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Outside the Lines

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The St. Louis Browns Team Ownership History

Part 1 of 4

By Greg Erion and Dennis Pajot

The St. Louis Browns ownership history here is part of a joint project between the Business of Baseball Committee and the BioProject site. As they are completed, the histories will appear in this newsletter and be posted permanently at <https://sabr.org/bioproj/topic/team-ownership-histories>. If you are interested in doing a team's history, or part of a team's history, such as the St. Louis Browns years of the current Baltimore franchise, please contact Andy McCue, at agmccue48@gmail.com, who coordinates the project. Several team ownership histories are already completed or under preparation, but many still need authors.

The histories should be as comprehensive as possible, covering the changes in ownership, the price paid, the makeup of partnerships, the division

of responsibilities among the partners, the reasoning of both the buyers and the sellers, and economically significant events within the era of each ownership group. There is no need to talk about events on the field unless they have a direct impact on the bottom line or a change in ownership. It is likely that arguments with cities over stadiums and threatened (or actual) re-locations will play a role in the essays. The histories should be long enough to tell the story but should be as tight as possible. There is no set word limit. The essays should include endnotes on sources. Heavy detail, such as the holdings of minor partners, might well be left to those endnotes.

Research guidance will be available if needed. Over the long run, it will be necessary to keep updating these essays and the original researchers will be given first opportunity to do those updates.

Introduction¹

Achieving on-field success has often proved elusive to owners of the Baltimore Orioles and its predecessor teams, the St. Louis Browns and original Milwaukee Brewers. The franchise, dating back to the inception of the American League,

¹ The authors would like to thank Chip Greene, Rick Huhn, Liz Erion, and Dwayne Isgrig for their contributions to this article. Dennis Pajot researched and wrote the Milwaukee section of this essay, while Greg Erion did the St. Louis years.

frequently vexed its chief executives, including the likes of businessman Phil Ball, baseball impresario [Bill Veeck](#), and more recently, attorney Peter Angelos. While the ballclub occasionally tasted victory, it endured long stretches of futility often aided by owner ineptness and undercapitalization.

Competitive difficulties began in the team's early years as the saying, "First in shoes, first in booze, and last in the American League," became popular, capturing the Browns' reputation for incompetence.² When the team moved to Baltimore after the 1953 season, it had the worst franchise won-lost record of the eight ballclubs in the league. Even the Washington Senators, whose "First in war, first in peace, and last in the American League" epithet inspired the Brownie descriptive, had a better record than St. Louis.³ While Baltimore eventually began to field winning teams in the early 1960s they reverted to losing ways as the twentieth century ended, experiencing a run of 14 consecutive losing seasons.

Over the years, various owners contributed to subpar performances through unwise decisions. Ball made a fatal mistake in letting his general manager, [Branch Rickey](#), go to the Cardinals. Rickey's contributions to the Cardinals' success eventually fueled the Browns leaving St. Louis. More recently, Angelos has received criticism for Baltimore's dismal play during the past 20 seasons.

There were, however, periods of enlightened leadership. [Robert Hedges](#), first owner of the Browns, promoted the game to a wider clientele by banning the sale of alcohol and instituting Ladies Day. His then-innovative reconstruction of Sportsman's Park in 1908 into a steel and concrete facility led the way in designing future ballparks. Hedges also had the foresight to hire Rickey to run the team. While Rickey's tenure was cut short by Ball, he was with the club long enough to obtain the

services of [George Sisler](#), the greatest of all Browns players.⁴

Brewery magnate Jerold Hoffberger presided over several decades of Orioles dominance as they won six division titles and two World Series. His organization served as a role model for all of baseball spanning the 1960s through the mid-1980s. In the 1980s, inspiration for the precedent-setting Oriole Park at Camden Yards was encouraged by Hoffberger's successor, Edward Bennett Williams. Its retro style ushered in a new era of ballpark architecture, helping stimulate a renewed interest in baseball.

In the Beginning ...

Throughout the ballclub's history, owners had to deal with daunting challenges such as scandals, strikes, and world wars. None, however, faced the experiences of brothers Henry and Mathew Killilea in 1901. They not only had to oversee the Milwaukee Brewers operations, but also assure the American League's success in challenging the National League's supremacy in baseball. Their ownership of the Brewers lasted only one year, a circumstance dominated by the overarching conflict between the two leagues.

After the 1900 season, [Ban Johnson](#), president of the then Class A American League, announced that players under his jurisdiction wouldn't be governed by the National Agreement, a covenant that decreed participants would honor a player's contractual agreements with their respective teams. Effectively this meant he would begin raiding teams in the National League for their "reserved" players.⁵ Johnson was establishing a new major league.

He needed top-notch players for his league, and the National League's self-imposed player salary cap of \$2,400 per year made it easy to lure them to his fledgling organization. A rush of players to the new

⁴ Peter Golenbock, *The Spirit of St. Louis: A History of the St. Louis Cardinals and Browns* (New York: Avon Books, Inc., 2000), 56, 64-67.

⁵ For descriptions of Johnson's actions see Lee Allen, *The American League Story* (New York: Hill & Wang, 1962), 10-11; Leonard Koppett, *Koppett's Concise History of Major League Baseball* (Philadelphia: Temple University Press, 1998), 88-89; and Warren N. Wilbert, *The Arrival of the American League: Ban Johnson and the 1901 Challenge to National League Monopoly* (Jefferson, North Carolina: McFarland & Company, Inc., 2007), 6-7, 44-45.

² The saying derived from the 150 shoe companies headquartered in St. Louis as well as more than 40 breweries including Anheuser-Busch and Falstaff. See missourilife.com/life/the-bad-news-browns/.

³ After the 1953 season the Browns had a .432 winning percentage. Washington was at .473 and the Philadelphia A's posted a .481 record. The Browns' record included their predecessor Milwaukee Brewers record for 1901.

league was immediate. Eventually, nearly two-thirds of American League rosters came from the National League.⁶ Significantly, his raid included such standouts as [Nap Lajoie](#) and [Cy Young](#).

In addition to attracting players through higher wages, Johnson played a longer strategy. A significant factor in determining a team's financial viability was (and still is) the population base from which it drew: the larger the base, the greater chance of success. Placing teams in large metropolitan areas was paramount, especially before popular usage of the automobile. Shifting franchises to these locales became crucial for the league's survival.

When the National League dropped Baltimore, Cleveland, and Washington after the 1899 season, Johnson added them to his circuit at the expense of less populated venues. Grand Rapids, with a population of less than 90,000, simply could not match Cleveland's potential to draw fans from a base of over 380,000 inhabitants. Johnson also placed teams in Boston, Chicago, and Philadelphia to compete directly with the senior circuit. Detroit and Milwaukee, both founding franchises in the Western League, rounded out the new major league. As 1901 began, the rearrangement looked much different (see accompanying table).

AL Teams (Prior to 1901)		AL Teams (1901)	
City	Size Rank	City	Size Rank
Buffalo	8	Baltimore	6
Detroit	13	Boston	5
Grand Rapids	44	Chicago	2
Indianapolis	21	Cleveland	7
Kansas City	22	Detroit	13
Milwaukee	14	Milwaukee	14
Minneapolis	19	Philadelphia	3
St. Paul	19	Washington	15

The league did well in 1901. Despite not having teams in two of the largest cities in the country, New York and St. Louis, Johnson's clubs generated attendance of nearly 1.7 million, favorably

comparing to the National League's 1.9 million fans.

While these developments boded well for the American League, the same could not be said for the Brewers. Milwaukee's performance in 1900 had been successful; it finished a close second to the Chicago White Stockings. But in 1901 the Brewers were overwhelmed by events stemming from the American/National League conflict.

With the movement of franchises to larger cities, Johnson also attracted substantial capital to Cleveland, Boston, Chicago, and Philadelphia. The Brew City's Killilea brothers could not hope to compete financially with these owners, and their ability to successfully attract players from the senior circuit. It was a sad turn of events for Matthew Killilea, who had not only been active in running the Brewers but also proved a solid legal adviser to Johnson during the league war years.

Killilea, son of Irish immigrants, was an attorney and minor politician in Milwaukee. He and nine other local businessmen became involved with the Brewers as a matter of civic pride.⁷ Increasingly entwined in team affairs, he was instrumental in construction of Milwaukee Park at 16th and Lloyd, a facility designed to accommodate minor-league competition. Killilea developed a reputation for fairness in dealing with his players and extended efforts to provide a competitive team. Most often, however, until [Connie Mack](#) began managing the team, this last objective was not met, the Brewers usually finishing well out of the pennant race.⁸

Frequently called on to provide legal expertise as the league grew and conflict with the National League continued, Killilea was integral to the process of incorporating the White Stockings franchise for the 1900 season.⁹ Earlier, he had worked with Johnson to rebuff efforts to have Western League players transferred to the National

⁷ Dennis Pajot, *The Rise of Milwaukee Baseball: The Cream City from Midwestern Outpost to the Major Leagues 1859-1901* (Jefferson, North Carolina: McFarland & Company, Inc., 2009), 206.

⁸ Dennis Pajot, "Matthew Killilea," SABR Baseball Bioproject, sabr.org/bioproj/person/83242fbf.

⁹ Doug Russell, "Milwaukee's First Major League team Remembered, No not them," onmilwaukee.com/sports/articles/thefirstbrewers.html?viewall=1.

⁶ Koppett, *Concise History*, 89.

League as well as securing new franchises to stabilize the growing circuit.¹⁰

Proprietorship of the Brewers went through several iterations over the years. By 1901 Henry Killilea as president and Fred Gross as treasurer were co-owners of the team.¹¹ Killilea's expertise notwithstanding, Milwaukee's relative lack of financial backing became apparent when National Leaguers flocked to the new circuit. Beginning in the 1901 season, more than 100 players with experience in the senior circuit jumped to the Americans; more than 70 came directly in the first two years of its existence.¹² Just three frontline players joined the Brewers; financial competition was just too keen for players to sign with Milwaukee.

[Hugh Duffy](#), a future Hall of Famer, was the best of the three. Named manager to start the 1901 season, the 34-year-old, who had hit .440 in 1894, batted a creditable .302 in half a season. He replaced Connie Mack, who had moved on to the Philadelphia A's, a shift orchestrated by Johnson to strengthen the new franchise. Other additions, pitchers Ned Garvin and [Pink Hawley](#), generated a combined 15-34 record.

As if not drawing top-flight players was obstacle enough, Matt Killilea struggled with tuberculosis, which forced extended absences, further distracting the beleaguered franchise. Even before the season began, there were rumors that Milwaukee would

move. Most suggested the team would move to St. Louis, if not in 1901, certainly in 1902.¹³

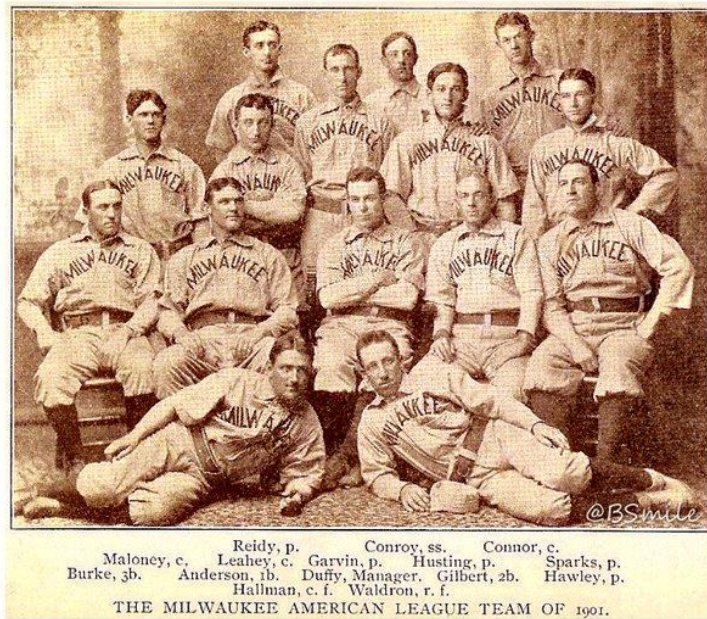
St. Louis was a logical destination, a metropolis Johnson had eyed for some time. It was the fourth largest city in the nation, with the added allure of preparing to host the 1904 World's Fair. Unlike most East Coast cities, St. Louis allowed Sunday baseball, and competing for fans with the National League Cardinals made the contemplated move an even more attractive venture.¹⁴

The relocation rumors were true. Both Johnson and Chicago owner [Charles Comiskey](#) had requested that Killilea shift the team to St. Louis before the season began. Killilea refused "with protestations of civic pride," at the same time promising that if the team did not perform well during the season he

would move.¹⁵ That Killilea could resist Johnson and Comiskey was uncommon; most often the autocratic Johnson had his way. It reflected the regard both Johnson and Comiskey had for the Brewers owner.

While Killilea obtained a reprieve, he could not dislodge Johnson's uneasiness as the season was about to start. After an exhibition game between Chicago and

Milwaukee – handily won by Chicago – Johnson became alarmed at the Brewers' level of play. He canceled further exhibition games between the two teams during the spring. "The games were unfair to the Milwaukee team and gave a false impression. The Brewers were not represented by their full strength and the opinion might be formed before the season begins that the White Stockings are stronger than Milwaukee."¹⁶



¹⁰ Pajot, "Killilea."

¹¹ Pajot, *The Rise of Milwaukee Baseball*, 295. Gross was part owner of the local F.C. Gross Packing Company, a meat-packing concern, as well as the president of the Wisconsin Rendering Company, which was "a general rendering establishment and sewerage farm, in charge of disposing of all Milwaukee's refuse matter."

¹² Harold Seymour, *Baseball: The Early Years* (New York: Oxford University Press, 1960), 314.

¹³ Pajot, *The Rise of Milwaukee Baseball*, 303.

¹⁴ Seymour, *Early Years*, 321.

