multi-year deals and can include performance bonuses based on playing time and awards bonuses in their contracts.

The next formal step in the arbitration process occurred on January 20, when the players and clubs exchanged proposed salary figures for the 2010 season. Before that point, 82 of the 128 players had agreed to contracts with their clubs.

After exchanging salary figures, the players and clubs proceed to an arbitration hearing during which a panel of three arbitrators decide whether the player's salary will be the figure offered by the player or by the club. The arbitrators are not permitted to elect a compromise amount. Thirty-eight of the 46 players who reached this stage of the process agreed to contract terms before an arbitration hear-

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Player	'09 Team	'09 Salary	'10 Team	'10 Salary	% Diff.
Anderson, Brian	Red Sox	$440k*	Royals	$700k	59%
Atkins, Garrett	Rockies	$7.05 mil.	Orioles	$4.5 mil.	-36%
Buck, John	Royals	$2.9 mil.	Blue Jays	$2 mil.	-31%
Capps, Matt	Pirates	$2.3 mil.	Nationals	$3.5 mil.	52%
Church, Ryan	Braves	$2.8 mil.	Pirates	$1.5 mil.	-46%
Condrey, Clay	Phillies	$650 k	Twins	$900k	38%
Cust, Jack	A's	$2.8 mil.	A's	$2.65 mil.	-5%
Garko, Ryan	Giants	$446k[1]	Giants	$550k	23%
Gomes, Jonny	Reds	$600k[2]	Reds	$800k	33%
Gross, Gabe	Rays	$1.255 mil.	A's	$750k	-40%
Johnson, Kelly	Braves	$2.825 mil.	D'backs	$2.35 mil.	-13%
Langerhans, Ryan	Mariners	$505k	Mariners	$525k	4%
Olsen, Scott	Nationals	$2.5 mil.	Nationals	$1 mil.	-60%
Wang, Chien Ming	Yankees	$5.0 mil.	Nationals	$2 mil.	-60%

[1] 2010 was the first time Anderson and Garko were eligible for arbitration, thus their 2009 salaries were not affected by their market value.

[2] Gomes was also non-tendered in 2009 after making $1.275 million in 2008.

Arbitration Wrap-Up--2010 (Continued from page 15)

ing. Possibly the easiest post-salary-exchange negotiation occurred between pitcher Matt Garza and the Tampa Bay Rays, who each proposed an identical salary figure of $3.35 million.

relatively quiet arbitration seasons suggesting that the system is effectively achieving benefits for both sides. Players who lack the service time to qualify for free agency receive salaries that are influenced by their market value and clubs are able to retain the rights to these players through 6 years of major league service before they become eligible for free agency.

Outcome of Arbitrations Heard

Player	Club	Player Filing, $k	Club Filing, $k	Winner
Brian Bruney	WSH	1,850	1,500	Club
Sean Burnett	WSH	925	775	Club
Corey Hart	MIL	4,800	4,150	Player
Jeff Mathis	LAA	1,300	700	Player
Wandy Rodriguez	HOU	7,000	5,000	Club
Cody Ross	FLA	4,450	4,200	Player
Ryan Theriot	CHN	3,400	2,600	Club
B.J. Upton	TB	3,300	3,000	Club

Of the 120 players who were able to agree to a contract, 101 negotiated one year contracts. The other 19 arranged for multi-year contracts.

The salaries of the remaining eight players were determined by arbitration hearings. Comparatively, only three arbitration hearings were held in 2009 and the last time more than eight hearings were held was in 2001. This year, the Clubs won 5 of the 8 hearings, improving their overall record to 285-210 since the inception of the arbitration process. The results of the eight hearings are reflected in the table below:

The big winners in the arbitration process this year were mostly pitchers; Tim Lincecum, Justin Verlander, Felix Hernandez, Jonathan Papelbon, Joe Blanton and Huston Street all landed big contracts without going before a panel of arbitrators. With the exception of Jonathan Papelbon, each player signed a multi-year contract, and generally, the 2010 salary was very near the team's proposed salary figure.

Of the cases that were heard, the biggest involved pitcher, Wandy Rodriguez of Houston who filed at $7,000K versus $5,000K filed by the club. The arbitrators sided with the club.

The 2010 off season was a continuation of a series of

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the nation's largest African-American newspaper with a weekly circulation of about 300,000 at its peak in the 1940s (Wolseley). The combined circulation of some of the other large and prominent papers – the Chicago Defender, Baltimore Afro-American and Pittsburgh Courier and their subsidiary publications – was 661,000 during World War II, but 288,000 by 1963 (Lanctot).

The second group was the socialist press. The Daily Worker began its campaign for baseball integration in the 1930s with sports editor Lester Rodney, and later Bill Mardo (Silber). There was a brief golden age before the suspended publication in 1958, although circulation never topped 36,000. In reality, the Cold War and McCarthyism effectively diminished any influence the Daily Worker had in boardrooms or clubrooms in the United States. Indeed, Branch Rickey of the Dodgers hated the mere thought of a Communist newspaper covering his team.

The white mainstream press sometimes pushed for equal rights, but usually it followed the lead of the African-American and the socialist press. When it did crusade, coverage mostly broke down along five main points (in no particular order):

1. The case for continued integration in baseball as some major league teams and minor leagues ignored the issue.
2. The fight for equal pay and opportunity for players at all positions on a baseball diamond.
3. The call to get non-whites into coaching, managing and executive roles within major and minor league baseball.
4. Equal treatment for non-white fans and the press.
5. Finding a role for the Negro Leagues within mainstream baseball.

EARLY YEARS

In order to understand how that model of coverage on a social and business issue evolved, its beginnings must be examined.

When Pittsburgh Crawfords owner Gus Greenlee founded the Negro National League in 1933, it was the one legitimate business venture that served as a counterpoint to his bootlegging operations in the 1920s and his numbers racket in the '30s. Some of the other owners in the league had equally shady business pasts. Greenlee knew that in the sports and entertainment world, innovation is a key to success. And Greenlee was an innovator. He came up with the idea to stage an East-West All-Star Game every summer. Because of the financial need to barnstorm for part of the season – thus skewing schedules, records and statistics – the East-West game was more important socially and financially than any postseason series.

But despite Greenlee's business smarts, the Negro Leagues rarely made any serious money. The reasons are many and varied:

For one thing, the core fan base of urban blacks suffered greatly in the Depression. When money was tight, even an inexpensive ticket to a ball game was a luxury.

Also, most teams had to rent major league ballparks. Rent was steep and the teams only got a share of the revenue from the concession stands.

Team owners did not always see eye-to-eye on league business. In fact, historian Neil Lanctot, in his book, *Negro League Baseball: The Rise and Ruin of a Black Institution,* criticized the leagues for having "remarkably shoddy administration" and never setting up a strong, independent commissioner who could oversee the business side of things.

Consequently, there were no rules truly binding a player to any team. In fact, not all players had contracts and most were poorly paid and endured long bus trips of sometimes hundreds of miles. The best players eventually tired of such a life. For example, Satchel Paige spent part of his long career playing in the Dominican Republic for $2,500 a season. He said he would rather "go to South America and live in the jungle … than go back to the league and play like I did for 10 years," according to a July 11, 2004, article in the Philadelphia Inquirer by Joseph S. Kennedy. (In 1938, Effa Manley tried to sign him for her team, the Newark Eagles, but Paige stayed in Latin America, according to an article by Wil Haygood in the April 16, 2006, Washington Post.)

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Teams did not always keep the public informed. Even casual daily contact with the press could have helped inspire a fan base and consistently draw crowds. League offices weren't much help because teams didn't regularly report stats and other information, thus frustrating sportswriters and the papers they worked for, according to Lanctot.

