Courting the Yankees

Legal Essays on the Bronx Bombers

Edited by
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Cornering the Market: The Yankees and the Interplay of Labor and Antitrust Laws

by Ed Edmonds

I. Introduction

The New York Yankees are, of course, the most successful single franchise in Major League Baseball history. They established this tradition in large measure because their ownership understood better than the competition how to acquire front office, managerial, and player talent. Being located in America's largest metropolitan area is significant to the Yankees' success. However, that fact alone is not enough to produce the sustained success of the franchise. For most of their history, the Yankees have been blessed with well-funded ownership that properly exploited the value of the team to increase revenue to sustain the acquisition of talent throughout the organization. The team has long exhibited a knack for outwitting and outmaneuvering other franchises. In no small measure, the Yankees have understood best how the business of baseball works and how the relationship of law to the business of baseball can be used advantageously.

The Yankees were established as an American League team in 1903 after the purchase and relocation of the Baltimore franchise to New York. For the next 50 years, the Yankees were the youngest of Major League Baseball's sixteen teams. Although the Yankees unsuccessfully struggled to reach the top during their first 18 years, the Manhattan-based team was busily establishing the foundation for their appearance in 37 World Series contests between 1921 and 2000.

The first great period of Yankee dominance began in 1921 and lasted until 1928. They played in six World Series during the Twenties and won three, causing a shift of city power across the Harlem River from John McGraw's Giants to a team housed in newly constructed Yankee Stadium. Without a doubt, the acquisition of Babe Ruth was the most significant factor in the creation of this dominance. The purchase of Ruth from the Boston Red Sox established a trend that the Yankees have used throughout their subsequent history to produce championship teams. Whenever it seemed necessary, the Yankees have been able to acquire an additional player by simply purchasing or trading with another Major League franchise.

During the seven years between 1929 and 1935, the Yankees won only the 1932 American League crown and World Series. They returned to the top in 1936 and won six pennants and World Series crowns through the 1943 season. During the span of 22
seasons between 1921 and 1943, the Yankees won 13 American League pennants and 9 World Series championships.

The second great period of Yankee dominance stretched from 1947 through 1964. During this 18-year stretch, the Yankees captured 15 pennants and 10 World Series. From 1949 until 1957, the three New York-based teams dominated Major League Baseball by garnering 15 of the 18 World Series spots. However, in 1958 the Giants and Dodgers moved to California, leaving only the Yankees in New York until the expansion Mets entered the market in 1962.

In November 1964, Columbia Broadcasting Network purchased 80% of the Yankees for $11.2 million. The Yankees struggled through this period of corporate ownership marked by the emergence of the Major League Baseball Players Association and the creation of free agency and salary arbitration. The Steinbrenner Era started in January 1973, when a limited partnership, headed by George M. Steinbrenner III as its managing general partner, purchased the Yankees from CBS for $10 million. Steinbrenner’s teams appeared in four World Series between 1976 and 1981. The current period of Yankee dominance includes appearances in all but one of the World Series from 1996–2001. This current period is marked by the dramatic increase in value of the Yankees’ media rights fees, allowing the team to greatly outspend the vast majority of other teams.

II. The Reserve Clause

For three-quarters of the twentieth century, the most significant factor in the labor relationship between management and players in Major League Baseball was the existence of the reserve clause. The United States Supreme Court decided a trilogy of cases that created Major League Baseball’s “Antitrust Exemption,” and the reserve clause was central to all three decisions. The antitrust exemption perpetuated a system that provided ownership with great leverage over players who desired both more control over the team for which they would play and increased salaries.

Baseball’s exemption from antitrust scrutiny was created in 1922 when the United States Supreme Court rendered its opinion in Federal Baseball Club v. National League. Although the Yankees were not a central part of the litigation, the importance of the New York market was a significant factor. The Yankees figured prominently in the middle case, Toolson v. New York Yankees, Inc. The Yankees were sued in Toolson by a career minor leaguer acquired from the Boston Red Sox. Toolson initiated his suit after the Yankees attempted to reassign him from Newark, their AAA farm team, to Binghamton in the Eastern League. The ownership of the Yankees by Columbia Broadcasting System was a factor in the early stages of the third and final case, Flood v. Kuhn.

The reserve clause essentially bound a player to one particular Major League team and forbade that player from jumping to another team for a higher salary. National League owners, guided by Boston owner Arthur Soden, created the reserve clause on September 29, 1879. Arguing that salaries were too high, the owners reached a secret agreement to protect five players from jumping to another member team for the 1880 season. The use of the reserve clause during the final twenty years of the 19th century assisted the National League in fighting off challenges from the Players League, Union
Association and the American Association to emerge near the end of the decade as the only major league.

III. The Creation of the American League

The American League was born in 1900, under the leadership of Ban Johnson, the president of the minor league Western League. When the established National League refused to recognize Johnson's league, the owners declared open war on the older league by refusing to recognize the reserve clauses of National League teams and began to raid the rosters of the older established teams. The result was a number of lawsuits by teams seeking injunctive relief to prevent the players from moving to the new league for higher salaries.

Perhaps the most significant of these suits was *Philadelphia Ball Club v. Lajoie*. The Philadelphia Phillies initiated a suit seeking injunctive relief against future Hall of Fame player Napoleon Lajoie. Initially, the Court of Common Pleas of Philadelphia County refused to issue an injunction holding that "to warrant the interference prayed for 'the defendant's services must be unique, extraordinary, and of such a character as to render it impossible to replace him; so that his breach of contract would result in irreparable loss to the plaintiff." The court simply did not consider Lajoie's qualifications to measure up to this high standard.

The lower court opinion was overturned on appeal to the Supreme Court of Pennsylvania. The justices felt that requiring a showing of impossibility of replacement of the player was too extreme. Noting that Lajoie "may not be the sun in the baseball firmament, but he is certainly a bright particular star," the court ordered the issuance of the injunction. Ban Johnson reacted by shifting Lajoie to the Cleveland Indians after ten games of the 1902 season. Because no Ohio court would claim jurisdiction and enforce the injunction, Johnson's American League succeeded in keeping Lajoie. To avoid the jurisdiction of the Pennsylvania courts, Lajoie did not come to Philadelphia during the season. Instead, he received a free vacation in Atlantic City, and the American League earned the service of one of baseball's finest second baseman.

In January 1903, the owners of the American and National Leagues signed a peace agreement pledging the enforcement of the reserve clause between the two leagues. Later that year, the two leagues and a number of minor leagues signed the "National Agreement." The new pact established a National Commission to ensure that teams abided by the reserve clause and territorial rights. The labor stability of baseball would not be challenged again until the rise of the Federal League.

Another major event in the history of baseball took place in January 1903. Ban Johnson had wanted a team in the New York market since the founding of the league. He succeeded in talking gambling house owner Frank Farrell and former chief of police Bill Devery into purchasing the Baltimore franchise for $18,000 and moving the team to Manhattan. The two owners quickly erected a stadium at 168th Street and Broadway. The team was nicknamed the Highlanders because their park was located on one of the highest points in Manhattan and also to honor Joseph Gordon, the man chosen to be team president. Gordon's Highlanders were a well-known regiment in the British Army.
pitcher Jack Chesbro, and outfielder Wee Willie Keeler, they lost to the Senators, 3-1. The team would be renamed the Yankees in 1913 by Jim Price, the sports editor of the New York Press who was looking for a shorter nickname. That same year the team left small Hilltop Park to share the Polo Grounds with the Giants.

IV. The Rise and Fall of the Federal League

In 1913, after a decade of labor peace in Organized Baseball, the Federal League was organized by a number of prosperous businessmen. Before the 1914 season, Federal League President James Gilmore requested parity with the other two major leagues and the right to operate under the National Agreement. When Gilmore and his owners were rebuffed, they decided to pour money into new stadiums in their eight cities and to compete directly with the established leagues in Brooklyn, Chicago, Pittsburgh, and St. Louis. The Federal League also refused to honor the reserve clauses of the teams bound by the National Agreement. The teams in Organized Baseball had coupled their reserve clause to another clause, known as the blacklist, that declared a player ineligible for three years if he signed with a team outside of Organized Baseball. Although attendance at Federal League games in 1914 did not rival that of the American or National League, it did impact attendance in the older two leagues.

The Feds signed 81 major leaguers and 140 minor leaguers to contracts, causing an escalation of salaries. Ray "Slim" Caldwell, a pitcher for the Yankees, signed an offer from a Federal League team after making $2,400 in 1913. Caldwell had pitched in 27 games for the Yankees in 1913 and ended the season with a 9-8 record. The Yankees were forced to give Caldwell a four-year deal at $8,000 annually to resign him before the season began. Caldwell responded with a 17-win season in 1914 and 19 wins in 1915. At the end of the 1918 season, Caldwell was sent to the Red Sox with Frank Gilhooley, Slim Love, Roxy Walter, and $15,000 for veteran players Ernie Shore, Duffy Lewis, and Dutch Leonard. Trades with the Boston Red Sox over the next decade would be a significant factor in the success of the Yankees.

Many Major League franchises filed lawsuits seeking injunctive relief to prevent the Federal League from raiding their rosters. A New York court denied a request by the Chicago White Sox to prevent controversial first baseman Hal Chase from playing for the Buffalo Federals. Chase had played with the Highlanders/Yankees from 1905 until a trade to the White Sox during the 1913 season prompted by Manager Frank Chance. Chase had irritated Chance by openly ridiculing the manager in the dugout. Chase, whose gambling habits would ultimately cost him a spot on a Major League roster, had been a fan favorite during his New York career.