¹⁵ "Rivalry for 1902: St. Louis to Have Two Major League Teams, *The Sporting News*, September 21, 1901, 4.

¹⁶ "Milwaukee Loses Again," *Milwaukee Journal*, April 10, 1901: 12.

Johnson's concern was justified. Neither the franchise's situation nor Killilea's health improved. Killilea's brother Henry, also an attorney, stepped



Henry Killilea

in to direct the team during his brother's absence, but to no avail.¹⁷ The team lost its first five games, bounced between seventh and eighth place for two months then settled into the cellar for good on June 30.

Earlier that month, a meeting of American

League owners convened in Chicago. Afterward, news leaked out that St. Louis and/or New York would replace Milwaukee and/or Cleveland. Mathew Killilea countered the rumors, commenting that he would "personally vouch for the retention of this city (Milwaukee) in the circuit." He said he had turned down an offer by St. Louis businessmen of \$30,000 for the franchise.¹⁸

Despite these disavowals, talk of a shift carried through the season. Killilea continued to insist the Brewers would not move and were not for sale. In August, he said he had turned down another offer – now \$42,000. By then, the impression had formed that Killilea was bargaining for the best price the franchise could draw. The team finished dead last, 35½ games behind the White Sox.

Attendance for the year at Milwaukee was 139,034, second to last in the American League, affected by continued rumors that the club was moving.

The season had not ended before *The Sporting News* reported that [Jimmy McAleer](#), former manager of the Cleveland Blues and a great recruiter of National Leaguers to Johnson's circuit, would manage the St. Louis team in 1902.¹⁹ This was before any word came that St. Louis would have a team.²⁰ Over the next several weeks, additional

stories found their way into *TSN* about the presumed move. The baseball weekly, operated by the Spink family in St. Louis, was particularly anxious to have an American League team in the city. Virtually every week through the next two months, an article referring to St. Louis replacing Milwaukee appeared in the paper.²¹

Matters came to a head in Chicago the first week of December when American League owners convened to discuss what seemed a foregone conclusion. While the franchise shift did take place, the path toward its doing so proved curious.

As Matt Killilea's health worsened, his brother Henry had assumed a more prominent role in running the Brewers. Apparently, his part now included controlling ownership of the club. When American League executives sanctioned transfer to St. Louis with Matt still being associated with the club, Henry objected. Concerned with his brother's well-being, he wanted Matt to retire from baseball. Matt wished to stay in the game. Finally, in a meeting that lasted nearly 12 hours, Henry gave up his interest and the transfer took place with Matt and treasurer Fred Gross controlling the new St. Louis franchise under terms that were not made public.²²



Matthew Killilea

Milwaukeeans were displeased. The *Milwaukee Daily News* denounced Killilea and Gross, saying they "have pink tea in their veins instead of sporting blood..." for not staying with Milwaukee. The *Milwaukee Journal* expressed similar sentiments, noting, "It is a very clever trick of the American League bunch in keeping Killilea ... on their staff with ground awaiting them in Milwaukee in case St. Louis should go to the bead."²³

¹⁷ Dennis Pajot, "Henry Killilea," SABR Baseball Bioproject, sabr.org/bioproj/person/8f25f7c6.

¹⁸ Pajot, *The Rise of Milwaukee Baseball*, 304.

¹⁹ David Fleitz, "Jimmy McAleer," SABR Baseball Project, sabr.org/bioproj/person/e6db627f.

²⁰ "McAleer May Manage Local team," *The Sporting News*, September 28, 1901: 1.

²¹ See for instance "American Leaguers Confer," "Present from His Players," and "To Close St. Louis Deal," *The Sporting News*, September 26, 1901, October 5, 1901, and November 16, 1901 respectively.

²² "Approve Changes," *The Sporting News*, December 7, 1901: 1; and "Milwaukee Club Formally Dropped," *St. Louis Republic*, December 4, 1901: 7.

²³ Pajot, *The Rise of Milwaukee Baseball*, 306.

The *Milwaukee Sentinel* countered these reactions with a pragmatic observation: “The owners of the Milwaukee club removed their team to St. Louis as a business proposition. They expected to sell out, but in the absence of capitalists in the Mound City to shoulder the burden made it necessary for them to carry the load themselves, and it is possible they may make their independent fortunes as a result of the move. The Killileas and F.C. Gross stated that Milwaukee could not adequately support the expensive team they had secured; so they had to leave the city.”²⁴

The *Sentinel* was perceptive. Killilea and Gross had maintained ownership of the team in the absence of local capitalists in St. Louis. The seriously ill Killilea and Gross, lifelong Milwaukeeans, did not make for a secure and stable St. Louis franchise ownership. It was an absence that did not continue for long; their control of the St. Louis franchise was short-lived. Ban Johnson was going to make sure of it.

Enter the Browns

Seeking to capitalize on past legacy, the new club appropriated the Browns as the team’s nickname. Even before the shift to St. Louis had been finalized it was being referred to as the Browns, a deliberate attempt to hearken back to the old St. Louis Brown Stockings, a successful franchise in the defunct American Association from the late 1880s that had won four pennants in a row.²⁵

In late January 1902, it became public that Matt Killilea planned to dispose of his stock to St. Louis investors.²⁶ Johnson on hearing of the impending deal “took the first train to St. Louis” and spent a day with the principal parties to ensure protection of league interests. While a *St. Louis Republic* article describing this development seemed to suggest rapidly evolving events, it actually represented the culmination of a long process in attracting resident ownership of the team.

In this situation, Johnson was far from the detached individual portrayed by the *Republic*. Two days after Killilea’s intentions became public, it was revealed that Johnson and Comiskey “will meet with local parties who will take charge of the club” and that their names would soon be publicized. The *Republic* article surmised that one of the individuals involved in negotiations for the team was a Mr. R.L. Hedges, formerly of Cincinnati and then living in Kansas City.

“I went into baseball purely as a business”
Robert Lee Hedges

Conjecture had it that Hedges, described as a retired carriage manufacturer, would have some connection

with the ballclub.²⁷ He and Johnson had known each other since Johnson was a sportswriter in Cincinnati; they had stayed in touch over the years.²⁸

Although Hedges emerged as the major force in controlling the franchise, it was not apparent at first. When *Sporting Life* announced stockholders in the ballclub, they were, with the exception of Hedges, all prominent St. Louis businessmen. Ralph Orthwein, George Munson, C.J. McDiarmid, and John P. Bruce each committed to purchase 50 shares in the club valued at \$100 per share, half paid up-front and representing 40 percent ownership.²⁹ Hedges’ 300 shares were the remaining 60 percent, a majority interest in the Browns. Upon consummating the deal, Hedges moved to St. Louis. He lived there the rest of his life.

²⁷ “Will Organize New Club,” *St. Louis Republic*, January 28, 1901: 6.

²⁸ Lieb, *Baltimore Orioles*, 184.

²⁹ “St. Louis Situation,” *Sporting Life*, February 15, 1902, page number not listed. While other sources show differing investors and amounts, Hedges is always listed as having the largest amount, if not majority ownership in the team, and the figure of \$30,000 is most frequently cited as his initial investment. Munson was a St. Louis entrepreneur involved in various areas of public entertainment including dog and horse shows, skating rinks, race tracks and theaters. See thisgameofgames.blogspot.com/search/label/George%20Munson. Bruce and McDiarmid were local attorneys. See “American Affairs,” *Sporting Life*, February 8, 1902. For other comments, variants on the transaction, see “Said to the Magnates,” *The Sporting News*, February 1, 1902: 2; and “St. Louis Browns Under Hedges Furnish Interesting Chapter in Game’s History,” *The Sporting News*, December 30, 1915: 2.

²⁴ Ibid.

²⁵ Frederick G. Lieb, *The Baltimore Orioles: The History of a Colorful Team in Baltimore and St. Louis* (Carbondale, Illinois: Southern Illinois University Press, 1955), 184.

²⁶ “Spaulding Is Apparently Satisfied With Situation,” *St. Louis Republic*, January 26, 1901: 26.

Numerous sources reflected various figures as to the team's selling price; the January 28, 1902, issue of the *St. Louis Republic* estimating a figure in the range of \$50,000. Whatever the final price, Henry Killilea seemed pleased with the transaction's conclusion: "You may say that the deal has been hanging fire, but that everything was satisfactorily arranged. ... Matt was never in favor of going to St. Louis, and when the opportunity came to sell out at a higher price he willingly consented. We were treated liberally by the men purchasing and have no complaint to make."³⁰

Matt Killilea died on July 27, 1902, a victim of tuberculosis. After his death, *The Sporting News* wrote that "He was the brains of the American League, having advised Ban Johnson in all his moves before and after the war started with the National League. Even the genius, [John T. Brush](#), with all his baseball experience, failed to cope successfully with the Milwaukee magnate, although the latter was new to the game compared to the Cincinnati man. Charlie Comiskey and other well known magnates have said that Matt Killilea had all the other leaders beaten by a mile when it came to base ball law."³¹

Matt's brother Henry went on to briefly own the Boston Red Sox (then called the Americans), possibly financed with some of the proceeds from the sale of the Browns. Respected for his legal acumen, Killilea received credit for his expertise in helping to gain peace between the American and National Leagues in 1903, the same year his Americans won the World Series.³²

Once the transaction was final, the principals selected officers. Orthwein became president and Hedges secretary-treasurer. Several histories of the Browns have Orthwein heading the team in its first year. Although being president of the Browns reinforced this impression, Orthwein was a minority stockholder. Hedges was always the principal owner.³³

Orthwein assumed the presidency to give the team a sense of legitimacy in the community. Hedges, from Kansas City, was viewed as an outsider. *The Sporting News* explained that Orthwein "was made nominal head of the new club to impress upon the public it was a St. Louis institution and not under alien ownership."³⁴ He was a millionaire, serving as secretary of the Sempire Clock Company and as director of the Orthwein Investment Company. Also known as a sportsman, Orthwein owned the then famous champion saddle horse Rex McDonald. At 25, he was the youngest president in either league.³⁵ The paper noted that the club's policies "would be shaped and affairs managed by Secretary Hedges who has a controlling interest in its stock."

Orthwein proved a minor and transitory figure in the Browns history. He was a somewhat eccentric figure. In 1903 *TSN* noted creation of a deed of trust to manage Orthwein's property and to "deal with his indebtedness," one of several untoward incidents in his life.³⁶ At the end of the 1903 season, a single sentence in the *St. Louis-Dispatch* noted that Hedges had succeeded Orthwein as president of the club.³⁷ Although later versions of his leaving the Browns suggest dissatisfaction with the team's management, Orthwein's shaky financial position probably decided his departure.³⁸

³⁴ "TSN A Weekly Journal," *The Sporting News*, August 15, 1903: 4.

³⁵ "St. Louis Situation," *Sporting Life*, February 15, 1902.

³⁶ "TSN A Weekly Journal"; Orthwein's Settlement," *Sporting Life*, August 15, 1903: 11; "Ralph Orthwein Gives Up \$100,000," *St. Louis-Post Dispatch*, August 6, 1903: 3.

³⁷ "Baseball Gossip," *Washington Post*, November 8, 1903: 10. Several years later, Orthwein, second cousin of the Busches, who would eventually purchase the Cardinals half a century later, was divorced, in part because of an affair he had with the wife of Browns catcher and future manager Jack O'Connor. Information publicized at the time revealed that Orthwein was a spendthrift who had gone through his and his wife's money. He subsequently married the former Mrs. Cora O'Connor in 1907; they in turn divorced several years later. She subsequently remarried, was arrested for and acquitted of murdering her third husband, Herbert Ziegler, whom she admitted having shot. "Mrs. Orthwein Has Letters of Mrs. O'Connor," *St. Louis Post-Dispatch*, October 24, 1906: 1; "We're Happy Says Bride of Orthwein," *St. Louis Post-Dispatch*, September 6, 1907: 3; and "Mrs. Orthwein Free; Jury Out Only an Hour," *New York Times*, June 25, 1921: 6.

³⁸ "St. Louis Browns Under Hedges Furnish Interesting Chapter in Game's History," *The Sporting News*, December 30, 1915: 2.

³⁰ "Will Organize New Club," *St. Louis Republic*, January 28, 1901: 6.

³¹ Pajot, "Matthew Killilea."

³² Pajot, "Henry Killilea."

³³ Bill Borst, *First in Booze, First in Shoes, Last in the American League: The St. Louis Browns, An Informal History* (St. Louis: Krank Enterprises, 1978), 21; and Lieb, *The Baltimore Orioles*.

Hedges is an obscure figure in baseball's narrative. His team lacked color, did not shine on the field or generate outstanding players. Yet, during his 13-year run as owner, Hedges showed an innovative side seldom equaled by his contemporaries.

While Orthwein came of wealth, his father generating a considerable fortune as a grain merchant, Hedges rose from more common stock. His tale of overcoming adversity ran along the line of a Horatio Alger rags-to-riches story. Born near Kansas City in 1869, he overcame several personal tragedies. His father died when Hedges was 13; four years later, two brothers were killed in a tornado.



Robert Lee Hedges

Despite these calamities, Hedges worked his way up from being a civil servant to launching a buggy-manufacturing firm in Hamilton, Ohio. Always shrewd in the way of business, he sold the concern in 1900, foreseeing its future demise at the hands of a coming automobile industry. Hedges then moved into the financial world, representing J.P. Morgan's various enterprises in the Midwest. Soon thereafter, lured by Johnson, he joined a select group of individuals investing in the American League.

Many owners at the time were former players or patrons who saw themselves as "sportsmen" indulging in a costly hobby or obligation to serve the civic good. Hedges was neither. "I went into baseball purely as a matter of business," he said.³⁹ Although the Browns' performance was mostly mediocre during Hedges' tenure, he held to this

principle, with the Browns consistently turning a profit.

