BASEBALL—SPORT OR COMMERCE?*

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FEW BUSINESS efforts receive the public attention accorded baseball. Every rhubarb¹ is given nation-wide consideration; the calcium deposit on the heel of a quasi-peon² becomes the object of universal concern. The country's greatest metropolitan dailies and its smallest bi-weekly newspapers invariably contain sport pages which dedicate themselves to the reporting of the minutest detail of every game, trade, or development in the sport of baseball. It is familiar scheduling for radio stations to provide fifteen minutes for news of the world, followed by an equal period of baseball news. As a result of such coverage, almost everyone has a fairly intimate knowledge of baseball.

In significant contrast to this familiarity with the play of the game is the lack of familiarity with "baseball law," the self-imposed body of regulations under which "organized baseball"³ regulates its activity. The Agreement of the National Association of Professional Baseball Leagues,⁴ adopted in 1901 "to perpetuate baseball as the national game of America, and to surround it with such safeguards as will warrant absolute public confidence in its integrity and methods,"⁵ together with the Major League Agreement,⁶ the Major-Minor League Agreement,⁷ and the rules promulgated thereunder, comprise "baseball law." Because of faithful adherence to the dictates of its own rules, "organized baseball" has had few excursions

* Subsequent to the preparation of this article it has been reported that Max Lanier and Fred Martin have decided to drop their suit against "organized baseball" which is discussed herein. N.Y. Times, § 5, p. 1, col. 2 (Aug. 28, 1949).

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¹ A term used by sports writers to describe an altercation, more or less intense in nature, between participants on a baseball field.

² A term used by the Court of Appeals for the Second Circuit to describe a young athlete who receives a base pay ranging from \$5,000 to \$100,000 for each baseball playing season of five and one-half months. *Gardella v. Chandler*, 172 F. 2d 402, 410 (1949).

³ "Organized baseball" connotes the integrated system of baseball comprised of the two major leagues and the so-called minor leagues described more fully later in this paper. The players are "professional" in that they are paid salaries. Many other teams and leagues, often called "semi-professional," are composed of players some or all of whom are paid and, therefore, are in reality "professional."

⁴ The Baseball Blue Book 701 et seq. (1948).

⁵ National Association Agreement § 2.01 (a), The Baseball Blue Book 701 (1948).

⁶ The Baseball Blue Book 501 (1948).

⁷ Ibid., at 601.

sions into the courts, and reported decisions are practically devoid of any reference to baseball.⁸ This tranquillity, however, has been abruptly interrupted. The entire framework of the law of "organized baseball" has been challenged twice recently as illegal under the Sherman and Clayton Acts,⁹ and that challenge has been given a substantial "assist" by the Court of Appeals for the Second Circuit in its remarkable decision in *Gardella v. Chandler*.¹⁰

I. GARDELLA, MARTIN, AND LANIER

In the spring of 1946 the owners of baseball interests in Mexico undertook to hire for their teams certain players who were under contract to play for teams operating within the framework of "organized baseball." Among the players who responded to the enticing offers to go south were Daniel Gardella, an outfielder with the New York Giants, and Fred Martin and Max Lanier, pitchers with the St. Louis Cardinals. Those three players, along with several others who also "jumped" their contracts to play in Mexico, were immediately placed on a so-called "ineligible list" by Commissioner Chandler and barred for a period of five years from participation in "organized baseball" in accordance with the express provision of the Major League Rules¹¹ which had been specifically incorporated in each player's contract.¹² The attraction of Mexican baseball apparently proved to be more illusory than real, for most of the players who "jumped" to Mexico have not returned to that country. Gardella, Martin, and Lanier, plaintiffs in the pending actions against certain officials and teams in "organized baseball,"¹³ following their abortive careers in Mexico, have returned to the United States. Since their return they have engaged in

⁸ Baseball has from time to time received the attention of legal periodicals: Topkis, *Monopoly in Professional Sports*, 58 Yale L.J. 691 (1949); Neville, *Baseball and the Antitrust Laws*, 16 Fordham L. Rev. 208 (1947); *Baseball and the Law—Yesterday and Today*, 32 Va. L. Rev. 1164 (1946); *Organized Baseball and the Law*, 19 Notre Dame Lawyer 262 (1944); Johnson, *Baseball Law*, 73 U.S.L. Rev. 252 (1939); *Organized Baseball and the Law*, 46 Yale L.J. 1386 (1937).

⁹ 26 Stat. 209 (1890), 15 U.S.C.A. § 1 et seq. (1941).

¹⁰ 172 F. 2d 402 (C.A. 2d, 1949).

¹¹ Rule 15, Major League Agreement, The Baseball Blue Book 530 (1948).

¹² Uniform Players Contract ¶ 9(a): "The Club and the Player agree to accept, abide by and comply with all provisions of the Major and Major-Minor League Rules which concern player conduct and player-club relationships and with all decisions of the Commissioner and the President of the Club's League, pursuant thereto."

¹³ Gardella has filed suit against Chandler, Commissioner; Frick and Harridge, Presidents of the National and American Leagues, respectively; Trautman, President of the National Association (minor leagues); and the New York Giants Club. Martin and Lanier are more ambitious. They have sued the same individuals, and, in addition, all sixteen clubs of the major leagues.

professional baseball,¹⁴ but, because of their suspensions, they were for a time denied an opportunity to play on a team associated with "organized baseball." Recently,¹⁵ "to temper justice with mercy," Commissioner Chandler "lifted" the suspension, and Gardella, Martin, and Lanier, as well as all the other players who went to Mexico, have been given permission to return to "organized baseball." The Commissioner's action does not affect any possible rights of the plaintiffs that may have accrued prior to the lifting of the suspensions, and their counsel have announced that the reinstatement will have no effect on the pending cases.

None of the players denies that in "jumping" to Mexico he breached the express terms of his contract with his club, the penalty for which was suspension from "organized baseball." They premise their action upon the allegation that the contracts are illegal because they serve to effect an illegal restraint of trade or commerce and to promote an illegal monopoly over trade or commerce in contravention of Sections 1, 2, and 3 of the Sherman Act and of Section 4 of the Clayton Act. To the extent that these sections are relevant to the pending actions, they are set out in the footnotes.¹⁶

The particular provision of the player's contract considered most offensive and directly calculated to effect the alleged monopoly is the so-called "reserve clause."¹⁷ Under this provision each player gives his present club

¹⁴ Supporting affidavits filed by Martin and Lanier with their complaint. Martin and Lanier are playing this year, the 1949 season, with the Quebec Professional League. Martin is with the Sherbrooke Club and Lanier is with the Drummondville Club earning a reported \$10,000 for season's play. *The Sporting News*, p. 32, col. 2 (June 1, 1949). Now that their suspension has been lifted, they are back in "organized baseball."

¹⁵ June 5, 1949.

¹⁶ Sherman Act: "Section 1. . . . Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. . . .

"Section 2. . . . Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor. . . .