On January 5, 1915, the Federal League filed suit in federal court in Chicago claiming that Organized Baseball was in violation of antitrust laws. The case was assigned to trustbusting judge Kenesaw Mountain Landis. The trial was completed by January 22, but Landis was in no rush to decide the case.

The 1915 season commenced with new competition for the Yankees. Oil magnate Harry Sinclair moved the champions of the 1914 season, the Indianapolis Federals, to Newark.
Sinclair, who would later gain prominence and public disgrace for his involvement in the Teapot Dome Scandal, would be a moving force in the future events of the Federal League. The 1915 season was financially ruinous for most of the Federal League franchises. Before the season was over, the Kansas City and Buffalo teams folded under the pressure.

Federal League President Gilmore convinced Sinclair and Brooklyn Federals' owner R.B. Ward to join him in a more direct attack on Organized Baseball and New York. The three purchased an option on vacant land at 143rd Street and Lenox Avenue. They contacted Corry Comstock, the vice-president of the Pittsburgh Federals and a New York City engineer to create plans for a 55,000-seat stadium on the site. Gilmore then leaked to the press the plans for the Federal League to play in New York during the upcoming 1916 season. But Gilmore and his compatriots never intended to play in New York or build a new stadium. They simply wanted to pressure Organized Baseball into offering a settlement. They hoped that their ruse would create some leverage.

On December 13, 1915, Gilmore and Sinclair went to the office of John K. Tener, National League President and former governor of Pennsylvania, to hear a proposal from Organized Baseball. They hammered out a deal that satisfied every remaining Federal League team owner except Baltimore Terrapins owner Carroll W. Rasin. First, the owners of Federal League teams were paid $600,000 to dissolve the League and drop the antitrust action. Second, each of the Federal League owners was allowed to sell their players' contracts to the highest bidder. Third, all blacklisted players from the Federal League were declared eligible to play for National League and American League teams. Fourth, the National League owners purchased the Brooklyn Federals' stadium for $400,000. The American League owners had to pay one-half of that settlement. Fifth, Chicago Federals (Whales) owner Charles E. Weeghman was allowed to purchase the Chicago Cubs for $500,000 and the National League contributed $50,000 of the purchase price. Sixth, the National League owners purchased the Pittsburgh Federals for $50,000. Seventh, Phil Ball, the owner of the St. Louis Federals (Terriers) team received the American League franchise in St. Louis. The purchase price was $525,000.

At a meeting on December 17, 1915, National Commission President and Cincinnati Reds owner August Herrmann called a meeting of representatives of Organized Baseball and the Federal League owners at New York's Waldorf-Astoria Hotel. The assembled group, particularly Chicago White Sox owner Charles Comiskey and Brooklyn owner Charles Ebbets, ridiculed the Baltimore group by asserting that Baltimore was nothing but a minor league town, and a poor one at best. The Terrapins owners left the meeting with nothing. The Baltimore group went to the United States Department of Justice claiming that Organized Baseball was violating federal antitrust laws. However, Assistant Attorney General Todd declared that he had no reason to look into the matter.

On September 20, 1917, the owners filed suit in Washington, D.C. It took over one and one-half years of legal wrangling before the case went to trial. The jury rendered a favorable verdict to the Terrapins' owners. After trebling the assessed damages of $80,000 and adding attorneys' fees, the judgment against Organized Baseball was $254,000.

Organized Baseball appealed the decision to the Court of Appeals for the District of Columbia. On December 5, 1920, Chief Justice Constantine J. Smyth rendered the court's opinion reversing the lower court. Smyth's opinion went to heart of the issue
framed by lawyers for Organized Baseball, that baseball was not trade or commerce within the meaning of the Sherman Antitrust Act:

The business in which the appellants were engaged, as we have seen, was the giving of exhibitions of baseball. A game of baseball is not susceptible of being transferred. The players, it is true, travel from place to place in interstate commerce, but they are not the game. Not until they come into contact with their opponents on the baseball field and the contest opens does the game come into existence. It is local in its beginning and in its end. Nothing is transferred in the process to those who patronize it. The exertions of skill and agility which they witness may excite in them pleasurable emotions, just as might a view of a beautiful picture or a masterly performance of some drama; but the game effects no exchange of things according to the meaning of ‘trade and commerce’ as defined above.16

The case was appealed to the United States Supreme Court. Seventeen months after the Court of Appeals had ruled in favor of Organized Baseball, over five years since the case had been filed, and nearly seven years after the last Federal League game, the Supreme Court rendered its opinion authored by Justice Oliver Wendell Holmes.17 Holmes echoed Smyth’s opinion:

The business is giving exhibitions of base ball, which are purely state affairs. It is true that, in order to attain for these exhibitions the great popularity that they have achieved, competitions must be arranged between clubs from different cities and States. But the fact that in order to give the exhibitions the Leagues must induce free persons to cross state lines and must arrange and pay for their doing so is not enough to change the character of the business. According to the distinction insisted upon in Hooper v. California, 155 U.S. 648, 655, the transport is a mere incident, not the essential thing. That to which it 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 defendants, personal effort, nor 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.18

Although Holmes’ opinion has been criticized extensively, one should be careful not to view a 1923 decision through the lens of a later time. The regulation of trade prior to the passage of the Sherman Act supports the noted jurist’s point that “personal effort” or human labor was not considered commerce in the same sense as production or manufacturing of goods. The brunt of Holmes’ point in the remainder of the paragraph is that the nature of travel could not transform something that was essentially not commerce into commerce.

Furthermore, the court’s decision should be placed in the larger historical context of the history of the sport. The baseball public had been rocked by rumors that the 1919 World Series between the Chicago White Sox and the Cincinnati Reds had been fixed.19 The image of the game was severely shaken. Seven Sox players were tried in Chicago for running a confidence game. Aided by the disappearance of grand jury testimony, the group was found not guilty after a celebrated trial closely followed by a national audience. The owners felt that the damage to the integrity of the game demanded a new administrative structure. To achieve that goal, they turned over nearly complete power of the game to new commissioner Kenesaw Mountain Landis. Landis would ban a total of eight players involved in the fixing scheme despite the court’s decision. Had Organized Baseball not
reacted strongly to the scandal, the Supreme Court and Congress might have shown a greater interest in becoming involved with the internal workings of the game. Instead, the decision in *Federal Baseball* allowed ownership to maintain all of the leverage in its dealings with players. Against the backdrop of the defeat of the only league to seriously challenge Organized Baseball until the Mexican League targeted Major League players in post-World War II America, the Yankees were beginning to flourish under new ownership.

**V. The Arrival of New Owners**

The relationship between the Yankees' original owners, Farrell and Devery, quickly dissolved into bitter bickering over the direction of the on-field operation. Gordon was dismissed as president, and Farrell took over the position. Attendance declined as the owners meddled with Manager Griffith's actions, causing him to depart in the middle of the 1908 season. A succession of managers failed to produce a pennant winner, and the relationship between the two owners weakened. Meanwhile, Giants manager John McGraw had introduced Jacob Ruppert, a brewer who had developed his enterprise into a multi-million dollar venture, to Tillinghast L’Hommedieu Huston, a successful engineer during the Spanish-American War. Although the duo wanted to buy the Giants, McGraw fended them off and pushed them towards buying the Yankees from Farrell and Devery. On January 11, 1915, Ruppert and Huston purchased the Yankees for $460,000. Devery and Farrell split the money and parted company, never to speak to each other again. Devery died in 1919, and Farrell passed away seven years later. Both had squandered all of their assets.

The new owners brought significant financial resources to the Yankees and a willingness to spend it to strengthen the team. Frank "Home Run" Baker, a veteran of four World Series with the Philadelphia Athletics, was persuaded to come out of retirement if the Yankees owners would purchase his release from Connie Mack's team. This was accomplished for the sum of $25,000. Baker would play for the Yankees from 1916 until 1922. The owners made one other significant deal with Mack. In July 1915, they purchased the contract of pitcher Bob Shawkey for $18,000. Shawkey hurled for 12 more seasons in New York. From 1919 through 1924, Shawkey won at least 16 games each year including three 20-win seasons. He finished his career with nearly 200 wins. Wally Pipp and Hughie High were purchased for the waiver price of $7,500 from Detroit Tigers owner Frank Navin. Pipp anchored the infield at first base from 1915 until 1925 when a young Columbia graduate named Lou Gehrig replaced him in the lineup. High contributed three seasons of 100-plus games in the outfield. The greatest Yankee success, however, was saved for two deals with the Boston Red Sox.

**VI. Huston and Ruppert Tangle with Ban Johnson over Carl Mays**

The 1914 Major League season was the year of the "Miracle Braves." Boston's National League entry stormed from last place in July to grab the league crown and sweep the Philadelphia Athletics in the World Series. Late in the season, Boston's other team, the Red Sox, brought up a duo of star pitchers from the International League champion Prov-
idence Grays to play the final two weeks of the season. The two joined a strong Red Sox pitching staff including Smoky Joe Wood, Dutch Leonard, Rube Foster, and Ernie Shore. Both new men would be stars for Boston and, later in their careers, the Yankees. One would earn his fame as a hitter with immense talent and charisma while the other would gain infamy as the only pitcher to ever kill a man during a Major League game with a pitched ball. George Herman "Babe" Ruth and Carl Mays had arrived in the big leagues.