Taking over the Browns was a daunting proposition for Hedges. The first priority was finding a ballpark for the team. Old Sportsman's Park, site of play for the American Association Browns, became the new Browns' ballfield – partially out of availability but also hinting at past glories. Renovation of the disused facility commenced as a new grandstand was constructed and the bleachers restored amid a general makeover. It was ready for play on Opening Day 1902.

Through the winter months, while financial transactions took place, McAleer proceeded to sign players for the Browns, focusing on disgruntled National Leaguers. The results of his efforts were stunning; he obtained six players from the Cardinals alone. Three were pitchers [Jack Harper](#), [Jack Powell](#), and Willie Sudhoff, who had combined for 59 Cardinals wins in 1901. Future Hall of Famers [Jessie Burkett](#) and [Bobby Wallace](#) followed suit. With these and other players, the Browns looked to be formidable going into their inaugural season in St. Louis.

The wholesale invasion of the Cardinals' roster set off a spate of lawsuits, the Cardinals defending their rights to control players through the reserve clause. Courts eventually upheld the Browns actions because the standard player contracts did not offer mutuality and were in violation of antitrust legislation.⁴⁰

Of lasting importance was a legacy of ill feelings that formed between the two teams. Intracity rivalries were to be expected, but the Browns' raid on the Cardinals generated a deep animosity that continued until the Browns left St. Louis. Hedges subsequently came to realize the cost to his team's good will, and said that if he had to do it over, he would probably have sought players from National League teams other than St. Louis.⁴¹

As the season commenced, Hedges found ways to improve attendance. One concerned the rowdy nature of fans attending Browns games. Ban Johnson's continuing initiative in running the American League was to remove unsavory and disorderly elements from ballparks. His efforts

³⁹ Steve Steinberg, "Robert Hedges," SABR Baseball Bioproject, sabr.org/bioproj/person/b91246d7.

⁴⁰ Golenbock, *Spirit of St. Louis*, 58.

⁴¹ Steinberg, "Robert Hedges."

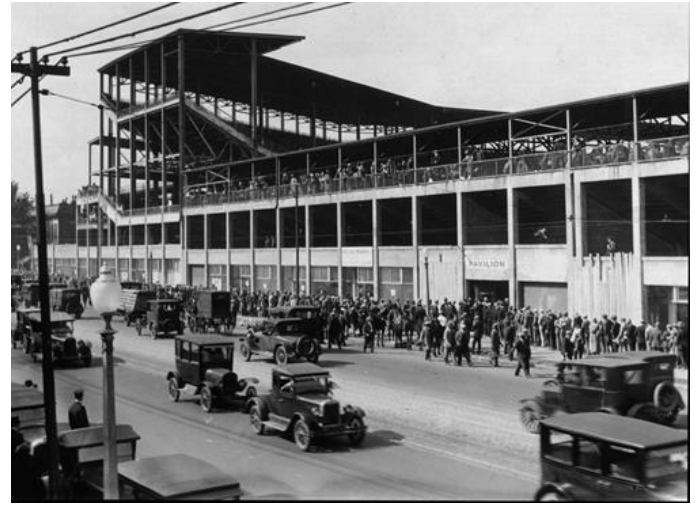
encouraged increased attendance by a wider public, long put off by disruptive elements. Theodore P. Wagner, attending his first Browns game in the early 1900s, recalled half a century later, the gauntlet of abuse fans had to endure: Women who attended “...received a raucous and often ribald welcome from the beer drinkers...” Wagner’s memories were of a “...Sunday afternoon filled with “brew bombs,” fisticuffs and excitement.”⁴²

Although American League teams for the most part followed Johnson’s strictures on dealing with disruptive fans, the Browns were commencing play in a heretofore National League town where such limits had not been encouraged or endorsed. Hedges proceeded to promote a family-friendly environment by employing security personnel and banning the sale of alcohol at games. A complimentary initiative revolved around what became known as “Ladies Days,” games at Sportsman’s Park.

Hedges frequently receives credit for creating Ladies Day.⁴³ In a series of articles nearly half a century after he took over the Browns, baseball writer Sid Keener said, “While many owners claim credit for introducing ‘Ladies Days’ to baseball this writer (Keener) awards that honor to Hedges. During the mid 1900’s women rarely patronized sporting events – baseball especially. There were those rowdies out on the ball field! And you didn’t want your mother, wife, daughter, or sweetheart to hear those nasty words!”⁴⁴

Despite Keener’s recollections, the idea of encouraging women to attend ballgames took place in the National League’s early days and was an offered feature of Milwaukee Brewers baseball.⁴⁵ Tickets were offered to women at a reduced price on special days of the week or if accompanied by a man. Although Hedges may not have come up with this promotional idea, he certainly popularized it in St Louis.

During the season, and over the years, Hedges became a familiar figure in St. Louis, attending business luncheons and civic functions, talking about his team, often providing free tickets with the invitation to “come out to the ball park as my guests.” To those wary of games based on prior experiences, “Uncle Bob,” as he came to be known, invited them to witness how attendance at a game had been transformed.”⁴⁶ Hedges’ presence extended to the ballpark, where he often appeared, greeting fans, and roaming the stands during play, efforts that gradually won followers to the team.⁴⁷



Sportsman's Park

Nearly a quarter-century later, Keener recalled watching Hedges in action at the ballpark. “Two men and a woman who seemed to be in their early 60’s were trying to edge their way through the mob. There wasn’t a vacant seat in the ballpark when Mr. Hedges spotted them. ‘You’ll pardon me,’ said Mr. Hedges. ‘This place is too crowded for the lady. Won’t you be kind enough to do me a favor and accept seats in my private box?’ He had an usher escort them to his seats behind home plate to watch the game. He ended up viewing it while standing on a concrete post, holding on to an iron beam.”⁴⁸

“First in shoes, first in booze, and last in the American League.”

With new players recruited prior to the 1902 season, the Browns became a contender. Their first game was auspicious, a victory over the Cleveland Blues

⁴² Golenbock, *Spirit of St. Louis*, 57-58.

⁴³ Golenbock, *Spirit of St. Louis*, 58.

⁴⁴ Sid Keener, “Hedges Made St. Louis Paying Franchise in A.L.,” *The Sporting News*, July 25, 1951: 13-14; Note Seymour, 328, which described Ladies Day having been established as early as 1867.

⁴⁵ *Milwaukee Sentinel*, May 4, 1901; Peter Morris, *A Game of Inches: The Stories Behind the Innovations that Shaped Baseball: The Game Behind the Scenes*. (Chicago: Ivan R. Dee, 2006), 121-122.

⁴⁶ Steinberg, “Robert Hedges.”

⁴⁷ “Hedges Made St. Louis Paying Franchise in A.L.” *The Sporting News*, July 25, 1951, 13.

⁴⁸ “Sid Keener’s Column,” *St. Louis Times-Star*, April 25, 1932.

on April 24, 1902, at Sportsman's Park. St. Louis went on to battle the Philadelphia A's for the league lead well into September. At the height of the pennant race, Hedges' innovative nature came into play: He offered his players 25 percent of the gross receipts should they win the league championship.⁴⁹ Illegal today, it was a novel concept at the time. The gesture, however, proved academic as the Browns faded in the stretch, finishing second, five games out.

Fueled by their solid play, the Browns outdrew the Cardinals by over 45,000 fans, making for a successful season. Overshadowing the local scene, however, was baseball's decidedly unsettled landscape; the two leagues were still at war. During the winter of 1902, National League owners had come to the realization that the American League was here to stay. The new circuit had outdrawn the old, 2,206,454 to 1,683,012. It was time to end the conflict. Both leagues understood that profits would continue to decline as long as players could make one team bid against another for their services. The National League sent out peace feelers, which



Johnson and his owners cordially received. Within weeks, a settlement to resolve differences concerning territorial rights and ownership of individual

Christy Mathewson, almost a Brownie
players came to the owners for approval.

While most were willing to sign off, New York Giants owner John T. Brush proved recalcitrant. Johnson, wishing to take advantage of New York's population base, had shifted the Baltimore Orioles franchise into New York, begetting a team later to become known as the Yankees, a transfer that enraged Brush. Further, Brush was going to lose three quality stars, [George Davis](#), [Ed Delahanty](#), and [Kid Elberfeld](#), to the American League. If these

factors were not enough to set Brush against the settlement, he was also going to lose a star pitcher. Hedges had lured [Christy Mathewson](#) to the Browns with what looked to be a lawful "ironclad" contract. Mathewson had been making \$1,500 annually with the Giants. Hedges offered \$4,000. A \$500 advance sweetened the bargain.⁵⁰ Brush was so much against the agreement that he won an injunction to stop the process. Although he canceled the injunction, Brush remained opposed to the conflict's resolution.

All indications pointed to Mathewson going to the Browns based on his having signed with them and receiving an advance. Yet the final listing of assignments had him staying with the Giants. By letting Mathewson stay with New York, Brush's recalcitrance toward the settlement dissipated. It subsequently came to light that Hedges willingly gave Mathewson up to bring closure to the dispute. "My individual and club interests were of comparatively minor importance when the future of baseball was at stake," he said. Later, he recalled, "I lost a pennant for St. Louis in that deal, but I brought about peace in the baseball world."⁵¹

In retrospect, Hedges and St. Louis lost more than a pennant. One can only speculate on how Mathewson might have affected the Browns' fortunes over the years, including the franchise's eventual move to Baltimore.

The Browns' success in 1902 proved their best performance during Hedges' time as owner of the team. Just once more would they finish in the first division under Hedges; the rest of the time they resided in the bottom half of the league, including six finishes in seventh or eighth place. Although there were flashes of excellence, such as outfielder [George Stone](#) winning the batting title in 1906 and the acquisition of George Sisler, most of the talent Hedges garnered for the club proved second-rate. His astuteness in the business world did not translate into success on the playing field. Over the years, "Uncle Bob" gradually earned a new moniker, "Tail-End Bob."

One reason suggested for the Browns' plodding performances was that the ability to scout out top-

⁵⁰ Allen, *American League*, 27; Seymour, *The Early Years*, 322-323.

⁵¹ Steve Steinberg, "Matty and the Browns: A Window onto the AL-NL War," *Nine: A Journal of Baseball History & Culture*, Vol. 14, No. 2, Spring 2006: 106-112.

⁴⁹ Steinberg, "Robert Hedges."

notch prospects was lacking.⁵² Perhaps Hedges' entry into the game from outside baseball worked against him. Unlike Comiskey or Mack, who had years of experience in developing a network of acquaintances able to discover talent, Hedges' inexperience impeded his ability to ascertain quality personnel.

He also left an impression that in dealing with player personnel, his actions were as an individual dealing in commodities, rather than in creating a winning team. *The Sporting News* describes Hedges' ability to obtain minor-league players who were "sold to major league clubs for large sums." Yet, the same article noted, "Scarce one of these players 'made good' with the major-league clubs to which they were sold."⁵³ Hedges' dealings in player personnel were so sharp they left fellow owners with a sense of unease, that he was "too canny a businessman for the good of the game."⁵⁴ This reputation eventually hurt him within baseball's hierarchy, working against his ability to do business with other teams.

In time owners refused to trade with him. Sid Keener, writing for the *St. Louis Times*, wrote, "It has been common talk in American League baseball circles for years and years that other magnates would not exchange with Hedges. Figures prove this. ... The American League, failing to shoo Uncle Bob out of the league, has entered into a combination to prevent him from getting his club back in the first division."⁵⁵ Cleveland and Philadelphia respectively thwarted his efforts to obtain [Joe Jackson](#) and [Home Run Baker](#).

Despite the team's less than sterling performances, it often turned a profit. Several external developments worked in Hedges' favor. While Sunday baseball was legalized, horse racing became illegal in 1905. It had been one of few sporting events the public could afford. Simultaneously, Hedges continued innovating, introducing features to give the stadium a friendlier setting. He commenced use of an electric scoreboard, provided a public-address announcer at games, and employed

detectives to rid Sportsman's Park of gamblers.⁵⁶ These factors contributed to increased attendance at the ballpark. Moreover, it did not hurt that the Cardinals were equally inept, finishing in the first division just once while Hedges ran the Browns. On average, the Browns outdrew the Cardinals by nearly 40,000 a year.

The Browns lumbered through several years of indifference until 1908. Then, thanks in part to picking up castoffs [Bill Dinneen](#) and [Rube Waddell](#), they made a solid run at the pennant. Both had comeback seasons, keeping St. Louis in the race before they finished a close fourth. More than 600,000 fans came to the ballpark, more than triple that of the crosstown Cardinals, and generating a profit of \$165,000.

Flush with success, Hedges reinvested over \$70,000 in reconstructing Sportsman's Park, creating a steel and concrete structure, one of the earliest of its kind, and allowing for an increase in capacity from 18,000 to over 24,000.⁵⁷ The refurbished facility provided little in the way of inspiration in 1909. Dinneen and Waddell dropped from a combined 33-21 to a 17-21 record as the team fell to seventh place. McAleer, who some said was too easygoing for his own good, was let go after having piloted the team for eight seasons.⁵⁸ Despite the increased capacity at Sportsman's Park, the Brownies' falloff caused attendance to drop from 618,947 to 366,274, sixth in the league.

To replace McAleer, Hedges hired Jack O'Connor, a former Browns catcher. Hedges had taken note of O'Connor's "superior knowledge of the sport," and "his knack of doing the unexpected or outguessing his adversary," when O'Connor had played for the team.⁵⁹ It proved a disastrous appointment. Not only did O'Connor lead the team to its worst record in the franchise's young history, he involved the club in a disreputable incident, caught Hedges up in a

⁵⁶ Ibid.

⁵⁷ Philip J. Lowry, *Green Cathedrals: The Ultimate Celebration of Major League and Negro League Ballparks*, (New York: Walker & Company, 2006), 201-202.