"Section 3. . . . Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is declared illegal." 26 Stat. 209 (1890), 15 U.S.C.A. §§ 1-3 (1941).

Clayton Act: "Section 4. . . . Any person who shall be injured in his business or property by reason of anything forbidden in the anti-trust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover three fold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee." 38 Stat. 731 (1914), 15 U.S.C.A. § 15 (1941).

¹⁷ Uniform Player's Contract ¶ 10(a).

or its assignee an option for his services for the succeeding year. Although, as Gardella quite frankly admits in his complaint, "the ultimate objective of this clause was to equalize the opportunities for each team representing a particular city or part thereof to win the pennant and thus to keep alive the interest of its supporters,"¹⁸ it is nevertheless maintained that the universal use of contracts containing this reservation empowers "organized baseball" to control playing talent in violation of the federal mandate against restraints of trade and commerce. The plaintiffs allege that the asserted conspiracy of "organized baseball" to restrain trade and commerce among the states and its concerted action to monopolize the baseball profession has resulted in their personal damage. Martin and Lanier have stated their treble damages as being \$1,000,000 and \$1,500,000, respectively; Gardella places his at \$300,000.

To be sure, the complaints of the plaintiffs have not been confined to a mere recital of the players' contracts and the reserve clause therein, but in considerable detail have discussed numerous provisions of the agreements comprising "baseball law," the apparent arbitrary power reposing in the Commissioner of Baseball to enforce discipline thereunder, the mechanical operations by which baseball teams move from city to city to meet their scheduled games, and particularly the more recent practice of broadcasting and televising games. The rationale of the plaintiffs' cases remains, however, that these players, because of their violation of provisions of their contracts,¹⁹ have, under the rules of "baseball law," been deprived of an opportunity to practice their profession in "organized baseball," and that the concerted effort of "organized baseball" in the creation and enforcement of those rules is a "conspiracy in restraint of trade or commerce among the several States."²⁰

II. THE FEDERAL CASE

The *Gardella* case and the *Martin and Lanier* case, although not yet disposed of, have been the object of considerable judicial attention. The defendants filed a motion to dismiss the *Gardella* action on the ground that the plaintiff had failed to state a cause of action. The district court agreed²¹ and granted the defendants' motion on the grounds that *Federal*

¹⁸ Gardella complaint ¶ 53.

¹⁹ Gardella had not signed his 1946 contract, but went off to Mexico in violation of the "reserve clause" in his 1945 contract—that he would play with the Giants or their assignee in 1946. Martin and Lanier had signed their 1946 contracts, and were playing and drawing pay thereunder. They left for Mexico on May 26, 1946, when Lanier had the enviable pitching record of five victories against no defeats.

²⁰ Sherman Act § 1, 26 Stat. 209 (1890), 15 U.S.C.A. § 1 (1941).

²¹ *Gardella v. Chandler*, 79 F. Supp. 260 (N.Y., 1948).

*Baseball Club of Baltimore v. National League of Professional Baseball Clubs*²² was still the law, and that the federal anti-trust laws were not applicable to the operation of "organized baseball."

The *Federal Baseball Club* decision²³ was handed down in a case which presented the only other serious challenge to the legality of the pattern established over the years by "organized baseball." There a similar raid had been made in 1914 on players under contract with clubs operating in "organized baseball" by interests in this country who were intent on creating a "third major league." When that effort proved unsuccessful, the Baltimore club of the short-lived Federal League claimed damages which it asserted were experienced because "organized baseball" had conspired to monopolize the baseball business in violation of the Sherman Act. The Court of Appeals for the District of Columbia held for the defendants.²⁴ The United States Supreme Court affirmed that decision. Justice Holmes, speaking for a unanimous Court, concluded that the business involved was that of giving exhibitions of baseball, "which are purely state affairs."²⁵ In addition, the decision held that baseball was not "commerce." The Court acknowledged that the teams played in different states and that men and equipment necessarily had to cross state lines, but said: "That to which it [interstate transportation] is incident, the exhibition, although made for money, would not be called trade or commerce in the commonly accepted use of those words. As it is put by the defendant, personal effort, not related to production, is not a subject of commerce. That which, in its consummation, is not commerce, does not become commerce among the States because the transportation that we have mentioned takes place."²⁶ In the twenty-seven years since that decision, the details of "baseball law" have been the subject of constant revision, but the game remains identical in all its major aspects—three strikes are still an "out," the Brooklyn Dodgers still travel to St. Louis to play the Cardinals, the clubs still carry balls and bats over state lines, and peanuts are still sold in the stands.

III. GARDELLA V. CHANDLER

It has been the general consensus of opinion of persons both in and out of baseball that the *Federal* case disposed of the issue with respect to the

²² 259 U.S. 200 (1922).

²³ *Ibid.*

²⁴ *National League of Professional Baseball Clubs v. Federal Baseball Club of Baltimore*, 269 Fed. 681 (1920).

²⁵ *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs*, 259 U.S. 200, 208 (1922).

²⁶ *Ibid.*, at 209.

character of the game, and that, since baseball was deemed not to be "interstate trade or commerce," it did not come within the ambit of the Sherman and Clayton Acts. The Court of Appeals for the Second Circuit, as recently as 1947, expressly followed the *Federal* case, but now it would seem as if "organized baseball" is to be regarded as having changed its "spots."²⁷ Two judges concluded that the judgment of the district court should be reversed and the cause remanded for trial on the complaint; one decided the district court's judgment should be affirmed. Each judge wrote a separate opinion.

Judge Chase reached the decision that the judgment below should be affirmed upon the grounds that (1) the *Federal* case was controlling and (2) that, even if that decision could be distinguished, Gardella had not stated a cause of action.²⁸ The judge found that the Holmes decision had never been reversed, that subsequent decisions had not overruled it by implication, and that the facts now before the court were indistinguishable from those considered by the Court in the *Federal* case. Commenting on the plaintiff's allegation that baseball games are now broadcast and televised, a development since the *Federal* case which proved so persuasive to the other two members of the court, Judge Chase observed that the record of the *Federal* case revealed that at the time of that decision "play-by-play" was sent over telegraph wires, and that now the same "information is sent through the air by impulses which are transformed either into words or pictures. So far as I can perceive, the difference in the method of transmission is without significance."²⁹

As a second ground for his decision, Judge Chase concluded that, irrespective of the binding effect of the *Federal* case, personal services and skills are not subjects of trade or commerce within the anti-trust laws. Therefore, Gardella's allegation that the alleged conspiracy had deprived him of a right to work shoots wide of the mark.³⁰ The Sherman Act, this opinion holds, has never been applied unless "there was some form of restraint upon commercial competition in the marketing of goods and services in interstate commerce. . . ."³¹ In that connection, Judge Chase

²⁷ Conley v. San Carlo Opera Co., 163 F. 2d 310 (C.C.A. 2d, 1947); Gardella v. Chandler, 172 F. 2d 310 (C.A. 2d, 1949).

