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Lydia Lavelle

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## FROM THE DIAMONDS TO THE COURTS: MAJOR LEAGUE BASEBALL V. THE COMMISSIONER

LYDIA LAVELLE\*

August 20, 1992: "I will not resign - ever."

September 7, 1992: "I've concluded that resignation - not litigation - should be my final act as Commissioner 'in the best interests of baseball.' "

Fay Vincent, Major League Baseball's Commissioner from  
1989-1992<sup>1</sup>

### I. INTRODUCTION

Fay Vincent's sudden resignation as Major League Baseball's eighth commissioner<sup>2</sup> was the culmination of a power struggle between the major league baseball owners and himself. The powers of the commissioner are found in the *Major League Agreement*, which gives the commissioner the sole and exclusive right to decide "all disputes and controversies related in any way to professional baseball between clubs . . . other than those whose resolution is expressly provided for by another means in [the] Agreement . . . ."<sup>3</sup> The commissioner is authorized to investigate "any act, transaction or practice charged, alleged or suspected to be not in the best interests of the national game of Baseball . . . [and] to determine . . . what preventive, remedial or punitive action is appropriate . . . and to take such action."<sup>4</sup> Just what these words mean, however, has been difficult to ascertain.<sup>5</sup>

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\* B.A. St. Andrews Presbyterian College, 1983; M.R.R. North Carolina State University, 1985; J.D. North Carolina Central University, 1993. Currently serving as a clerk for the Honorable Clifton E. Johnson of the North Carolina Court of Appeals. Lydia would like to dedicate this writing to the lawyer she most admires, her father, Judge William A. Lavelle, of Athens, Ohio.

1. *Vincent Resigns*, THE HERALD-SUN (Durham, NC), Sept. 8, 1992, at B1.

2. The seven previous commissioners were Judge Kenesaw Mountain Landis (1920-1944), A.B. "Happy" Chandler (1945-1951), Ford Frick (1951-1965), General William Eckert (1965-1968), Bowie Kuhn (1969-1984), Peter V. Ueberroth (1984-1989), and A. Bartlett Giamatti (4/1/89-9/1/89). Vincent was appointed Acting Commissioner 9/2/89 upon the sudden death of Giamatti, and elected commissioner 9/13/89. THE BASEBALL ENCYCLOPEDIA 27 (R. Wolf, 8th ed. 1990).

3. MAJOR LEAGUE AGREEMENT, ART. VII (1988).

4. *Id.*, art. I, § 2(b).

5. "In theory, the commissioner . . . operates apart from the owner collective. From time to time, some commissioners have even maintained that they act as a buffer between the owners and the players. Most concede, however, that they are part of management. The question is

The extent of the commissioner's power has been litigated in the courts for years.<sup>6</sup> This comment will focus on the commissioner's office in a historical context. It will first focus on the origin of the office of the commissioner and will analyze the reasons for creating the office. The various personalities who have held this office will be introduced, and their exercise of the broad power bestowed upon them by the *Major League Agreement* will be reviewed. This perspective will reveal that the powers of the commissioner in the *Major League Agreement* were modified somewhat throughout the years.<sup>7</sup>

This comment will continue with a review of *Chicago National League Ball Club, Inc. v. Vincent*.<sup>8</sup> This case was brought by the Chicago Cubs in an attempt to secure a preliminary injunction against Commissioner Vincent to prevent him from forcing the realignment of the divisions of the National League.<sup>9</sup> Although the case has now been vacated, it offers a 1992 perspective on the continuing struggle to define the extent of the commissioner's power - here, in a battle with the ownership of the Chicago Cubs baseball team.<sup>10</sup>

Three of Major League Baseball's commissioners have been forced to leave their terms as commissioner early. One more was not re-elected, and another chose not to run again, believing he would not be re-elected.<sup>11</sup> These are further examples that the existing agreement between the commissioner and Major League Baseball's owners have proven to be unworkable. This comment will conclude by asking if it is realistic to expect the commissioner to be able to effectively promote the best interests of baseball under the current *Major League Agreement*.

## II. THE CREATION OF THE OFFICE OF THE COMMISSIONER

Prior to formation of the commissioner's office, Major League Baseball was administered by the National Commission, created in 1903, which consisted of three persons: the president of the National

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how much power do they actually receive under league constitutions and bylaws?" ROBERT C. BERRY & GLENN M. WONG, *LAW AND BUSINESS OF THE SPORTS INDUSTRIES* 11 (1986).

6. See, e.g., *Charles O. Finley & Co. v. Kuhn*, 569 F.2d 527 (7th Cir. 1978), *cert. denied*, 439 U.S. 876 (1978).

7. *Id.* at 534 (noting amendments made in 1944 to the Major League Agreement which are discussed in further detail in the body of this comment).

8. No. 92 Civ. 4398 (N.D. Ill. July 23, 1992) (order granting preliminary injunction) (withdrawn and vacated Sept. 24, 1992).

9. *Id.*

10. *Executive Council Rescinds Realignment Plans*, THE HERALD-SUN (Durham, NC), Sept. 25, 1992, at B1. The Cubs and lawyers for the commissioner's office filed a joint motion, asking to dismiss the lawsuit. U.S. District Judge Suzanne B. Conlon dissolved the injunction and vacated the July 23, 1992 decision. *Id.*

11. *Vincent Resigns*, *supra* note 1, at B4.

League, the president of the American League, and one baseball club owner.<sup>12</sup> The main responsibilities of these unsalaried positions were to interpret and enforce the National Agreement, which was then the governing instrument, and to punish violations by fines and suspensions.<sup>13</sup> This three-position form of administration was adequate, although strained at times.<sup>14</sup>

By 1919, the year of the infamous Chicago "Black Sox" scandal,<sup>15</sup> the National Commission was nearly powerless. Under pressure from unhappy owners, the Commission collapsed with the resignation of its last original member. Most baseball commentators suggest that the "Black Sox" scandal brought about the overthrow of the Commission when in reality a plan for a new governmental structure was being contemplated before the scandal broke.<sup>16</sup>

The new plan was formulated by Albert D. Lasker, a prominent Chicago businessman, and a large stockholder in the Chicago Cub baseball team.<sup>17</sup> Lasker's plan provided for Major League Baseball to be run by three persons (one chairman and two associates) without financial ties to any club, and with "unreviewable authority."<sup>18</sup> Although not met with enthusiasm by the owners, the plan was approved, in part to boost public confidence in the sport after the disappointment of the Black Sox scandal.<sup>19</sup> On November 12, 1920, the owners "framed for the industry the basic governmental structure that stands to this day," and confirmed the election of baseball's first commissioner.<sup>20</sup>

The first commissioner of major league baseball, Judge Kenesaw Mountain Landis, delayed the start of his official duties until a committee appointed to revise the National Agreement had finished

12. TOTAL BASEBALL 656 (John Thorn and Peter Palmer eds., 1989).

13. *Id.*

14. *Id.* "League presidents, by their nature, could not view intra- and inter-league affairs equably. The club owners of each league expected the loyalty of their Commission representative and were infuriated when justice or equity required a decision that went against them." *Id.*

15. The Chicago "Black Sox" scandal was the subject of a movie, "Eight Men Out," named after the book of the same title. ELIOT ASINOF, EIGHT MEN OUT (1963). "Eight Men Out" is the story of the Chicago White Sox players who threw the 1919 World Series to the Cincinnati Reds. Eventually, the main players in the scandal were brought to trial. *Id.*

16. HAROLD SEYMOUR, BASEBALL: THE GOLDEN AGE 311-12 (1971). "Thus, the Black Sox scandal precipitated and accelerated a structural change already contemplated and which very likely would have come about in some form anyway." *Id.* at 312.

17. Lasker was the second largest stockholder in the Chicago Cubs. The largest stockholder was William Wrigley, known for his chewing gum. *Id.* at 311.

18. *Id.* at 312.