Mays quickly assumed a major role on the Red Sox staff right behind Ruth. While Ruth won 18 games in 1915 and followed up with two 20-win campaigns, Mays matched the three-year feat beginning in the following year. The Red Sox won the American League pennant three times and finished second once during the four year span. But the 1919 season started differently. Red Sox owner Harry Frazee was strapped for money. In the midst of the strong run of his Broadway hit Nothing but the Truth, Frazee had joined a silent partner from Philadelphia to purchase the Red Sox from Joe Lannin on November 1, 1916, for a price between $400,000 and $700,000. Frazee pledged much of the purchase price in future payments. Three years later, Frazee was without a theatrical success, and he turned to his baseball team seeking financial help. Over the winter he had engineered the trade to the Yankees of Ernie Shore, Dutch Leonard, and Duffy Lewis for Ray Caldwell. Ruth was holding out for the first time in his career, and Mays refused to sign his contract. The successful Red Sox franchise was poised to enter a prolonged era of intense frustration for its rabid fans, and their demise would benefit the Yankees by adding the players they needed to establish themselves as the dominant team in the American League in the 1920s. Mays began the year pitching well, but his team failed to provide any run support. By July 13, 1919, his record was 5-11.

Mays began that day pitching against the rising stars of the American League, the Chicago White Sox. Trailing 4-0 in the second inning, Red Sox catcher Wally Schang attempted a throw to second base to get a Chisox runner. Instead, he hit Mays in the back of the head. Although the runner failed to score, Mays left the mound at the end of the inning extremely agitated. Throwing down his glove, he headed for the clubhouse exclaiming, "I'll never pitch for this ballclub again!"

When Red Sox manager Ed Barrow was told his pitcher had left the field, he sent pitcher Sam Jones to check on his starter. Jones found Mays undressing in the clubhouse. When Jones told Mays that Barrow wanted him back on the field, he told his teammate to simply tell their manager, "I've gone fishing." When Barrow sent another player to check on the condition of Mays, he found the star hurler sitting in front of his locker weeping.

Mays took a taxi back to the Red Sox hotel, packed his bags, and checked out. Leaving a note apparently claiming that he was "despondent over some personal problems," he left for Pennsylvania. Earlier that year, Mays' new home in Mansfield, Missouri, had burned, destroying all of his mementos from his playing career. Mays was also upset with his treatment by the Red Sox concerning a fine from American League President Ban Johnson when Mays fired a ball into the stands during a Memorial Day game in Philadelphia. The Red Sox were refusing to cover the cost of the fine.

Upon learning of the Chicago incident, Frazee saw an opportunity to raise some money. He called Barrow and said, "Don't suspend this fellow. The Yankees want him and I can get a lot of money for him." Chicago, Cleveland, Detroit, and Washington were also interested in Mays. White Sox owner Charles Comiskey, whose treatment of his team would provide the undercurrent for throwing the upcoming World Series, offered $25,000. League President Ban Johnson was not amused. He contacted all of his owners trying to nix any trade talk until Frazee disciplined Mays.
Over two weeks passed with Mays relaxing in Pennsylvania when the pitcher received a call in Pennsylvania from Huston. Mays told Huston if the money was right he would be happy to pitch for the Yankees. Frazee did not need to hear anything more. He traded Mays to the Yankees for $40,000 and marginal players Allan Russell and Bob McGraw.

Ban Johnson was in St. Louis with J. G. Taylor Spink, the publisher of *The Sporting News*. He was furious to open the morning newspaper and see a story proclaiming the trade. He immediately suspended Mays, the type of action he often took when affairs in the league were not to his liking. He sent a message to all league umpires:

You are hereby notified the American League has suspended Carl W. Mays of the Boston Club by reason of his desertion of the club and the breaking of his contract. He will not be permitted to take part in any games until you receive direct notice from me.26

Ruppert now claimed that Mays was a Yankee. The two Yankees' owners met with Johnson at a stormy meeting that failed to resolve the matter. Comiskey, Frazee, and the two Yankees owners were aligned against Johnson and the remainder of the owners. The Yankees owners headed to the New York Supreme Court seeking an injunction against Johnson. The court responded positively, and on August 7 the umpires were served with the court order at the Polo Grounds before a Yankees-Browns doubleheader. Mays threw a six-hitter to win 8-2. The New York press responded by naming him “The Injunction Kid.”

The season continued with Mays winning nine games for his new team. The Yankees edged the Tigers for third by one-half game. Because only the top three teams shared in the World Series earnings, Detroit owner Navin moved to block the distribution of the $13,000 third-place share.

On October 26, New York Supreme Court Judge Robert F. Wagner granted an injunction for the Yankees by siding unequivocally with Huston and Ruppert against Johnson. The league president was not pleased with the brazen attack upon his usually undisputed control over the league. The Yankees, however, received a player who would win 53 games while pitching almost 650 innings over the next two seasons.

Wagner’s opinion proved to be a complete attack on Johnson’s position. The future United States Senator began his opinion by showing his support for the Yankees: “Suspension of a player, therefore, not only interferes with his individual contract, but may also interfere with the reputation and collective ability of the club.”27

Before delivering his legal analysis, Wagner characterized Mays in the following manner:

In the very early stages of the contest he played concededly below the standard of skill which he usually exhibited. At this time, and for some time prior thereto, Mays had shown a disposition of discontent and nervousness which he attributed to personal difficulties and the worry incident thereto. On behalf of the defendant it is claimed that his disposition was one of recalcitrancy and desire to abandon his contract.…Barrow, the manager of the Boston club, immediately sent two players to him to ascertain his condition. The latter reported to Barrow that they found Mays in a condition of great nervous tension, and indeed of practical nervous collapse.…Mays told Frazee that he was suffering from a nervous breakdown, that he could be of no service to the Boston Club by reason of his condition, that he desired to take a rest, and that he was ready to report to the Boston Club whenever directed.26

Wagner started his analysis by offering two interpretations of Johnson’s actions. At trial, Johnson argued his actions were meant to punish both the Boston and New York teams
for the decision to go forward with the trade. However, Wagner felt that Mays was the true target for punishment. If Johnson meant to punish the teams, Wagner reasoned that the act was “clearly ultra vires” because the constitution of the American League did not grant to the league president the power to discipline teams. Only the board of directors could exercise the power to discipline under sections 6, 7, and 10. Furthermore, Wagner argued that it was not the trade but the lack of discipline by the Red Sox that prompted Johnson’s suspension. Because the Yankees could not discipline Mays for an act involving his relationship with the Red Sox, Wagner saw the Yankees as “the real sufferer” because they were “obliged to pay the salary of Mays while it was deprived of his services.”

Wagner turned next to a consideration of Johnson’s actions under the theory that the goal was to punish Mays. Johnson had conceded that the primary right of discipline belonged to Boston, yet he asserted that he enjoyed a similar power as league president. Wagner quoted sections 20 and 24 of the league constitution. He reasoned that section 20 provided Johnson with power only with respect to the “general welfare of the game.” Section 24, however, was a specific grant to the teams and general grants of power should be subordinated to specific grants of power. After quoting Matthew Bacon on equity and statutory construction, Wagner looked at the similarity between the American League Constitution and the older National League Constitution. This analysis led Wagner to conclude “the construction becomes inevitable that it was the intention of the framers to give unmodified and unrestricted power to the clubs in respect to their purely internal affairs.”

To strengthen his argument against Johnson, Wagner next considered whether Johnson’s actions were “in the performance of his duties” as required under section 20. Because Wagner felt that Mays’ act of desertion or breach of contract did not happen on the field, the judge characterized Johnson’s suspension as unauthorized. If Johnson’s suspension was based on his supervisory powers, section 36 of the constitution did not give a right beyond the ministerial duty to send complaints to the board. Wagner finished his analysis of the constitutional provisions by concluding that Johnson had no power to issue the injunction.

Wagner was not finished criticizing Johnson. Johnson argued that he had often exercised similar powers and those actions had not been questioned. Quoting Washington’s Farewell Address, Wagner made it clear that Johnson could not “acquire power by continual usurpation.” Completing his opinion by granting the injunction, Wagner again attacked the league president for an act that was “to say the least, not fortified with that perfect appreciation of the facts which evinces a desire to do equity to all parties concerned.”

The Yankees’ owners were ecstatic, “Our fight has not been for Mays alone, but to safeguard the vested and property rights of the individual club owner against the encroachments on club rights by the president, who has never been clothed with the powers that he has taken unto himself.”

With Tigers owner Frank Navin as the peacemaker, the owners gathered in Chicago on February 10, 1920, to deal with the aftermath of the trade and Wagner’s decision. They emerged at 2:00 a.m. the next morning after enduring three lengthy sessions. Johnson and his owner allies were completely defeated. Mays would remain a Yankee, and he would not be penalized. The third-place finish by the Yankees was recognized, and they would be immediately granted their World Series share. To curb the president’s power, Ruppert and Griffith were appointed together to a committee to consider any major suspension or fine. If the two did not agree, the tie-breaking vote would go to a
Chicago federal judge rather than Johnson. Johnson would never regain the power he had enjoyed as league president. Now, Ruppert and Huston assumed the place of power within the ownership group. However, the most important action taken by the two owners as the team entered the 1920s was the acquisition of the one Red Sox player who would have the greatest impact of any single individual on the game. That player was Babe Ruth.