And once Jackie Robinson signed with the Dodgers in late 1945, it was the death-knell for the Negro Leagues as Major League Baseball owners lured the best players away from struggling black teams with little, if any, compensation to the teams.
Lanctot says Rickey would not compensate the Kansas City Monarchs for Robinson, the Baltimore Elite Giants for Roy Campanella, or the Newark Eagles for Don Newcombe. He did, however, pay the Philadelphia Stars $1,000 for Roy Partlow and the Memphis Red Sox $15,000 for pitcher Dan Bankhead. Cleveland's Bill Veeck paid the Newark Eagles $1,000 for Larry Doby. The Giants paid Newark $5,000 for Irvin's contract. But instances of compensation were rare, or measly.

"Not surprisingly black baseball failed to develop a coherent plan to prepare adequately for the looming prospect of integration and was caught off guard by Branch Rickey's 1945 signing of Jackie Robinson . . . . The decline of black baseball in the post-Robinson era was inevitable," Lanctot wrote.

Despite all that, attendance picked up during World War II since defense industry jobs meant more income, and also for a brief period in the postwar economic readjustment. Tom Weir wrote in an April 16, 1997, USA Today article that in the 1940s, Negro Leagues baseball was the third-biggest black-owned industry in the country, only trailing hair products companies and an insurance firm. Everything seemed to peak at the 1944 East-West All-Star game, played before a record crowd of 46,000+ at Chicago's Comiskey Park. That was also the period (1942-46) when the Kansas City Monarchs made about $260,000 because of increased attendance.

A brief snapshot of Monte Irvin's time in the Negro Leagues also serves as an example of the roller coaster ride of poor-to-riches-to-bust: "When I first joined the team, [in 1937] I was making $125 a month," he said in Haygood's article. The team he was referring to was the Newark Eagles, owned by Abe and Effa Manley; Abe, a numbers racketeer, was at one time the treasurer of the Negro Leagues and his wife, Effa, ran the Eagles. "In 1942 I told Mrs. Manley I wanted to get married and wanted a $25 a month raise. She said she couldn't do it." So Irvin jumped to a team in Mexico and played there before being drafted into the Army.

But when the war ended and ballplayers came home, Effa Manley gave raises. Irvin returned to the Eagles and made $600 a month. She even bought the team an air-conditioned bus, driven by a man named Edison Thomas, according to Haygood's Washington Post article. At the time, box seats inside Newark's Ruppert Stadium were $1.25, other seats cost 75 cents.
"We were drawing good crowds after the war," Haygood quotes Irvin as saying. "People were starved for good baseball."

Despite the flush times, the metaphoric "going out of business" sign was always nearby. In fact, all the leagues eventually went out of business:

- The National Colored Base Ball League (the first of the Negro Leagues) lasted two weeks in 1887.
- The Negro National League lasted from 1920 to 1931, but the league's life was in jeopardy in 1930 when founder Rube Foster died and the Kansas City Monarchs withdrew to become an independent team.
- The Eastern Colored League lasted from 1923 to 1928.
- The American Negro League played one season in 1928.
- Gus Greenlee organized his Negro National League in 1933; most of the teams were in the East.
- The Negro American League was formed in 1937, with most teams in the South and Midwest.
- In 1948, the NNL merged with the NAL, but that disbanded in 1963.

After African Americans permanently gained entry into the majors, the various Negro Leagues eventually came to be seen as symbols of Jim Crow. Even so, the demise of the leagues meant the loss of hundreds of jobs and business in the cities with teams in the leagues.

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INTEGRATION

It is important to understand that the Negro Leagues existed both because of the intransigence of white team owners and players, and because of the interpretation of the Supreme Court's 1896 ruling in Plessy v. Ferguson, which upheld Louisiana's "separate but equal" statutes. Michael Klarman, in his *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality*, argues that the Plessy ruling showed that both white northerners and white southerners were apathetic or hostile to equal rights (Gillman, 2004).

But those attitudes eventually, glacially changed. The question is why. Well, what must be taken into account is how baseball mirrored the times – from the 19th century when Jim Crow became the law of the land and was backed by all the powers of the state, to the push for greater civil rights that coincided with urbanization and industrialization of the New Deal in the 1940s and into the Great Society of the 1960s. By the 1950s and '60s the South was under increased media attention with spring training visits by more and more integrated teams, so the worst excesses of Jim Crow could not be glossed over by a sympathetic press (Klarman, 2004, p. 188). When Southern police literally turned fire hoses and dogs loose on African-American protesters, which was broadcast nationally, it partially transformed some racial opinions and this, in turn, led to the passage of the Civil Rights Act of 1964.

In other words, what was business as usual in the 19th century was becoming bad business in the 20th century. Yet some organizations and leagues tried to bide their time in hopes that the fervor for equal rights would bypass their corner of the world. And baseball was originally prepared to let them get away with it.

Between July 8 and Aug. 6, 1946, baseball owners and execs held a series of six meetings designed to look at the business of the game and the stirrings of players' sentiments toward unionization. A steering committee chaired by New York Yankees exec Larry MacPhail, and composed of owners Tom Yawkey of the Boston Red Sox, Sam Breadon of the St. Louis Cardinals and Phillip Wrigley of the Chicago Cubs, issued a 15-page report that was subsequently almost destroyed. Only a few copies survived of *The Report of the Major League Steering Committee for Submission to the National and American Leagues at Their Meeting in Chicago*, according to a June 18, 1997, Philadelphia Inquirer article by Frank Fitzpatrick. That report was characterized in Fitzpatrick's article as "the last official racist statement from organized baseball."

MacPhail devoted 13 paragraphs to what he called "The Race Question." Historians have been blunt in interpreting what he wrote: "The obstructionist MacPhail saw it as a means to forestall desegregation," Jules Tygiel once said.

But MacPhail at the time saw the report as a chance to explain why baseball was discriminatory, according to Fitzpatrick. Among the points MacPhail used to argue to keep baseball segregated:

1.) Troublemakers outside mainstream public opinion sought to use the issue for their own advantages. They were "political and social-minded drum-beaters [who] single out professional baseball for attack because it offers a good publicity medium."

2.) Black fans at major league games would drive away white fans, ". . . the preponderance of Negro attendance in parks such as Yankee Stadium, the Polo Grounds and Comiskey Park could conceivably threaten the value of Major League franchises."

3.) Segregation would destroy the Negro Leagues, "Baseball . . . has grown and prospered over a period of many years on the basis of separate leagues. . . . The Negro League will eventually fold up – the investments of their club owners will be wiped out – and a lot of professional Negro players will lose their job."

MacPhail's report didn't surface until 1951, when a House subcommittee investigating baseball's reserve clause heard about it. Fitzpatrick said that MacPhail later testified that he and his fellow committee members were unanimous in supporting it.

"Signing a few Negro players for the major leagues would be a gesture," as Fitzpatrick quotes MacPhail. "But it would contribute little or nothing toward a solution to the real problem."

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'The problem' Evolves

The late, great tennis pro Arthur Ashe wrote a series of books about African American athletes, and he characterized the years from 1947 to 1953 as years of token integration. In baseball some teams only slowly added black players to lineups while other teams and whole leagues ignored players of color. Although most of the press focus was on Jackie Robinson in Brooklyn, Larry Doby also broke into the major leagues with the Cleveland Indians in the summer of 1947, a few months after Robinson. Robinson spent 10 years in the majors and Doby 13, but another pioneer from 1947, Henry Thompson, who played with the American League's St. Louis Browns, lasted just 27 games. His time in the big leagues was typical for many African-American players who would only be given a token shot, according to Ashe. (Thompson later became the first African-American player with the New York Giants in 1949.)