19. ASINOF, *supra* note 15, at 121. The disappointment the American people felt toward major league baseball at that time can be summed up by the famous words of a little boy as he spoke to "Shoeless" Joe Jackson of the Chicago White Sox departing from the Grand Jury during the investigation of the 1919 World Series scandal: "Say it ain't so, Joe." Unfortunately, it was. *Id.*

20. SEYMOUR, *supra* note 16, at 319.

sweeping revisions to the document. Once completed, the new National Agreement gave the commissioner extremely broad investigative and punitive powers.<sup>21</sup> Specifically, the new document allowed the commissioner "to investigate, either upon complaint or upon his own initiative, any act, transaction, or practice . . . suspected to be detrimental to the best interests of the national game of Baseball," as well as the power to take punitive action (fining or blacklisting) against players, clubs, officers, or leagues found guilty of misconduct.<sup>22</sup> Judge Landis took office in January, 1921.<sup>23</sup>

### III. COMMISSIONERS LANDIS (1920) THROUGH ECKERT (1968)

When he became commissioner, Judge Landis had been a federal district judge for fifteen years.<sup>24</sup> While on the bench in 1915, the Judge heard a case involving Major League Baseball in which the Federal [Baseball] League had filed an anti-trust suit against organized baseball.<sup>25</sup> Judge Landis delayed action on this suit until a settlement could be reached, thus avoiding a legal test of baseball's monopoly status.<sup>26</sup> He was popular, and many thought he had the "backbone" to clean up major league baseball.<sup>27</sup>

Judge Landis retained his position on the federal bench for the first fifteen months of his position as commissioner, invoking rage from Congress, the American Bar Association and the press.<sup>28</sup> A congressman from Ohio introduced a resolution asking for an investigation of the legality of Landis' holding two offices, and called for Landis' impeachment at the hearing that followed.<sup>29</sup> Although a Judiciary Com-

21. *Id.* at 321.

22. *Id.* at 322. Indeed, Judge Landis insisted on the punitive powers. When Landis heard rumors that one of the former powers of Major League Baseball, Ban Johnson, was trying to change the pertinent clause in the Agreement to read "recommend [punitive]" action, he was insistent. He told the committee that the clause had to say "take [punitive] action" or else they would have to find a new commissioner. He said, "You have told the world that my powers are to be absolute. I wouldn't take this job for all the gold in the world unless I knew my hands were to be free." *Id.*

23. TOTAL BASEBALL, *supra* note 12, at 657.

24. *Id.* He was appointed by President Theodore Roosevelt to the United States District Court for the Northern District of Illinois in 1905. Landis never went to college but received a law degree from the Union Law School of Chicago and was admitted to the bar in 1891. SEYMOUR, *supra* note 16, at 367.

25. TOTAL BASEBALL, *supra* note 12, at 644.

26. *Id.* at 657. Landis' justifications: "The court's expert knowledge of baseball obtained by more than 30 years of observation of the game as a spectator convinced me that if an order had been entered it would have been, if not destructive, at least vitally injurious to the game of baseball." SEYMOUR, *supra* note 16, at 368.

27. TOTAL BASEBALL, *supra* note 12, at 657.

28. SEYMOUR, *supra* note 16, at 371.

29. *Id.* Conflict of interest was one area of concern. The congressman from Ohio, B.F. Welty, pointed out that Landis had just accepted the commissionership of Major League Baseball, and yet, litigation pertaining to the "Black Sox" and the Baltimore Federal League Club

mittee investigation into Judge Landis' dual employment conceded that no law was violated, the Judge finally decided to submit his resignation to President Harding in February of 1922.<sup>30</sup>

Judge Landis set the tone for his administration with his comments made after the "Black Sox" hearings but well before the trial: "There is absolutely no chance for any of them to creep back into Organized Baseball. They will be and remain outlaws . . . [I]t is sure that the guilt of some of them at least will be proved."<sup>31</sup> Indeed, the "Black Sox" players, even though acquitted by the jury during the "Black Sox" trial, remained ineligible to play baseball by order of Judge Landis.<sup>32</sup>

Although the new government of major league baseball was to have been a three-person administration, the appointment of two associate commissioners was forgotten.<sup>33</sup> It is said that Judge Landis' tenure has been transformed into "a legend that still cloaks him."<sup>34</sup> Landis spent his first several years as commissioner handing out, as needed, fines, suspensions and banishments of persons associated with baseball. Furthermore, he acted to protect the rights of the players in certain cases.<sup>35</sup> One of Landis' early suspensions was of the legendary Babe Ruth.<sup>36</sup> Although Judge Landis' decisions were often "inconsistent, arbitrary and unfair," they were final.<sup>37</sup>

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was still pending. Welty submitted a letter which he considered evidence that baseball bigwigs had bribed Landis to become commissioner. The Judiciary Committee didn't agree with Welty. *Id.*

30. *Id.* at 372.

31. ASINOF, *supra* note 15, at 323. Here was a federal judge condemning men to the black-list before they had even had their day in court!

32. *Id.* at 330. Landis said, "Regardless of the verdict of juries, no player that throws a ball game; no player that undertakes or promises to throw a ballgame; no player that sits in a conference with a bunch of crooked players and gamblers where the ways and means of throwing games are planned and discussed and does not promptly tell his club about it, will ever play professional baseball." *Id.*

33. TOTAL BASEBALL, *supra* note 12, at 657.

34. SEYMOUR, *supra* note 16, at 367.

35. *Id.* at 388. During his first several years as commissioner, Judge Landis blacklisted some fifteen players permanently, and others were banned for varying periods for various offenses. In 1924, fifty-three players were on the ineligible list. *Id.*

36. KEN SOBOL, *BABE RUTH AND THE AMERICAN DREAM* 137-38 (1974). In 1921, World Series participants were not allowed to participate in post-season tours because of a fear this might take some importance away from the Series. A promoter wanted the Babe, along with some other players, to go on a post-season tour of upstate New York, Pennsylvania and Ohio. The players planned to ignore the rule, and Judge Landis warned them that they were not to put themselves above the law. Landis said, "This case resolves itself into a question of who is the biggest man in baseball, the commissioner or the man who makes the most home runs." The Babe went on the tour despite warnings from nearly everyone, and Judge Landis fined him a month's salary and suspended him the next season until May 20th (thirty-nine days). *Id.*

37. TOTAL BASEBALL, *supra* note 12, at 657.

The earliest legal test of the commissioner's authority is found in *Milwaukee American Ass'n v. Landis*.<sup>38</sup> The Milwaukee Club (a minor league club) sought to enjoin the commissioner from disapproving an option contract between the St. Louis Club (a major league club) and the Milwaukee Club.<sup>39</sup> This option contract was to assign to the Milwaukee Club a then existing agreement between the intervener, Bennett (a ball player) and the St. Louis Club, as owner, but reserving the right to recall Bennett to St. Louis.<sup>40</sup>

Prior to this legal proceeding, the commissioner found that the president and principal stockholder of the St. Louis Club was also the controlling stockholder in several minor clubs, and that player Bennett had been transferred back and forth from the major club to these minor clubs for an indefinite period of time under what appeared to be outright sales agreements.<sup>41</sup> In fact, these "sales" failed to furnish other major clubs with the opportunity to claim the player's services.<sup>42</sup> The commissioner found that Bennett's services had been at all times subject to one owner's control, and therefore, Bennett could be optioned without waivers on April 5, 1930, two years from the date of the original acquisition by St. Louis.<sup>43</sup> The commissioner reasoned that the period could not be extended by the process of apparent outright transfer back and forth between clubs that were actually controlled by one individual.<sup>44</sup>

The court allowed the commissioner's disapproval of the contract and prefaced its opinion by noting that "[t]he various agreements . . . for . . . organized baseball . . . disclose a clear intent upon the part of the parties to endow the commissioner with all the attributes of a benevolent but absolute despot and all the disciplinary powers of the proverbial pater familias."<sup>45</sup> The court noted the following:

The code is expressly designed and intended to foster keen, clean competition in the sport of baseball, to preserve discipline and a high standard of morale, to produce an equality of conditions necessary to the promotion of keen competition and to protect players against clubs, clubs against players and clubs against clubs.<sup>46</sup>

The court went on to say that "apparently it was the intent of the parties to make the commissioner an arbiter, whose decisions made in

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38. 49 F.2d 298 (D.C. Ill. 1931).