Unfortunately, tragedy accompanied the reuniting of Mays and Ruth in New York. On August 16, 1920, Mays threw a pitch that struck Cleveland Indians shortstop Ray Chapman in the head. Chapman died the next day despite a one hour and fifteen minute operation to remove both a piece of skull and to deal with numerous blood clots. Ultimately, the Yankees parted company with Mays when he was sold to the Cincinnati Reds in December 1923 for cash.

VII. The Arrival of Ruth

During the last week of 1919 and the first days of 1920, the Yankees returned to Boston and Red Sox owner Harry Frazee to complete a blockbuster deal. Frazee needed money to cover his Broadway debts and to pay the notes held by Lannin on the original purchase of the Red Sox. Ruth had aggravated the Sox owner by demanding a doubling of his salary for the upcoming year. The day after Christmas, Frazee called Ruppert looking for a loan. Frazee needed $500,000 for the Broadway productions that he was willing to finance. At the same time, Frazee was telling the press in Boston that he was willing to deal any player except future Hall-of-Fame outfielder Harry Hooper. When the quick negotiations were concluded, Ruth went to the Yankees for $125,000 and a $350,000 loan against the mortgage on Fenway Park. The Uniform Agreement for Transfer of a Player was dated December 26, 1919, and included the final two years of Ruth's three-year deal with the Red Sox. The Boston owner received an immediate payment of $25,000. Because Huston was leery of a loan based upon a ballpark, Ruppert made that part of the deal on his own. It was nearly one year later before Ruppert's interest in Fenway became nationally known, but such an obvious conflict of interest was not unusual for the time. In fact, Ban Johnson's interest in the Cleveland Indians had been cited as a reason for his suspension of Mays in 1919 when the White Sox, Indians, and Yankees were battling for the American League pennant. The mortgage outlasted Frazee's ownership of the Red Sox.

Although the bulk of Ruth's purchase price was a well-secured loan, the deal cost Ruppert and Huston more than they had paid to purchase the Yankees. Furthermore, it eclipsed the $55,000 that Cleveland had paid for Tris Speaker, the $50,000 price that the White Sox paid for Eddie Collins or the $32,000 and two players involved in the purchase of Joe Jackson by the White Sox. In an oft-heard refrain throughout baseball history, the New York Times chided both teams because a good player could demand "an imposing salary" from one of the poorer owners, only to have "somebody in New York or Chicago...buy his services."

Frazee would sell another ten players to the Yankees when he needed to raise money. On December 15, 1920, the Red Sox sent Harry Harper, Waite Hoyt, Mike McNally, and Wally Schang to New York for Muddy Ruel, Del Pratt, Hank Thomahle, and Sammy Vick. Hoyt would be a mainstay through part of the 1930 season. His annual victory totals beginning in 1921, were 19, 19, 17, 18, 11, 16, 22, 23, and 10 through the
1929 season. Herb Pennock was sent to New York on January 30, 1923, for $50,000 and players Camp Skinner, Norm McMillan, and George Murray. Frazee sold the team to Bob Quinn during the 1923 season, but the fortunes of the Red Sox and Yankees remained the same. Red Ruffing was sold to the Bronx Bombers in 1930 for $50,000 and Cedric Durst.

At the end of the 1921 season, the Yankees would embark on establishing perhaps the strongest on-field record of any major sports franchise in any sport in the United States during the twentieth century by capturing their first American League pennant. The next 22 seasons would mark the first great period of Yankees domination of baseball. From 1921 until 1943, the Yankees would capture 13 American League pennants and 9 World Series championships. Ruppert’s financial resources fueled the establishment of a dynasty. On May 21, 1922, Ruppert solidified his hold on the club by purchasing all of Huston’s interest for $1,500,000.

VIII. DiMaggio and Ruppert

Joe DiMaggio joined the Yankees from the San Francisco Seals of the Pacific Coast League in 1936. DiMaggio was a star for his hometown team, and he barely lost out on the PCL batting championship. Oscar Eckhardt’s .399 average beat Joe by one percentage point. As a rookie with the Yankees, DiMaggio hit .323, with a league-leading 15 triples, 29 home runs, and 125 RBIs. In his second full year with the Yankees, he improved on his great debut by hitting .346 with 167 RBIs and 46 home runs. He felt that his season should be rewarded with a raise from $15,000 to $40,000, and he went to New York to argue his case directly to Colonel Ruppert. Because ballplayers in the post- Federal Baseball case era lacked any leverage, Colonel Ruppert saw no reason to meet DiMaggio’s demand. Ruppert told the New York reporters that he offered $25,000, and “I don’t intend to go any higher.” When the Colonel held fast, DiMaggio decided not to report. Ruppert retorted “DiMaggio is an ungrateful young man, and is very unfair to his teammates, to say the least.” With the New York press firmly in the Colonel’s corner, DiMaggio was eventually forced to accept Ruppert’s offer after the third day of the season. Even a star of DiMaggio’s magnitude could not shake a system so favorable to management. Eventually, DiMaggio would become baseball’s first $100,000 player, but the Yankee Clipper never forgot his losing clash with the Yankee owner.

IX. Baseball’s Antitrust Exemption Comes under Judicial and Congressional Scrutiny

Kennesaw Mountain Landis ruled over Organized Baseball for a quarter century until his death in 1944, and the game enjoyed its greatest period of labor peace. However, during World War II, significant numbers of active players enlisted or were drafted into the armed services. Landis sought President Franklin D. Roosevelt’s advice on the continuation of playing Major League Baseball. Roosevelt strongly endorsed the contin-
The evaluation of playing by issuing the Green Light Letter. Teams started to search for players of reasonable major league ability to add to their rosters.

Danny Gardella was a minor league player from 1939 through 1941. By 1944, Gardella was working in a New York shipyard. He was coaxed out of his job to join the New York Giants as an outfielder in 1944 and 1945. By the beginning of the 1946 season, the veterans were returning, and Gardella went to spring training without a signed contract, and he knew that he held little chance of continuing his career with the Giants.

While Gardella considered his post-war career options, the president of the Mexican League, Don Jorge Pasquel, had decided to elevate his league to the major league level. Pasquel arrived in New York and stated boldly at a May 3, 1946, press conference that he expected Yankees shortstop Phil Rizzuto to accompany him to Mexico, and, if not Rizzuto, than surely another member of the Yankees starting lineup. The Yankees filed suit in the New York Supreme Court seeking injunctive relief against Pasquel. Pasquel's attorney argued that the inequitable and monopolistic nature of the Yankees' contracts should prevent a court from enforcing them. In May and November, two separate judges considered Pasquel's claim. Neither judge found the arguments that baseball, or in particular the Yankees, were either involved in a restraint of trade or guilty of forcing players to sign illegal contracts.

Rebuffed at his attempts to lure Yankees to Mexico, Pasquel did succeed in signing eighteen major league players to contracts. One of the signees was Gardella. In response to the signings, new commissioner Happy Chandler suspended the group for five years. Gardella responded by filing suit in the Southern District Court of New York requesting treble damages under sections 1, 2, and 3 of the Sherman Act and sections two and three of the Clayton Act. Judge Henry Goodard dismissed the case by invoking the binding power of the Federal Baseball decision. Gardella and his attorney Frederic A. Johnson appealed the case to the Second Circuit Court of Appeals. On February 9, 1949, a three-judge panel overturned the lower court opinion. Each judge issued a separate opinion.

Judge Jerome N. Frank argued that decisions rendered by the Supreme Court after Federal Baseball had "completely destroyed the vitality" of that ruling leaving "that case but an impotent zombi (sic)." Frank together with Judge Learned Hand voted to remand the case for a trial on the merits of the antitrust claim. Chandler responded to the assault on the reserve clause by granting amnesty to all of the players. The new commissioner's strategy paid off. Before the case went to trial, Gardella agreed to settle his case. The settlement left the Federal Baseball ruling intact, but the Second Circuit opinion forced Congress to consider legislation that would reinvigorate baseball's historic exemption from antitrust analysis. Ultimately, no legislation was passed, but the Supreme Court would soon be asked to reconsider the exemption when three separate suits were combined and accepted on appeal.

X. Toolson v. New York Yankees

Earl Toolson began his minor league career in Greensboro, North Carolina, in 1942 as a Boston Red Sox farmhand. Greensboro won the Piedmont League crown during the playoffs after finishing the year tied for first place with Portsmouth with a 78-53 record. Hall of Famer Heinie Manush was the Red Sox manager. The pitching staff was deep with Joe Ostrowski (21-8, 1.69 ERA), Adam Gluchoski (15-8), Roger Wright (15-
In 1943, Toolson began the first of four years hurling for Louisville in the AAA American Association. After winning three and losing five in twenty-four games, Earl enlisted in the Army Air Corps while on crutches because of knee surgery. Toolson served at Williams Field in Higley, Arizona, during 1944 and 1945. After returning to baseball, Toolson had his best success in 1946 and 1947 with Louisville. In sixteen games in 1946, Toolson won five while losing three with a 3.88 ERA. The following year, he hurled in thirty-three games for Louisville, winning eleven and losing six. In 1948, Toolson won four and lost ten with a 5.21 ERA in thirty-three games despite being plagued by a back injury. At the end of the year, Boston traded Toolson to the Yankees. The Yankees, having discovered his injury, assigned him from Newark, their AAA team at a comparable level with Louisville, to Binghamton. Although Earl was not unhappy about the trade to the Yankees system, he did not like the decision to demote him to Binghamton nor the general treatment that the Yankees accorded to him. He contacted a high school friend, a California lawyer, and they filed suit against the Yankees in the United States District Court for the Southern District of California alleging that the reserve clause constituted a violation of both the Sherman and Clayton Acts.