By 1950 the situation had not changed much. In an April 1951 article in Baseball Magazine, Dan Daniel said that there were only nine black players in the majors during the 1950 season.

Time magazine reported in its May 14, 1951, edition that there were 14 black players in the major leagues and that the "color line" was still firmly in place since the "southern-most cities (Washington, Cincinnati, St. Louis), and several clubs far above the Mason-Dixon line – notably the Boston Red Sox and New York Yankees – still have a tacit exclusion policy."

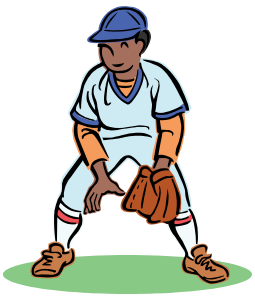
It took almost 14 years (starting with Robinson's signing with the Dodgers in late 1945) for the major leagues to be fully integrated. In July 1959, infielder Elijah "Pumpsie" Green made his big league debut with the Boston Red Sox, making Boston the last of the then 16 major league teams to sign a black player. Green lasted 50 games that season, but an unbylined article in the June 1959 Ebony magazine noted that he was one of 56 "Negro players" in the big leagues that season, 42 in the National League and 14 in the American League. If Ebony was celebrating, Ashe had the convenience of history to note the facts:

> … and still in 1959, there was even an unwritten limit on the number of black players on a team roster, as well as on the field at any given time. If an owner thought his white fans might object to his fielding too many blacks, he would play it safe for he had too much to lose (Ashe).

For example, Branch Rickey said the Dodgers sent outfielder Sam Jethroe to the Boston Braves because management felt that a fifth black player on the team in 1950 could hurt club morale and cut into gate receipts (Heaphy).

On Jan. 21, 1954, Dick Young wrote in the Sporting News that having too many blacks on a team was not good business:

> Suppose you own a ball club and it represents $3,000,000. Everything you do in connection with the club must be done with an eye toward protecting your investment … [playing too many blacks] would be taking a chance – and no man takes a chance with $3,000,000 if he doesn't have to (Tygiel).



Young wrote that five blacks on a team of 25 was about the right mixture. However, in an article in the Feb. 23, 1955, Sporting News he wrote that the Dodgers that year projected that eight black players could make the roster. "I honestly don't believe baseball is ready for that step right now," he wrote (Tygiel; Heaphy).

Life in baseball wasn't any better for the African-American fans or press. Sam Lacy of the Baltimore Afro-American had what he termed "the Jackie Robinson beat" throughout Robinson's career. He wrote that spring training down South was hard, and so was covering games in the Southern cities – Washington, Cincinnati, St. Louis and Baltimore (the St. Louis Browns had moved to Baltimore for the 1954 season) – which still had segregated hotels and restaurants. The Jim Crow pattern for players and sportswriters remained in effect partly through the 1960s. In order to try to do something about it, Branch Rickey leased the former U.S. Naval Air Station in Vero Beach, Fla., in 1948 so that teammates could have equal accommodations. But the Dodgers had to acquiesce to local custom on segregating fans of different races during spring training games. Lacy wrote about one such game in his column on April 10, 1948:

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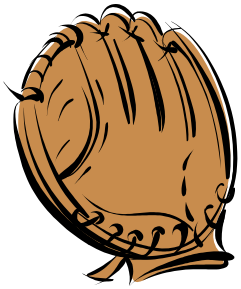
> Even native Floridians, hardened to the indignities of Jim Crowism, shun Vero Beach as "a good place to be from – far away from." … Vero Beach police pressed their obnoxious presence on "Dodgertown" for the two-game series between Brooklyn and the Montreal Royals last week. They had nothing to do, nobody seemed to want them around; and, with nothing to occupy them, they might have enjoyed the games. But they didn't – they busied themselves herding the colored fans into a roped-off area down the left field line, sweating, cussing and fuming in the process, instead of watching the game and letting others – both colored and white – do the same (Reisler).

African-American fans endured indignities, even though owners were quick to take their money. This is from a Lacy column on April 2, 1949, about a spring training game in Haines City, Fla:



> This town's colored fans are being admitted to spring training exhibition games for the first time in history … In previous years when the [minor league] Baltimore Orioles – and before them, the Kansas City Blues – trained here, only white fans were admitted to the park … When they turned out for the first games played by the Newark Bears, Yale Field workmen had to hurriedly construct a makeshift "colored" stand … This reporter, looking for the "colored restroom," was directed to a tree about 35 yards off from where the right field foul line ended (Reisler).

These indignities didn't just happen in the South in the spring. Prejudice knows no boundaries, nor does it follow a season. For example, a Lacy column from April 1, 1950, talks about sleeping and eating accommodations in big league cities during the summers:

> In Cincinnati, while the Netherlands-Plaza accepts the whole group, it is "suggested" that the colored members of the party stay out of the dining room. A special arrangement is made whereby their meals are served in their rooms.
> The Dodgers' hotel in St. Louis is the Chase. On arrival in that city, the white players take cabs in one direction and the colored in another (Reisler).

What Lacy means is the white players were to the air-conditioned Chase, while the black players were to black hotels or boarding homes. In January 1960, when Wendell Smith was writing for The Chicago American, he started a campaign to halt separate housing of black and white players. He wrote a series of columns and articles pointing out that black players resented the humiliations and indignities of segregation. He also wrote to all of the major league clubs protesting the practice. Soon, the San Juan Star joined the crusade and suggested that baseball move spring training games to Puerto Rico, California and Hawaii. As a result, Dr. Ralph Wimbush, head of the St. Petersburg, Fla., NAACP said he would no longer allow clubs to send black players to his home. From now on, he said, all players should be housed together in the same hotels. On Feb. 2, 1961, the New York Yankees announced that all players would be housed together. Soon, other clubs followed: the Chicago Cubs stayed at the Maricopa Inn in Mesa, Ariz.; the San Francisco Giants in the Hotel Adams in Phoenix; and the Cleveland Indians in the Santa Rita Hotel in Tucson. The editors of The Chicago American nominated Smith for the Pulitzer Prize. Although Smith didn't win, A.S. (Doc) Young, writing in the June 1969 issue of Ebony, said "Smith … had the satisfaction of knowing that he had played another key role in the integration of baseball operations" (Young).

If accommodations were shifting toward equality, salaries were not. An example is the concept of "centrality," or "stacking." According to a study published in a 1970 sports sociology journal, African Americans were usually found in peripheral positions. Infield positions were considered central because there was a high degree of social interaction with other players; the outfield was seen as peripheral because there wasn't as much interaction with others. Researchers John Loy and Joseph Elvogue studied the race and playing position of all major leaguers who had been in at least 50 games during the 1967 season. They found that black players were most often found in the outfield (36 of 74 total outfielders were black), but were rarely in the infield (only 19 of 94 infielders and catchers).

Loy and Elvogue said that meant coaches assigned beginning players to a position based on race. A player's position generally relates to what he is paid, and a December 1970 report by Anthony Pascal and

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Leonard A. Rapping for the Rand Corporation said "no black player before 1959 received a signing bonus of $20,000 or more, while twenty-six white players received such sums in the same time period ... from 1959 through 1961, forty-three white players received bonuses in excess of $20,000 while only three blacks received as much." (Ashe).