39. *Id.* at 299.

40. *Id.*

41. *Id.* at 301.

42. *Id.*

43. *Id.* at 300.

44. *Id.*

45. *Id.* at 299. "Pater familias" is defined as "the father of a family." BLACK'S LAW DICTIONARY 1014 (5th ed. 1979).

46. *Milwaukee American Ass'n*, 49 F.2d at 301.

good faith, upon evidence, upon all questions relating to the purpose of the organization and all conduct detrimental thereto, should be absolutely binding."<sup>47</sup>

The Milwaukee Club argued that this wide grant of jurisdiction of the commissioner "is an attempt to deprive the court of its jurisdiction and that such a provision as is contained in these agreements, rules and uniform contract is contrary to public policy."<sup>48</sup> The court noted:

The decision of any arbiter . . . or similar person endowed with the power to decide may not be exercised in an illegal manner, that is fraudulently, arbitrarily, without legal basis for the same or without any evidence to justify such action. . . . An agreement to arbitrate a controverted question and to deprive all courts of jurisdiction, so long as in executory form, is quite commonly held void, but an actual submission to an arbiter . . . in good faith is proper, and decision under same is binding, unless it is unsupported by evidence, or unless the decision is upon some basis without legal foundation or beyond legal recognition.<sup>49</sup>

Judge Landis ruled until 1944, when he died at age 78.<sup>50</sup> At this time, two amendments were made to the *Major League Agreement* by the club owners to limit the authority of the commissioner. The first of these was to eliminate the provision by which the owners had agreed to "waive their right of recourse to the courts to challenge actions of the Commissioner." Nevertheless, they did retain the first part of the section, which stated that they were to be bound by the decisions of the commissioner and the penalties imposed by him.<sup>51</sup> The second amendment was to add the following to Article I, Section 3 of the *Major League Agreement*: "No Major League Rule or other joint action of the two Major Leagues, and no action or procedure taken in compliance with any such Major League Rule or joint action of the two Major Leagues shall be considered or construed to be detrimental to Baseball."<sup>52</sup> These two amendments were in effect during the tenure of the next two commissioners.<sup>53</sup>

Senator A.B. "Happy" Chandler succeeded Judge Landis as commissioner, taking office in 1945.<sup>54</sup> Chandler was anticipated as a con-

47. *Id.* at 302.

48. *Id.* at 303.

49. *Id.*

50. TOTAL BASEBALL, *supra* note 12, at 658. Landis was commissioner for twenty-three years. *Id.*

51. Charles O. Finley & Co. v. Kuhn, 569 F.2d 527, 534 (7th Cir.), *cert. denied* 439 U.S. 876 (1978).

52. *Id.*

53. *Id.*

54. DAVID Q. VOIGT, III, AMERICAN BASEBALL 92 (1970). The Kentucky senator had previously been Lt. Governor and Governor of Kentucky, and stated upon his election that "Ah love baseball . . . I would rather be Commissioner of Baseball than President of the United



trast to the dictatorial Landis, with his initial good-humored folksiness, but this was quickly disproved.<sup>55</sup> From the outset, his decisions were controversial, alienating owners, sportswriters, players, fans and umpires alike, and talk of replacing him began during the second year of his term.<sup>56</sup> Major League Baseball was in desperate need of a respected commissioner who could deal with pressing issues, such as player anti-trust suits,<sup>57</sup> racial integration of the major leagues, the specter of player unionism, and the press and television media that was becoming more sophisticated every day.<sup>58</sup>

One of Chandler's more controversial decisions was a one year suspension of Leo Durocher, the manager of the Brooklyn Dodgers, citing "an accumulation of 'incidents'."<sup>59</sup> This was the stiffest penalty ever issued against a manager, and fell under the catch-all phrase "conduct detrimental to Baseball."<sup>60</sup> Even when Chandler was ethically correct - such as when he freed minor league players from improper contracts - he was criticized, and when he asked for a vote of confidence from the owners in 1950, he was voted out of office.<sup>61</sup>

The next commissioner of baseball was Ford C. Frick, who before his appointment was the National League President.<sup>62</sup> The owners wanted a commissioner to serve as "a figurehead who would represent the game, while keeping his nose out of important decisions."<sup>63</sup> Frick was the man for the job, and during his tenure in office he seldom bucked owners or stood up for the players, limiting his role to the administration of rules laid down by the owners.<sup>64</sup> Frick was commissioner during an era that saw the emergence of air travel, expansion of

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States." As commissioner, he would make a salary of \$50,000 - as Senator, he made a salary of \$10,000. *Id.*

55. TOTAL BASEBALL, *supra* note 12, at 658. "The owners obviously wanted a glad-handing good-will ambassador for baseball and a lightweight boss for themselves." *Id.*

56. VOIGT, *supra* note 54, at 93.

57. See *Martin v. Chandler*, 174 F.2d 917 (2d Cir. 1949); *Gardella v. Chandler*, 174 F.2d 919 (2d Cir. 1949); *Gardella v. Chandler*, 79 F. Supp. 260 (S.D.N.Y. 1948), *rev'd* *Gardella v. Chandler*, 172 F.2d 402 (2d Cir. 1949). Note that after *Gardella v. Chandler*, 174 F.2d 919 (2d Cir. 1949), in which the players asked for their immediate reinstatement pending the outcome of the anti-trust trials but were refused, the players dropped the anti-trust cases and settled out of court. *Id.*

58. VOIGT, *supra* note 54, at 93.

59. HY TURKIN AND S.C. THOMPSON, THE OFFICIAL ENCYCLOPEDIA OF BASEBALL 491 (1959).

60. TOTAL BASEBALL, *supra* note 12, at 658. Chandler didn't spell out the particulars of the violations when he issued the penalty, and the suspension year was never adequately defined. The suspension made Leo a martyr and provided more bad press for Chandler. *Id.*

61. *Id.*

62. TURKIN & THOMPSON, *supra* note 59, at 492. Frick previously had been a sportswriter for a New York paper, and a radio sports caster and manager of the National League Service Bureau. *Id.*

63. VOIGT, *supra* note 54, at 94.

64. *Id.* at 95.

the major leagues, and shifting of major league franchises to different cities (the Brooklyn Dodgers, New York Giants, and Boston Braves, for example).<sup>65</sup> During Frick's era, major league baseball was transformed "from the rough-and-ready old-timers to big money . . . businessmen or corporations," and Congress conducted hearings on baseball's exemption to the anti-trust laws without taking any official action.<sup>66</sup> Frick resigned in 1965.<sup>67</sup>

Frick had recommended three amendments to the *Major League Agreement*, and these were adopted in 1964.<sup>68</sup> The first was to remove the language added in 1944 that prevented the commissioner from finding any act or practice "taken in compliance" with a Major League Rule to be "detrimental to baseball."<sup>69</sup> The second amendment was to add back the provision deleted in 1944, which waived any rights of recourse to the courts to challenge a Commissioner's decision.<sup>70</sup> The third amendment was to change the wording "detrimental to the best interests of the national game of baseball" to "not in the best interests of the national game of baseball" or "not in the best interests of baseball."<sup>71</sup> These adoptions were made, and this is how the *Major League Agreement* reads today.

The fourth commissioner was William D. "Spike" Eckert, a retired Air Force Lieutenant General.<sup>72</sup> Eckert was quickly dubbed the "unknown soldier" because he was a complete unknown to baseball people as well as to military historians.<sup>73</sup> Eckert's tenure as commissioner was brief; he "had no awareness of baseball's problems or of the direction it should take."<sup>74</sup> In the fall of 1968, a dozen owners moved for Eckert to leave office. Consequently, he resigned in December of 1968.<sup>75</sup> Club owners told the press that Eckert had resigned so that the office of commissioner could have a "bold and imaginative restructuring."<sup>76</sup>

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65. TOTAL BASEBALL, *supra* note 12, at 658-59.