²⁸ Gardella v. Chandler, 172 F. 2d 402, 404 (C.A. 2d, 1949).

²⁹ Ibid.

³⁰ Ibid., at 407. In this connection it may be noted that the Supreme Court has made distinctions between restraints upon interstate commerce transactions and restraints imposed in the course of interstate labor disputes. See *United States v. Frankfort Distilleries*, 324 U.S. 293, 297 (1945), and, at a lower court level, *United Brick & Clay Workers of America v. Robinson Clay Products Co.*, 64 F. Supp. 872 (Ohio, 1946).

³¹ Gardella v. Chandler, 172 F. 2d 402, 406 (1949).

quoted from the opinion of Justice Stone in *Apex Hosiery Co. v. Leader*:

In the cases considered by this Court since the *Standard Oil* case in 1911 some form of restraint of commercial competition has been the *sine qua non* to the condemnation of contracts, combinations or conspiracies under the Sherman Act, and in general restraints upon competition have been condemned only when their purpose or effect was to raise or fix the market price. It is in this sense that it is said that the restraints, actual or intended, prohibited by the Sherman Act, are only those which are so substantial as to affect market prices.³²

Judge Learned Hand took what might be considered an intermediate position between that of Judge Chase and Judge Frank. Because the complaint alleged that the sale of radio and television rights had indelibly impressed upon the sport of baseball a characteristic substantially different from that which was before the Supreme Court in the *Federal* case, Judge Hand decided that the plaintiff should have an opportunity to prove his assertions at a trial.

It may be asserted unequivocally that Judge Frank, in his opinion, did not take an intermediate position. In his first sentence he branded the Holmes decision in *Federal Baseball Club v. National League*³³ as an "impotent zombi,"³⁴ but concluded that nevertheless it was a decision with which the court must reckon. Thereupon, in a statement which is commendable for its candor but which, nonetheless, reflects on the judicial temperament, he stated that the *Gardella* case should be distinguished, if possible, from the *Federal* decision. The reason ascribed for this eager search for a means of placing the brand of illegality on "organized baseball" was that "we have here a monopoly which, in its effect on ball-players like the plaintiff, possesses characteristics shockingly repugnant to moral principles that, at least since the War Between the States, have been basic in America, as shown by the Thirteenth Amendment to the Constitution, condemning 'involuntary servitude,' and by subsequent Congressional enactments on that subject."³⁵

The *Federal* case had decided that the playing of a ball game was intrastate activity. For that reason, then, the players' contracts, good or bad, related to intrastate activity. The Frank opinion proceeds on the theory that if the game can be found to be interstate, then the players' contracts relate to interstate activity, and if bad (and Judge Frank has no question in his mind on that score) they violate the Sherman Act.

³² 310 U.S. 469, 500 (1940).

³³ 259 U.S. 200 (1922).

³⁴ 172 F. 2d 402, 409 (1949). Because of the adjective "impotent" used by the Judge we can assume he employed "zombi" to mean "the walking dead" rather than the alcoholic beverage by the same name.

³⁵ *Ibid.* Now it would seem that the "national pastime" is "un-American."

The ingredient grasped upon by Judge Frank to prove the present interstate aspect of "organized baseball" in contradistinction to the situation which existed at the time of the *Federal* case was the frequent broadcast of baseball games by radio and television. Because of this activity, the decision says, the games "are, so to speak, played interstate as well as intra-state."³⁶ It was conceded that the question was one of degree, but to resolve that difficult issue it was said: "However, to the question whether the difference between a difference of kind and difference of degree is itself a difference of degree or of kind, the sage answer has been given that it is a difference of degree, but a 'violent' one."³⁷ In final testimony to the difficulties of this tail-wags-the-dog point of view—that the sport of baseball, as it has operated for more than fifty years, is illegal because recently its games have been broadcast—stands what seems to be the fairly strained assumption upon which Judge Frank based his decision: "I think we must, for purposes of deciding the applicability of the Sherman Act, consider this case as if the only audiences for whom the games are played consist of those persons who, in other states, see, hear, or hear about, the games via television and radio."³⁸

IV. MARTIN AND LANIER V. CHANDLER

On June 2d of this year, the Court of Appeals for the Second Circuit, speaking through Judge Learned Hand, filed an opinion in a proceeding which it denominated a "sequel" to its decision in the *Gardella* case.³⁹ Motions had been filed in both the *Gardella* and *Martin and Lanier* cases for injunctions *pendente lite* to compel the defendants to remove the plaintiffs' suspensions and to reinstate them to the "eligible" list. The motions were denied by the judge of the district court on three grounds. "First, he held that the injunction would 'disturb the status quo by restoring the plaintiffs to positions which they had voluntarily resigned three years

³⁶ *Ibid.*, at 411.

³⁷ *Ibid.*, at 412.

³⁸ *Ibid.*, at 414. The thoroughness and zeal with which Judge Frank has pursued his mission is indicated by his footnote number 9a. *Ibid.*, at 415. There he suggests an accounting technique to be used by plaintiff in the trial of his case. The "broadcast theory" will, of course, be met with the argument that while the sale of radio and television rights is a valuable asset, it in no sense controls or determines any aspect of the baseball undertaking. In anticipating that argument, the footnote seems to admit the argument's validity by calling income from that source "velvet." Nonetheless, Judge Frank would have that income compared to net profits rather than gross profits in order that it may be shown to be more than "trifling." This procedure seems to be not only bad accounting, but inconsistent with the theory of his decision. If, because of radio and television, baseball has become interstate, then certainly income from that source must be lumped with and considered in relation to income from baseball's intrastate activity. Compare Judge Hand's opinion in *Martin and Lanier v. Chandler*, 174 F. 2d 917 (C.A. 2d, 1949).

³⁹ *Martin and Lanier v. Chandler*, 174 F. 2d 917 (C.A. 2d, 1949).

before'; second, he held that their rights depended upon disputed questions of fact and law; third, he held that they had an adequate remedy of law in the recovery of damages."⁴⁰

In affirming the decision of the district court, Judge Learned Hand wrote a short but significantly unanimous opinion. Of the three grounds, the court found it necessary to consider only the second ground, that the plaintiff's rights depended on disputed questions of fact and law. While briefly analyzing the court's opinion in the *Gardella* case, Judge Hand amplified his own position and, on the intrastate vs. interstate issue, said: "It seemed to me that it was [in the *Federal* case] a question of the proportion of the interstate activities to the whole business and that the new activities of radio broadcasting and television should be added to the earlier interstate activities and the sum should be compared with the business as a whole."⁴¹ The court had before it the controversial "reserve clause" (which is set out in full later in this article) and in reference to it said: "Apart from the question of jurisdiction, we are not prepared to say, on the record now before us, the 'reserve clause' violates the Anti-Trust Acts. Such a determination may involve consideration, among other things, of the needs and conduct of the business as a whole."⁴² Judge Frank did not dissent.⁴³

As has been indicated, at the time of this writing neither the *Gardella* case nor the *Martin and Lanier* case has been tried on the facts. Irrespective of the outcome of those trials, it seems likely that at least the *Gardella* case will finally be argued before the United States Supreme Court unless, of course, legislation makes moot the issues.⁴⁴ In light of the encouragement he has received from the Court of Appeals for the Second Circuit, the

⁴⁰ Ibid., at 918.