"Stacking" and its surrounding myths of black inferiority likely also contributed to the dearth of African Americans in management positions in baseball. An April 9, 1987, USA Today story said that only 17 of 879 top administrative positions in the major leagues were occupied by African Americans. Terry Jones, in an article in The Black Scholar in 1987, said the baseball old boys club shunned African-American players who had paid their dues and who should have been eligible for management jobs once their playing days were done. Jones says the bosses justify the exclusion by clinging to myths that blacks are shiftless, lazy or just plain dumb and can't handle front office jobs.
Paradoxically, the number of African-American players has also dropped. Proportionally, about one out of every six players in the major leagues is an American-born black player, down from one out of every four in the 1960s. Also, by 1987, surveys said that only about 7 percent of the fans at ballparks were African American.

An April 15, 2008, story on espn.com said that the major leagues were working harder at presented a diversified face to the world and trying to draw interest among more fans by better hiring practices. MLB received an A- for racial hiring from Richard Lapchick, director of the University of Central Florida's Institute for Diversity and Ethics in Sports; it received a C+ for gender hiring. Its overall grade remained a B. Lapchick said 28 percent of employees at baseball's central offices were nonwhite, including 20 percent among senior executives. Women were 42 percent of employees, but 26 percent of the senior executives.

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to the presence of Albert Pujols. But Albert Pujols was a Cardinal in 2009 because prior to the 2004 season Walt Jocketty signed him to a seven-year contract. Jocketty may have been the GM in Cincinnati in 2009, but his residual impact on the Cardinal roster was the principal reason why St. Louis reached post-season play.

In short, the GM Rating System isn't one rating but three:

1. It is a short-term rating: the impact on team performance of all of a GM's moves from the end of the previous season to the end of the season in question.
2. It is also a long-term rating: the impact on team performance of moves made by the GM prior to the end of the previous season.
3. It is a residual rating: the impact of moves made by prior general managers on team performance.

You can validly focus on any of those aspects individually, but you cannot amalgamate them into a single number because they measure wholly different things. It is a true statement, for instance, that Ned Colletti's short-term rating in 2009 was 9.5, and his long-term rating was 6.0. But it does not follow, then, that he can be given an overall rating expressed as 15.5. That would be equivalent to asserting that an athlete's 10.0 in the 100-yard dash and 4:00 in the mile translated to an overall speed of 4:10.

Forced to pick one rating, I prefer to look at short-term figures because for the most part I think fans expect things to happen now as opposed to some great come and get it point in the future. That's especially true at big league ticket prices. So in this essay I'm focusing on short-term scores. (If you'd like to get the long-term ratings for 2009 or any previous season, message me and I'll be happy to send them along.)

Structurally, short-term and long-term ratings are identical. The difference is that they measure decisions made during different time periods. Each rating is a composite of the BFWs and PWs (as calculated by Pete Palmer) of all players involved in transactions during the time period outlined above. This produces a number approximating the number of games in the standings that each GM's moves either improved or hampered their club.

GM RATING LEADERS SINCE 1977

1977	Cedric Tallis	NYY	16.3
1978	Al Campanis	LA	15.0
1979	Harding Peterson	Pit	15.9
1980	Gene Michael	NYY	9.5
1981	Roland Hemond	CWS	12.3
1982	Buzzy Bavasi	Cal	11.8
1983	Paul Owens	Phi	10.6
1984	Joe McDonald	Stl	7.7
1985	Clyde King	NYY	18.6
1986	Frank Cashen	NYM	9.0
1987	Bill Lajoie	Det	12.2
1988	Jack McKeon	SD	6.9
1989	Lee Thomas	Phi	10.0
1990	Dave Dombrowski	Mtl	6.8
1991	Andy McPhail	Min	9.9
1992	Gene Michael	NYY	10.8
1993	John Schuerholz	Atl	18.8
1994	Roland Hemond	Bal	9.0
1995	Dan Duquette	Bos	18.7
1996	Kevin Towers	SD	17.2
1997	John Schuerholz	Atl	14.4
1998	John Schuerholz	Atl	19.9
1999	Joe Garagiola Jr.	Ari	12.3
2000	Walt Jocketty	Stl	19.4
2001	Walt Jocketty	Stl	12.0
2002	Brian Sabean	SF	17.2
2003	Pat Gillick	Sea	10.1
2004	Mike Flanagan	Bal	16.1
2005	Terry Ryan	Min	19.9
2006	Ned Colletti	LA	11.1
2007	John Schuerholz	Atl	9.8
2008	Kenny Williams	CWS	11.4
2009	Ruben Amaro	Phi	10.6

In each case, the rating has five components. The first component involves players acquired in transactions with other teams. These are typically trades, waivers or straight sales. The second component involves players leaving the team in transactions involving other teams. The third component involves players obtained in direct dealing: that is, players either signed as a free agent or re-signed. The latter could include re-signed players who otherwise would have been free-agent eligible as well as those signed to multi-year contracts prior to free agent eligibility. The fourth component involves players lost to free agency or released. The fifth component involves players produced by the team's farm system who had fewer than

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100 plate appearances or fewer than 50 innings pitched in all prior seasons.

Although the GM Rating System often tends to reflect a ballclub's position in the standings, that is not its purpose and it does not necessarily do so. Rather, it is designed to measure how much each GM helped or harmed his team's position compared to what would have happened if the team's roster had been left untouched. Thus it is possible for the GM of a non-contender to rank high because he prevented a team's collapse. That precise thing occurred in 2004 when Mike Flanagan led the GM Rating System short-term category with a score of 16.1 despite the fact that the Orioles finished 78-84.

In effect, the system said, "imagine how bad the Orioles would have been without him?" The system can work the other way as well. In 2009, the Red Sox won 95 games and made the playoffs. The short-term portion of the GM Rating System was not impressed, rating Theo Epstein 21st on the finding that his personnel moves had actually cost Boston 5.4 games. (He did better on the long-term rating, with a score of 12.0.)

Here are brief sketches of the short-term performance of each general manager for the 2009 season. Included is their cumulative score as well as the number of player moves involved. Also included is a breakdown by each of the five components of the short-term score: Acquisitions involving other general managers; departures involving other general managers; direct signings or re-signings; losses due to signings by other teams; and rookies. Moves resulting in a gain of loss of 1.0 games or more in the standings are individually noted. Each GM's most significant player move is bold-faced.

1. Ruben Amaro (Phi.), 10.6 (35 players). Amaro inherited a world championship team and didn't damage it, a neat feat. He did better than that, compiling the best score among all major league GMs on the free agent market. Dealing directly with players, he added 8.6 games to the Phils' standing. Amaro was also good when he worked with other GMs. His trades, sales and purchases advanced the Phils' fortunes by 2.8 games. Highlights included the re-signing of Ryan Howard and Jason Werth, dumping Pat Burrell for Raul Ibanez, and finessing the decline of Jamie Moyer by letting J.A. Happ mature. Amaro is the third Phillies' GM to lead the GM rating, and the first since Lee Thomas in 1989.

Acquisitions (1.0). Trade losses (1.8): Carrasco 1.5, Coste 1.2. Signed/re-signed (4.4): **Werth 2.8,** Howard 1.7, Ibanez 1.4, Madsen 1.2, Moyer -1.3, Bruntlett -1.4. Free agents lost (4.4): Eaton 2.2, Burrell 1.7. Rookies (-0.8): Bastardo -1.1.