On November 6, 1951, Judge Harrison, relying upon the precedent established in Federal Baseball, ruled against Toolson. In his opinion, Harrison recounted Toolson’s basic allegation that Organized Baseball’s monopoly deprived him of his livelihood. As stated in Harrison’s opinion, because Toolson had refused to report to Binghamton after the assignment from Newark, Earl had been placed on the “ineligible list” and other teams had refused to allow him to play. In fact, Toolson did play baseball in 1949 and 1950 for Oakland and San Francisco of the Pacific Coast League apparently with the Yankees’ consent. The 1949 Oakland Oaks finished in second place under manager Charlie Dressen who had replaced popular field boss Casey Stengel at the helm. Stengel had managed the Oaks from 1946 though 1948. Toolson’s teammates on the 1949 team included Jackie Jensen, Billy Martin, Cookie Lavagetto, and Artie Wilson.

Harrison noted in his opinion that “[t]o me, the simple issue of this case is whether the game of baseball is ‘trade or commerce’ within the meaning of the Anti-Trust Acts, and whether the structure known as ‘Organized Baseball’ is engaged in such trade or commerce.” Harrison cited sixteen decisions that had favorably cited Federal Baseball, and found that only the Gardella case supported a finding that Organized Baseball was now “engaged in interstate commerce.” Relying on the binding nature of Supreme Court precedent, Harrison declined to reconsider the underlying premises of Federal Baseball:

I am bound by the decision of the Supreme Court. It is not my function to disregard such a decision because it is old. If the Supreme Court was in error in its former opinion or changed conditions warrant a different approach, it should be the court to correct the error. Trial courts in my opinion should not devote their efforts to guessing what reviewing courts may do with prior holdings because of lapse of time or change of personnel in such courts. We are supposed to be living in a land of laws. Stability in law requires respect for the decisions of controlling courts or face chaos.
Therefore, he dismissed the case for lack of subject matter jurisdiction. The United States Court of Appeals for the Ninth Circuit affirmed the district court in a per curiam opinion.51

The United States Supreme Court case was a consolidation of Corbett v. Chandler,52 Kowalski v. Chandler,53 and Toolson v. New York Yankees. The United States Supreme Court also rendered a per curiam opinion54 affirming the three lower court decisions by noting the holding in Federal Baseball that "the business of providing public baseball games for profit between clubs of professional baseball players is not within the scope of the federal antitrust laws."55 The Court noted that "Congress has had the ruling (Federal Baseball) under consideration but has not seen fit to bring such business under these laws by legislation having prospective effect."56 The Court upheld Federal Baseball "so far as that decision determines that Congress had no intention of including the business of baseball within the scope of the federal antitrust laws."57

Justice Harold Burton wrote a dissenting opinion that was joined by Justice Stanley Reed. The two justices could no longer accept the concept that Organized Baseball was not involved in interstate commerce. They cited as supporting this claim the exhaustive treatment of the finances and nature of baseball from the 1952 hearings of the House of Representatives Subcommittee on the Study of Monopoly Power of the Committee on the Judiciary. The justices closed by noting that Congress had never granted Organized Baseball an exemption and because baseball's popularity should increase the need for compliance with the Sherman Act, the cases should be remanded for a trial on the merits. Unfortunately for Earl Toolson and the other plaintiffs, the other seven justices could not be swayed. A few Congressmen remained interested in baseball's peculiar status, but the Yankees and the rest of Organized Baseball would be spared from further United States Supreme Court review for nearly two decades.

XI. Casey Stengel Befuddles Congress58

Casey Stengel was manager of the Yankees for 12 years from 1949 to 1960. In 1958 Senator Estes Kefauver summoned the skipper to discuss antitrust law before the Committee on the Judiciary. Stengel had been in Baltimore to manage the American League team in the All-Star game.

Stengel had played in the major leagues for 14 years, and he compiled a career batting average of .284. His first stint in the dugout of two Major League clubs was not distinguished. He managed the Brooklyn Dodgers from 1934 until 1936. After a year's absence, Stengel was hired by the Boston Braves. In 1938, the team finished two games above .500 and in fifth place. The next four years, the Braves finished in seventh place. He was fired in 1943 after 107 games and the Braves finished in sixth place. He was destined to toil in the minor leagues until the Yankees saw something in the man nicknamed the "Old Perfessor."

Stengel took over the helm in New York in 1949. During the next five years, the Yankees won both the American League pennant and the World Series. After slipping to second place in 1954 despite 103 wins, the Yankees played in the next four World Series, winning two and losing two. After a third place finish in 1959, Stengel led them back to the World Series in 1960 against the Pirates. Casey was fired after the 1960 season, but
he came back to manage the New York Mets for three years plus 96 games in 1965. Over a 10-year period with the Yankees, his team won the world championship seven times.

Stengel started his testimony by noting his nearly 50 years in the game. Although he took pains to point out the inequity of baseball's pension fund, he largely lauded the game. Kefauver remarked that perhaps he had been unclear in his original directive to Stengel about why baseball might want legislation providing baseball with an unlimited antitrust exemption. Stengel retorted that it was alright because he probably was not going to supply a perfect answer anyway. After the laughter in the committee room subsided, Stengel offered another view before Kefauver decided to allow the other senators an opportunity to glean something meaningful from the Yankees field general. During the remainder of his time in front of the senators, he launched into a rambling stream of consciousness and disjointed observations that were typical of the speech patterns dubbed Stengelese. By the time he finished, the whole room was in an uproar. Feeling that perhaps another view might clarify baseball's need for protective legislation, the chairman asked Yankees outfielder Mickey Mantle to address the committee. In a single sentence response to the same question presented to Stengel, Mantle proceeded to upstage his manager. Mantle simply asserted, "My views are just about the same as Casey's." Congress failed to seriously consider the matter any further, and the status quo remained intact into the next decade. However, the nature of baseball and the future of the Yankees as its dominant team were approaching dynamic and dramatic changes.

XII. Curt Flood Sues Major League Baseball

In 1964, the Yankees appeared in their fifth consecutive World Series. Little did they expect that their loss in game seven to Cardinals pitching ace Bob Gibson would begin an 11-year absence from the Fall Classic. The year had been tumultuous for first year manager Yogi Berra. He was fired the day after the series concluded, replaced by Johnny Keane, the manager of the Cardinals.

Although the Yankees struggled after the 1964 season, the Cardinals returned to the World Series in 1967 and 1968. A major participant in all three series was center fielder Curt Flood, the Cardinals co-captain from 1965–1969. But in 1969, the Cardinals dropped to fourth place in the newly-created East Division of the National League. Although Flood was a seven-time Gold Glove Award winner with a lifetime .293 average, Cardinals Owner Augie Busch decided to trade Flood on October 7, 1969, together with Byron Brown, Joe Hoerner, and Tim McCarver to the Philadelphia Phillies for Dick Allen, Jerry Johnson, and Cookie Rojas. Flood refused to accept the trade and decided to sue Major League Baseball for the right to strike his own deal. Six years later, Flood would lose his case before the United States Supreme Court, but Organized Baseball's perpetual reserve clause would be altered by the ruling of an arbitration panel. Players were about to receive unparalleled freedoms with the creation of free agency and the establishment of salary arbitration.

Flood initiated his lawsuit by filing a complaint in the Southern District of New York based upon five causes of action.60 First, Flood argued that Organized Baseball's reserve
clause constituted an unreasonable restraint of trade under the Sherman Act; second, that the actions of twelve specific teams violated New York and California law; third, that the actions of these same twelve teams violated the common law; fourth, that the practice of the reserve system resulted in peonage and involuntary servitude in violation of federal statutes and the Thirteenth Amendment. The fifth cause of action specifically targeted the St. Louis Cardinals and the New York Yankees.\(^{41}\)

Flood's complaint alleged that the Cardinals derived substantial revenues from the sales of concessions including beer at its baseball stadium. Because only beer produced by Anheuser-Busch was available at Busch Stadium, Flood's complaint argued that this practice violated both the Sherman and Clayton Acts. Furthermore, Flood argued that "the effect of this violation has been, and will continue to be, to increase the revenues of the beer company and diminish the revenues of defendant St. Louis National Baseball Club, Inc. available for player salaries, including that of plaintiff."\(^{42}\)

Flood's second claim under the fifth cause of action targeted the Yankees:

48. Defendant New York Yankees, Inc. are owned by the Columbia Broadcasting System, one of the three national radio and television networks which might bid on the right to broadcast professional baseball games. On information and belief, as a result of its ownership of the New York Yankees, Inc., the Columbia Broadcasting System has refrained from bidding on such broadcast rights with consequent injury to competition, in violation of §§1 and 2 of the Sherman Anti-Trust Act and §7 of the Clayton Anti-Trust Act (15 U.S.C. §§1, 2, and 18).