66. *Id.* at 659.

67. *Id.* Frick is perhaps best known for insisting that Roger Maris' record breaking 61 home runs in the 1961 season have an asterisk placed beside it because the previous record had been achieved in 154 games, rather than 162 games. *Id.* at 658.

68. See Charles O. Finley v. Kuhn, 569 F.2d 527, 534 (7th Cir. 1978), *cert. denied*, 439 U.S. 876 (1978).

69. *Id.*

70. *Id.*

71. *Id.*

72. Eckert was recommended by General Curtis Le May, who refused to be a candidate himself. TOTAL BASEBALL, *supra* note 12, at 659.

73. VOIGT, *supra* note 54, at 309.

74. TOTAL BASEBALL, *supra* note 23, at 659. Eckert's "ineptitude was obvious. . . . He aroused national indignation by failing to cancel games after the assassinations of Martin Luther King and Robert Kennedy." *Id.*

75. VOIGT, *supra* note 54, at 309.

76. *Id.*

#### IV. COMMISSIONERS KUHN (1969) THROUGH VINCENT (1992)

The next commissioner of Major League Baseball was Bowie Kuhn, arguably the most capable commissioner to date.<sup>77</sup> Because the owners had decided that a restructuring was needed, one of Kuhn's first tasks as the new commissioner was to develop a more efficient plan for the administration of the business of Major League Baseball.<sup>78</sup> Kuhn's proposal was rejected:

The Commissioner's study, completed at a cost of \$100,000, urged league presidents and minor league officials come under his control. Moreover, he requested authority to nominate league presidents, appoint committee chairmen, set the agenda for owner's meetings, and personally direct the all-powerful executive committee. The Commissioner's final shot suggested that he be re-elected by only a two-thirds vote.

...  
The fact that Kuhn spent so much money and came forward with a personal power play boggles the imagination. He certainly recognized the obvious - that the two league presidents labored at cross purposes, each trying to exalt his circuit over the other. . . . The owners bristled at Kuhn's plan and resoundingly rejected it, accusing the Commissioner of wasting their money.<sup>79</sup>

It would seem that Kuhn failed in his attempt to restructure the organization of Major League Baseball. He noted later "[t]he report was not adopted, but over the years significant elements of it were adopted, and I had already accomplished a lot by enlarging the functions and increasing the personnel of the commissioner's office . . . things happened, but not on the timetable I had in mind."<sup>80</sup> Kuhn felt that this was a "philosophical crisis":

By balking at my reasonable restructuring plan, the owners had gone back on the mandate they gave me when I was elected; implicit in that mandate was a promise to restructure . . . restructuring in some ways was more psychological than real. By barring the opposition of a great majority of clubs, there was very little the commissioner could not have accomplished if he had set his mind to the task. He had enormous power to prevent things he thought were bad for the game.<sup>81</sup>

Kuhn served during a time when the Major League Player's Association (MLPA) had come into its own, behind the leadership of its fer-

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77. TOTAL BASEBALL, *supra* note 12, at 659. Kuhn had worked the Griffith Stadium scoreboard as a youth, earned a law degree from Princeton, and practiced law with a New York firm which had long handled National League business. *Id.*

78. *Id.*

79. VOIGT, *supra* note 54, at 310.

80. BOWIE KUHN, *HARDBALL: THE EDUCATION OF A BASEBALL COMMISSIONER* 67 (1987).

81. *Id.*

vent executive director, Marvin Miller.<sup>82</sup> One of Kuhn's first tasks was to encourage negotiations between the MLPA and the owners' Players Relations Committee concerning the particulars of pension funds; a successful settlement averted a 1969 players strike.<sup>83</sup>

The subject of baseball's anti-trust exemption which had been litigated unsuccessfully throughout the years<sup>84</sup> was brought to the forefront again in *Flood v. Kuhn*.<sup>85</sup> Curt Flood, a member of the Cardinals, was traded to the Phillies after the 1969 season.<sup>86</sup> Flood refused to go. Writing Kuhn, he stated, "I am [not] a piece of property to be bought and sold irrespective of my wishes."<sup>87</sup> Kuhn would not declare him a free agent, so Flood filed suit.<sup>88</sup> The lower court dismissed his case, and the Supreme Court upheld the dismissal. Justice Blackmun noted the following:

Remedial legislation has been introduced [regarding baseball's anti-trust exemption] repeatedly in Congress but none has ever been enacted. The Court, accordingly, has concluded that Congress as yet has had no intention to subject baseball's reserve system to the reach of the antitrust statutes. . . . If there is any inconsistency or illogic in all this, it is an inconsistency and illogic of long standing that is to be remedied by the Congress and not this Court.<sup>89</sup>

While *Flood* was being litigated, Kuhn noted that the reserve clause controversy might be settled through labor negotiations, upsetting owners who feared this would be costly.<sup>90</sup> Kuhn believed that "there were club executives who would have considered negotiated approaches to some form of free agency, and their numbers, though limited, were bound to increase as new and younger ownership appeared in the game."<sup>91</sup> Kuhn stated that the *Flood* lawsuit was a mistake because the prospects of winning were poor. Moreover, the possibility of negotiation concerning the matter in future years were diminished as a result.<sup>92</sup>

Another legal test of the commissioner's powers under the *Major League Agreement* was litigated in *Finley v. Kuhn*.<sup>93</sup> Charles O. Finley

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82. TOTAL BASEBALL, *supra* note 12, at 659.

83. *Id.*

84. See cases cited *supra* note 57.

85. 407 U.S. 258 (1972).

86. *Id.*

87. TOTAL BASEBALL, *supra* note 12, at 646.

88. *Id.*

89. *Id.*

90. VOIGT, *supra* note 54, at 310.

91. KUHN, *supra* note 80, at 84.

92. Flood v. Kuhn, 404 U.S. 258, 283-84 (1972).

93. Charles O. Finley & Co. v. Kuhn, 569 F.2d 527 (7th Cir. 1978) *cert. denied*, 439 U.S. 876 (1978).

was the owner of the Oakland Athletics,<sup>94</sup> and the Oakland club had negotiated agreements to sell the contract rights for the services of two Oakland players, Joe Rudi and Rollie Fingers, to the New York Yankees for \$1.5 million.<sup>95</sup> This agreement was negotiated on June 15, 1976.<sup>96</sup> Oakland also entered into a contract with Vida Blue on June 15, 1976, that Blue would play with Oakland through the 1979 season.<sup>97</sup> After the midnight deadline on June 15th, Oakland could not have sold the contracts of these players to other clubs without first offering them to all other American League teams, in inverse order of their standing, at a waiver price of \$20,000.<sup>98</sup>

Kuhn would not allow assignment of the contracts to the Yankees or the contract to Blue, proclaiming them "as inconsistent with the best interests of baseball, the integrity of the game and the maintenance of public confidence in it."<sup>99</sup> The reasons behind the commissioner's decision were "the debilitation of the Oakland ball club, the lessening of the competitive balance of professional baseball through the buying of success by the more affluent clubs, and 'the present unsettled circumstances of baseball's reserve system.'"<sup>100</sup>

Finley filed suit, arguing that the commissioner's disapproval of the assignments was beyond the scope of the commissioner's authority, as well as arbitrary and capricious.<sup>101</sup> Judgment was entered in favor of Kuhn at the district level, and Finley appealed to the court of appeals.<sup>102</sup> Kuhn counterclaimed for a declaratory judgment that the covenant not to sue in the *Major League Agreement* was valid and enforceable.<sup>103</sup>

The court of appeals, in order to determine the extent of the commissioner's powers, examined the circumstances attending the creation of the office, the language of the *Major League Agreement*, the changes and adoptions made to the agreement through the years, and the "interpretation given by the parties to their contractual language throughout the period of its existence."<sup>104</sup> The court noted that the district court found as a fact that Oakland was contending that only if

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94. On the subject of Charles O. Finley, Kuhn said, "[h]e had few redeeming virtues as far as I was concerned." KUHN, *supra* note 80, at 126.