⁴¹ Ibid., at 918.

⁴² Ibid., at 918.

⁴³ The court did not file a separate opinion in *Gardella*'s action for an injunction pendente lite but affirmed the district court's denial of the injunction by a per curiam opinion citing as authority its discussion in the *Martin and Lanier* case. *Gardella v. Chandler*, 174 F. 2d 919 (C.A. 2d, 1949).

⁴⁴ Two identical bills have been introduced in the 81st Congress: H.R. 4018 and H.R. 4019, which provide: "That section 313 of the Communications Act of 1934, as amended, is amended by inserting "(a)" after "313." And by adding at the end of such section the following new subsection:

"(b) 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."

It seems unlikely that these, or bills designed to have the same effect, will be pressed for action until the pending cases have reached final decision.

plaintiff is not likely to yield; "organized baseball" has at stake its entire structure.

V. TRADE OR COMMERCE?

Gardella, Martin, and Lanier seek damages under the anti-trust laws. In order to bring "organized baseball" within the purview of those laws, two fundamental questions must be answered in the affirmative. (1) Is baseball an interstate activity? (2) Is baseball trade or commerce?

The new element which the plaintiff asserts has been added since the *Federal* case, the broadcast of the play of the games,⁴⁵ goes only to the answer to question number one: whether or not "organized baseball" is an intrastate or interstate activity.⁴⁶ The Supreme Court, indeed, did hold in the *Federal* case that the business of baseball was giving exhibitions, a "purely state affair,"⁴⁷ but assuming arguendo that it is found that selling the right to broadcast does in some way place an interstate aspect on the game, the second fundamental question still remains—is baseball "trade or commerce"?

To state the question thus simply compels a negative answer. "Trade or commerce" inexorably connotes activities of the market place—the buying or selling of a commodity. In answer to those who would conspire to restrain the flow of goods to the market place or who would attempt to monopolize the supply of such goods, with the objective in both instances to fix or raise the price to the consumer, Congress passed the Sherman Act. The meaning of the words "trade or commerce" and the abuse at which the anti-trust laws are directed have been analyzed and stated by the Supreme Court in *Apex Hosiery Co. v. Leader*: "Restraints in competition or on the course of trade in the merchandising of articles moving in interstate commerce is not enough, unless the restraint is shown to have or is intended to have *an effect upon prices in the market or otherwise to deprive purchasers or consumers of the advantages which they derive from free competition.*"⁴⁸ (Italics added.) As Judge Chase put it, dissenting in the *Gardella*

⁴⁵ Gardella Complaint, ¶ 30, 31, 33, 34, 35, 36. Martin and Lanier Complaint, ¶ 32.

⁴⁶ In a recent Sherman Act case, *Mandeville Island Farms v. American Crystal Sugar Co.*, 334 U.S. 219 (1948), the Court seems to have established a new intrastate frontier for the anti-trust laws. There refiners of sugar purchased sugar beets, raised and delivered in refiners' state. Because the ultimate act, the sale of the refined sugar, was admittedly an interstate transaction, the Court ruled the whole process was given an interstate character and the Sherman Act covered the preliminary step, the purchase of sugar beets. The reverse situation is presented by baseball, where the ultimate act, production of the ball game, is an intrastate activity, and the preliminary or ancillary activity is alleged to be interstate.

⁴⁷ *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs*, 259 U.S. 200, 208 (1922).

⁴⁸ 310 U.S. 469, 500 (1940).

case, "The Supreme Court has never, so far as I know, applied the Sherman Act in any case unless it was of the opinion that there was some form of restraint upon commercial competition in the marketing of goods and services in interstate commerce. . . ."⁴⁹

By no standard, however elastic, can baseball be considered such "trade or commerce." On the contrary, baseball is a sport, an athletic contest. The function and purpose of "organized baseball" as such, is to provide for, regulate, maintain and discipline such sporting event. The essence of baseball is the game; the essence of the game is the personal, physical efforts of the players in that game. "Trade or commerce" is not involved. There is no production of goods or services which have any effect on either intrastate or interstate commerce. As the appellees in the *Federal* case argued: "Playing baseball, whether for money or not, is a striking instance of human skill exerted for its own sake and with no relation to production. In the case of an exhibition of athletic skill, as in the case of dramatic performance, the onlookers derive nothing but enjoyment."⁵⁰

The rationale of the *Federal* case is that baseball is not trade or commerce, and it is submitted that the court's decision would have been quite the same had the facts shown that every ball park was located on a state line and the players had to pass from one state to another as they ran from first to second base. Justice Holmes said that "the decision of the court of appeals went to the root of the case."⁵¹ The lower court had said that "the game effects no exchange of things according to the meaning of 'trade or commerce' as defined above."⁵²

It is believed that only two other decisions have determined specifically the question as to whether or not baseball is "trade or commerce." One of them, *American Baseball Club of Chicago v. Chase*,⁵³ contains little language to cheer the officials of "organized baseball," and a large portion of it was found by Judge Frank to be useful in support of his quasi-peon theory of ballplayer servitude.⁵⁴ When called upon, however, to resolve the argument that "organized baseball" was subject to the Sherman Act because it was "trade or commerce," the court there said:

⁴⁹ 172 F. 2d 402, 406 (C.A. 2d, 1949).

⁵⁰ Brief of Defendants in Error, *Federal* case, p. 47.

⁵¹ *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs*, 259 U.S. 200, 208 (1922).

⁵² *National League of Professional Baseball Clubs v. Federal Baseball Club of Baltimore*, 269 Fed. 681, 685 (1920).

⁵³ 86 N.Y. Misc. 441, 149 N.Y. Supp. 6 (1914).

⁵⁴ *Gardella v. Chandler*, 172 F. 2d 402, 410 (C.A. 2d, 1949).

. . . I cannot agree to the proposition that the business of baseball for profits is interstate trade or commerce, and therefore subject to the provisions of the Sherman Act. An examination of the cases cited by the defendant confirms rather than changes my conclusion. Commerce is defined by the Century Dictionary as an "interchange of goods, merchandise or property of any kind; trade, traffic; used more especially of trade on a large scale carried on by transportation of merchandise between different countries, or between different parts of the same country, distinguished as foreign commerce and internal commerce."

The defendant urges that under the National Agreement baseball players are bought and sold and dealt in among the several States, and are thus reduced and commercialized into commodities. A commodity is defined as: "That which is useful; anything that is useful or serviceable; particularly an article of merchandise; anything moveable that is a subject of trade or of acquisition."