49. The consequence of this violation has been and continues to be, to reduce the revenues of Organized Baseball from the sale of broadcast rights, in which revenues players such as plaintiff would share.\(^{43}\)

In response to the claim against the Cardinals, the District Court considered the affidavit of club vice president Bing Devine. Devine asserted that beer from brewers other than Anheuser-Busch was sold at the stadium and that the Cardinals did not control or receive concession revenue anyway. The court granted St. Louis summary judgment on their motion.\(^{64}\)

The court turned its attention to the claim against the Yankees. The Yankees submitted the affidavit of William MacPhail, the Vice-President for Sports for the CBS Television Network. MacPhail stated that CBS presented a bid to the Major League Baseball Television Committee in 1965. That bid was turned down in favor of one from NBC and the Committee had subsequently renewed the contract. Because Flood's attorney offered no evidence to rebut the affidavit, the court granted summary judgment to the Yankees on their motion.\(^{65}\)

The case proceed to trial. Flood was treated rudely by Judge Cooper who seemed to question why someone offered a large amount of money to play baseball could possibly be upset with the system. Cooper decided that baseball was still exempt from antitrust scrutiny under Federal Baseball and Toolson.\(^{66}\) The decision was affirmed by the United States Court of Appeals for the Second Circuit.\(^{67}\) Judge Waterman did find that baseball was involved in interstate commerce, but he refused to alter the stance taken by the district court.

The United States Supreme Court affirmed the opinion of the Second Circuit on June 19, 1972.\(^{68}\) Justice Harry Blackmun presented a long historical discussion of the origins of baseball including a list of great players that included Yankees notables Babe
Ruth, Lou Gehrig, Joe McCarthy, Wee Willie Keeler, Red Ruffing, Clark Griffith, Frank Chance, and Bill Dickey. Blackmun concluded that

1. Professional baseball is a business and it is engaged in interstate commerce.

2. With its reserve system enjoying exemption from the federal antitrust laws, baseball is, in a very distinct sense, an exception and an anomaly. *Federal Baseball* and *Toolson* have become an aberration confined to baseball.

3. It is an aberration that has been with us now for half a century, one heretofore deemed fully entitled to the benefit of *stare decisis*, and one that has survived the Court's expanding concept of interstate commerce....

4. Other professional sports...are not so exempt.

5. The advent of radio and television...has not occasioned an overruling of *Federal Baseball* and *Toolson*.

6. Congress as yet has had no intention to subject baseball's reserve system to the reach of the antitrust statutes....

7. The Court has expressed concern about the confusion and the retroactivity problems that would inevitably result with a judicial overturning of *Federal Baseball*....

Justices William O. Douglas and William Brennan dissented noting that *Federal Baseball* "is a derelict in the stream of the law that we, its creator, should remove." Justice Thurgood Marshall offered another dissent joined by Brennan that discussed the involuntary servitude issue. Marshall wanted to overrule both *Federal Baseball* and *Toolson*, but accurately predicted the future by stating that the labor exemption may not allow Flood to prevail.

Flood had lost his case, and it sent his life into a downward spiral. He later extricated himself from depression and alcoholism to become a strong community leader and a hero among the stalwarts of baseball's labor movement. Although he sacrificed his career for little gain, he had launched a revolution in relations between owners and players. CBS would decide to sell the Yankees, and the new ownership group headed by George Steinbrenner quickly grasped the meaning of the changing landscape.

**XIII. Free Agency and Jim “Catfish” Hunter**

During the early 1970s, Charles O. Finley had created the strongest team in the American League in Oakland. The A's captured the World Series from 1972 through 1974. The ace of their pitching staff was Jim "Catfish" Hunter who won 25 games in 1974. He had posted three straight 21-win seasons before 1974. Finley's flamboyant style placed him in stark contrast to the mainline ownership in Major League Baseball. His relationship with Bowie Kuhn became increasingly tempestuous, and his actions relative to his ballplayers would be a hallmark of the changing nature of the game.

Hunter arrived in the Major Leagues at the age of eighteen, and he quickly established himself as a star. Despite his skills, Finley saw little reason to reward him economically. After hurling a perfect game in 1968, Finley raised Hunter's salary by $5,000
and loaned him $150,000 to buy a farm in Hunter's native North Carolina. Finley was a farm owner himself in northern Indiana. His logo-emblazoned barn was a landmark along the otherwise pastoral scenes offered on the sides of the Indiana Turnpike.

Finley's activities in other professional sports franchises, however, had created cash flow problems for the A's owner. He demanded that Hunter repay the loan in full. The pitcher was forced to sell all but a small parcel of the extremely fertile land that he had purchased. The owner's move proved costly for the A's and a boon to the Yankees. Hunter signed a new two-year contract with Finley before the 1974 season. For tax purposes, Hunter arranged to have one-half of his salary paid as an insurance annuity. Finley failed to make the necessary payments into the annuity account. Hunter's attorney, J. Carlton Cherry, made repeated written requests for the payments, but they still were not forthcoming. In frustration, Hunter complained to the media and his teammates. Marvin Miller and Dick Moss of the Major League Players Association had negotiated into the 1968 Collective Bargaining Agreement the right for such deferred payments. They also had forced the creation of an arbitration method in the 1970 agreement to handle grievances.

The union took the lead in filing a grievance on Hunter's behalf. Moss notified Finley that they believed that the owner's actions were a violation of section 7(a) of the Uniform Playing Contract. The clause provided a unilateral right to declare a termination of the contract within ten days after written notification of a breach. Although the union allowed more than ten days for Finley to respond, the A's owner would not budge. On October 4, 1974, in the midst of the World Series between the A's and the Los Angeles Dodgers, the union declared that the contract was terminated and that Hunter was a free agent. Finley responded by offering Hunter a $50,000 check. However, because the cash offer constituted a taxable gift that was not the equivalent of payments to a tax-free annuity fund, Hunter requested that the money be paid to his insurance company.

The matter was submitted to a panel chaired by arbitrator Peter Seitz. Marvin Miller served as the union's panel member, and John Gaherin, represented Major League Baseball. At a hearing on November 1, 1974, Finley's main argument was that Cherry had not submitted the proper paperwork to him. Seitz considered Finley's position and the nature of the contractual language, and he rendered his decision for Hunter on December 13. Although the original statement failed to declare that Hunter was indeed a free agent, Miller convinced Seitz to correct any ambiguity in his decision. Commissioner Bowie Kuhn was angered by the ruling and encouraged the owners not to negotiate with Hunter. However, Kuhn was forced to alter his position after Miller threatened to file a lawsuit claiming a violation of the Collective Bargaining Agreement. Finley's appeal to overturn the arbitration decision failed before the California Supreme Court.

Hunter's salary for 1974 was $100,000. Every team save the Giants and A's offered lucrative deals to Hunter. The teams used creative means to entice Hunter into signing. The San Diego Padres were leading the way when the managing partner of the new Yankees ownership group, George Steinbrenner, stepped forward. The Yankees offered $3.75 million in total salary, an amount that was less than the package offered by the Padres and Royals, but Steinbrenner did present a signing bonus of $1 million, a $1 million life insurance policy, $0.5 million in deferred compensation, $50,000 in annuities for Hunter's children's college expenses, and attorney's fees for Cherry. Hunter accepted the terms on the last day of the year.

Hunter won 23 games and lost 14 for the Yankees in 1975. He followed up with a 17 win campaign in 1976 as the Yankees defeated the Royals in the American League
Championship Series before losing to the Cincinnati Reds in the World Series. After 12 years of pitching in 30 or more games, Hunter’s starting appearances declined to an average of 20 during his final three years with the Yanks. He retired at the end of the 1979 season with 224 career wins. He was elected to the Hall of Fame in 1987. Ironically, Hunter died in August 1999 of amyotrophic lateral sclerosis, Lou Gehrig’s disease.

XIV. Salary Arbitration

By the early 1970s, the Major League Baseball Players Association began to exhibit some clout at the negotiating table. Curt Flood’s case, although ultimately won by Organized Baseball, signaled growing player unrest over the continued strict enforcement of the reserve clause. Union chief Marvin Miller also had a degree of leverage created by Dodgers pitchers Don Drysdale and Sandy Koufax. In 1966, Drysdale and Koufax, two of the National League’s premier pitchers, decided to hold out together unless Dodgers owner Walter O’Malley agreed to pay the tandem $1,000,000 over three years. Koufax’s financial adviser Bill Hayes approached some attorneys for advice, and they urged him to use California’s personal-service contract legislation limiting such agreements to seven years. Because baseball’s reserve clause was effectively perpetual, the two pitchers were ready to go to court to argue for free agency status. The prospect of a lawsuit that might attack the essence of the reserve clause on grounds other than antitrust furthered negotiations. Although the two players did not get quite the deal that they sought, they were able to force Dodgers General Manager Buzzy Bavasi and O’Malley to give them the most lucrative contracts of that time in order to get them both to play. Koufax received $125,000, and Drysdale signed for $110,000.

The leverage forced ownership to offer a solution to determine salaries when both the player and management reached an impasse: salary arbitration. The agreement would force all players into this process, thus avoiding a repeat of the Koufax-Drysdale double team. Miller saw the possibilities behind the proffered arrangement. The union would agree to the anti-collusion clause in the collective bargaining process only if they received a reciprocal agreement against collusion from the owners. The collusion clause would prove invaluable to the players in the 1980s just as arbitration would prove to be a great boon to players seeking to push salaries upward.