⁵⁸ Bob Burnes, *The Baltimore Orioles*, in Ed Fitzgerald, ed., *The American League* (New York: Grosset & Dunlap, 1959), 206.

⁵⁹ Rick Huhn, *The Chalmers race: Ty Cobb, Napoleon Lajoie, and the Controversial 1910 Batting Title That Became a Nation's Obsession* (Lincoln: University of Nebraska Press, 2014), 96.

⁵² Ibid.

⁵³ "St. Louis Browns Under Hedges Furnish Interesting Chapter in Game's History, *The Sporting News*, December 30, 1915: 2.

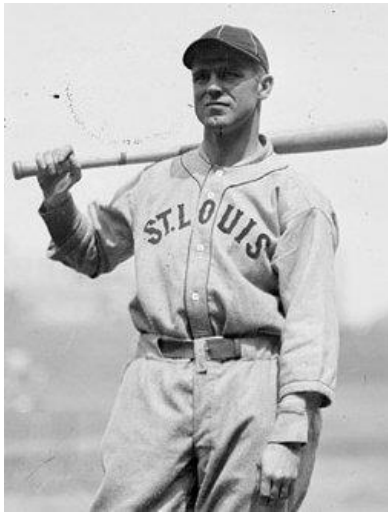
⁵⁴ Steinberg, "Robert Hedges."

⁵⁵ Ibid.

legal battle, and decidedly raised the ire of Ban Johnson. All this came out of play on the last day of the season.

St. Louis was finishing last – 20½ games behind seventh-place Washington – as attendance dropped to less than 250,000. They were playing a doubleheader on the last day of the season against the Cleveland Naps. While the games had no meaning in the standings, they did play a role in the batting race. Cleveland's Napoleon Lajoie, then second to the less popular [Ty Cobb](#), made eight hits against Browns pitching, seemingly winning the batting crown.

His spree was achieved under bizarre circumstances. Most of Lajoie's hits were bunts down the third-base line toward rookie [Red Corriden](#), playing his position suspiciously deep. After a questionable play, Browns coach [Harry Howell](#) allegedly offered a bribe to the official scorer to give Lajoie a hit. Hedges, in attendance, was not pleased with what he saw.



George Sisler

Hedges soon fired O'Connor. It turned out that Corriden was playing deep under orders from O'Connor, who admitted, "The games Sunday were a farce." O'Connor and Howell were banished from the game. When Hedges fired O'Connor and Howell, it was clear to those in the know that he was acting under Johnson's direction.⁶⁰

O'Connor was not finished with Hedges, however. His contract covered 1910 and 1911. Hedges refused to pay O'Connor for 1911. O'Connor took

him to court and won in 1913, forcing payment of \$5,000 for 1911.⁶¹ The case did little in the way of credit to either man, O'Connor being shown up for his lackadaisical management of the team and Hedges for his evasiveness on matters concerning the contract while under oath.⁶²

Shortly after the season ended, rumors circulated that Hedges was going to sell the Browns. There was truth in the rumors; a transaction was in process. As recalled 40 years later by Hedges' attorney, Montague Lyon, in *The Sporting News*, a group of St. Louisian Racquet Club members decided that they wanted to purchase the club from Hedges.⁶³ Hedges at the time owned just over 60 percent of the club, minority stockholders being Ben C. Adkins, John E. Bruce, W.E. Orthwein and C.J. McDiarmid.⁶⁴ The would-be purchasers, headed by local financier E. Manning Hodgman, deposited \$30,000 with Hedges as down payment on a \$300,000 purchase price. They had 10 days to determine whether to go through with the matter, failure to do so generating forfeiture of the down payment.

The reasons offered for Hedges' decision to sell varied. Lyon was quoted in *Sporting Life* as saying, "Mr. Hedges' health has been impaired by worry and hard work since the close of last season and his friends and his wife finally prevailed upon him to sell the club and accordingly the deal with the Hodgman syndicate was closed. After the stock has been transferred, Mr. Hedges will go to Arizona on personal business and finally to Europe for his health."⁶⁵

Other sources pointed to a different reason: that Hedges faced outside pressure, especially from Johnson, to sell the Browns. The article quoting Lyon alluded to efforts to oust Hedges because of

⁶¹ The entire incident is covered in Huhn's book. As far as who won the batting title in 1910, records show Lajoie won, but this is not recognized by the major leagues and is still a point of controversy.

⁶² Huhn, *Chalmers*, 173, "President Hedges' attitude on the stand created an unfavorable impression." As it turned out, Hedges did not pay the settlement of O'Connor's contract. Under terms of Hedges selling the club to Ball, Ball and associates paid off O'Connor. "The St. Louis Shift," *Sporting Life*, January 15, 1916.

⁶³ J.G. Taylor Spink, "Johnson Brought Ball Into American League," *The Sporting News*, July 25, 1951: 14.

⁶⁴ "Hedges Gives Facts," *Sporting Life*, February 25, 1911: 1.

⁶⁵ "Big Baseball Deals," *Sporting Life*, December 24, 1910: 1.

⁶⁰ Huhn, *Chalmers*, 145-146, and a phone conversation with Rick Huhn on January 5, 2016.

the Browns' poor showing, the O'Connor incident, and a disagreement with Comiskey concerning possible tampering charges involving a White Sox player. Comiskey, Hedges, and Johnson denied all this conjecture.

The deal, subsequently vetted by Johnson and others representing the American League, eventually collapsed. The would-be investors began squabbling about apportioning responsibilities in running the club, and as a result missed payment deadlines for completing the purchase. Hedges granted an extension, hoping disagreements could be resolved, but the dispute went beyond resolution, and the transaction was never consummated. The investors lost their \$30,000 down payment.

As the deal collapsed, Hedges, full of effusiveness, said he was "never feeling better in (my) life and is eager to get to work and resurrect the lowly Browns from the graveyard brigade." Once the transaction failed, he rapidly reassumed control of the Browns and named shortstop Bobby Wallace manager for the 1911 season. It proved nearly as unfortunate a choice as was the selection of O'Connor.⁶⁶

Wallace, the peerless-fielding shortstop, was a future Hall of Famer who had been with the Browns since 1902. He took the job against his better judgment. "I never had the slightest desire to be a major-league manager and all knew it," said Wallace. "But Ban Johnson, Bob Hedges, and Jimmy McAleer persuaded me that the Browns were in a sort of a jam and it was up to me, as an old standby, to do what I could."⁶⁷

O'Connor's efforts had generated a 47-107 record. With Wallace, the team's record was near identical, at 45-107, prompting another last-place finish. Early in 1912, as the team continued to perform poorly, first baseman [George Stovall](#) replaced Wallace. The *Sporting Life* article describing his appointment as a playing manager provided insight into Stovall's nature as well as his perspective on what St. Louis needed. "I am going to have a conference with President Hedges, and I am going to tell him that he will have to get me some players and get them in a hurry," he said. "The club is in bad shape. ... If he

expects me to make a showing and win some games he'll have to give me the material."

The same article noted that the Browns were going through the motions, lifeless; that there were "no rowdies," no "pepper and fighting spirit." Mindful of Hedges' business practices, the *Sporting Life* correspondent offered a telling observation: "[T]o make Stovall's reign a success Colonel Hedges will have to bring along some of those high-priced minor-leaguers who go to other teams at fancy prices."⁶⁸

Under Stovall, the team marginally improved, enough to eke out a seventh-place finish ahead of the New York Highlanders (later Yankees). There was a sense of optimism as the Browns entered 1913 with Stovall at the helm. However, before the season was over, he earned Ban Johnson's wrath for an on-field incident.

In early May, Stovall got into an argument with umpire [Charlie Ferguson](#). As Browns infielder [Jimmy Austin](#) described it, the dispute climaxed when "George let fly with a big glob of tobacco juice – ptooeey – that just splattered all over Ferguson's face and coat and everywhere. Ugh, it was an awful mess. It was terrible"⁶⁹ Suspended for several weeks, fined, and forced to write a letter of apology to Ferguson, Stovall complied. However, he had crossed the line with Johnson and Hedges, not only assaulting the authority of an umpire, but also behaving in a manner counter to the image of the game that they were trying to project. Stovall would have to go. Hedges, who had now made three consecutive poor selections as managers, did not have far to look in finding a successor.

Parts II-IV will appear in the next three issues of Outside the Lines

Meeting Announcement

Please join us for the annual meeting of the Business of Baseball Committee during SABR 51 in Chicago on Saturday July 8th from 4:30-5:30 pm in the State Ballroom (4th floor) of the Palmer House Hotel.

⁶⁶ "Johnson Brought Ball...", *The Sporting News*, July 25, 1951: 14; "The Deal That Failed," *Sporting Life*, January 21, 1911.

⁶⁷ Scott E. Schul, "Bobby Wallace," SABR Bioproject, sabr.org/bioproj/person/59a8cf09.

⁶⁸ "Stovall's Position," *Sporting Life*, June 15, 1912: 3.

⁶⁹ David Jones, ed., *Deadball Stars of the American League; George Stovall*, (Dulles, Virginia: Potomac Books, Inc., 2006), 664.



Recently Published Research

This column highlights recently published articles on topics that may interest members of the Business of Baseball Committee. If you are aware of a source that publishes articles of interest to the readership, please alert me so that I can monitor it.

Walter Gantz and Nicky Lewis, "Sports Fanship Changes Across the Lifespan," *Communication and Sport* 11, no. 1, (2022)

Using two studies and two theoretical perspectives—socioemotional selectivity theory (SST) and social identity theory—this article examines the intensity of sports fanship across the adult lifespan. It is proposed that as adults age, emotional well-being increases, negative affect decreases, life satisfaction is enhanced, and self-identity is less dependent on group affiliation. All of these are likely to diminish the importance of sports fanship for most individuals over time. Adults aged 40 to 87 were surveyed in three data collections (combined $N = 2,524$). Study 1 used a 17-item measure to identify changes in sports fanship. Study 2 analyzed participants' responses to an open-ended item that asked why their sports fanship decreased or increased over time. Results determined that most participants' fanship significantly diminished with age. Key factors for this were lack of time, shifting priorities, and increasing maturity levels, with the latter marked by decreased passion. A minority of participants reported an increase in fanship, primarily because of a stronger connection to teams and the opportunity sports afforded them to spend time with their family and friends. Gender also mattered. The majority whose fanship decreased were male; the majority of those whose fanship increased were female.

Stephen P. Andon, "From Save The Crew to Saved The Crew: Constitutive Rhetoric, Myth, and Fan Opposition to Sports Team Relocation," *Communication and Sport* 11, no. 1, (2022)

Sports franchise relocation is a hallmark of the American sports landscape. Teams relocate at their owners' whims, leaving fans with little more to do than voice their angst. When the Columbus Crew of Major League Soccer announced in 2017 that

ownership was set to move the team to Austin, a group of the Crew's most ardent supporters initially seemed resigned to the franchise's predetermined fate. However, over the course of months, those fans embarked on a grass roots campaign that generated attention worldwide and, ultimately, convinced a new ownership group to purchase the team and keep it in Columbus. This paper analyzes the efforts of these supporters through the lens of constitutive rhetoric, an ideologically-based concept that can galvanize disparate communities, shift their collective perspective, and set them on a course for action. In using this approach, the Save The Crew movement used myth to deploy a unique rhetorical power that successfully opposed the powerful capitalist logic of team relocation.

Seomgyun Lee, Kyungun Ryan Kim, and Minsoo Kang, "The Importance of an Organization's Reputation: Application of the Rasch Model to the Organizational Reputation Questionnaire for Sports Fans," *International Journal of Sport Communication* 16, no. 1, (2023)

Crises are unavoidable in the sport world, and their relationship with reputation is inextricable. Protecting its reputation is a top priority for a sport organization in a crisis; thus, developing a valid and reliable instrument should be a precedent. In this study, Rasch analysis was applied to evaluate a 10-item Organizational Reputation Scale (ORP), extensively used in general and sport communication research, but whose development was made under classical test theory. This traditional method has several limitations (i.e., item and sample dependencies, nonadditive features of ordinal data, and item category functioning). The main purposes of the study were to calibrate ORP items and evaluate their category functions. A total of 373 sport fans responded to the ORP on a 5-point Likert scale. Several analytic steps were applied to provide psychometric properties of each item in the ORP. The findings provided evidence that supports the unidimensional structure of the ORP with eight items. All items and a person's ability exhibited satisfactory levels of variability along the continuum. The 5-category rating scale in Likert format functioned properly. As a better alternative to classical test theory, Rasch analysis provided information about the practicality of each ORP item in measuring individuals' perceptual level of an organization's reputation within a sport setting. Our

study proposed some insights for enhancing each item's quality and encouraging future scholars to make informed decisions when using the ORP.

Paul M. Holmes and Robert F. Kane, "The Spread of Integration in Major League Baseball," *Journal of Sports Economics* 24, no. 3, (April 2023)

After the initial integration of Major League Baseball (MLB), teams introduced black players at different rates. We examine whether, and to what extent, team performance affected the rate of spread of integration. Our theoretical model predicts that teams of moderate talent will integrate fastest. We confirm this prediction using data from the first twenty years of MLB integration. However we show that relatively little of the spread of integration can be explained by differences in talent/performance, suggesting that competitive rivalry (as we measure it) was not the primary driver of the pace of integration in MLB.

Brian M. Mills and Rodney Fort, "Performance Quality Preference Heterogeneity in Major League Baseball," *Journal of Sports Economics* 24, no. 3, (April 2023)

With few exceptions, the sports attendance demand literature assumes the intensity of fan responses to home and visiting team quality are homogeneous across the markets in a league. However, the theory of sports leagues makes no such assumption. In this paper, we empirically investigate heterogeneity in fan win preference intensity using Major League Baseball attendance. Using a generalized linear mixed model, we find evidence of substantial fan preference heterogeneity, toward both home and visiting team quality, across Major League Baseball markets. In addition to the demonstrated importance for empirical analysis, we detail how this also matters for league policy design.