We are not dealing with the bodies of the players as commodities or articles of merchandise, but with their services as retained or transferred by contract. The foundation of the National Agreement is the game of baseball conducted as a profitable business, and if this game were a commodity or an article of merchandise and transported from State to State, then the argument of the defendant's counsel might be applicable. . . .

Baseball is an amusement, a sport, a game that comes clearly within the civil and criminal law of the State, and is not a commodity or an article of merchandise subject to the regulation of Congress on the theory that it is interstate commerce.⁵⁵

More recently, the court in *American League Baseball Club of New York v. Pasquel*⁵⁶ was confronted with the question of whether or not baseball was trade in relation to a New York statute. There the court said: "Organized baseball has been in existence for many decades. The plaintiff's activities involve the rendition of services. Even if organized baseball, as claimed by defendants, be a monopoly, it would seem that it is not a combination in restraint of trade, either under the provision of Section 340 of the General Business Law, known as the Donnelly Act, or at common law."⁵⁷

Although, in this era of pragmatic thinking, considerations of legislative intent,⁵⁸ like the principle of *stare decisis*⁵⁹ and the issue of federal constitutionality,⁶⁰ have lost much of their weight as precepts for judicial construc-

⁵⁵ 86 N.Y. Misc. 441, 149 N.Y. Supp. 6 (1914).

⁵⁶ 187 N.Y. Misc. 230, 63 N.Y.S. 2d 537 (1946).

⁵⁷ *Ibid.*, at 540. See *American League Baseball Club of New York v. Pasquel*, 188 N.Y. Misc. 106, 66 N.Y.S. 2d 743 (1946).

⁵⁸ *United States v. South Eastern Underwriters Ass'n*, 322 U.S. 533 (1944), where the Court, divided four and four, extended the Sherman Act to cover insurance in spite of "overwhelming" evidence of congressional intent to the contrary. See dissenting opinion of Justice Frankfurter. *Ibid.*, at 583.

⁵⁹ *Comm'r of Internal Revenue v. Church*, 335 U.S. 632 (1949); *Spiegel v. Comm'r of Internal Revenue*, 335 U.S. 701 (1949).

⁶⁰ Compare *Helvering v. Davis*, 301 U.S. 619, 640 (1937).

tion, to the extent that the will of the citizens of the country expressed through the acts of their elected representatives is controlling, it settles this issue. Twenty-seven years ago the Supreme Court ruled that baseball was not "trade or commerce." Since that time both major political parties have at different times had incontestable control of both houses of the national legislature, yet no effort has been made by legislative fiat to bring baseball under the Sherman Act.⁶¹

On the issues presented by the pending cases it can be affirmatively stated that Congress has, in fact, expressed itself. The rationale of the plaintiffs' cases is not that "organized baseball" is in the television business and that they are damaged because the defendants refuse to show their pictures, but rather that they are baseball players and are being deprived of an opportunity of exercising their efforts in the play of the game. The finding of fact upon which Congress premised the exemption of unions from the anti-trust laws is that "the labor of a human being is not a commodity or article of commerce."⁶² To be sure the pending actions do not involve any issues of labor unions and the Sherman Act, but the finding by Congress that the ability to work is not a subject of trade or commerce is pertinent.⁶³ Manifestly, if baseball is not "trade or commerce" under Section 1 of the Sherman Act,⁶⁴ it is not trade or commerce which is subject to a monopoly condemned by Section 2.⁶⁵

VI. BASEBALL LAW: REASONABLE OR UNREASONABLE?

Of considerable significance in the disposal of the pending cases will be the question as to whether or not the restraint alleged by the plaintiffs is, in fact, unreasonable. That "organized baseball" has imposed restraints upon itself and all associated with it cannot be gainsaid—that is the very essence of "baseball law." To be condemned, however, those restraints must be unreasonable. Justice Brandeis stated the rule of law in *Chicago Board of Trade v. United States*:

... But the legality of an agreement or regulation cannot be determined by so simple a test, as whether it restrains competition. Every agreement concerning trade, every regulation of trade, restrains. To bind, to restrain, is of their very essence. The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even

⁶¹ And the President gives the game executive sanction by continuing the practice of throwing out the first ball at the season's start—with either his right or his left hand.

⁶² Clayton Act § 6, 38 Stat. 731 (1914), 15 U.S.C.A. § 17 (1941).

⁶³ *Gardella v. Chandler*, 172 F. 2d 402, 406 (C.A. 2d, 1949).

⁶⁴ 26 Stat. 209 (1890), 15 U.S.C.A. § 1 (1941).

⁶⁵ 26 Stat. 209 (1890), 15 U.S.C.A. § 2 (1941).

destroy competition. To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, are all relevant facts. This is not because a good intention will save an otherwise objectionable regulation or the reverse; but because knowledge of intent may help the court to interpret facts and to predict consequences. . . .⁶⁶

"Organized baseball" is composed of two major leagues, the National and American, both nonprofit, unincorporated associations composed of eight teams each. The corporations operating the teams are organized for profit under the laws of the several states. In addition to the major leagues are the so-called minor leagues, composed of clubs in various classifications designated as AAA, AA, A, B, C, and D. These classifications are based upon the aggregate population of the cities composing the league⁶⁷ and determine, for instance, the number of players a team in a given classification may carry⁶⁸ and the monthly salary limit for each club as a whole.⁶⁹

The leagues and the teams which compose them have entered into various agreements to regulate the conduct of "organized baseball" and the play during each league's championship season and any post-season competitions such as the "World Series." These agreements, three in number, compose "baseball law."

The "Major League Agreement"⁷⁰ executed by the two major leagues and their sixteen constituent clubs, and the rules promulgated thereunder, relate specifically to the conduct of the major leagues. That agreement creates the office of Commissioner, and gives the Commissioner broad powers to investigate, determine, and discipline conduct found to be "detrimental to the best interests of the national game of baseball."⁷¹ Such discipline may be by way of fine, suspension, or "such other steps as he [the Commissioner] may deem necessary and proper in the interest of the morale of the players and the honor of the game."⁷²

Other business communities have never ceased to be amazed at the degree of unbridled power those representing baseball interests have voluntarily surrendered to the Commissioner. The explanation lies in the long history of the game. The very nature of a sports enterprise requires

⁶⁶ 246 U.S. 231 (1917).

⁶⁷ National Association Agreement § 10.02(a), The Baseball Blue Book 710 (1948).

⁶⁸ National Association Agreement § 17.02, The Baseball Blue Book 728 (1948).

⁶⁹ National Association Agreement § 180.04, The Baseball Blue Book 730 (1948).

⁷⁰ The Baseball Blue Book 501 (1948).

⁷¹ Major League Agreement Art. I, § 2(a), The Baseball Blue Book 507 (1948).

⁷² Major League Agreement Art. I, § 4, The Baseball Blue Book 502 (1948).

submission by those competing to the "rules of the game." That has been the characteristic pattern of baseball since its inception. The need of self-discipline and regulatory control of those within the framework of "organized baseball" was underlined in 1919 when certain interests entirely independent of "organized baseball" approached players in an effort to "influence" the outcome of the World Series of that year. Baseball itself discovered and revealed what has been popularly known as the "Black Sox Scandal."