95. *Finley*, 569 F.2d at 531.

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.* Kuhn believed that Finley was liquidating his club, not rebuilding it. TOTAL BASEBALL, *supra* note 12, at 659.

100. *Finley*, 569 F.2d at 531.

101. *Id.*

102. *Id.*

103. *Id.* at 532. The district court did not rely on this covenant in the prior proceedings.

104. *Id.*

the violation involved a rules violation or moral turpitude could the commissioner set aside assignments.<sup>105</sup>

The court of appeals agreed with the district court:

The history of the adoption of the Major League Agreement in 1921 and the operation of baseball for more than 50 years under it, including: the circumstances preceding and precipitating the adoption of the Agreement; the numerous exercises of broad authority under the best interests clauses by Judge Landis and . . . Commissioner Kuhn; the amendments to the agreement in 1964 restoring and broadening the authority of the Commissioner; . . . and most important the express language of the Agreement itself - are all to the effect that the Commissioner has the authority to determine whether *any* act, transaction or practice is 'not in the best interests of baseball,' and upon such determination, to take whatever preventative or remedial action he deems appropriate, whether or not the act complies with the Major League Rules or involves moral turpitude.<sup>106</sup>

The court noted that "[b]aseball's management through a commissioner is . . . an exception . . . . In no other sport or business is there quite the same system, created for quite the same reasons and with quite the same underlying policies."<sup>107</sup> The court concluded that anyone who became a signatory to the *Major League Agreement* was "put on notice" that such action could and probably would be taken by the commissioner.<sup>108</sup> The court also placed emphasis on the fact that the unsettled state of the reserve system justified the commissioner's actions.<sup>109</sup>

However, in a case tried in United States District Court in Atlanta, *Atlanta National League Baseball Club v. Kuhn*,<sup>110</sup> Judge Newell Edenfield took a more limited view of the power of the commissioner. Ted Turner, as Chief Executive Officer of the Atlanta Braves, brought this action to enjoin the commissioner from imposing certain sanctions on the Atlanta ball club.<sup>111</sup> At the heart of the conflict was that certain executives in the Atlanta organization had talked with a major league player, Gary Matthews, who was a potential free agent, violating warnings that Kuhn had sent to every major league club.<sup>112</sup> A

105. *Id.* at 536.

106. *Id.* at 539.

107. *Id.* at 537.

108. *Id.* at 540.

109. *Id.* Kuhn's actions in this case, ignoring precedent, drew fire from sports writers, players and some owners. It is believed that the backing of the powerful owner of the Dodgers, Walter O'Malley, and others, helped Kuhn win this case. When the case was decided, Kuhn said, "The McGarr [the Circuit Judge who wrote the opinion] decision is my greatest victory." VOIGT, *supra* note 54, at 312.

110. 432 F. Supp. 1213 (N.D. Ga. 1977).

111. *Id.* at 1215.

112. *Id.* at 1216.

month after these violations had been ruled upon by Kuhn, and sanctions announced, Turner made comments, which he later said were "in jest" at a cocktail party that he "would do anything to get Gary Matthews" and that he "would go as high as he had to."<sup>113</sup> This, in Kuhn's view, violated his earlier directive which included prohibitions of "public comments which would indicate an interest in signing any . . . player."<sup>114</sup> Kuhn found that these statements "were not in the best interest of baseball" and applied sanctions that included suspending Turner for a year.<sup>115</sup>

Although the court found that Kuhn's decision to suspend Turner was within his authority under the *Major League Agreement*, Judge Edenfield disapproved of the severity of the sanctions:

The Commissioner also did some inexplicable things. . . . The Atlanta Baseball Club is called the "Atlanta Braves"; and considering the severity of this punishment, the same casual observer might call this an Indian massacre in reverse. In their encounter with the Commissioner, the Braves took "nary" a scalp, but lived to see their own dangling from the lodgepole of the Commissioner, apparently only as a grisly warning to others. At about the same time and for an identical offense, though perhaps not as flagrant, the venerable owner of the St. Louis Cardinals was fined \$5,000.<sup>116</sup>

The court noted that it "may have been the disparity between these two sentences that landed the case in this court. Disparate sentences between two persons found guilty of the same offense, unless carefully explained and justified, always provoke resentment and distrust among the victims, whether in prison or baseball."<sup>117</sup>

The targets of Kuhn's actions often became his enemies, and in 1983, only eighteen of twenty-six major league owners voted to keep Kuhn in office, a sixty-nine percent approval rating (short of the seventy-five percent needed).<sup>118</sup> Kuhn stayed on until the next commis-

113. *Id.* at 1217.

114. *Id.* at 1216.

115. *Id.* at 1217.

116. *Id.* at 1222. Ted Turner had the support of his fans. Kuhn tells the story of meeting Lillian Carter, the President's mother, in 1977. Miss Lillian said, "I know perfectly well who you are and I don't know that I really want to talk to you! . . . I'm a great admirer of Ted Turner, and you suspended him!" See also KUHN, *supra* note 80, at 263.

117. *Atlanta National Baseball Club*, 432 F. Supp. at 1222. Additionally, the court voided Kuhn's order depriving Atlanta of its first round draft choice in 1977, stating that it was not a sanction "specifically enumerated under section 3 of the Major League Agreement." Kuhn noted "I thought he was on thin judicial ice in returning the draft pick to the Braves. Still, we had won the main show and had established beyond any doubt the commissioner's power to discipline the ownership. With the help of Finley and Turner, the dominance of the commissioner was firmly in place as it had not been since the days of Judge Landis." KUHN, *supra* note 80, at 262.

118. TOTAL BASEBALL, *supra* note 12, at 659.

sioner, Peter Ueberroth, was unanimously elected to a five year term in 1984.<sup>119</sup>

Ueberroth became baseball's "chief executive officer."<sup>120</sup> All departments, activities and the two league presidents reported to him; his authority to discipline owners was increased.<sup>121</sup> Re-election for the commissioner reverted to requiring a majority of the club's owners, with a minimum of five from each league.<sup>122</sup> Ueberroth had to deal with emerging social issues, such as drugs and gambling, during his tenure. Owners did not always react well to Ueberroth's "forceful business intelligence - an outsider's voice in which they heard as much coercion as persuasion."<sup>123</sup> Ueberroth decided to resign before his first term ended, and Bart Giamatti, who at that time was the National League President, was unanimously elected to a term as commissioner.<sup>124</sup>

Giamatti was generally viewed as being qualified to defend the integrity of baseball; as National League President, he had once suspended Pete Rose of the Cincinnati Reds for thirty days for pushing an umpire.<sup>125</sup> During his five-month reign as commissioner, Giamatti once again dealt with Pete Rose in the continuing battle to define the extent of the powers of the commissioner.

In May of 1989, Giamatti "served Pete Rose's lawyers with a report alleging Rose illegally bet on baseball, more specifically on Cincinnati Reds games."<sup>126</sup> In June of 1989, Rose filed suit in the Court of Com-

119. Ueberroth had just completed his stint as head of the Los Angeles Olympic Organizing Committee. *Id.*

120. Ueberroth's management style was to "delegate authority." *Id.* at 659-660.

121. *Id.*

122. *Id.*

123. *Id.*

124. Giamatti had also been a professor of Renaissance literature and president of Yale University. *Id.* Giamatti's "love affair" with baseball is evident in a book written shortly before his death, in which he writes:

Our pleasure . . . is radically tangled up with our childhood. Much of what we love later in a sport is what it recalls to us about ourselves at our earliest. And those memories, now smoother and bending away from us in the interior of ourselves, are not simply of childhood or of a childhood game. They are memories of our best hopes. They are memories of a time when all that would be better was before us, as a hope, and the hope was fastened to a game. One hoped not so much to be the best who ever played as simply to stay in the game and ride it wherever it would go, culling its rhythms and realizing its promises. That is, I think, what it means to remember one's best hopes, and to remember them in a game, and revive them whenever one sees the game played, long after playing is over.