2. Ned Colletti (LAD), 9.5 (40 players). Colletti enjoyed the best season of any big league GM on the free agent acquisition market. The eighteen players he either signed or re-signed -- headlined by Manny Ramirez and Casey Blake -- improved the Dodgers' standing by a cumulative 8.1 games. Factoring in the accomplishments of players who left Los Angeles via free agency, Colletti stood a close second to Amaro overall in free agent impact. Had the farm system produced a positive contribution, Colletti may have ranked as the game's best GM for the second time in his career, 2006 being the other season. As it was, Colletti joined Amaro in improving his team by more games (9.5) than the number (7) by which they qualified for the post-season. In 2009, they were the only two GMs who could legitimately claim to have maneuvered their teams into the post-season.

Acquisitions (0.8). Trade losses (0.9): Young 1.1. Signed/re-signed (8.1): **Blake 2.8**, Wolf 1.8, Hudson 1.4, Ramirez 2.2, Belisario 1.2, Loretta -1.0, Castro -1.2. Free agents lost (0.3): Saito -1.4. Rookies (-0.6): Troncoso1.1.

3. Frank Wren (Atl), 9.1 (31 players). Wren led the majors in 2009 in improving his team via deals with other GMS. His trades, sales and purchases netted Atlanta 4.1 games in the standings. That figure is highlighted by the acquisition of Javier Vazquez (from the White Sox) and the re-acquisition of Adam LaRoche from Boston. Wren helped the Braves by another 0.6 games when the unburdening of three unproductive players is factored into the equation.

Acquisitions (5.1): **Vazquez 3.9**, LaRoche 1.1. Trade losses (0.6). Signed/re-signed (-0.2): Ross 2.1, Anderson -2.2. Free agents lost (3.0). Rookies (0.6): Hanson 2.0.

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4. Brian Cashman (NYY), 7.5 (45 players). Since the Yankees are rolling in dough, Cashman ought to rank near the top of this list every year, right? It hasn't worked that way. In fact, his 7.5 rating was Cashman's best since 2002, which was also the last time he ranked higher among GMs (first in the AL, third overall). The key turned out to be a relatively subtle deal, the acquisition of Nick Swisher from Oakland. Swisher was a bit player until Xavier Nady got hurt, but he came off the bench to improve the Yanks by 1.3 games. Cashman got big-time notice for his free agent acquisitions of C.C. Sabathia and Mark Teixeira. Those moves were good, but they were essentially offset by the agreements that brought underachievers Damaso Marte and Sergio Mitre to New York, and that re-upped Cheng Ming Wang. Time was when New York never lost a player with perceived value to free agency, yet Cashman faced several big "keep or cut" decisions after 2008 and with the exception of Bobby Abreu made the right call every time. Those free agent losses alone improved the Yankees by nearly four games. The Yankees rarely rely on their farm system, but the 2009 version produced values of the stripe of Alfredo Aceves.

Acquisitions (1.7): Swisher 1.3. Trade losses (0.9). Signed/re-signed (0.2): **Sabathia 2.9**, Teixeira 1.6, Burnett 1.0, Mitre -1.3, Marte -1.3, Wang -2.9. Free agents lost (3.9): Pavano 1.8, Ponson 1.8, Giambi 1.2, Abreu -1.4. Rookies (0.8): Aceves 1.0.

5. Dave Dombrowski (Det), 5.9 (35 players). The Tigers' failure to make the 2009 post-season is generally seen as a great disappointment in Detroit. The real story is how close Dombrowski came to booting the Tigers home ahead of Minnesota. Rick Porcello proved a find in the farm system, and the signing of Brandon Lyon gave a major lift to the bullpen. Three members of the 2008 Tigers were poised for big-time stumbles in 2009, and Dombrowski had the foresight to unload all three of them: Edgar Renteria (released and signed by San Francisco), Lucas French (to Seattle for Jarod Washburn) and Juan Rincon (released to Colorado). Dombrowski would have pushed Cashman for the AL's top spot but for the failures of trade acquisitions Washburn, Brian Anderson and Aubrey Huff to produce.

Acquisitions (-0.5): Jackson 1.8, Huff -1.0, Anderson -1.2. Trade losses (2.0): French 1.3. Signed/re-signed (0.3): Lyon 2.1, Everett -1.4. Free agents lost (2.9): Renteria 2.8, Rincon 1.4. Rookies (1.2): Porcello 1.4.

6. Dave Hill (Fla), 5.1 (39 players). As can be the case with small-market teams, Hill helped the Marlins as much by whom he foisted off on others as who he acquired. He most important trade turned out to be the dispatch of one-dimensional Mike Jacobs to Kansas City . Hill acquired eight players who saw significant playing time during 2009, and their cumulative impact partially offset the 3.1 game cost in the standings of Emilio Bonifacio's presence in the lineup.

Acquisitions (-2.2): **Bonifacio -3.1** . Trade losses (3.7): Jacobs 1.7, Andino 1.1, Willingham -1.2. Signed/re-signed (2.8): Johnson 3.0, Calero 1.0, Ayala -1.1. Free agents lost (0.2): Rookies (0.6): Wood 2.0, West -1.0.

7. Jim Hendry (ChC), 1.7 (42 players). Northsiders will find this hard to believe, but Jim Hendry actually improved the Cubs during 2009. Granted, much of that improvement was due to the players he got rid of, including fan favorite Mark DeRosa. The exiling-by-trade of nine Cubs – notably DeRosa, Kevin Hart and Ronnie Cedeno – unsaddled the Cubs of the equivalent of 3.6 losses. Free agent departures – largely Chad Gaudin – aided the cause by another two games. And while the heralded free agent signing of Milton Bradley certainly flopped, it wasn't Hendry's most damaging mistake. The decision to turn second base over to Aaron Miles (on a two-year deal) cost 1.6 games, four times the negative impact of Bradley.

Acquisitions (-0.7): Baker 1.2. Trade losses (2.4): Hart 2.4, Cedeno 1.9, DeRosa 1.2, Burns 1.1, Marquis -1.1, McGehee -1.2, Wuertz -1.4. Signed/re-signed (-2.5): Dempster 1.1, Miles -1.6. Free agents lost (2.1): Gaudin 2.1. Rookies (0.4): **Wells 2.6**, Samardzija -1.0, Hoffpauir -1.0.

8. Jon Daniels (Tex), 1.2 (29 players). In a quiet, unassuming way, Jon Daniels is building a resume as strong as any of his fellow GMs. Following a freshman 2006 season in which he took plenty of lumps, Daniels ranked s the 5th most successful GM in 2007, and the 10th best in 2008. That makes this his third straight season in the top 10, a streak only Hendry can

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(*Rating the GMs* *Continued from page 25)*

match. Daniel's strength has been his willingness to accept incremental improvement. Of the 29 players Daniels either obtained for or lost from the Rangers, only the promotions of rookie Elvis Andrus and Derek Holland carried an impact beyond 1.1 games. But three-quarters of those moves helped the Rangers. At season's end, Daniel was one of only three American League GMs to actually help his team in 2009.

Acquisitions (1.2). Trade losses (-2.3). Signed/re-signed (-0.6). Free agents lost (1.0): Vazquez 1.1. Rookies (0.4): Andrus 1.7, **Holland -2.7.**

9. Dan O'Dowd (Col), 0.9 (36 players). Considering only the players he acquired, Dan O'Dowd was baseball's master trader in 2009. His acquisitions of players such as Huston Street and Jason Marquis improved the Rockies' fortunes by 4.6 games. The problem was that O'Dowd had to give talent to get talent, so the trade or sale losses of players such as Matt Holliday and Jeff Baker reduced O'Dowd's net trade impact on the team by half. The Rockies would have been better off if O'Dowd approached free agency more passively. The loss of six players, notably flop Willie Tavares, helped far more than the ten generally unproductive replacements O'Dowd signed . O'Dowd tried seven rookies, none o f them contributors.