Ryan Pinheiro and Stefan Szymanski, "All Runs Are Created Equal: Labor Market Efficiency in Major League Baseball," *Journal of Sports Economics* 23, no. 8, (December 2022)

Moneyball (Lewis, 2003) claimed that data analytics enabled savvy operators to exploit inefficiencies in the market for baseball players. The economic analysis of Hakes and Sauer (2006) appeared to show that the publication of Moneyball represented a watershed, after which inefficiencies had been competed away. In both cases analysis

focused on composite statistics such as on base percentage (OBP) and slugging percentage (SLG). This paper relies on a more structural approach, associated with the statistical analysis of Lindsey (1963) which identifies the run value of each individual event in a game. Using a dataset of every event in every game from 1996 to 2015, we show that run value of each event can be accurately calculated, as can the run value contribution of each player. We show that the compensation of free agents reliably reflects the run value contribution of each player, regardless of the source of those contributions (walks, singles, and home runs). We find this was true both before and after the publication of Moneyball, suggesting that the labor market for batters in Major League Baseball operated efficiently across our entire sample period.

Hyunwoong Pyun, Brad R. Humphreys, and Umair Khalil, "Professional Sports Events and Public Spending: Evidence from Municipal Police Budgets," *Journal of Sports Economics* 24, no. 1, (January 2023)

Prior evidence reveals a causal relationship between sporting events and crime. If sporting events increase crime, they also increase public spending on policing. We analyze the crime-police spending relationship using data from the Annual Survey of Public Employment & Payroll over the periods 1979–1995 and 1997–2010 for a sample of 52 US municipalities with and without teams. Reduced form regression models reveal that police employment increases with the arrival and departure of an NFL team as well as with the number of postseason games played. We argue that both these outcomes generate plausibly exogenous variation in sports-related demand for policing.

Alicia Cintron, Jeffrey Levine, Dylan Williams & Jordan Kobritz, "Sin city betting on the major leagues? An analysis of the sport-based approach to economic redevelopment in Las Vegas," *Sport in Society: Cultures, Commerce, Media, Politics* 25, no. 12, (2022)

The city of Las Vegas, Nevada was one of the hardest hit communities in the United States during the 2008 Great Recession. As the nation emerged from the economic downturn, city and state officials worked together to create a framework through which the region could become more proactive in its future through economic diversification. That

effort resulted in the creation of an urban regime, a working committee of private and public stakeholders who collaborated to offer recommendations to the governor. One such recommendation was a \$750 million subsidy to build a large-scale football stadium, one of the largest sport facility public subsidy to date. This qualitative inquiry examined regime development and the decision-making process at the local and state level that led to approval of the stadium subsidy. Through a historical research approach, we examined how the Las Vegas stadium regime coalesced, and how economic conditions, politics, and ideology may have influenced the regime's decision-making.



Team Ownership Histories Project

By Andy McCue

The project (<https://sabr.org/bioproj/topic/team-ownership-histories>) continues to grow and evolve.

In recent weeks, we have added work that reflects the breadth of the project -- Bruce Allardice's essay on the 1884 Richmond Virginians of the American Association and Andy McCue's piece on the Seattle Pilots. From a failed 19th Century league to a bankrupt 20th Century franchise.

In the beginning, we set out to do ownership histories of the current 30 major league franchises. We've gone well beyond that. Our researchers have created pieces on franchises from the Negro Leagues, AAGPBL, defunct 19th Century teams and those from leagues that are long past. There are a lot of possibilities out there.

The newest work joins earlier essays on the Mets (Leslie Heaphy), the Boston Braves (Bob LeMoine), the Red Sox and Yankees (Dan Levitt and Mark Armour), the Indians (Dave Bohmer), the Dodgers (Andy McCue), the New York Giants (Bill Lamb), the Diamondbacks (Clayton Trutor), San Francisco Giants (Rob Garratt), Miami Marlins (Steve Keeney), Philadelphia Phillies (Rich Westcott), Blue Jays (Allen Tait), Mariners (Steve Friedman), St. Louis Browns (Greg Erion), both versions of the Washington Senators (Andy Sharp), the Montreal Expos (Joe Marren), the St. Louis

Cardinals (Mark Stangl), Kansas City Royals (Dan Levitt), San Diego Padres (John Bauer) and the Minnesota Twins (Gary Olson). Mike Hauptert has written the Cubs before the Wrigleys and is working on the later years.

Also working on drafts are Brian Erts (Reds to 1968), Steve West (Rangers), Nick Waddell and Jeff Samoray (Tigers), Ed Edmonds (Reds from 1968), Ken Carrano (White Sox), Colorado Rockies (Dana Berry), Houston Astros (Brian Axell), Baltimore Orioles (John Bauer), Milwaukee Brewers (Dennis Degenhardt) and Washington Nationals (Jason Horowitz).

That leaves the Milwaukee Braves, Atlanta Braves, Pittsburgh Pirates, Los Angeles Angels, Philadelphia/Kansas City/Oakland Athletics, and the Tampa Bay Rays.

Charlie Bevis has done three 19th Century NL franchises that have left the tracks (Worcester, Providence and Troy) as well as Boston teams of the 1884 American Association and the 1890 Players league which moved into the 1891 American Association. John Zinn did the Brooklyn Players League team of 1891. Bill Lamb has written the Newark Peppers and Indianapolis Hoosiers of the Federal League. Mike Hauptert has done the Negro Leagues' Hilldale Club and is working on the South Bend Blue Sox of the AAGPBL. Duke Goldman is working on the Negro Leagues' Newark Eagles.

Anyone interested in the un-assigned teams or those of defunct franchises should contact Andy McCue at mccue@sabr.org.

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A Call for Submissions

The Business of Baseball Committee has more than 700 registered members. We are sure many of you are doing research that would be of interest to your fellow SABR members. Please consider sharing your work in the newsletter, which is especially well suited to preliminary versions of work you may wish to publish elsewhere. *Outside the Lines* is an

excellent outlet for the publication of your research on any topic of baseball that occurs “outside” the playing field. Submissions can be directed to Mike Hauptert at mhauptert@uwlax.edu.

MLB Team Employee Directory Project Update

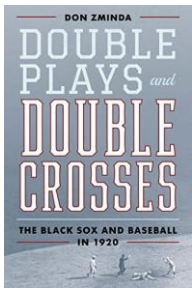
The [Business of Baseball Committee](#) has embarked on building a historical database of major league baseball employees. Sean Lahman has been helping compile the data, and we are working to turn our efforts into a more formal database.

We have a terrific group of volunteers who have made this project possible: to date we have completed roughly 1600 team-seasons and have another 100 or so assigned. Nearly all the media guides that we have access to either electronically or in hard copy have been either assigned or entered (other than a number of teams from 2020 to 2023, which are available in pdf). If you are willing to enter data for some of these recent seasons, please let us know.



Book Reviews

If you are interested in reviewing a book for the newsletter, please contact Mike Hauptert at mhauptert@uwlax.edu.



Don Zminda, *Double Plays & Double Crosses: the Black Sox and Baseball in 1920*, Lanham, MD: Rowman & Littlefield, 2021, 325 pages

Reviewed by Amanda Taylor

Since its inception in the 1860s, baseball’s reputation remained rather unscathed, until the 1919 World Series fixing and outcome questioned its purity. Scandal riddled this championship series, tarnishing the reputation of America’s pastime and impacting the nostalgic element of the game. The 1919 World Series scandal involving eight players from the Chicago White Sox — soon to be called the Black Sox — left a blemish on the record books and compromised the integrity of baseball and the ultimate championship, the World Series. As a consequence, the eight players involved would never play the game again,

and professional baseball would be reorganized, given the demonstrated inefficiencies and grievances among the clubs affected by the scandal.

Don Zminda’s *Double Plays and Double Crosses* recalls the 1919 scandal through a retelling of the 1920 regular season, a whole year after the fix, and how suspicions, misplays, and miscommunications came to bring attention to the team and the players in question. The fixing and gambling involved in the World Series was unheard of and would have a residual effect on the following season, though the White Sox’s involvement would not be found until after. Zminda reminds readers that gambling and fixing was an issue well before 1919; it was not until then that people were punished for it. The author explores the seasons leading up to it, how Comiskey’s 1918 White Sox were affected by the World War, and the hope that he had for his 1919 team, to be met with game fixing at his expense. While the White Sox players were involving themselves in gambling, the Pacific Coast League faced a similar scandal as well as other individual players across professional baseball. Zminda captures the suspicion in Comiskey based on these instances that would lead to his own investigation within his own club to learn why his team selectively performed.

As a young baseball fan, books like *Eight Men Out* and movies like *Field of Dreams* were my first exposure and understanding of baseball beyond being a game; baseball is a business, too. In 1919, money and greed bested the sport. The core of the work is historical, juxtaposing the games of the 1920 regular season and their outcome with the effect it had not only on the American League standings, but on individual players, the money some players made, and the lasting effect that gambling and game fixing had on baseball. The retelling of the 1920 season is laced with anecdotes of scandals reminiscent of the 1919 World Series fixing in the Pacific Coast League and information on Comiskey, his own investigation within his own club, and his rocky relationship with Ban Johnson, who oversaw the American League. It also highlighted interactions between Comiskey, the league, and Judge Kenesaw Mountain Landis, whose involvement in previous baseball cases and goal to preserve the game’s purity would land him the job of baseball’s first Commissioner.

If you are an avid baseball fan, historian, or consumer, this book is for you. To know baseball is to know the 1919 World Series scandal that would change the trajectory of the league and the sport. But few are aware of what unfolded in 1920. Zminda's work captures the profiles of the sport's biggest names — Ty Cobb, "Shoeless" Joe Jackson, Babe Ruth, Charles Comiskey, Judge Kenesaw M. Landis, and their involvement in or awareness of the scandal. While some of the game's best got caught up in fixing, others were starting stellar careers and watching what should be their counterparts be held back by their teammates and proximity to it. The author goes between being a historian in his retelling of the events that unfolded to being analytical in how different plays, games, and decisions led to suspicion, Comiskey's investigation, and the ultimate trial involving a grand jury.

While we all may know the outcome of the 1919 World Series and the eight players banned from baseball, its impact goes far beyond that season and seasons to come. The author's dedication to the game, this scandal, and the integrity of baseball, does not go unnoticed. Zminda ends his work by offering his perspective on how baseball was forced to reevaluate its priorities and values and subsequently restructured its organization. The grand jury's involvement, players' testimonies, and the outreach of this scandal is captured in the last three chapters of the book, ending with his thoughts and reflection of the matter. This work offers insight to the events before, but namely after the 1919 World Series that ultimately indicted the players and ended their careers. This thorough history and analysis of events that unfolded from approximately 1918 to 1920, captures the narrative of individual players, managers, and coaches, otherwise not shared in mainstream books and media with which we are familiar. In reference to said media, Zminda captures the nostalgia in these stories that have been shared and passed down through generations of baseball fans while focusing on one of the first tarnishings of America's purest game. Inherently impure, gambling and fixing damned eight players, and this story would be a cautionary tale for players, managers, coaches, owners, and the league, as well, for generations to come.

Steve Treder, *Forty Years a Giant: The Life of Horace Stoneham*, Lincoln: University of Nebraska Press, 2021

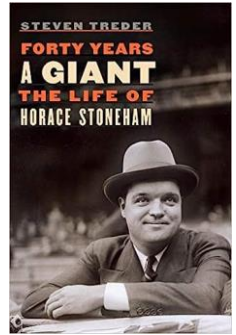
Reviewed by Bill Pruden

"Horrie, I bought you a ball club." That January 1919 announcement from his father C.A Stoneham is reportedly how the course of the rest of the then 15-year-old Horace Stoneham's life was set. And while some might have bridled at such a directive, for young Horace it not only represented the sealing of a bond with an often-distant father, but also allowed the young man to spend a veritable lifetime pursuing his passion — baseball, during arguably the game's most critical period. And not only did he pursue it, but in an understated but influential way that until this book has not gotten the attention or credit it deserves. Horace Stoneham was a player in the national pastime, one whose efforts and accomplishments have been overshadowed by other more blustery and colorful public figures, most prominently his fellow cross-country traveler, Walter O'Malley.

But make no mistake, as owner of the New York and later San Francisco Giants, his achievements and influence were extensive, and not just as an owner. Rather, his role was no less extensive behind the scenes, where, as the team's untitled general manager, Stoneham played no small role in assembling some fine individual baseball teams as well as creating an organization whose farm system produced more than its share of stars. All of this is covered in great detail in Steve Treder's interesting, highly informative and imminently readable work, *Forty Years a Giant: The Life of Horace Stoneham*.

Its title notwithstanding, *Forty Years a Giant* is every bit as much a history of the Giants during the years Stoneham owned them as it is a biography of the owner. And yet in fairness, that is a charge to which Treder pleads guilty when, near the outset of the book, he warns that the book is, in fact, as much a history of the Giants as it is a life of Stoneham, explaining that it was often hard, if not impossible, to separate the two, Stoneham the man and Stoneham the baseball man. That reality is at the heart of both the book itself and the story it tells.

Indeed, beyond a few episodic diversions, the book is organized in a straightforward chronological



manner. Each season unfolds, almost always including, with an uncanny consistency, a June swoon, followed by the summer effort to get back in contention or at least relevancy. Then when it is over, having achieved over the course of his tenure the full range of success and failure that any franchise can experience, Horace would take inventory and, in his untitled but fully acknowledged role as general manager, go about the process of trying to turn the team into a contender or one that in the best of times set the standard for all. At the end, he was trying to hold off the pretenders nipping at their heels and the creditors knocking at the door.

Stoneham was aware that nothing sells like success. With the team central to his own economic well-being - not a millionaire's toy like most modern owners, he was always conscious of the need to try and recapture—and then maintain--the magic that had been seemingly the norm in the early days with John McGraw and later Bill Terry. But that magic was more elusive, though it always seemed to be just around the corner in the days of Willie Mays.