Regular avenues of law enforcement had proved inadequate to protect the integrity of the game. "Organized baseball" concluded that it could and would keep its own house in order so that it might properly command the respect of a sports-loving nation. It was then that the office of Commissioner was created. A federal judge, Kenesaw Mountain Landis, whose courage and integrity were exemplary, stepped down from the bench to assume that office. Following his death, a United States Senator, Albert B. Chandler, resigned that public trust to assume the responsibilities of the office of Commissioner. The power the Commissioner exercises over ownership and players alike is, in many respects, absolute, but the sports community of the country knows and appreciates that "organized baseball" is entitled to command its unquestioned confidence and respect.

In addition to establishing the office of Commissioner, the Major League Agreement and Rules provide in meticulous detail the regulations under which the major leagues operate. A player limit of twenty-five is established; prohibitions against the signing of high-school and American Legion Junior players are provided; rules for selection of players in order that a capable player will not be held in the minor leagues, and waiver rules which prevent a player being transferred from a major to a minor league, are stated; a minimum salary for players of \$5,000 is established; the right to own stock in a competing club is denied; rules against misconduct which prohibit and penalize the throwing of games, gifts to umpires and gambling are included; and regulations affecting the World Series are defined.⁷³ These are a very few of the detailed provisions of the Agreement and Rules.

Under the Major-Minor League Agreement and Rules thereunder,⁷⁴ the minor leagues agree to submit to the jurisdiction of the Commissioner, and in the agreement the major and minor leagues defined the rules for the conduct of those leagues.

⁷³ Major League Rules 2(a) and (b), 3(i), 3(j), 5(a)-(f), 10, 17(d), 20(a)-(e), 21, 33-50. The Baseball Blue Book 508, 512-14, 531-34, 539 (1948).

⁷⁴ The Baseball Blue Book 601 et seq. (1948).

The third agreement, rounding out "baseball law," is the National Association Agreement.⁷⁵ This document creates the office of President of the National Association, now occupied by George M. Trautman, and gives to that office many of the powers of discipline over minor leagues reposed in the Commissioner over the majors. This agreement establishes rules for the conduct of the minor leagues.

Rule 3A of the Major-Minor League Rules provides:

To preserve morale and to produce the similarity of conditions necessary to keen competition, the contracts between all clubs and their players in the Major League shall be in a single form which shall be prescribed by the Major League Executive Council; and the contract between all clubs and players in the Minor Leagues shall be in a single form which shall be prescribed by the President of the National Association. No club shall make a contract different from the uniform contract, and no club shall make a contract containing a non-reserve clause except permission be first secured from the Major League Executive Council in case of a Major League player, or from the President of the National Association in case of a Minor League player. The making of any agreement between a club and a player not embodied in the contract shall subject both parties to discipline; and no such agreement, whether written or verbal, shall be recognized or enforced.⁷⁶

Rule 3(a) of the Major League Rules⁷⁷ and Section 15.01 of the National Association Agreement⁷⁸ contain similar language.

Each such "uniform contract" incorporates, by reference, the Major-Minor League Agreement and Rules and either the National Association Agreement or Major League Agreement, as the case may be,⁷⁹ and requires the signatories' assent to all decisions of the Commissioner of Baseball. Thus, the Uniform Player's Contract becomes the instrumentality by which the players assent to and become regulated by "baseball law."

The court of appeals in the *Gardella* case did not attempt to analyze the player's contract as such. Although Judge Frank made some fairly harsh observations about the contracts, the court did not have before it the text of the contract and the rules incorporated therein, or any evidence as to the purpose, operation and effect of the contract and rules as bearing upon the reasonableness of the restraints contained in them.⁸⁰ It is likely, however, that considerable attention will be given to its terms and provisions in the trial of the case. Of particular interest will be the "reserve clause" and the power of the club to assign a player's contract.

⁷⁵ Ibid., at 701 et seq.

⁷⁷ Ibid., at 508.

⁷⁶ Ibid., at 609.

⁷⁸ Ibid., at 719.

⁷⁹ Minor League Contract § 7a; Major League Contract § 9a.

⁸⁰ Compare the same court's comments in *Martin and Lanier v. Chandler*, 174 F. 2d 917 (C.A. 2d, 1949).

VII. THE RESERVE CLAUSE

The paragraph providing for renewal, or the "reserve clause," in the current major-league Uniform Player's Contract provides:

10. (a) On or before February 1st (or if a Sunday, then the next preceding business day) of the year next following the last playing season covered by this contract, the Club may tender to the Player a contract for the term of that year by mailing the same to the Player at his address following his signature hereto, or if none be given, then at his last address of record with the Club. If prior to the March 1 next succeeding said February 1, the Player and the Club have not agreed upon the terms of such contract, then on or before 10 days after said March 1, the Club shall have the right by written notice to the Player at said address to renew this contract for the period of one year on the same terms, except that the amount payable to the player shall be such as the Club shall fix in said notice; provided, however, that said amount, if fixed by a Major League Club, shall be an amount payable at a rate not less than 75% of the rate stipulated for the preceding year.

(b) The Club's right to renew this contract, as provided in subparagraph (a) of this paragraph 10, and the promise of the Player not to play otherwise than with the Club have been taken into consideration in determining the amount payable under paragraph 2 hereof.

It is in the use of the clause just quoted that Judge Frank found "virtual slavery";⁸¹ yet in that clause lies the secret of baseball's successful operation year after year. Upon the proposition that the "reserve clause" is absolutely necessary to baseball, the officials, owners and players are in total agreement. In their brief the defendants in the *Gardella* case said: "The restraint of which the plaintiff here complains, namely, the reserve clause and the Commissioner's disciplinary power, are the very heart of the system of self-regulation by which Baseball has preserved the competition and integrity which are the public's principal concern."⁸²

The players in whose contracts the "reserve clause" appears are even more positive. The Committee on Labor and Industries of the Massachusetts Legislature recently held hearings on a bill⁸³ to outlaw the "reserve clause" in baseball player contracts. John Murphy, a pitcher for the New York Yankees, who had been elected by the players on the eight teams in the American League as their spokesman, and Dixie Walker, an outfielder for the Pittsburgh Pirates, similarly elected as spokesman for the players in the National League, appeared at the hearing. Murphy advised the Committee of a meeting held to discuss the "reserve clause" by represen-

⁸¹ *Gardella v. Chandler*, 172 F. 2d 402, 410 (1949).

⁸² Appellee's Brief, p. 30.