Acquisitions (4.6): Street 1.6**,** Marquis 1.1, Betancourt 1.1, Gonzalez 1.0 . Trade losses (-2.3): \ Baker -1.2, Holliday -1.4. Signed/re-signed (-2.6): Rincon -1.4. Free agents lost (2.4): **Taveras 2.3**. Rookies (-1.2).

10. Walt Jocketty (Cin), -1.2 (40 players). Twice during his 13-season tenure with the Cardinals, Jocketty ranked as the most effective general manager in baseball. On two other occasions he was most effective in the National League. But he has found the going tougher since coming to Cincinnati as an in-season replacement for Wayne Krivsky in 2008. What Jocketty accomplished in 2009 largely qualified as addition by subtraction. He removed 14 players from the Reds' payroll, either by trade, sale or expiration of contract, and only three of those 14 helped their new teams. Jocketty had a tougher time attracting actual talent to Cincinnati, and those failure turned his overall ranking negative. Of the 25 players he either acquired, purchased, signed or promoted from the minors, fewer than one-third improved the Reds. The most significant crash-and-burn: free agent signee Willie Taveras.

Acquisitions (-0.8). Trade losses (-2.4). Signed/re-signed (-3.1): **Taveras -2.3**. Free agents lost (0.7): Affeldt -1.1. Rookies (-0.4): Rosales -1.4.

11. Josh Friedman (TB), -1.8 (29 players). With Evan Longoria, Carl Crawford and Orlando Pena already signed to multi-year deals, most of Friedman's heavy lifting appeared to already be done as 2009 began. He signed Pat Burrell to add a bat, but Burrell's underperformance pretty much typified the Rays' season. Short-term, Friedman got burned in his dealings with other GMs, shipping Scott Kazmir to the Angels (where he had a 1.73 ERA in 6 starts) for three minor leaguers, and sending Edwin Jackson (13 wins, 3.62 ERA) to Detroit for the lightly used Matt Joyce. He released Jonny Gomes, who signed with Cincinnati and produced 20 home runs. The arrival of starter Jeff Niemann from the farm system was one of the few highlights.

Acquisitions (0.1). Trade losses (-2.3): Kazmir -1.1, **Jackson -1.8**. Signed/re-signed (0.5): Wheeler 1.2, Burrell -1.7. Free agents lost (-0.6). Rookies (0.5): Niemann 1.1.

12. Tony Reagins (LAA), -2.2. (22 players). Only 22 players circulated in or out of Anaheim in 2009, the fewest of any big league team. So relaxed an operation did Reagins run that Scott Kazmir, picked up from Tampa Bay for the pennant push, was the only big leaguer traded into or out of town between October of 2008 and October of 2009. For new blood, Reagins largely relied on youngsters, and as is often the case with farm systems those kids failed him. The net cost to the Angels of the 14 first-year players was 4.6 games; only Cleveland and San Diego took harder hits. Not counting Nick Adenhart, killed in a car crash following his first appearance of the season, Reagins used nine different first-year pitchers, and not a single one produced a positive rating. The collective damage was 23 starts, 88 relief appearances and -4.4 games in the standings.

Acquisitions (1.1): Kazmir 1.1. Trade losses: None. Signed/re-signed (3.1): Abreu 1.5. Free agents lost (-1.8): **Teixeira -1.6**. Rookies (-4.6): Bell -1.4.

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13. Doug Melvin (Mil), -2.3 (36 players). The pickups of Casey McGehee and Felipe Lopez, both comparative steals, helped Melvin fashion the second best score among all GMs in acquiring players via trades or sales. Little else went right for Melvin, notably the money-driven departure of C.C. Sabathia via free agency. That single loss cost the Brewers nearly three games in the standings, and is the reason why Melvin's overall score skewed negative in 2009.

Acquisitions (2.1): McGehee 1.2, Lopez 1.2. Trade losses (0.3). Signed/re-signed (-1.9): **Hoffman 2.8**, Counsell 2.1, Burns -2.5, Looper -2.6. Free agents lost (-1.8): Sabathia -2.9. Rookies (-1.0).

14. John Mozielak (Stl), -2.3 (33 players). Mozeliak benefits from a strong nucleus – that would be Albert Pujols – that allows him to keep the Cardinals in contention despite run-of-the-mill front office performance. So it was in 2009. Duly noting the acquisition of Matt Holliday, it was Mozeliak's only move of positive consequence. His farm system proved particularly problematic: Mozeliak called on 15 youngsters – among them heralded Colby Rasmus -- but only two yielded positive value and they collectively cost his team 4.4 games in the standings. Well, if you have Albert, you can survive a few mistakes.

Acquisitions (1.1): Holliday 1.4. Trade losses (0.0). Signed/re-signed (0.2): Miller 1.0. Free agents lost (0.8): Miles 1.6. Rookies (-4.4): Stavinhova -1.0, **Rasmus -1.7**.

15. Billy Beane (Oak), -2.9 (45 players). The most famous general manager in America suffered through the third-worst season of his 11-year tenure during 2009. The problem was a recurring one: The need to trade talent before losing it to free agency. Beane made deals that sent eight A's to new locations prior to and during 2009, and six of those eight – notably including Huston Street and Matt Holliday -- rewarded their new teams with positive contributions. Purely considering talent provided in trades, only Kenny Williams on Chicago's South Side was more generous. Beane got some ability in return, notably the aforementioned Holliday, Craig Breslow and Michael Wuertz. Beane was also a net loser in signing free agents, his biggest gamble – Jason Giambi for one season – costing Oakland 1.4 games. At least Beane's churn was significant. Of the 45 players he traded, traded for, purchased, sold, signed, re-signed or promoted, 14 moved their new team's performance needle by at least a game.

Acquisitions (1.4): Breslow 1.9, Wuertz 1.4, Holliday 1.1, Hairston -1.2, Mortensen -1.8. Trade losses (-4.5): Gonzalez -1.0, Holliday -1.4, Street -1.6. Signed/re-signed (-1.9): Giambi -1.4. Free agents lost (2.3): DiNardo 1.4. Rookies (-0.2): **Bailey 3.8**, Mazzaro -1.3, Marshall -1.4, Gonzalez -1.5.

16. Jack Zduriencik (Sea), -4.1 (40 players). As if often the case with first-year GMs, Zduriencik posted unremarkable numbers that would have been worse but for the opportunity to pawn off under-achievers on others. He dealt away 11 members of the roster he inherited, and with the notable exception of Luis Valbuena (to Cleveland) the departures were painless. Letting Raul Ibanez go via free agency was, short-term anyway, a bigger mistake. Among nearly 20 arrivals, the gem was David Aardsma, but the value he brought was more than offset by the damage done jointly by Ronnie Cedeno and later Jack Wilson.

Acquisitions (-2.5): **Aardsma 2.9**, Wilson -1.0, Cedeno -2.2. Trade losses (2.2): Valbuena -1.0. Signed/re-signed (-0.8). Free agents lost (-1.2): Ibanez -1.4. Rookies (-1.8): Saunders -1.0, Jakubauska -1.1 .

17. Andy McPhail (Bal), -4.3 (47 players). McPhail came up negative in every category that involved obtaining players, but rated positively in every category that involved getting rid of players. In other words, he was a junk dealer. In 2009, a total of 47 players either arrived in or departed from Baltimore, more than any big league franchise except the Padres. Barely a third of those generated positive value for their team, and just two generated value in excess of 1.0 games. That kind of churn without result is the mark of a team lacking traction. Among players brought in by McPhail, flops were everywhere: Rich Hill from Chicago, Roberto Andino from Florida, Adam Eaton from Philadelphia, Ty Wigginton from Houston, and Jason Berken from the farm.