The basic system of salary arbitration in baseball is a simple one. Eligibility is based on terms of service. Under the current Collective Bargaining Agreement, a player with at least three years of Major League service but less than six years is defined as “arbitration-eligible.” A player with between two and three years of service can be eligible if “he has accumulated at least 86 days of service during the immediately prior season” and “ranks in the top seventeen percent” of players in the two-year service group. This category was bitterly negotiated during the 1994 season when ownership sought to reduce the number of players eligible for arbitration. Because players who are not “arbitration-eligible” are still tied exclusively to one team, they have little ability to force ownership to provide salaries far above the league minimum. Players with six years of service have won the right to be free agents under the Collective Bargaining Agreement.

In what is styled as “single offer” or “final offer” arbitration, the player and management each submit a single number. The arbitrator or panel of arbitrators can choose only one of the two numbers. The essence of the system is to force each party to offer a
defensible wage. If one side chooses a figure that is not credible, that side runs the strong risk of having the arbitrator(s) choose the other side's number. The result in the vast majority of cases is to force each side to settle before arbitration at a point between the two offered figures. If the sides cannot settle on a figure, they proceed to arbitration understanding that they will either win completely and receive the figure they have selected or lose and be forced to live with the winner's wage.

Each party is granted one hour for an initial presentation and one-half hour for rebuttal. The arbitrator or panel can grant an extension for good cause. The parties can discuss:

[T]he quality of the Player's contribution to his Club during the past season (including but not limited to his overall performance, special qualities of leadership and public appeal), the length and consistency of his career contribution, the record of the Player's past compensation, comparative baseball salaries..., the existence of any physical or mental defects on the part of the Player, and the recent performance record of the Club including but not limited to its League standing and attendance as an indication of public acceptance....

The arbitrator or panel cannot consider the following evidence:

The financial position of the Player and the Club;...Press comments, testimonials or similar material bearing on the performance of either the Player or the Club, except that recognized annual Player awards for playing excellence shall not be excluded;...offers made by either Player or Club prior to arbitration;...The cost to the parties of their representatives, attorneys, etc.;...Salaries in other sports or occupations.78

The arbitrator or panel has 24 hours to select one of the two numbers and write that number into the standard player contract. Neither side can litigate or appeal the outcome of the process.

XV. The Yankees in Salary Arbitration79

Salary arbitration arrived on the Major League scene at the same time that George Steinbrenner purchased the New York Yankees. Steinbrenner's feelings about the process have never been positive, and his feelings about the players that have forced him into arbitration rarely have been positive. Unless you are a key player, a trip to arbitration with the Yankees usually results in a quick exit from Manhattan regardless of the outcome.

During the first year of salary arbitration, 1974, 29 cases proceeded to a hearing. The Yankees were involved in four, winning two and losing two. Future manager Gene Michael had logged 129 games in 1973 for the Yankees at shortstop hitting .255 at a salary of $55,000. He requested an increase to $65,500, but the Yankees prevailed after offering the same $55,000. Michael played only 81 games in 1974 for New York, and he spent 1975, his last year as a player, in Detroit. Catcher Duke Sims had played only four games in 1973 for the Yankees after a trade from Detroit. Sims asked for an increase from his previous salary of $50,000 to $56,000. The Yankees again countered with the previous year's salary, and they won. Sims was traded to the Texas Rangers after playing only five games in 1974 for the Yankees.
Pitcher Wayne Granger had arrived in New York in August 1973 in a trade for Ken Crosby. Granger pitched in only seven games for the Yankees and recorded one loss. Although Granger actually submitted a request for $2,500 less than his previous salary of $47,500, the Yankees thought even $45,000 was undeserved. The team countered with an offer of $42,000. Granger won his case, but he did not even pitch in New York in 1974. Bill Sudakis, a utility player for Texas in 1973, hit .255 in 82 games. The Yankees had purchased him for cash in December 1973. Sudakis sought an increase from $20,000 to $30,000. The Yankees offered $25,000, but the arbitrator ruled in favor of Sudakis. In 89 games he could muster but a .232 batting average. In December 1974, the Yankees sent Sudakis to California in exchange for Skip Lockwood. The Yankees were able to settle with two more significant players, Lou Piniella and Graig Nettles, prior to the hearings. The Yankees were able to avoid arbitration the next year, and baseball did not have the process in 1976 and 1977.

It was not until 1981 that the Yankees again entered into arbitration, this time with catcher Rick Cerone. Cerone hit .277 with 14 home runs and 85 RBIs in 147 games in 1980. Cerone requested $440,000, and the Yankees offered $350,000. Cerone won when Jesse Simons chose the backstop's figure. Both Cerone and Simons, a New York lawyer and director of the Office of Collective Bargaining, incurred Steinbrenner's wrath:

Cerone makes $440,000 a year, this is after I rescued him from the scrap heap at Toronto, where he was making $100,000. And as soon as he comes to New York he takes me to arbitration and wins with some garment-district arbitrator who knows nothing about baseball. And if Cerone doesn't do well is he gonna return the money to me? Hell no. It's a new age, and these players are making more than some big corporate executives. So I've got a platform where the little guy doesn't, and I use it.10

Cerone responded to Steinbrenner's outrage and the nickname “Brutus” applied by his teammates by noting that manager Gene Michael was the last to take Steinbrenner to arbitration, “[I]f I'm disloyal, how come he's the manager?” Michael quipped, “I was in Detroit the next season.” Despite the Boss's outrage, Cerone's first tour of duty with the Yankees lasted through the 1984 season. He would also play for the Yankees in 1987 and 1990.

In 1982 the Yankees’ consolation prize for losing the 1981 World Series to the Los Angeles Dodgers was three victories in arbitration. Outfielder Bobby Brown, who batted .226 in 31 games for the 1981 Yankees, asked for $175,000 and the Yankees countered with $90,000. Brown wanted to force the issue with the Yankees. “If I had won, I still wouldn’t have gotten what I wanted. I went to salary arbitration to get traded. I want to go somewhere that I can play. The Yankees don’t have any use for me. I would think that they would want to get me out of here.” Arbitrator Robert Stutz sided with the Yankees, the same position he would take after hearing Ron Davis's case. Brown was peddled to Seattle on April 1, 1982, with Bill Caudill and Gene Nelson for Shane Rawley.

Pitcher Ron Davis had won 4 and lost 5 with a 2.72 ERA in 43 relief appearances. Davis requested a raise from $200,000 to $575,000, but the Yankees countered with $300,000. Davis lost the case, but still received the 50% raise and a better deal than the last pre-arbitration offer of $225,000. Vice president for baseball operations Bill Bergesh noted “I just hope that now he continues with the fine attitude he’s exhibited with this thing. He's shown me a lot of spirit, the way he came in early and stayed until the night before the arbitration hearing and came back right afterward.” Davis argued that he did not have statistics to show his value as a set-up man to Goose Gossage. Although he
stated that "I have a right to be back next year and I'll be back," he never got that opportunity with the Yankees. Davis was dealt on April 10, 1982, to Minnesota with Paul Boris and Greg Gagne for Roy Smalley.

First baseman Dave Revering wanted $325,000, but the Yankees felt that he deserved only $250,000. Arbitrator Richard Bloch finished the Yankees sweep by siding with the team against Revering. Revering quipped, "I'm just going to the beach. It's all business. My time will come." Noting the difficulty for players who attend the hearing, Revering pointed out, "If they say to R.D. what they said to me, he'll go over the top of the table because he can't control his temper." After 14 games in the 1982 season, Revering received the same treatment as Brown and Davis when the Yankees packaged him in a deal with Oakland that included Mike Patterson and minor league pitcher Chuck Dougherty for Jim Spencer and Tom Underwood.

No one dared push the Yankees back into arbitration over the next four years. However, in 1987 the Yankees were forced into the process when their first major star, Don Mattingly, challenged the Bronx Bombers. The first baseman had led the league in hits (238), doubles (53), and slugging percentage (.538) in 1986 while batting .352 with 31 home runs, 117 runs scored, and 113 RBIs. Mattingly's 1986 salary was $1,375,000. The Yankees were willing to offer an increase to $1,700,000, but the first baseman felt that $1,975,000 was more in order. Arbitrator Arvid Anderson agreed with the Yankees star player.

Steinbrenner angrily attacked both the union and his first baseman. Steinbrenner felt that the union interfered with negotiations claiming that "he (Mattingly) and I were very close to an agreement (reportedly a two-year, $3.85 million contract),...but both the player and his agent came back and said they were getting pressure from the union (to go through arbitration)." MLBPA Executive Director Don Fehr called the assertion "patent claptrap."

The Yankees owner clearly placed the onus for winning on Mattingly:

I fully expect Don Mattingly to lead us to a championship at these figures, like Gary Carter did with the Mets. Now the monkey's on his back. He's got to deliver....The only thing that came to me—and, mind you, there was no bitterness—is that I used to think of Don Mattingly as the little kid from Evansville. That's the way he portrayed himself. The union had a fine hand in driving this kid, and he's now no longer the little Hoosier from the Indiana river. He's out for the almighty buck.

Mattingly finished his 14-year career with the Yankees in 1995 with 2,153 hits and a .307 batting average. Unfortunately, his only playoff experience was in 1995 in the divisional series.

In 1988, the Yankees were able to beat third baseman Mike Pagliarulo in arbitration. Pagliarulo requested an increase from $175,000 to $625,000 after slamming 32 home runs but batting only .234 in the previous campaign. The Yankees countered with an offer of $500,000, and arbitrator Lawrence Holden agreed with them. Pagliarulo played the entire 1988 season with the Yankees, but he was traded during the 1989 season to San Diego with Don Schulze for Walt Terrell and Fred Toliver. From 1989 through 1992, the Yankees were spared from arbitration.