Occasionally the book seems almost formulaic as once Horace is firmly in control of the team, Treder presents each season with its distinctive ups and downs, as noted, making it not inappropriately a history of the Giants as much as a biography of Stoneham. Then with another season in the books, one of the many seasons that were generally successful but too often not as successful as Stoneham or the dwindling fan base wanted, the reader is given the annual reports of what the general manager without title did to try and make the coming year better. It is not a bad way to present the Giants and the Stoneham story but it does lack depth and a certain element of humanity, although in its own way it reinforced the degree to which the life of Horace Stoneham the Giants owner was not particularly different from the life of Horace Stoneham, New York and San Francisco resident.

Beyond interactions with long-time and loyal employees or treasured veterans like Mays and Willie McCovey, whose exits are choreographed to offer them the best result at a time when fiscal constraints made remaining with the Giants an option that was just not feasible, there is not much in the way of personal narrative. All of the hallowed Giants are here, for Stoneham was not an

absentee owner. But there are only a handful of players who the reader comes to know beyond their contributions on the field. Mays is on that select list, as was McCovey and to a lesser degree Juan Marichal and Orlando Cepeda. Meanwhile, Carl Hubbell's years as first the pitching ace heir to the sainted Christy Matthewson, and then later as the overseer of one of baseball's best and most far-reaching minor-league operations, earned him a special place in Stoneham's baseball inner circle. But so too did the many anonymous figures whose longtime ties to the Giants were cemented when they followed the team to San Francisco and kept the core alive and intact.

In its own way, the decline of the Giants, one that saw attendance drop to previously unimaginable lows and ultimately forced the sale of the team in 1976, serves as a case study of the changing nature of professional sports ownership. Horace Stoneham's need to make a profit with the Giants and the salary ranges he could afford were driven by true economics and not the luxury tax that modern owners may talk about but often do not heed. It was a different time and the Stoneham and Giants story reflects that in ways that can leave a long-time fan wondering about how the game has changed. Few fans begrudge the modern players their freedom from the reserve clause, but no baseball fan with any long-term memory or appreciation for the game's history can ignore the changes—no less in the owner's suite than any other place—that free agency, among other changes, has wrought.

In the end, in many ways, it is a sad story. Especially after they move to San Francisco, but even while they were in New York, the Giants were never able to achieve the stature of their New York city rivals, neither that of their American League counterpart the New York Yankees, nor the Dodgers who for all of their "Bums" status and inability to win a World Series, nevertheless were not only a beloved rival for affections of the city's national league fans, but were a team whose "Boys of Summer" captured the city's imagination in a way that only Mays at his best was able to rival. It was hard for an owner like Stoneham, who at his core was a baseball fan, to struggle against the likes of Walter O'Malley who was more lawyer and businessman than fan, but who always seemed - erroneously as Treder makes clear - to be one step

ahead of Stoneham, whether as a baseball impresario or in the desire to move out of New York, something Stoneham had been considering for some time, although the joint move to the west coast rather than his initial plan to go to Minnesota was certainly influenced by O'Malley. To see Stoneham forced to trade Mays and McCovey when he could no longer afford their superstar salaries while at the same time being deeply concerned about sending them to a place that would be right for them, thus the decision to send Mays back to New York and the Mets or McCovey to San Diego Padres, is heart-wrenching.

And his ultimate need to sell the team is the final piece in the heartbreaking journey that the book details. While a look into the dynamics of Stoneham is often little more than a glimpse, the snippets we get of the challenges he faced with his son, who he had hoped to bring into the team's leadership as his father had done with him, but who was in so many ways a disappointment, are hard to take. But they are also areas that this the reader would like to have seen explored more fully.

While there is no denying that the focus on baseball was appropriate for a life of Stoneham, a more in-depth look into his personal life, into the decades long, on again off again relationship with his wife, one marked by periodic separations but an ultimate reconciliation, would have added to the human portrait of Horace. So too would more on the daughter he adored and whose husband ultimately joined the Giants, and of course on his son, Peter. All of this could have warranted more discussions. And yet, perhaps it is asking too much for this, when all was said and done, it appears that aside from those familial relations, the people, the memories, and the dreams of his life were wrapped up in baseball and the Giants.

In the end, it was probably appropriate that Carl Hubbell gets more mentions in Stoneham's life story than does his wife--or any of his family members besides his father. And yet the limited bits of familial news that we do get, in their own way only serve to make clear that the Giants were, in fact, Stoneham's real family, and that while he could not have known it at the time, C.A. Stoneham had done far more than buy Horrie a ball club, he had given him a life.

BUSINESS OF BASEBALL COMMITTEE
The Business of Baseball Committee co-chairs are Dan Levitt dan@daniel-levitt.com, and Mike Hauptert mhauptert@uwlax.edu, who edits *Outside the Lines*. The committee's website is at <http://research.sabr.org/business/>. Stay in touch with the site as we improve it and add content.

Over a Century in the Making: Myths and Misconceptions About Major League Baseball's Antitrust Exemption - Part 2

By Ed Edmonds

*(part 1 was published in the fall 2022 edition of
Outside the Lines)*

Part one of this article on baseball's antitrust trilogy ended with the analysis of John Weistart and Cym Lowell that the two grounds of Holmes' Sherman Act analysis in the *Federal Baseball* case - that games were not commerce because the effort of players was "not related to production" and the games were "purely state affairs" and the movement of teams across state lines to play games was "a mere incident, not the essential thing."⁷⁰ Thus, the transportation's interstate nature did not elevate what was not commerce at all to interstate commerce. It took seven years to completely resolve the litigation involving the birth and death of the Federal League. Three decades of antitrust stability for Organized Baseball, through the Great Depression and World War II, followed.

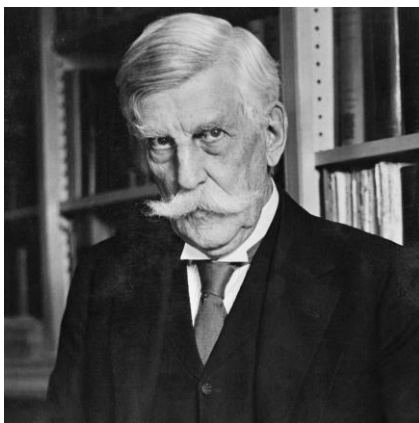
While baseball was calm on this front, Weistart and Lowell pointed out that the narrow definition of both trade and commerce and the interstate nature of commercial activities "were substantially undermined in the next thirty years."⁷¹ They reasoned that the "expansion of the industry and the increased broadcasting and recruiting activities," changed things so dramatically that "the business of baseball had become so embroiled in interstate commerce that it likely would have satisfied even the early standards of Sherman Act coverage articulated in the contemporaries of *Federal*

⁷⁰Weistart & Lowell, 482 (citing *Federal Baseball*, 259 U.S. at 208-09)

⁷¹Weistart & Lowell, 483.

Baseball.”⁷² In fact, the jurisprudence began to change during the very next Supreme Court term. Weistart and Lowell pointed this out in a footnote following the previous quotation when Justice Holmes, in a case involving an alleged conspiracy of theater owners towards a vaudeville circuit, seemed to abruptly depart from his *Federal Baseball* position by declaring that what “in general is incidental in some instances may rise to a magnitude that requires it to be considered independently.”⁷³

Wake Forest economics professor Todd McFall and law student Kyle Tatich offer a detailed analysis of the *Hart v. Keith Vaudeville Exchange* case. In particular, they concentrated on the strategic differences taken by counsel and concluded that “put simply, the appellant in *Hart* learned from the mistakes made by Baltimore’s attorneys and submitted a more concise and calculated argument to the Court in its briefing.”⁷⁴ In *Hart*, the briefs and arguments stressed the need for cameras, films, and other machines as necessary to putting on a performance. Thus, McFall and Tatich concluded that “electing not to use a creative collective product argument, like the appellants did in *Hart*, adds to the contention that it was poor lawyering that contributed to Baltimore’s defeat.”⁷⁵



Justice Oliver Wendell Holmes

Holmes, in his short opinion in *Federal Baseball*, cited only one Supreme Court decision as precedent — *Hooper v. California*.⁷⁶ *Hooper*, decided

in 1895, involved the

constitutionality of a California penal statute that required residents to purchase insurance coverage solely from companies incorporated within the

state. The Court ultimately determined that “the business of insurance is not commerce. The contract of insurance is not an instrumentality of commerce.”⁷⁷ The Court also turned aside a claim that the California statute was invalid on its face because it blocked Californians from making contracts beyond the state’s borders. The Court cited five prior Supreme Court cases when it declared that “the elementary rule is that every reasonable construction must be resorted to, in order to save a statute from unconstitutionality.”⁷⁸

Hooper was undercut significantly by *United States v. South-Eastern Underwriters Association* in 1944 where the Court was again required to consider the commercial nature of the sales of insurance contracts. The Court stated at the beginning of its opinion the very essence of the question they needed to resolve —

Not one of all these cases, however, has involved an Act of Congress which required the Court to decide the issue of whether the Commerce Clause grants to Congress the power to regulate insurance transactions stretching across state lines. Today for the first time in the history of the Court that issue is squarely presented and must be decided.⁷⁹

The Court found that the Commerce Clause did, indeed, apply to the sales of insurance.

Returning to the Weistart and Lowell’s post-*Federal Baseball* discussion, the authors concluded their analysis with the following observation —

Supreme Court decisions in the 1930’s and 1940’s had virtually overruled the specific precedents on which *Federal Baseball* was based. The threshold for finding an effect on interstate commerce had been dramatically reduced, and the classification of ‘commerce’ for the purposes of the Sherman Act had been extended to include personal services.

Weistart and Lowell did not cite *South-Eastern Underwriters* in the footnote at the end of this statement. However, they did cite *United States v. National Association of Real Estate Boards*,⁸⁰

⁷²Ibid.

⁷³Ibid. (citing *Hart v. Keith Vaudeville Exchange*, 262 U.S. 271 (1923).

⁷⁴McFall & Tatich, 347.

⁷⁵Ibid., 348

⁷⁶155 U.S. 648 (1895).

⁷⁷155 U.S. at 655.

⁷⁸155 U.S. at 657.

⁷⁹322 U.S. 533, 534 (1944).

⁸⁰339 U.S. 485 (1950).

American Medical Association v. United States,⁸¹ and a comment in the *Yale Law Journal* that is quite well-known to many commentators on *Federal Baseball, Toolson, and Flood*.

The 1943 *American Medical Association* case involved a Sherman Act section 3 violation.⁸² The United States supported an indictment charging “a conspiracy to hinder and obstruct the operation of Group Health Association, Inc., a nonprofit corporation organized by Government employees (*sic*) to provide medical care and hospitalization on a risk-sharing prepayment basis.”⁸³ The district court determined “that neither the practice of medicine nor the business of Group Health is trade as the term is used in the Sherman Act.”⁸⁴ The Court of Appeals reversed holding that both entities were involved in “trade.” The Supreme Court declined to consider whether or not the practice of medicine was “trade” under the Sherman Act, but did decide that Group Health was a “membership corporation engaged in business or trade.”⁸⁵

The 1950 *National Association of Real Estate Boards* case involved both a civil and criminal action brought by the United States claiming that NAREB’s enforcement of its rules was a price-fixing scheme in violation of section 3 of the Sherman Antitrust Act.⁸⁶ The Association asserted that the business of a real estate broker did not constitute “trade” under section three, and the district court agreed. The Supreme Court, however, declared that “the fact that the business involves the sale of personal services rather than commodities does not take it out of the category of ‘trade’ within the meaning of § 3 of the Act.”⁸⁷

The *Yale Law Journal* comment, “Monopsony in Manpower: Organized Baseball Meets the Antitrust Laws,” has an interesting story regarding its author, Peter S. Craig. Craig’s article was the focus of a front page story in the April 22, 1953, issue of *The Sporting News* entitled “Ex-Celler Aide Warns of Pitfalls for Game.”⁸⁸ In a side bar on page 4, under

the headline “Craig Was Sports Scribe and Aide to Celler Group,” *The Sporting News* revealed –

Although the policy of the Yale Law Journal is to publish its student comments anonymously, THE SPORTING NEWS established the fact that the author of its report on the relation of the antitrust laws to Organized Ball was Peter S. Craig.

Craig, a former baseball writer and special assistant to the Celler Committee which investigated Organized Ball two years ago, is completing his studies at Yale Law School and is a member of the Yale Law Journal editorial board.

During the summers of 1945 and 1949, Craig served on the editorial staff of THE SPORTING NEWS and has since been a free-lance baseball writer.⁸⁹

Craig’s 64-page comment was unusually lengthy with a detailed analysis of baseball’s business history with respect to federal antitrust law. Although Craig opened his analysis by attributing Holmes’ denial of antitrust liability to baseball’s lack of interstate commerce, he later stated –

Professional baseball is not only *interstate* but also ‘trade or commerce’ within the meaning of the Sherman Act. The illusory distinction . . . that professional baseball is sport and not trade or commerce, finds no support in recent Supreme Court decisions. . . Neither the commerce clause nor the Sherman Act are limited to businesses dealing in commodities. Enterprises dealing in services are likewise trade whether they sell real estate brokerage, medical, dry cleaning, or entertainment services.⁹⁰

Weistart and Lowell next turn from their analysis of post-*Federal Baseball* Sherman Act jurisprudence generally to changes in baseball after World War II including an attack on the reserve system by Jorge Pasquel and his brothers to entice Major League and Negro League baseball players to join the Mexican League with substantial annual salary raises. One of the players who jumped to the Mexican League was Danny Gardella, who played in 168 games for the

⁸¹317 U.S. 519 (1943).

⁸²*Ibid.*

⁸³*Ibid.*, 526.