Acquisitions (-2.5): Hill -1.6, Andino -1.1. Trade losses (2.5): Burres 1.1, Freel 1.0, Huff 1.0. Signed/re-signed (-3.6): Wigginton -1.8, Eaton -

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2.1. Free agents lost (1.7): Cabrera 1.5, Millar 1.1, Castro -1.2. Rookies (-2.4): Bergesen 1.5, **Berken -2.9**.

18. Kenny Williams (CWS), -4.5 (38 players). In 2009, the Chicago White Sox farm system made a larger contribution to their major league roster than any club in the majors. Unfortunately for Williams, farm system are notoriously tin places to turn for quick fixes, and that was again the case last year. The nine rookies he brought up – useful players like Gordon Beckham and Chris Getz – nonetheless helped Chicago by just 1.4 games in the standings, an unremarkable contribution in a season during which rookies everywhere performed modestly. And when he dealt with veterans, things really turned sour for Williams. Of seven free agents brought to the South Side, Freddie Garcia's 0.4 score was best. Williams did land Jake Peavy (1.2) by trade, but that came late and only offset the negative impact of having taken on Brent Lillibridge. Williams added 15 players with big league experience to the Sox during 2009, and two-thirds of them hurt the team. He traded away eight, and five helped their new teams, notably including Javier Vazquez in Atlanta and Steve Swisher in New York.

Acquisitions (-1.4): Peavy 1.2, Lillibridge -1.3. Trade losses (-4.3). Signed/re-signed (-1.1). Free agents lost (0.9): Anderson 1.2, Swisher -1.3, **Vazquez -3.9**. Rookies (1.4).

19. Bill Smith (Min), -4.6 (30 players). Coming off a -5.2 score in his 2008 rookie GM year, Smith's second season with the Twins can be read as a slight improvement. But facing perennial cash deficiencies, Twins' GMs have to consistently work the margins to actually help the team, and Smith has not yet demonstrated that he can do that. The Twins made the post-season in 2009 despite Smith, not because of him. A modest success at acquiring players from other teams, Smith mis-judged the free agent market (principally by re-signing Nick Punto for two seasons), and got mixed, largely unproductive efforts from Minnesota's farm system. The losses of Craig Breslow (by waiver) and Garrett Jones (by release) can only be looked on as unforced errors.

Acquisitions (0.9): Rauch 1.0. Trade losses (-0.8): Breslow -1.9. Signed/re-signed (-1.2): Punto -1.0. Free agents lost (-1.3): Everett 1.4, **Jones -2.3**. Rookies (-2.2): Swarzak -1.7.

20. J.P. Ricciardi (Tor), -5.3 (24 players). Ricciardi operated a relatively quiet, almost build-in-place system in 2009. Just two dozen players moved from or to the Blue Jays, with Houston the fewest of any team other than the Angels. The most impactful decision was the one that gave rookie Scott Richmond 24 starts when A.J. Burnett left for New York via free agency. Richmond responded with a 5.52 ERA, and that Richmond-for-Burnett switch set the Jays back 2.7 games. But beyond that nothing much occurred in Toronto, unless you count the signing of journeyman Kevin Millar as significant. As with many teams, it may be fairer to judge Ricciardi's moves over the long haul. If Richmond or lightly used Brian Burres eventually pays off, then the short-term price Ricciardi paid in 2009 might be worth it.

Acquisitions (-1.6): Burres -1.1. Trade losses (1.7): Rios 1.6. Signed/re-signed (-0.4): Millar -1.1. Free agents lost (-1.8): Burnett -1.0. Rookies (-3.2): **Richmond -1.7**.

21. Theo Epstein (Bos), -5.4 (44 players). The two world championships he brought to Boston have masked Epstein's periodic failures as an acquirer of talent. But his standing in the bottom third of GMs is not a freakish occurrence: Epstein ranked lower in both 2005 and 2006, and his career short-term score is on the order of a dozen games to the bad. Perhaps it's simply a case of big teams failing big. Epstein pursued free agents Brad Penny, John Smoltz and Junichi Tazawa, and all three moves cratered on him, collecting costing the Red Sox 4.5 games. Epstein's reputation might have taken a bigger hit but for two decisions that paid off. The trade for Ramon Ramirez gave the Red Sox a reliable bullpen arm, and the re-signing of Kevin Youkilis for four seasons locked down a player who added 3.5 games to Boston's stature last year alone. The farm system yielded a lot of bodies, most of them mildly toxic in the short-term, and none of them suggesting a future along the lines of Dustin Pedroia or Jonathan Papelbon.

Acquisitions (1.5): Ramirez 1.7. Trade losses (-4.4): Aardsma -2.9. Signed/re-signed (-0.8): **Youkilis 3.5**, Saito 1.4, Tazawa -1.2, Penny -1.4, Smoltz -1.9. Free agents lost (0.4): Bard 2.1, Ross -2.1. Rookies (-2.1).

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22. Jim Bowden (Was), -6.0 (45 players). Hand it to Jim Bowden: He tried. Bowden dealt for eight players who impacted the major league roster in 2009, signed or re-signed 16 more, and promoted 11 from the Nats' farm system. There wasn't much improvement in Washington in 2009, but there was a lot of churn. Bowden's big stumbling block turned out to be his various forays into the free agent market. The signings of Daniel Cabrera and Josh Bard both proved to be big blunders, and collectively the 16 signees cost the Nats four games in the standings. Only the padres, Royals and Mets did worse on the open market in 2009.

Acquisitions (1.00): Morgan 1.5, Willingham 1.2. Trade losses (-0.1) . Signed/re-signed (-4.0): Dunn 1.9, Tavares -1.0, Cabrera -1.3, **Bard -2.1**. Free agents lost (-0.7). Rookies (-3.6): Mock -1.9.

23. Ed Wade (Hou), -6.0. (24 players) Following eight unremarkable years as GM in Philadelphia and a two-season partial exile, Wade landed the Houston job late in 2007. He has been for the Astros what he was for the Phillies – so-so. Wade particularly hurt the Astros by signing used-up veterans Mike Hampton and Russ Ortiz to fill two-fifths of the starting staff, and when that failed by asking rookie Felipe Paulino to step in. Those three moves alone cost the Astros five and one-half games in the standings. View it as a flaw or an asset, but Wade was one of the most cautious GMs in baseball. His various 2009 moves involved 24 big league players, second fewest (with Ricciardi) to Tony Reagins.

Acquisitions (-0.5): Coste -1.2. Trade losses (-0.2) . Signed/re-signed (-3.9): Hawkins 1.6, Ortiz -1,1., Hampton -1.4. Free agents lost (2.8): Wigginton 1.8, Loretta 1. Rookies (-4.2): **Paulino -2.9**.

24. Brian Sabean (SF), -6.1 (32 players). Since he's been the Giants' GM since the end of 1996, you'd think Sabean would be tough to take advantage of in a head-to-head deal. In fact, the players Sabean acquired in trades cost the Giants one game in the standings in 2009, and the players he gave away cost them three more. He had no more luck in the farm system. The Giants brought up a dozen new hands for at least a stretch in 2009, but only three produced positive value, and the net of that positive value was barely half a game.

Acquisitions (-0.9). Trade losses (-3.0): Misch -1.0, Davis -1.4. Signed/re-signed (1.3): Affeldt 1.1, Johnson -1.0, **Renteria -2.8**. Free agents lost (-1.0). Rookies (-2.5): Martinez -1.4.