A. BARTLETT GIAMATTI, TAKE TIME FOR PARADISE 81-82 (1989).

125. THOMAS BOSWELL, THE HEART OF THE ORDER 115 (1989). Boswell, a long time *Washington Post* sports columnist, noted that when baseball faced lawsuits, it had Bowie Kuhn, the lawyer. When baseball faced an economic crisis, it had Peter Ueberroth, a "master marketeer." In Giamatti, baseball now had a "thinker." *Id.*

126. Mathew G. Conway, Comment, *Sports Commissioners or Judges: Who Should Make the Call when the Game Is Over?* 24 SUFFOLK U. L. REV. 1043, 1060 (1990). Within Conway's article, compare the Rose-Giamatti battle with *Molinas v. Podoloff*, 133 N.Y.S.2d 743 (Sup. Ct.



mon Pleas in Hamilton County, Ohio, seeking a temporary restraining order and preliminary injunction against Giamatti.<sup>127</sup> Rose argued that he was "being denied the right to a fair hearing on the gambling allegations by an unbiased decisionmaker."<sup>128</sup> In the complaint, Rose sought permanent injunctive relief that would prevent Giamatti from ever "conducting a hearing to determine whether Rose has engaged in gambling activities in violation of the Rules of Major League Baseball."<sup>129</sup> The temporary restraining order was granted, and Giamatti filed a notice of removal of the action from the state court to the United States District Court for the Southern District of Ohio, noting diversity jurisdiction.<sup>130</sup>

Rose filed a motion to attempt to have the action remanded to the Court of Common Pleas of Hamilton County, Ohio.<sup>131</sup> *Rose v. Giamatti*<sup>132</sup> addressed this issue of jurisdiction. The court held that the Cincinnati Reds and Major League Baseball were "nominal parties" and their citizenship could be disregarded in establishing diversity jurisdiction.<sup>133</sup> Further, the court held that diversity of citizenship did exist between Giamatti and Rose, and that the case was properly before the district court.<sup>134</sup>

The court properly noted that the "actual controversy in this case is between Rose and Commissioner Giamatti."<sup>135</sup> Allegations by Rose of wrongdoing on the part of Giamatti included the following:

For example, Rose asserts that Giamatti and investigators hired by him attempted to bolster the credibility of witnesses against Rose, prejudged the truthfulness of certain testimony given as part of the investigation, acted unreasonably in demanding information from Rose, improperly threatened him with refusing to cooperate in the investigation, requested that Rose step down as the Reds' Field Manager without revealing to him the evidence which had been compiled concerning his alleged gambling activities, and otherwise acted improperly in violation of Giamatti's alleged duty to provide Rose with a

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1954), an NBA case where the league suspended a player from the NBA for betting on games which included games in which his team was playing.

127. *Rose v. Giamatti*, 721 F. Supp. 906, 909 (S.D. Ohio 1989). Also named as defendants were the Cincinnati Reds because of their contractual relation with Rose. *Id.* at 915.

128. *Id.* at 909.

129. *Id.*

130. *Rose*, 721 F. Supp. at 910.

131. Rose argued that there was "a lack of complete diversity of citizenship between himself and the defendants, and that even if complete diversity existed, defendant Giamatti waived his right of removal by participating in the [earlier] proceedings in the state courts." *Id.*

132. *Id.*

133. *Id.* at 923.

134. *Id.* at 923-924.

135. *Id.* at 915.

fair and impartial hearing with respect to the allegations against him.<sup>136</sup>

That the ultimate purpose of this action was to prevent Giamatti from conducting any hearing because of his alleged bias toward Rose was the underlying issue in this matter.<sup>137</sup> The court, citing *Charles O. Finley v. Kuhn* and the *Major League Agreement*, pointed out that “[t]he Commissioner’s jurisdiction under the Major League Agreement to investigate violations of Major League Rules, or any activity he believes is ‘not in the best interests’ of baseball, is exclusive. The major leagues and the twenty-six major league clubs have absolutely no control over such an investigation or the manner in which the Commissioner conducts it.”<sup>138</sup>

Rose filed for immediate appeal and filed a motion to maintain the status quo pending the appeal.<sup>139</sup> The court reasoned that it was “not unreasonable to request that the Commissioner delay his hearing until the court of appeals decides whether to accept or reject Rose’s application for appeal, and, if the application is granted, until the jurisdictional issue is resolved.”<sup>140</sup> Further, “if the Commissioner were not restrained from proceeding with a hearing . . . the entire thrust of Rose’s action — to prevent the Commissioner from holding a hearing — would have been destroyed, and the jurisdiction of this court to consider the merits of Rose’s claims against Giamatti would have been effectively eliminated.”<sup>141</sup> The court noted that it was “mindful” of the commissioner’s desire to proceed with a hearing as soon as possible to determine if Rose has violated the Rules of Major League Baseball.<sup>142</sup> The court pointed out that the removal of the action by the commissioner from state court to federal court resulted in the “jurisdictional controversy which is the subject of Rose’s appeal.”<sup>143</sup>

Shortly after this decision, Rose and the commissioner reached an out-of-court settlement; Rose agreed that the commissioner’s office had the “sole and exclusive jurisdiction” to decide such disciplinary matters.<sup>144</sup> Giamatti suspended Rose for life with the right to apply

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136. *Id.*

137. *Id.*

138. *Id.* at 918. See also *Chicago National League Ball Club, Inc. v. Vincent*, No. 92 Civ. 4398 (N.D. Ill. July 23, 1992) (order granting preliminary injunction) (withdrawn and vacated Sept. 24, 1992).

139. *Rose*, 721 F. Supp. at 925.

140. *Id.* at 927.

141. *Id.*

142. *Id.* at 928.

143. *Id.* The jurisdictional issue in *Rose v. Giamatti* is beyond the scope of this article.

144. Jill Lieber and Craig Neff, *An Idol Banned*, SPORTS ILLUSTRATED, Sept. 4, 1989, at 29.

for reinstatement in one year, in what turned out to be one if his final acts as commissioner.<sup>145</sup>

Fay Vincent became commissioner upon Giamatti's death in September of 1989.<sup>146</sup> Early in his term as commissioner (which was actually the unexpired term of Giamatti), an earthquake in San Francisco played havoc with the 1989 World Series; the next spring, a thirty-two day lockout that kept spring training camps closed threatened to interfere with the season.<sup>147</sup> Although the commissioner helped negotiate a settlement that preserved opening day, baseball commentators noted that this was "the beginning of the end," as conflict after conflict pitted Vincent against owners, players, and other major league personnel.<sup>148</sup>

#### V. CHICAGO NATIONAL LEAGUE BALL CLUB, INC. v. VINCENT

The final conflict was litigated in *Chicago National League Ball Club, Inc. v. Vincent*,<sup>149</sup> filed by the Chicago Cubs who sought to enjoin the commissioner from attempting to use his broad powers as commissioner to force realignment of the western and eastern divisions of the National League.<sup>150</sup>

The court found that the commissioner derives his authority solely from the *Major League Agreement* and that the National League is governed by a constitution.<sup>151</sup> In 1968, an amendment to the *National League Constitution* was passed which provided for the league to split into two divisions, and in 1982, another amendment was passed to "require an approval by three-fourths of the clubs for league expansion

145. *Id.* Note that Giamatti suspended Rose under section (f) of Major League Rule 21 (conduct not "in the best interest of baseball"), not section (d) (betting on baseball games.) See Conway, *supra* note 126. See also Mathew B. Pachman, *Limits on the Discretionary Powers of Professional Sports Commissioners: A Historical and Legal Analysis of Issues Raised by the Pete Rose Controversy*, 76 VA. L. REV. 1409 (1990) and Jeffrey A. Durney, *Fair or Foul? The Commissioner and Major League Baseball's Disciplinary Process*, 41 EMORY L.J. 581 (1992).

146. "He became baseball commissioner in a way he least wanted, taking over . . . after the death of his good friend, A. Bartlett Giamatti." *Vincent's Job Wasn't Easy*, THE HERALD-SUN (Durham, NC), Sept. 8, 1992, at B1.