⁸⁴*Ibid.*, 527.

⁸⁵*Ibid.*, 528.

⁸⁶339 U.S. 485, 487 (1950).

⁸⁷*Ibid.*, 490.

⁸⁸“Ex-Celler Aide Warns of Pitfalls for Game.”

⁸⁹*Ibid.*, 4.

⁹⁰*Monopsony*, 611.

New York Giants in 1944-1945. After being blacklisted by Major League Baseball, Gardella, represented by New York City attorney Frederic A. Johnson, sued the Commissioner of Baseball, the president of both the American and National League, the president of the National Association of Professional Baseball Leagues, and the New York Giants claiming that all of the defendants were (1) guilty of a conspiracy to restrain trade in violation of section one of the Sherman Act; (2) that the same conspiracy violated section three of the Sherman Act and section 14 of the Clayton Act; and (3) the minor league farm system, the contracts, the reserve clause violated section two of the Sherman Act and section 13 of the Clayton Act. Gardella alleged that his damages were \$100,000, a figure that would be trebled if he prevailed. The district court, after noting that the issue in *Federal Baseball* was whether or not Baseball was “engaged in ‘trade’ or ‘commerce’ within the Sherman Act,” felt compelled to follow *Federal Baseball* as controlling authority although it noted “that there seems to . . . be a clear trend toward a broader conception of what constitutes interstate commerce than formerly in view of the expanding and changing conditions since the decision in the Federal Base Ball Club case.”⁹¹

The Second Circuit Court of Appeals disagreed in a 2-1 decision with esteemed jurists Learned Hand and Jerome N. Frank ruling that Gardella’s case should be remanded to the district court to determine if the growth of the interstate nature of the sport, particularly broadcasting, was no longer “incidental” as stated by Justice Holmes in *Federal Baseball* but now required an independent consideration as stated in *Hart*. Such a determination could allow a circuit court to distinguish Gardella’s case from *Federal Baseball*. Judge Harrie Brigham Chase filed a dissent. Judge Frank opened his opinion with one of the greatest quotable phrases in baseball’s rich labor legal history –

No one can treat as frivolous the argument that the Supreme Court’s recent decisions have completely destroyed the vitality of *Federal Baseball Club v. National League* . . .

decided twenty-seven years ago, and have left that case but an impotent zombi.⁹²

Frank’s reference to *Federal Baseball* as “an impotent zombi” unnerved Commissioner Happy Chandler as well as some members of Congress. Chandler responded on June 5, 1949, by reinstating all Mexican League players whom he had blacklisted for five years if they would agree to drop their lawsuits.⁹³ Gardella refused to accept Chandler’s terms as all the other players did, and a trial began in September. The worried Commissioner approached Gardella during the trial with a proposed settlement, and Gardella accepted Chandler’s financial offer.

Two of the unnerved Congressmen were Wilbur D. Mills (D-AR) and A. S. “Syd” Herlong, Jr. (D-FL), and they introduced two identical bills on April 5, 1949, in the 81st Congress that would have granted baseball and all other professional sports an express exemption from antitrust liability.⁹⁴ The bills would have amended the Sherman Act, the Clayton Act, the Federal Trade Commission Act, and the Robinson-Patman Antidiscrimination Act by adding that the four acts “shall not apply to organized professional sports enterprises or to acts in the conduct of such enterprises.”⁹⁵ Herlong had a special interest in baseball as a former minor league player as well as serving as president of the Class D Florida State League. As quoted by Lee Lowenfish, in his pioneering work *The Imperfect Diamond* with Tony Lupien, Herlong predicted that “a Gardella victory could well sound the death knell for the sport that has kindled the fires of ambition in the breast of so many thousands of young Americans.”⁹⁶

Lowenfish and Lupien also summarized what Mills and Herlong had provoked – “A new age of largely ritualistic but intense Congressional interest in the game was dawning. No fewer than sixty bills would

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⁹⁴Justice Burton’s dissent in the *Toolson* case discussed below addressed the Congressional legislation when he quoted in footnote 9 of his opinion the following statement from the Celler Subcommittee – “Four bills have been introduced in the Congress, three in the House, one in the Senate, intending to give baseball and all other professional sports a complete and unlimited immunity from the antitrust laws.”

⁹⁵H.R. 4018 and H.R. 4019, 81st Cong.

⁹⁶Lowenfish & Lupien, 164.

⁹¹79 F. Supp. 260, 263 (S.D.N.Y. 1948), *rev’d* 172 F.2d 917(2d Cir. 1949).

be introduced within the next two decades concerning baseball's regulation or tacit deregulation, though legislative action would be taken on none of them."⁹⁷

In the 82d Congress, Melvin "Mel" Price (D-IL) joined Mills and Herlong in introducing three identical bills on May 23, 1951.⁹⁸ Interestingly, these bills focused not on an amendment to the Sherman Act and its progeny but to the element of radio and television broadcasting that they felt would trigger interstate commerce by proposing to amend the Communications Act of 1934 with a new subsection with the following language –

No organized professional sports enterprise shall by reason of radio or television broadcasts of sports exhibitions, or by reason of other activities related to the conduct of such enterprise, be held to be engaged in trade or commerce among the several States, Territories, and the District of Columbia, or with foreign nations, or in activities affecting such trade or commerce, within the meaning of any law of the United States relating to unlawful restraints and monopolies or to combination, contracts, or agreements, in restraint of trade or commerce.⁹⁹

Meanwhile, Frederic Johnson, undeterred by his client's acceptance of the settlement offer and emboldened by the failure of both Congresses to pass language exempting baseball from antitrust attack was now certain that he had a winning argument, and he filed new cases on behalf of numerous plaintiffs including Walter Kowalski and Jack Corbett.¹⁰⁰ Those two cases would ultimately reach the United States Supreme Court combined

with one filed by Earl Toolson and his childhood friend and attorney Howard C. Parke.¹⁰¹

Toolson v. New York Yankees

Earl Toolson might be one of the most forgotten litigants to ever reach the United States Supreme Court. In fact, my research on Toolson was hampered for years before a research assistant and I discovered that the biggest roadblock involved our searching for anything written about George Earl Toolson, his full given name as used in the style of the case, or George Toolson. Because Toolson's father was also named George, he was known by his family, friends, and by everyone during his minor league baseball career by his middle name Earl. I have tried for years with almost no success to change this oversight and bring to the public the story of Earl's life and baseball career. Alas, I still read about George Earl Toolson's Supreme Court case.¹⁰²

The Supreme Court issued a very short per curiam opinion that brought sharp dissents from Associate Justices Harold Burton and Stanley F. Reed.¹⁰³ The court's opinion is reprinted in full –



In *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs*, 259 U.S. 200 (1922), this Court held that the business of providing public baseball games for profit between clubs of professional baseball players was not within the scope of the federal antitrust laws. Congress has had the ruling under consideration but has not seen fit to

⁹⁷Ibid.

⁹⁸H.R. 4229, H.R. 4230, and H.R. 4231, 82d Cong. See also, Lowe, 16.

⁹⁹Ibid.

¹⁰⁰Boyd Tepler and Jim Prendergast were also Johnson's clients. His case against Ford Frick was dismissed by Judge David Norton Edelstein of the Southern District of New York for failure to sufficiently state an antitrust cause of action. *Tepler v. Frick*, 112 F. Supp. 245 (S.D.N.Y. 1952). Tepler published a biography with the provocative title, *In Cubs Chains: My Climb to the Bottom of the Ladder*. William and Michael Kunstler joined Johnson as Prendergast's counsel. *Baseball's Reserve Clause Faces Second Attack in Civil Courts*, *Hazleton Plain Speaker*, April 26, 1951, 24; Hy Turkin, "Prendergast Sues Chiefs For \$150,000," *Sporting News*, May 2, 1951.

¹⁰¹Johnson and Parke were joined by additional attorneys in their lawsuits, but they were the lead attorneys in the initial district court cases that would reach the Supreme Court on appeal.

¹⁰²"Remembering Earl–Not George–Toolson: The Plaintiff Who Took the New York Yankees to the US Supreme Court," *National Pastime: Baseball in the Big Apple* (New York, 2017).

¹⁰³The composition of the Warren Court in 1953 included Chief Justice Earl Warren, and Associate Justices Hugo Black, Harold Burton, Tom Clark, Felix Frankfurter, Robert H. Jackson, Sherman Minton, and Stanley F. Reed.

bring such business under these laws by legislation having prospective effect. The business has thus been left for thirty years to develop, on the understanding that it was not subject to existing antitrust legislation. The present cases ask us to overrule the prior decision and, with retrospective effect, hold the legislation applicable. We think that if there are evils in this field which now warrant application to it of the antitrust laws it should be by legislation. Without re-examination of the underlying issues, the judgments below are affirmed on the authority of *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs*, *supra*, so far as that decision determines that Congress had no intention of including the business of baseball within the scope of the federal antitrust laws.

Problems With the Toolson Decision

The statement that baseball was “not within the scope of the federal antitrust laws” is subject to misinterpretation. When the Sherman Act was passed in 1890, Congress certainly did not assign a special exempt status for baseball. As I have argued earlier, Justice Holmes’ opinion in *Federal Baseball* was based on an understanding that the game was not “trade or commerce” within the jurisprudence of 1922 nor did the movement of players from state-to-state raise this lack of “trade or commerce” to interstate commerce. The Supreme Court created baseball’s unusual antitrust status not Congress. As noted above since 1922 the Supreme Court had greatly expanded the definition of “trade or commerce” as well as the interstate nature of such activity. In those cases, the Court refused to rule that those business activities were beyond “the scope of the federal antitrust laws.”

Justice Burton in the concluding paragraph of his dissent addressed the role of Congress –

Conceding the major asset which baseball is to our Nation, the high place it enjoys in the hearts of our people and the possible justification of special treatment for organized sports which are engaged in interstate trade or commerce, the authorization of such treatment is a matter within the discretion of Congress. *Congress, however, has enacted no express exemption of organized baseball from*

the Sherman Act, and no court has demonstrated the existence of an implied exemption from that Act of any sport that is so highly organized as to amount to an interstate monopoly or which restrains interstate trade or commerce. In the absence of such an exemption, the present popularity of organized baseball increases, rather than diminishes, the importance of its compliance with standards of reasonableness comparable with those now required by law of interstate trade or commerce. It is interstate trade or commerce and, as such, it is subject to the Sherman Act until exempted. Accordingly, I would reverse the judgments in the instant cases and remand the causes to the respective District Courts for a consideration of the merits of the alleged violations of the Sherman Act.¹⁰⁴

As to the Court’s comment on legislation in the second sentence, the Judiciary Subcommittee on Monopoly Power: Organized Baseball chaired by Emanuel Celler met from July to October 1951, and they spent quite a bit of time on the business of baseball. In fact, the Subcommittee produced 1,643 pages of hearing material and a 232-page report. At the conclusion of that Report, Celler and the other members of the Subcommittee issued the following statement –

It would therefore seem premature to enact general legislation for baseball at this time. Legislation is not necessary until the reasonableness of the reserve rules has been tested by the courts. If those rules are unreasonable in some respects it would be inappropriate to adopt legislation before baseball has had an opportunity to make such modifications as may be necessary. . . . Accordingly, the subcommittee has determined to . . . recommend no legislative action at this time.¹⁰⁵

As noted earlier, the bills introduced in both the 81st and 82d Congresses would have granted all

¹⁰⁴*Toolson*, 346 U.S. 356, 364-65 (Burton, J. dissent)(emphasis added).

¹⁰⁵Organized Baseball: Report of the Subcommittee on the Judiciary Pursuant to H. Res. 95 (82d Cong., 1st Sess.), 232 (Emanuel Celler, Chairman, Edwin E. Willis, Byron G. Rogers, Chaune W. Reed, Kenneth E. Keating, William M. McCulloch).

sports an exemption that the Congressman who introduced the legislation felt no longer existed. So, instead of accepting that view and taking the Subcommittee's recommendation to remand the cases to their respective district courts for a trial on the merits, the Supreme Court simply rejected that opportunity.

Furthermore, the retrospective nature of the litigation, certainly a worrisome point for Organized Baseball, was not a necessary result of the cases before the Court. In fact, Frederic Johnson was quoted in a United Press article on May 26, 1953, that "we are not asking the court to make every player a free agent. . . . All we are asking for is a reasonable interpretation of the Reserve Clause so that the 16 major league clubs do not monopolize the player market from the Equator to Hudson's Bay."¹⁰⁶ Baseball players were not represented by a union in the early 1950s, so a class action suit brought on behalf of players by an association representing these athletes was not possible.

The Court also stated that Organized Baseball had relied on the exemption, but because the lower courts had dismissed the cases because of a lower court's requirement to honor the *Federal Baseball* precedent, they had not held trials as requested by the Celler Subcommittee. Thus, there was nothing in the record supporting the nature of this reliance. The Yankees' main argument as seen in the record was that the district court in California lacked subject matter jurisdiction over the team. There appears to be no reliance argument in their brief.