⁸³ Massachusetts Legislature, House Bill No. 1636 (1948).

tatives of the players from each team in the American League. His testimony was:

We knew what it [the reserve clause] meant. It simply means that at the end of the year, or the following spring the ball club owners have the right to resume their option on our services. We spoke as informally as that in our meeting, and we said that is the only way baseball can continue; that if our livelihood is to continue, we have to have that in our contract, as an integral part of the contract, because without that clause if a ball player were free to sign up with anybody whom he pleases at the end of that year or the next spring, why, the whole structure of the game would be destroyed. . . .⁸⁴

Dixie Walker reported that he had been a player in "organized baseball" for twenty years and had "never heard any of the ball players who have said that they were anxious to have that [reserve] clause stricken out." Walker affirmed John Murphy's testimony, adding that "the ballplayers felt that it [the reserve clause] should be left as it was, because it was the very backbone of the game."⁸⁵

The minor leagues, as well as the majors, benefit from and are dependent on the "reserve clause." A substantial percentage of the teams in the minors have direct identity with major league teams either by ownership or "working agreements" under the "farm system." That system gives an associated team the benefit of the financial stability of its parent club, the advantage of its scouting system and, most important, the use of its personnel in training and developing young players. The accomplished result has been more teams in the minors, hence, more communities with baseball, more players gainfully employed and more quickly trained for participation in the major leagues. Without the "reserve clause" and the attendant right to claim a player's services as he is thus trained, no major league team would undertake the considerable expense required to operate a farm system.

The "reserve clause" is designed to prevent raids by wealthy clubs upon the players of poorer members of the league, thereby preserving more equal competition from year to year and maintaining more stable identity of players with clubs and the baseball fans of their communities. As the Court of Appeals in the *Federal* case said, ". . . [I]f the reserve clause did not exist, the highly skillful players would be absorbed by the more wealthy clubs, and thus some clubs in the league would so far outstrip

⁸⁴ Hearing, Committee on Labor and Industries, Massachusetts Legislature, January 22, 1948.

⁸⁵ Ibid. George "Birdie" Tebbetts of the Boston Red Sox appeared, as well, and told the committee, "I am a baseball player and I have no connection with management, and I have no sympathy with them. . . . However, there is no reason that I can see why this bill [outlawing the "reserve clause"] should go through, because if it does it will absolutely ruin the baseball players. It will deprive fellows like me of a tremendous earning power in baseball."

others in playing ability that the contest between the superior and inferior clubs could be uninteresting, and the public would refuse to patronize them."⁸⁶

Theoretically, except for the seventy-five percent proviso, the "reserve clause" gives the player no alternative to a grossly inadequate salary. In practice that has never been the case. Efforts to produce "awful examples of the operation of the reserve clause" during the trial of the *Federal* case were unavailing.⁸⁷ It is unlikely that any will be produced at the trial of the pending actions. The average age of the players in the National League at the beginning of the 1949 playing season was 27.31 years;⁸⁸ the average salary for the five and one-half months' season was approximately \$12,000.

The reason for lack of abuse of the "reserve clause" lies in the nature of the game more than in the "benevolent" aspects of the baseball "dictatorship."⁸⁹ There is always a shortage of capable players; the threat of voluntary retirement is efficacious. More than that, esprit de corps, possible only with salary-satisfied players, is essential to a winning team. As some evidence of the success of baseball's "collective bargaining" stands the fact that at the commencement of the 1949 season there were no "hold outs" among the more than 600 major league players, a situation which is more the rule than the exception. Dictates of competition on the playing field prohibit abuse of the "reserve clause."

VIII. POWER TO TRADE

The second feature of the player's contract which will be given attention upon the trial of the pending cases is the right given the club to assign a player's contract. In order, in fact, to prohibit a monopoly such as the pending cases allege, each club in the major leagues is restricted to a

⁸⁶ *National League of Professional Baseball Clubs v. Federal Baseball Club of Baltimore*, 269 Fed. 681, 687 (1920).

⁸⁷ Brief on Behalf of Defendants in Error, p. 14.

⁸⁸

NATIONAL LEAGUE AVERAGE AGES AS OF MARCH 1, 1949

	Catchers	Infielders	Outfielders	Pitchers	Team
1. Brooklyn.....	26.45	26.23	26.15	26.22	26.22
2. Philadelphia.....	27.17	27.61	24.77	27.06	26.77
3. New York.....	29.90	28.38	26.41	26.15	27.25
4. Chicago.....	24.86	26.52	26.37	28.75	27.28
5. Boston.....	29.90	28.31	28.97	25.78	27.31
6. Cincinnati.....	26.40	27.56	27.52	27.51	27.35
7. St. Louis.....	27.99	27.03	27.03	27.65	27.40
8. Pittsburgh.....	27.51	28.46	28.67	29.58	28.93
League.....	27.35	27.49	27.01	27.35	27.31

⁸⁹ Compare *Gardella v. Chandler*, 172 F. 2d 402, 415 (C.A. 2d, 1949).

player roster of twenty-five men. Because of this limit, however, it is necessary to the game and to the welfare of the players that the clubs have the right, by assignment, to exchange players skilled in the play of one position, but not needed or being used, for other players needed to strengthen the team. The right of assignment is a valuable and necessary right in management. The players agree:

That is another way of keeping competition in baseball. One club will think they have too many pitchers, and another club has too many infielders, and the only way to maintain a balance is for one club to trade a pitcher for two infielders, or vice versa. It is the structure of baseball. The fans love it and the players love it. In most cases of trades of players, I would say nine out of ten times the player receives an increase in salary when he is transferred from one club to another, because the new owner wants a satisfied ballplayer. . . . We knew that was part of our business of baseball as much as balls and strikes, and we went right along with it.⁹⁰

"Baseball law" surrounds the right of assignment with specific protections in the players' interests. Under the "waiver system" it is impossible to assign a player to a classification lower than he holds unless all other teams of that classification claim no interest in his services. Similarly the "selection system" allows a team of higher classification to force the assignment of a player's contract against the will of his club, thereby assuring that a capable player will not get lost in the minor leagues.

The assignment of rights to personal services often presents troublesome aspects. The Uniform Player's Contract anticipates and provides for that right.⁹¹ Williston in his work on Contracts says, "Rights which would not

⁹⁰ John Murphy's testimony before Committee on Labor and Industries, Massachusetts Legislature, January 22, 1948.

⁹¹ The Uniform Player's Contract provides:

"6. (a) The Player agrees that this contract may be assigned by the Club (and reassigned by any assignee Club) to any other club in accordance with the Major and Major-Minor League Rules.

"(b) The amount stated in paragraph 2 hereof which is payable to the Player for the period stated in paragraph 1 hereof shall not be diminished by any such assignment, except for failure to report as provided in the next sub-paragraph (c).

"(c) The Player shall report to the assignee Club promptly (as provided in the Regulations) upon receipt of written notice from the Club of the assignment of this contract. If the Player fails so to report, he shall not be entitled to any payment for the period from the date he receives written notice of assignment until he reports to the assignee Club.

"(d) Upon and after such assignment, all rights and obligations of the Assignor Club hereunder shall become the rights and obligations of the assignee Club; provided, however, that

(1) The assignee Club shall be liable to the Player for payments accruing only from the date of assignment and shall not be liable (but the assignor Club shall remain liable) for payments accrued prior to that date.