147. *Id.*

148. American League owners were upset when Vincent said that each team would receive expansion fees from two new expansion clubs, but would lose three players each. The players' union did not approve of the way Vincent investigated Steve Howe's drug troubles. George Steinbrenner had been banned from daily control of the Yankees in an agreement signed with Vincent. Even National League President Bill White disapproved of the way Vincent handled the two-day umpires' strike in 1991, which affected opening day. *Id.* at B3.

149. No. 92 Civ. 4398 (N.D. Ill. July 23, 1992) (order granting preliminary injunction) (withdrawn and vacated Sept. 24, 1992).

150. Vincent "ordered that the Chicago Cubs and St. Louis Cardinals would shift to the National League's Western Division, while the Reds and Atlanta Braves would move east." Richard Corliss, *Fay Vincent Gets Beamed*, TIME, September 14, 1992, at 61.

151. *Chicago National Baseball Club*, No. 92 C 4398 at 2.

and divisional realignment, provided that no club could be transferred to a different division without its consent.”<sup>152</sup>

In March of 1992, the realignment that was the subject of *Chicago National League Ball Club, Inc. v. Vincent* was brought to a vote before the National League clubs.<sup>153</sup> Although ten clubs voted in favor of the motion, the Chicago Cubs (one of the teams to be transferred) and the New York Mets did not favor the move.<sup>154</sup> Five of the National League clubs that favored the realignment solicited the commissioner’s involvement in this matter.<sup>155</sup> The commissioner asked for opinions from the National League clubs as to whether he should intervene, and National League President William D. White responded:

Changes in areas covered by the League Constitution should only be achieved by members of the League and not through unprecedented individual action. The current issues simply do not justify the Commissioner invoking the extraordinary power to substitute his business judgment for that of the League. To my knowledge, no Commissioner has attempted . . . a wholesale intrusion into the business affairs of the Leagues such as you are apparently considering. Surely at this critical juncture in our game an abrupt reversal of these long established expectations and understandings will inflame the current divisions to such an extent that any temporary benefits obtained from your decision could be almost an afterthought in the acrimony and litigation that may result.<sup>156</sup>

When the commissioner issued his order to realign the divisions, he relied on his broad power under the *Major League Agreement* “to investigate . . . any act, transaction or practice . . . not in the best interest of the national game of baseball . . . [and] to determine . . . what preventive, remedial or punitive action is appropriate . . . and to take such action.”<sup>157</sup> The commissioner stated further “that his powers under the Major League Agreement were broad enough to overturn a decision made in conformity with the National League Constitution, notwithstanding a specific provision in Article VII of the agreement that limits his authority to resolve disputes between clubs.”<sup>158</sup> The

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152. *Id.*

153. *Id.*

154. *Id.*

155. A telephone conference determined that of the ten clubs voting in favor of the realignment, five of the clubs (Atlanta, Montreal, Pittsburgh, San Diego and San Francisco) felt the commissioner’s intervention was appropriate, while the other five clubs did not (Cincinnati, Los Angeles, New York, Philadelphia and St. Louis). Although Houston and Chicago were not part of this conference, Houston supported the commissioner’s intervention, while Chicago did not. *Id.*

156. *Id.*

157. *Id.* at 3.

158. *Id.*

commissioner concluded that the National League constitutional provisions — requiring the transferred club's consent — did not serve the best interests of baseball because the Chicago Cubs' veto "thwarts the preferences of the great majority of National League Clubs."<sup>159</sup>

The *Major League Agreement* states that the commissioner decides "[a]ll disputes and controversies related in any way to professional baseball between clubs . . . other than those whose resolution is expressly provided for by another means . . . in the constitution of either Major League."<sup>160</sup> The Chicago Cubs argued that this express provision flatly barred a divisional transfer if the affected team did not consent.<sup>161</sup>

The court noted that this was a matter of first impression. It further noted that it was not considering the disputed merits of the realignment order but whether the commissioner had exceeded his authority and impaired the Chicago Cubs' contractual rights.<sup>162</sup> After determining that Illinois law governed the interpretation of the contract involved,<sup>163</sup> the court opined "it is clear that the broad authority granted the commissioner by Article I of the Major League Agreement is not as boundless as he suggests. Giving the language of Article I its common sense and ordinary meaning, the Commissioner's authority to investigate 'acts,' 'transactions' and 'practices' and to determine and take 'preventive, remedial or punitive action' does not encompass restructuring the divisions of the National League."<sup>164</sup> Further, there has been "no conduct [or misconduct] for the Commissioner to investigate, punish or remedy under Article I."<sup>165</sup>

Commissioner Vincent cited *Charles O. Finley & Co. v. Kuhn*<sup>166</sup> to support expanding the powers of Article I of the Major League Agreement, but the court distinguished that case, reasoning that in *Finley* the commissioner was responding to the affirmative conduct of

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159. *Id.*

160. *Id.*

161. *Id.*

162. In determining whether to issue the injunction, the court had to assess the probability that the Cubs would prevail on the merits. Further, the Cubs had to demonstrate that they would suffer irreparable harm outweighing any harm the commissioner would suffer if the injunction were not to issue. *Id.* at 4-5.

163. This means to "give effect to the reasonable expectations of the parties," to "give words their common and ordinary meaning," and to read the Major League Agreement "as a whole, with each of its provisions read in light of the other." *Id.* at 5.

164. *Id.*

165. *Id.*

166. 569 F.2d 527 (7th Cir.1978), *cert. denied*, 439 U.S. 876 (1978); see *supra* text accompanying notes 93-109 for a discussion of *Finley*.

Finley, not a contractual right authorized by the *American League Constitution*.<sup>167</sup>

The court noted that *Atlanta National League Baseball Club v. Kuhn*<sup>168</sup> was more on point because the court there found that the commissioner had exceeded his authority in eliminating the Braves' first round choice because that sanction was not enumerated in the *Major League Agreement*. The court also quoted the decision in *Atlanta National Baseball Club* that "if the Commissioner is to have the unlimited punitive authority as he says is needed to deal with new and changing situations, the [Major League] agreement should be changed to expressly grant the Commissioner that power."<sup>169</sup> Finally, the court noted that the provisions within the constitution that provide for the means to resolve disputes concerning division realignment "manifest a clear intention to protect the substantial interest of an individual club in its divisional assignment from adverse action by the majority."<sup>170</sup>

Shortly after the temporary injunction was delivered in *Chicago National League Ball Club, Inc. v. Vincent*, Vincent resigned as commissioner of Major League Baseball.<sup>171</sup> Vincent noted that "[a] fight based solely on principle does not justify the disruption when there is not greater support among ownership for my views."<sup>172</sup> During the fall of 1992, Major League Baseball continued without a commissioner, contemplating its future.

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167. *Chicago Nat'l League Ball Club, Inc. v. Vincent*, No. 92 Civ. 4398, at 6 (N.D. Ill. July 23, 1992) (order granting preliminary injunction) (withdrawn and vacated Sept. 24, 1992).

168. 432 F. Supp. 1213 (N.D. Ga. 1977) See *supra* text accompanying notes 110-117.

169. *Chicago Nat'l Baseball Club*, No. 92 C 4398 at 6. Commissioner Vincent also advanced arguments based on prior actions by former Commissioners Kuhn and Ueberroth which overrode voting requirements of a league constitution. The court noted that these actions did not occur in a court of law, and thus were "neither probative nor persuasive evidence that the Commissioner in fact acted within his authority on those occasions." *Id.*

170. *Id.* at 7. The author believes the litigation in *Chicago National League Ball Club, Inc. v. Vincent* properly did not go Vincent's way. Although the Commissioner was clearly looking out for baseball, the National League Constitution expressly stated how this matter was to be handled.

171. Announcing his resignation Vincent said:

It would be an even greater disservice to baseball if I were to precipitate a protracted fight over the office of the commissioner. After the vote at the meeting last week [in which the teams voted 18-9 to urge him to quit, with one abstention], I can no longer justify imposing on baseball, nor should baseball be required to endure a bitter legal battle - even though I am confident that in the end I would win and thereby establish a judicial precedent that the term and powers of the commissioner cannot be diminished during the remaining months of my term.