The Aftermath of Toolson



Curt Flood struck a blow for future players' rights in a losing cause

The real importance of *Toolson*, a point that is greatly overlooked, is that the short opinion really solidified baseball's antitrust exemption. In fact, one could argue that *Toolson* really created the exemption. Prior to the *Toolson* decision, many felt that *Federal Baseball* would not

survive as a precedent. Weistart and Lowell succinctly confirmed the impact –

After *Toolson*, the Supreme Court's position seemed clear and predictably, lower courts found little reason to question it. Whatever encouragement *Gardella* had given for courts to test the premises of *Federal Baseball* had effectively been quieted by the refusal of the *Toolson* majority to rely on the interstate commerce rationale.¹⁰⁷

Flood v. Kuhn

Antitrust and baseball settled into a nearly two-decade period of quiet acceptance of the status quo. Other sports were unsuccessful in trying to argue that they deserved the same antitrust exemption as baseball as the Supreme Court refused to grant boxing, football, and basketball a similar status.¹⁰⁸

When Curt Flood was traded to the Philadelphia Phillies on October 7, 1969, with Byron Browne, Joe Hoerner and Tim McCarver for Dick Allen, Jerry Johnson and Cookie Rojas, he refused to accept the transfer. After informing Commissioner Bowie Kuhn that he did not accept the trade, he consulted with Marvin Miller, the executive director of the Major League Baseball Players Association about filing an antitrust suit against Organized Baseball. After Miller consulted with the MLPBA's executive committee who agreed to support the litigation, Flood's counsel filed his complaint in the District Court for the Southern District of New York. After losing his request for a preliminary injunction, Flood's case ultimately proceeded to a trial before Judge Irving Ben Cooper, who found for Kuhn, concluded "as a long line of litigation and congressional inquiry attest, this system has often been a center of controversy and a source of friction between player and club. Existing and, as we see it, controlling law renders unnecessary any

¹⁰⁷Weistart & Lowell, 485.

¹⁰⁸United States v. International Boxing Club, Inc., 348 U.S. 236 (1955), Radovich v. National Football League, 352 U.S.445 (1957), Haywood v. National Basketball Ass'n, 401 U.S. 1204 (1971). Lower courts also refused to extend an antitrust exemption to hockey, golf, and bowling. Philadelphia World Hokey Club, Inc. v. Philadelphia Hockey Club, Inc., 351 F. Supp. 462 (E.D. Pa. 1972), Deesen v. Professional Golfers Ass'n, 358 F.2d 165 (9th Cir. 1966), Blalock v. Ladies Professional Golf Ass'n, 359 F. Supp. 1260 (N.D. Ga. 1973), Washington State Bowling Proprietors Ass'n v. Pacific Lanes, Inc. 356 F. Supp. 371 (9th Cir. 1966).

¹⁰⁶"Baseball Sport or Business? – Supreme Court Will Decide," *Akron Beacon Journal*, May 26, 1953, 37.

determination as to the fairness or reasonableness of this reserve system.”¹⁰⁹ The case is discussed in detail by Neil Flynn in his excellent and detailed treatment of this part of Flood’s legal story.¹¹⁰

The case was appealed to the United States Supreme Court. Former Associate Justice Arthur Goldberg argued the case in front of many of his former colleagues.

Justice Blackmun’s Characterization of Federal Baseball and Toolson

The problem with Justice Harry Blackmun’s majority opinion in Flood begins with his initial sentence – “For the third time in 50 years the Court is asked specifically to rule that professional baseball’s reserve system is within the reach of the federal antitrust laws.” Let’s look again carefully at Holmes’ statement of the facts in *Federal Baseball* -

The plaintiff is a base ball club incorporated in Maryland, and with seven other corporations was a member of the Federal League of Professional Base Ball Clubs, a corporation under the laws of Indiana, that attempted to compete with the combined defendants. It alleges that the defendants destroyed the Federal League by buying up some of the constituent clubs and in one way or another inducing all those clubs except the plaintiff to leave their League, and that the three persons connected with the Federal League and named as defendants, one of them being the President of the League, took part in the conspiracy.

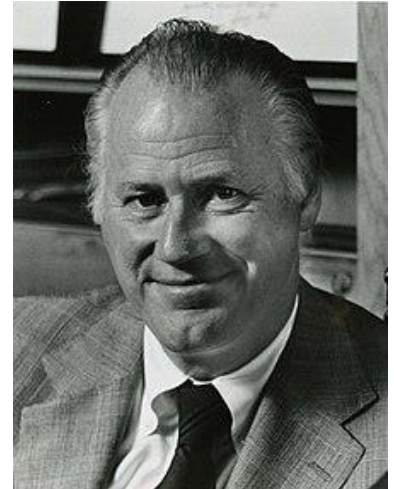
Although there is a discussion of the reserve system in Judge Smyth’s Circuit Court *Federal Baseball* opinion, the main focus of the litigation as stated above by Justice Holmes was the dissolution of the Federal League leaving the Baltimore Terrapins franchise without a major league spot. So, the reserve system was not the focus of the *Federal Baseball* case that Blackmun would subsequently rely upon as deserving the full application of the doctrine of stare decisis. The *Toolson* case was certainly about the reserve clause in his contract,

but to characterize *Federal Baseball* as a reserve clause case is inaccurate.

What follows the initial sentence in Justice Blackmun’s opening is a long discourse on the history of baseball. Roger Abrams argued in his analysis of the list of players that Blackmun included in the opinion that “there is nothing like Blackmun’s list anywhere else in the hallowed tomes of American judicial opinions.”¹¹¹

For some inexplicable reason when judges deal with cases involving sports, it is nearly always the case that they have a rare out-of-body experience complete with romanticizing athletic activities and treating the factual concepts as if it demands to be treated differently from all other cases. Even Justice Burton in his dissent in *Toolson* felt compelled to start his conclusion with a reference to “the major asset which baseball is to our Nation, the high place it enjoys in the hearts of our people.” If Curt Flood and his counsel ex-Supreme Court justice Arthur Goldberg did not already know the outcome of the case, as soon as they started reading the opinion with its flowery treatment of

the game, they would quickly understand that they had lost.



Bowie Kuhn prevailed in court

Justice Blackmun’s Conclusions

Justice Blackmun offered an eight-point conclusion with the first being that “professional baseball is a business and it is engaged in interstate commerce,” but, second, “with its reserve system enjoying exemption from the federal antitrust laws, baseball is, in a very distinct sense, an exception and an anomaly. *Federal Baseball* and *Toolson* have become an aberration confined to baseball.”¹¹² So, although Justice Blackmun accepted that the reasons behind denying the Baltimore Terrapins

¹⁰⁹ Flood v. Kuhn, 316 F. Supp. 271, 284-85 (S.D.N.Y. 1970).

¹¹⁰Neil F. Flynn, Neil F., *Baseball’s Reserve System: The Case and Trial of Curt Flood v. Major League Baseball*, Springfield, IL: Walnut Park Group, Inc. (2006).

¹¹¹Roger I. Abrams, “Blackmun’s List, 6 Va. Sports & Ent. L.J. 181, 187 (2007).

¹¹²*Flood*, 407 U.S. at 282.

leadership the legal victory that they won at the trial court level, his opinion ratified Organized Baseball's unique legal status when he declared in his third point that "it is an aberration that has been with us now for half a century, one heretofore deemed fully entitled to the benefit of *stare decisis*, and one that has survived the Court's expanding concept of interstate commerce. It rests on a recognition and an acceptance of baseball's unique characteristics and needs."¹¹³ After noting that other sports were not protected by antitrust immunity, Justice Blackmun refused to consider that the changes in broadcasting necessitated a departure from *Federal Baseball* and *Toolson*. Justice Blackmun's sixth point related to Congress –

The Court has emphasized that since 1922 baseball, with full and continuing congressional awareness, has been allowed to develop and to expand unhindered by federal legislative action. Remedial legislation has been introduced repeatedly in Congress but none has ever been enacted. The Court,



Marvin Miller

accordingly, has concluded that Congress as yet has had no intention to subject baseball's reserve system to the reach of the antitrust statutes. This, obviously, has been deemed to be something

other than mere congressional silence and passivity.

Justice Blackmun ignored the many bills introduced in Congress as noted by Lowenfish. So many of them would have granted an express antitrust exempt because such status no longer made sense. Congress was neither passive nor silent in consideration of the issue. Justice Blackmun seems to put too much into the fact that legislation for one industry had not garnered passage.

Justice Blackmun's seventh point dealt with the same concern about retroactivity that appeared in the *Toolson* decision. The eighth point was that "the Court noted in *Radovich* . . . [the case that denied the National Football League the same antitrust exemption enjoyed by baseball] that the slate with respect to baseball is not clean. Indeed, it has not been clean for half a century."¹¹⁴

Marvin Miller - Flood Case Was Likely to be a Loser

Marvin Miller, in his autobiography, *A Whole Different Ballgame: The Sport and Business of Baseball*, provides a detailed reprise of his discussion with Curt Flood after the star center fielder refused to accept his trade to the Philadelphia Phillies.

Flood called me early in November and said, briefly and in a businesslike way, that he had thought long and hard about the matter and that he simply was not, under any circumstances, going to report to the Philadelphia Phillies for the 1970 season. There would be no going back on that. He told me about his conversation with his attorney, Allan Zerman, and what he had told him about the antitrust laws.¹¹⁵

After giving "Curt a brief history of the laws as they applied—or rather, as they *didn't* apply—to baseball," including the story of "George" Toolson's case, Miller offered that "While there were indications that those decisions might not stand a third time, he'd be foolhardy to bet on it."¹¹⁶

Robert Burk, in his biography of Miller, repeats *Federal Baseball's* interstate commerce explanation of the *Federal Baseball* decision and offers a similar Flood/Miller story bolstered by a March 14, 2006, interview with Miller –

Despite his characteristic displays of pessimism, Miller was not above taking on great odds ... But taking on baseball's antitrust exemption and reserve system in court, given prior defeats and the usual judicial fealty to *stare decisis*, seemed a fool's errand. Citing the earlier verdicts, Miller

¹¹⁴*Flood*, 407 U.S. at 283.

¹¹⁵Miller, 173.

¹¹⁶*Ibid.*, 173-74.

¹¹³*Ibid.*

candidly told Flood he ‘he wouldn’t bet the farm’ on his chances.¹¹⁷

The ultimate outcome of the *Flood* case, with Justice Harry A. Blackmun writing the majority opinion, was a 5-3 decision in favor of Bowie Kuhn and Major League Baseball. So, was Miller correct in telling Flood that it would cost him any future in baseball because he was destined to lose? It turns out that the 5-3 decision against Flood was not a preordained outcome. In 2001, editor Del Dickson published the *Supreme Court in Conference (1940-1985): The Private Discussions Behind Nearly 300 Supreme Court Decisions*. The discussion of the *Flood* case during the conference roundtable after the oral argument shows that the decision could have gone in Flood’s favor. As the volume was published in 2001, many commentators have not read the material on this decision that cast a different light on the ultimate outcome.

In the final published decision, Justice Blackmun was joined in the majority by Chief Justice Burger and Associate Justices Rehnquist, Stewart, and White. Associate Justices Brennan, Douglas, and Marshall dissented. Justice Powell recused himself although he was “involved” in this decision as noted below.

The Chief Justice stated at the beginning of the conference roundtable that “*Toolson* is probably wrong.” If the Chief had maintained his position in the final vote, that would have switched the tally to 4-4. A tie vote would have upheld the Court of Appeals decision, so Powell’s decision to recuse himself could have produced a deadlock that favored Commissioner Kuhn.

Justice Powell stated “I will take no part in this decision. I own stock in Anheuser-Busch, which owns the St. Louis Cardinals. I will state my views tentatively. I would reverse.” So, if Powell had taken part in the final decision instead of recusing himself (something that many fellow justices urged him not to do), his vote and Burger’s in favor of Flood would have switched the result to 5-4 in favor of Flood.

Justice Marshall in conference would have voted for MLB’s position, so that adds a layer to the intrigue about the ultimate outcome of the case. Marshall, however, changed his position writing an important

dissent noting the importance of the non-statutory labor exemption that trumps the antitrust exemption when a collective bargaining relationship exists.

So, although Marvin Miller told Flood that his case was a loser, it was much closer to actually going in Flood’s favor than what is generally known or discussed.

Afterword

The legal aspects surrounding Organized Baseball have remained robust since the announcement of the *Flood* opinion. In the mid-1970s, the Major League Baseball Players Association won the Messersmith-McNally arbitration decision that forever altered the nature of player restraints. Coupled with salary arbitration, the financial rewards for playing major league baseball have exploded. Congress enacted the Curt Flood Act of 1998 and the Save America’s Pastime Act.¹¹⁸ A few cases have questioned the continuing vitality of the *Federal Baseball*, *Toolson*, and *Flood* cases, but the exemption has remained strong. The settlement of *Senne v. Office of the Commissioner of Baseball* led to representation of minor league baseball players with increased salaries and positive improvement of housing and food. However, the trilogy precedent was grounds for the May 31, 2023, decision by United States Magistrate Judge Bruce McGiverin to grant a motion to dismiss for defendants in *Concepcion v. Office of the Commissioner of Baseball*.

Minor league players Daniel Concepcion, Aldemar Burgos, and Sidney Duprey-Conde, following the path established in *Senne*, filed a purported class action suit in the District Court for the District of Puerto Rico claiming that Major League Baseball has violated the Sherman Antitrust Act, the Fair Labor Standards Act (“FLSA”), and Puerto Rico wage and hour laws. As Judge McGiverin noted this case is “strikingly similar” to *Miranda v. Selig*, a 2017 Ninth Circuit case where the court found that minor league baseball “falls squarely within baseball’s exemption from federal antitrust laws.”¹¹⁹

¹¹⁸Curt Flood Act of 1998, 112 Stat. 2824, Pub. L. No. 105-297 (1998); Save America’s Pastime Act, 132 Stat. 348, 1126-27, Pub. L. No. 115-141, § 201. See also Edmonds, “The Curt Flood Act of 1998”; Grow, “The Curiously Confounding Curt Flood Act”; Grow, “The Save America’s Pastime Act”.

¹¹⁹ *Miranda*, 860 F.3d 1237, 1242 (9th Cir. 2017).

¹¹⁷Burk, 141.

Concepcion's counsel argued that *Miranda* and similar cases should no longer be followed because *Alston* and *Dobbs*, recently decided by the Supreme Court, and potentially proposed federal legislation pave the way for overruling baseball's trilogy. Judge McGiverin rightly determined that district court judges cannot take that step. However, if Concepcion is appealed and the Supreme Court grants certiorari, Earl Toolson and Curt Flood's arguments might finally find a sympathetic Court.¹²⁰

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