25. Dayton Moore (KC), -8.0 (32 players). You think you've got a tough job? In chronically under-financed Kansas City, no general manager has made a positive impact on the Royals since Herk Robinson in 1996. Dayton Moore came to K.C. as a mid-season replacement for Allard Baird three seasons ago with an Atlanta pedigree, which means he trained at the feet of former Royals GM John Schuerholz. But he has found that the personnel moves are tougher when they don't involve re-signing Maddux, Glavine and Smoltz. In 2009, Moore acquired seven players for the Royals via deals with other GMs, and all seven produced negative impact. His -4.3 rating for players acquired in deals ranked second worst in the majors, ahead of only Neal Huntington. He signed or re-signed 13 players, and none of those 13 made a positive contribution. At 6.3 games to the bad, Moore again stood second to the bottom, ahead of only Kevin Towers.

Acquisitions (-4.3): Jacobs -1.7. Trade losses (1.5). Signed/re-signed (-6.3): DiNardo -1.4, **Ponson -1.8**. Free agents lost (1.4). Rookies (-0.3).

26. Josh Byrnes (Ari), -8.1 (34 players). Byrnes has now completed four seasons as GM of the Diamondbacks, and his rating has steadily declined. He arrived in 2006 as something of a boy genius, compiling a 4.9 cumulative score. That fell to 0.8 in 2007, and went negative (to -2.8) in 2008 …when, for the record the D-Backs missed the playoffs by just two games. If Byrnes values job security, he needs to reverse that trend next year. He has plenty of places to start, for Byrnes received low marks in deals with other GMS, in deals directly with players, and in his farm system production in 2009. He was the only GM in the majors in 2009 with negative scores in all five GM performance categories. Byrnes moves were responsible for the presence of two dozen D-Backs in 2009, but only five of those two dozen yielded positive impact, none higher than 0.6 games.

Acquisitions (-2.0): Allen -1.1. Trade losses (-2.8): Rauch -1.0, **Lopez -1.2**. Signed/re-signed (-1.5). Free agents lost (-0.3). Rookies (-1.5): **Parra -1.2**.

27. Omar Minaya (NYM), -8.7 (39 players). Remember when Omar Minaya was a *wunderkind* stolen by the Mets from his Montreal internship. That was yesterday. Minaya in 2009 was forced to rely on a non-productive farm system when his well-publicized free agency moves backfired. A three-year deal for Oliver

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Perez? Not so much. Felix Rodriguez (and J.J. Putz via trade) for the pen? With that rotation, who needs a pen? Livan Hernandez? Too retro. The free agents cost the Mets 5.3 games. The rookie fixes cost an additional 2.8 games. Bobby Parnell in any pitching capacity at all? Someday, perhaps…but not yet.

Acquisitions (-0.5): Misch 1.0. Trade losses (0.0). Signed/re-signed (-3.9): Redding -1.0, Perez -1.5, **Hernandez -1.7**. Free agents lost (-0.1). Rookies (-4.2): Parnell -1.4.

28. Neal Huntington (Pit), -9.2 (27 players). Huntington tried to re-make the Pirates through deals with other GMs involving players not yet free-agent eligible. The result was disaster. The players he acquired in those trades cost Pittsburgh 6.3 games in the National League standings. To obtain those ne'er-do-wells, he traded away another 2.4 games worth of talent, collectively making Huntington the majors' biggest trading patsy. The low-budget Pirates didn't have much of a free-agent game although the bargain-basement pickup of Garrett Jones stood out. Nate McCutcheon's callup by itself helped make Pittsburgh one of just three teams whose first-year classes rated +1.0- or better in 2009.

Acquisitions (-6.3): Jaramillo -1.1, Young -1.1, Vasquez -1.2, **Hart -2.4**. Trade losses (-2.4) LaRoche -1.1, Morgan -1.5. Signed/re-signed (-0.7): Jones 2.3, Vazquez -1.1. Free agents lost (-0.9): Belisario -1.2. Rookies (1.1): McCutcheon 1.6.

29. Mark Shapiro (Cle), -10.4 (44 players). Isn't time running short for Shapiro? His occasional fits of brilliance since arriving as a GM prior to the 2002 season have been over-shadowed by four consecutive sub-par seasons. In 2009, Shapiro leaned heavily on the farm system, and it did him in. Eight rookies saw action in Cleveland, yielding a cumulative -5.0 games that ranked ahead of only the Padres. His attempts to patch weaknesses in trades or through free agency tended to net guys like Carl Pavano.

Acquisitions (-2.0): Valbuena 1.0, Carrasco -1.5. Trade losses (-1.5): Betancourt -1.1. Signed/re-signed (-2.8): Pavano -1.7 . Free agents lost (0.9). Rookies (-5.0): Gimenez -1.5, **Huff -2.1**.

30. Kevin Towers (SD), -16.2 (53 players). On the job since 1995, Kevin Towers was the dean of major league GMs when he was fired following the conclusion of the 2009 season. Financially handicapped by his owners' divorce, Towers' free agent decisions set the Padres back by nearly 12 games during 2009, and the rookies he largely relied on to replace those lost veterans cost another 5.3 games. You can't say Towers didn't try. His manipulations involved a total of 53 players who saw big league time during 2009, eight more than any other GM.

Acquisitions (1.7): Cabrera 1.5. Trade losses (-0.8) S. Hairston 1.2, Gerut -1.2. Signed/re-signed (-9.3): Sanchez -1.1, Alfonzo -1.2, Eckstein -1.8, Gaudin -2.4. Free agents lost (-2.5): **Hoffman -2.8**. Rookies (-5.3): Latos -1.1, Geer -1.7, Carillo -1.7.

Bill Felber runs the baseball website billfelber.com. He is the author of "The Book on the Book," published in 2005 by Thomas Dunne Books . Email: bfelber@att.net.

From the Editor

This issue of *Outside the Lines*, the newsletter of SABR's Business of Baseball Committee, contains four articles on a range of issues. Experienced anti-trust litigator Larry Boes explores the case of ***American Needle, Inc. V. NFL et al.*** currently before the U.S. Supreme Court (which now includes a SABR author) and awaiting decision. Bill Gilbert and Tim Darley bring their experience in baseball arbitration to a wrapup of 2010 activity in that field. Joe Marren explores the long history of baseball segregation as a business decision. Finally, Bill Felber rank General Managers for their 2009 short-tern successes, part of his three-part ranking system.

OTL depends entirely on our members for submissions. There was no Fall 2009 issue because we had no offerings. Our view of the Business of Baseball is that anything that happens outside the lines is game. We are interested in high-quality research and writing. If you have an idea and want to see if we are interested, just email me at JRuoff@bellsouth.net.

The next issue will go out in June before the Atlanta, so our deadline for articles is June 1. The earlier you get things to me the better, in case I want to suggest changes or request clarifications.

John Ruoff
Co-Chair Business of Baseball Committee
Editor, *Outside the Lines*

Business of Baseball Committee

The Business of Baseball Committee co-chairs are Steve Weingarden (steveweingarden@gmail.com) and John Ruoff (jruoff@bellsouth.net). Ruoff edits *Outside The Lines*.

The committee's website is at http:\\www.businessofbaseball.com. You should stay in touch with the site as we improve the look and add content.

The Committee's discussion group, BusinessofBaseball, is on YahooGroups. If you are a member of the Committee and want to join, go to http://sports.groups.yahoo.com/group/BusinessofBaseball/ or send an e-mail to Business of Baseball-subscribe@yahoogroups.com.

Thank Yous to our authors
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