*Vincent Resigns*, *supra* note 1, at B1.

172. *Id.* at B4.

VI. CAN THE COMMISSIONER BE EXPECTED TO EFFECTIVELY  
PROMOTE THE "BEST INTERESTS OF BASEBALL" UNDER  
THE CURRENT MAJOR LEAGUE AGREEMENT?

This historical analysis of the commissioner's office has shown how the *Major League Agreement*, first executed in 1921,<sup>173</sup> has been interpreted as to the commissioner's powers. As to the current state of the commissioner's office, Fay Vincent has had the most recent inside view of the powers of the commissioner's office. After *Chicago National League Ball Club, Inc. v. Vincent*, Fay Vincent argued upon his resignation to the owners what it would take to make the agreement work effectively:

I strongly believe a baseball commissioner should serve a full term as contemplated by the Major League Agreement. Only then can difficult decisions be made impartially and without fear of political repercussions. Unfortunately, some want the commissioner to put aside the responsibility to act in the "best interests of baseball"; some want the commissioner to represent only owners, and to do their bidding in all matters. I haven't done that, and I could not do so, because I accepted the position believing the commissioner has a higher duty and that sometimes decisions have to be made that are not in the interests of some owners . . . . Unique power was granted to the commissioner of baseball for sound reasons - to maintain the integrity of the game and temper owner decisions predicated solely on self-interest. The office should be maintained as a strong institution . . . . I can only hope owners will realize that a strong commissioner, a person of experience and stature in the community, is integral to baseball. I hope they learn this lesson before too much damage is done to the game, to the players, umpires and others who work in the game, and most importantly, to the fans.<sup>174</sup>

As Vincent points out, the office of the commissioner is unique; indeed, the Major League Agreement states that "THE COMMISSIONER shall be the chief executive officer of Major League Baseball."<sup>175</sup> A chief executive officer of a corporation typically has a fiduciary and legal duty to that corporation. However, the commissioner of baseball must perform a balancing act and consider not only the interests of the major league owners, but the interests of the game itself. These two interests often collide when the commissioner has to resolve a conflict, for example a legal or business matter such as in *Flood v. Kuhn*, or a disciplinary action, the motivation behind the litigation in *Rose v. Giamatti*. The only one who can speak for the game is the commissioner.

173. MAJOR LEAGUE AGREEMENT, art. I, § 1 (1988).

174. *Vincent Resigns*, *supra* note 1, at B4.

175. MAJOR LEAGUE AGREEMENT art. I, § 2(a).

Considering both the “best interests of baseball” and the interests of the club owners will continue to create conflict in Major League Baseball. The club owners must decide whether they want to continue to put the determination of the “best interests of baseball” in the hands of the commissioner. The *Major League Agreement* has been a workable agreement; no system of governance provides the answer for every situation.<sup>176</sup> If the owners decide to keep power in the hands of the commissioner, the *Major League Agreement* should be amended to the extent that the commissioner is able to make controversial decisions in the “best interests of baseball” without fear of repercussion.

The *Major League Agreement* currently states that “[t]he commissioner shall hold office for a minimum of three (3) years or for such longer term as shall be established by the Major League Clubs at the time of his election and he shall be eligible to succeed himself.”<sup>177</sup> Further, “[a]ny re-election shall be considered at a joint meeting held not less than six (6) months nor more than fifteen (15) months prior to the expiration of any term.”<sup>178</sup> The current *Major League Agreement* allows the owners to consider the re-election of the commissioner more than a year before the commissioner’s term expires. This does not allow the commissioner to oversee two full seasons of baseball before the subject of re-election can arise. Moreover, the owners can apparently call meetings at their discretion to ask the commissioner to resign.<sup>179</sup>

If the commissioner is to continue to act in “the best interests of baseball,” the *Major League Agreement* should be expressly amended to state that the owners cannot at their discretion vote to seek the commissioner’s resignation. Indeed, an argument could be made that the current agreement only allows owner action as to re-election of the commissioner.<sup>180</sup> Additionally, the fifteen month provision should be amended to provide for a shorter — yet realistic — outer boundary on the earliest the owners can consider the re-election of the current commissioner. Another amendment should address an “impeachment” vote only after an investigation related to allegations of impropriety or dishonesty, much like impeachment proceedings for other elected officials. If these amendments are made the owners

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176. For example, the U.S. Constitution has survived nearly two hundred years of scrutiny with twenty-seven amendments.

177. MAJOR LEAGUE AGREEMENT, art. I, § 6.

178. *Id.*

179. For example, Vincent was elected on September 13, 1989, to a term which was to run through March 31, 1994. The *Major League Agreement* does not expressly address any called meetings to ask for the commissioner’s resignation. See *Vincent Resigns*, *supra* note 1 at B1, B4.

180. Before resigning, Vincent was prepared to argue in an anticipated court battle that the *Major League Agreement* prevents a commissioner from being fired. *Id.*



would consider the issue of re-election near the end of the commissioner's term, allowing the commissioner to decide issues without immediate political reaction.

If the owners delay amending the *Major League Agreement*, they risk a revolt by the people who make it all possible — the millions of fans that support Major League Baseball. Alternatively, perhaps an individual owner will tackle this problem and start working with the other owners to amend the agreement before the game becomes mired in more controversy.<sup>181</sup>

Philosophically, is it realistic to expect the owners to maintain the commissioner's office with the powers that office currently enjoys? Are other governing organizations in our country asked to put the collective needs of their organizations above their individual needs? Is this not the "moral dilemma" corporations face every day? Is baseball, "America's game," truly different? The answer lies in the hands of the club owners.

## VII. CONCLUSION

The *Major League Agreement* has been in place for nearly seventy years. Over the past seventy years, baseball has become more than the game itself; Commissioner Landis would probably not recognize it. A commissioner ruling today as Landis ruled would not likely survive the scrutiny of today's club owners. Commissioner Kuhn was the first of the commissioners to consistently differ with various baseball personnel over issues never contemplated when the *Major League Agreement* was drafted. Commissioner Vincent, like Commissioner Kuhn, believed the commissioner should be pro-active and not serve as a figurehead for the Major League Baseball club owners.<sup>182</sup> What course the commissioner's office takes in the coming years depends on the decisions of the owners and on the ability of the commissioner to work with the owners under the governance of the *Major League Agreement*.

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181. If the club owners do not want to have a commissioner deciding what is in the "best interest of baseball," they could restructure the administration so that these decisions are decided collectively. Jerry Reinsdorf, owner of the Chicago White Sox, has said he would like to see the office restructured so that a chief executive officer reports to the twenty-eight owners as a board of directors. *Vincent Decides to Forego Long Battle; Resigns as Baseball's Commissioner*, THE ATHENS MESS. (Athens, OH), Sept. 4, 1992, at 9. Some researchers believe the Commissioner's position should be retained, but not be responsible for investigating and prosecuting disciplinary matters. See Durney, *supra* note 145.

182. Columnist Lewis Grizzard noted "[w]hat happens in baseball is the owners hire someone as commissioner. This person is supposed to run baseball, but the minute this person tries to do that, the owners get mad at him and either fire him or pressure him to resign." Louis Grizzard, *No More Designated Hitters nor Dreamstick Uniforms*, THE HERALD-SUN (Durham, NC), September 21, 1992, at A9.

While the owners contemplate whether to maintain the “best interests of baseball” philosophy with the commissioner at the helm, and whether to give the position the stability to uphold this, they would be well advised to heed the words of Fay Vincent: “I remind all that ownership of a baseball team is more than ownership of an ordinary business. Owners have a duty to take into consideration that they own a part of America’s national pastime - in trust. This trust sometimes requires putting self-interest second.”<sup>183</sup> What course the commissioner’s office takes in the coming years depends on the decisions of the owners and on the ability of the commissioner to work with the owners under the governance of the *Major League Agreement*.

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183. *Vincent Resigns*, *supra* note 1.