(2) If at any time the assignee is a Major League Club, it shall be liable to pay the Player at the full rate stipulated in paragraph 2 hereof for the remainder of the period stated in paragraph 1 hereof and all prior assignors and assignees shall be relieved of liability for any payment for such period.

otherwise be capable of assignment because too personal in their character, and duties, the performance of which for a similar reason could not be delegated, may be assigned or delegated if the contract so provides. . . ." And the author continues in the footnote: "Thus the contracts of professional ball players often contain provisions enabling a club which has employed a player to assign to another club the right to his services. See *Griffin v. Brooklyn Ball Club*, 68 App. D. 566, 73 N.Y.S. 864, aff'd., 174 N.Y. 536; *Baseball Players' Fraternity v. Boston, etc., Club*, 166 App. D. 484, 151 N.Y.S. 557."⁹²

Were the "reserve clause" and the right to assign players' contracts abolished, there would immediately be introduced incentives tending to destroy the loyalty of players to their team, an element so important to the integrity of the game. For instance, if a player knew he would be a "free agent" at the end of a season he might be tempted to shop around for next season's job and to relax his efforts if he thought he had made an arrangement with another team. In the case of assignments, if the player had the right to stipulate as to where and when he would be assigned, there would be an incentive for a player to endeavor to make a deal for himself during the season and to have divided loyalties which would inevitably affect the quality of his play. There can be no doubt that the integrity of the game and the public confidence in it would be adversely affected if players became free to move from club to club at their own choice.

"Baseball law" and the Uniform Player's Contract, for which it provides, are designed solely for the production of baseball games and to preserve all aspects of the game's integrity. For the plaintiffs, Gardella, Martin and Lanier, to prevail, it will be necessary for the court to find such an arrangement unreasonable.⁹³

(3) Unless the assignor and assignee clubs agree otherwise, if the assignee Club is a Minor League Club, the assignee Club shall be liable only to pay the Player at the rate usually paid by said assignee Club to other players of similar skill and ability in its classification and the assignor Club shall be liable to pay the difference for the remainder of the period stated in paragraph 1 hereof between an amount computed at the rate stipulated in paragraph 2 hereof and the amount so payable by the assignee Club.

"(e) In the event this contract is assigned by a Major League Club during the playing season, the assignor Club shall pay the Player his reasonable and actual moving expenses resulting from such assignment up to the sum of \$500.

"(f) All references in other paragraphs of this contract to "the Club" shall be deemed to mean and include any assignee of this contract."

⁹² 2 Williston, Contracts § 423 (1936).

⁹³ In his complaint Gardella alleged:

"72. That the defendants are utilizing the 'reserve clause,' the standard Minor League contract, the Major League Agreement, the Major League Rules, the Major-Minor League Agreement and the Minor League Rules, contrary to the settled principles of equity and common

IX. AND NOT BASEBALL ALONE

It may be obvious without comment that "organized baseball" is not alone on the execution block. All professional sports, because of the problems common to all, have adopted systems similar to that under which "organized baseball" operates. Another observation, which may be categorized as a *reductio ad absurdum* but which nonetheless is compelled by consideration of this subject, is the effect on college football of a final decision that baseball does violate the anti-trust laws. The production of football, at least by the larger universities, is strikingly similar to that of "organized baseball." Teams cross state lines, they carry paraphernalia with them, admissions are charged the spectators, the games result in profit for the sponsoring universities, "scholarships" make participation "attractive" for the players, and the games are broadcast and televised by interstate facilities. More than that, practically every university in the country, to prevent "jumping" and "raids on its players," enforces the "one-year rule" under which a player, having played for a university, is deprived of the opportunity of playing football the succeeding year if he transfers to another university. Percentagewise his loss of one of three years is strikingly similar to Gardella's loss of five years out of an expected playing life of fifteen years. Can it be said that the application of the "one-year rule" has not "deprived such a player of his occupation?" Is every university president whose institution subscribes to and enforces the

law, and to monopolize or attempt to monopolize trade or commerce among the several states and with foreign nations contrary to Section 2 of the Sherman Anti-Trust Act (15 U.S.C.A., Sec. 2) and to Section 13 of the Clayton Act (15 U.S.C.A., Sec. 13)." In answer the American League replied, in part:

"Further answering paragraph 72, defendant alleges: The form of the player contract, the Major League Agreement, the Major League Rules, the Major-Minor League Agreement and the Minor League Rules have evolved naturally and progressively to meet the unique conditions necessarily inherent in a sport in which contests can only be played between independent competing teams. The form of said contract provisions, agreements and rules has evolved and has been determined by what was reasonable and necessary from time to time, to promote the highest degree of competition between teams and to safeguard and preserve the integrity of the game and the conditions under which it is played. The overall objects and purposes of the contract provisions, agreements and rules are, and have been, to perpetuate baseball as the national game of the United States, to surround it with the safeguards necessary to warrant the highest public confidence in its integrity and in the manner in which the game is played and to provide uniform rules and regulations for umpiring, scoring and other matters involved in the playing of the game. These objectives were and are beneficial to, and necessary for the protection of, the proper interests of the players, the Clubs and the public in the game. The contract provisions, agreements and rules are both reasonable and essential to protect and preserve the respective interests of the players, the Clubs and the Public in the game and to preserve the existence of the game itself. Experience has demonstrated that such contracts, agreements, rules and regulations operate, and have operated, with great benefit to the public interest in the national game of baseball and that their prohibition would not only unjustifiably injure the interests of players and Clubs but also would irreparably injure the public."

"one-year rule" guilty of a misdemeanor and liable, under the Sherman Act, to a fine of \$5,000 and one year's imprisonment?

A decision by the United States Supreme Court reversing its ruling in the *Federal* case and finding that "organized baseball" is "interstate trade or commerce," its restraints unreasonable, and therefore in conflict with the Sherman and Clayton Acts, would have a profound effect upon organized sports in this country. It is a fairly standard technique for each industry when first charged with violating the anti-trust laws to respond with the cry that only ruin to that industry lies in an application of the anti-trust laws to its particular restraints. The frequent use of that assertion, however, does not deny its validity respecting any particular set of facts. It is the serious judgment of both management and players that a finding that the operation of "organized baseball" violates the anti-trust laws would mean the end of baseball as we know it. Such a consequence will not be taken lightly by any court.

It is difficult to conceive a rationale upon which a decision compelling that result might be based. Overruling the *Federal* case would assuredly not serve the ends of social justice. In opposition to the interests of three young men who consciously breached their contracts and deliberately and knowingly subjected themselves to the prescribed penalty for such action are the interests of those representing the ownership of baseball, the thousands of players who each year realize a substantial and often extraordinary income from their playing efforts, and, of paramount importance, the interest of a sports-loving public which has through its emotional and monetary support made baseball the "National Game."