In 1993, the Yankees defeated pitchers Jim Abbott and John Habyan and lost to Randy Velarde. Abbott sought an increase from $1,850,000 to $3,500,000 after winning 7 and losing 15 for the California Angels in 1992. The Yankees acquired Abbott on De-
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cember 6, 1992, for J. T. Snow, Russ Springer, and Jerry Nielsen. The Yankees felt that a $500,000 raise was sufficient and offered $2,350,000. Arbitrator Anthony Sinicropi agreed with the Yankees. Abbott responded with an 11-14 campaign with 32 starts and a 4.37 ERA. After a 9-8 season in 1994, the Yankees lost Abbott in free agency to the Chicago White Sox on April 8, 1995.

Habyan requested a raise to $830,000 after making $500,000 the previous year. The reliever appeared in 56 games in 1992, recording 5 wins against 6 losses and 7 saves. Arbitrator Theodore High adopted the Yankees’ position. Habyan departed in July 1993 in a three team trade with the Kansas City Royals and the Chicago Cubs. The Yankees received pitcher Paul Assenmacher.


In 1994, second baseman Pat Kelly sought an increase from $160,000 to $810,000. Kelly batted .280 in 93 games. The Yankees offered $575,000. Arbitrator Pat Hardin awarded Kelly $810,000. Kevin Maas and Terry Mulholland, however, each lost their battles with the Bronx Bombers. Maas sought $490,000 after appearing in 59 games and hitting .205 in 1993. His compensation for the previous year was $255,000. The Yankees offered $425,000. Maas had become a fan favorite when he hit 21 home runs during three months of his rookie season. Arbitrator Jerome Ross agreed with the Yankees management, who released Maas near the end of spring training. Maas did not play in the majors in 1994 after signing a minor league deal with the San Diego Padres. Maas did play in 22 games for the 1995 Minnesota Twins, but he failed to regain his rookie form.

Mulholland had played for $2,600,000 in 1993 as a member of the Philadelphia Phillies. He sought an increase to $4,050,000. The Yankees offer of $3,350,000 was determined by arbitrator Jim Duff to be satisfactory. In his only year with the Yankees, he appeared in 24 games, with 19 starts, a record of 6 wins and 7 losses and a 6.49 ERA. On April 8, 1995, Mulholland signed as a free agent with the San Francisco Giants.

After skipping 1995, the Yankees entered their second arbitration hearing with a significant star player prior to the 1996 season. Bernie Williams toiled for $400,000 in 1995, his fifth year with the Yankees. He hit .307 with 18 home runs and 83 RBIs in 144 games in the outfield. He sought an increase to $3,000,000, and the Yankees offered $2,555,000. Arbitrator Ralph Berger awarded Williams his request after a hearing that left Williams less than pleased with statements made by the Yankees about his play. General Manager Bob Watson, putting aside any feelings that he had as a former player, was also displeased with the process. Highlighting a general feeling about the role of arbitrators in the process, Watson noted:

The whole thing leaves a lot to be desired. Obviously, there has to be a better way for both sides, where one guy rules in one side’s favor one time, then feels like he has to rule the other way just to keep his job. The system we have now is not fair, and ultimately it’s the fans who are losers. The salary costs are passed on to them."

Despite the displeasure, Williams increased his homer output to 29 with 102 RBIs while batting .305 in 1996 in 143 games. In 1998, he led the American League in hitting with a .339 average. Williams later received a significant free agent offer from the Boston Red Sox, but he decided to stay in New York.
The Yankees avoided arbitration during the next two off-seasons, only to return in 1999 to bitter victories by Derek Jeter and Mariano Rivera over new General Manager Brian Cashman. Jeter and Rivera had both received $750,000 in 1998, the year before each became salary arbitration-eligible. Jeter requested a raise to $5,000,000, and Rivera requested $4,250,000. The Yankees offered Jeter $3,200,000 and Rivera $3,000,000. The power of the process and the stark differences between the salaries of arbitration-eligible and non-arbitration-eligible players were seldom more apparent than in these two cases.

Jeter’s agent, Casey Close, offered to settle with Cashman for $4.1 million just before the hearing. Cashman felt that he had the better number, but the arbitration panel of Ira Jaffe, Gil Vernon, and Nicholas Zumas decided that $5 million was more of an accurate reflection of Jeter’s worth despite the Yankees’ argument that he needed to show better power numbers. Published newspaper accounts of Steinbrenner’s comments were positive towards Jeter, but the same stories noted his displeasure with Cashman.

Rivera also prevailed. Arbitrator James Duff chose Rivera’s 4.25 million figure. Steinbrenner reacted angrily to his second loss within one week. “Only one time out of 10 has baseball won in arbitration when a world championship team is concerned. If they want to make popularity part of it, or whether you win the championship, I don’t know. I’ve dealt with a lot of arbitrators, but I’ve never seen anything like this.”

Cashman was ordered to trim the payroll to account for the two losses.

The following year, the Yankees again failed to agree with Rivera. The star closer wanted an increase to $9,250,000. The Yankees thought that a $3,000,000 increase to $7,250,000 was more appropriate. Arbitrators Howard Block, Elisabeth Neumeier, and Alan Symonette agreed with the Yankees this time.

Jeter and Rivera were joined by catcher Jorge Posada when the trio filed for arbitration in 2001. Posada settled before exchanging numbers. Deciding to avoid the annual antagonism, the Yankees worked toward long-term deals with their shortstop and closer. Jeter asked for $18,500,000, and the Yankees countered with $14,250,000. Jeter and the Yankees signed a 10-year deal worth $189 million before the hearing took place. Rivera sought $10,250,000, and the Yankees offered $9,000,000. Rivera ultimately inked a 4-year $39.9 million deal because Steinbrenner refused to offer $40 million.

The Yankees settled all of their 2002 cases prior to any hearings and settled in for negotiations over a new collective bargaining agreement. Although a strike was averted at the last possible moment, the Yankees were left with a heavy assessment for their huge salary structure. The Yankees, however, continue to use their time-honored tradition of trading or purchasing the athletes that they need to maintain their on-field success.

XVI. The Maris Family Suit against Anheuser-Busch

Roger Maris joined the Yankees prior to the 1960 season after a trade with the Kansas City Athletics. The left-handed hitting outfielder quickly adjusted to Yankee Stadium’s short right field dimensions, and Maris posted five strong power seasons in-
cluding the fabled 61-homer year in 1961. When Maris failed to produce similar seasons in 1965 and 1966 and the Yankees’ string of five straight World Series appearances dissolved into a last place and a next to last place finish, the Yankees decided to trade Maris to the St. Louis Cardinals. Maris responded by helping an already strong team to World Series appearances in 1967 and 1968. In gratitude for Maris’ ten-hit performance in the 1967 Fall Classic as the Cardinals defeated the Boston Red Sox, Cardinals owner Augie Busch Jr. thought he had a proper reward. Busch awarded Maris and his brother Rudy the Gainesville and Ocala, Florida, Anheuser-Busch distributorship. Maris retired after the Cardinals lost the 1968 series to the Detroit Tigers to run the business. Under Maris’s leadership, the franchise became one of the strongest in Florida, and Maris brought his wife, son Roger Maris, Jr., and six relatives into the business. Roger Maris died in 1985, and his older brother Rudy assumed the presidency of Maris Distributing.

Beginning in 1991, however, Anheuser-Busch sought changes in its Florida market. During that year, the parent company lost a federal court case launching a long battle with their Orlando distributor over that market. The Tampa distributor lost a state court action when the parent company blocked the Tampa group’s attempt to purchase the Sarasota distributorship. In the midst of a two-year court battle concerning Anheuser-Busch’s attempt to terminate their relationship with their Jacksonville distributorship, the St. Louis-based company settled the suit by purchasing those rights and awarding it to the Tallahassee group. That transaction allowed Susan Busch Transou, the daughter of August Busch III, and her husband Tripp Transou to assume control of the Tallahassee market.

In July 1996, Anheuser-Busch sent a marketing team to review Maris Distributing’s facilities and practices. Family members were ordered to St. Louis where the results of the team’s analysis of the Marises’ practices were discussed. Sensing the potential termination of their distribution relationship with the parent company, the family submitted in August a “Notice of Intent to Sell,” as outlined in the Wholesaler Equity Agreement that formed the contractual basis of that relationship. Anheuser-Busch made two offers to the Maris family for the business. Because the family considered the $20.4 million and $21.5 million offers to be below market value, they continued to look for a stronger offer from the six potential buyers that came forward. In November 1996, the parent company notified Maris that without corrections to certain noted deficiencies the agreement would be terminated. Without a favorable purchase offer and facing the imminent termination of the distribution relationship, the Maris family responded in January 1997 by filing lawsuits in both state and federal court.

The federal court complaint charged the parent company with violating the Sherman Act because the Wholesaler Equity Agreement’s prohibition of public ownership constituted an unreasonable restraint of trade that worked against the Maris family in their attempt to sell the business. On March 20, 1997, Anheuser-Busch terminated its agreement with Maris Distributing Company. At the time of the termination of the relationship, Maris Distributing had a 64 percent share of its market. That performance exceeded the 55 percent overall state market share for Anheuser-Busch and the national market share of 45 percent. Anheuser-Busch filed a countersuit claiming a breach of contract due to “merchandising and operating procedures that were seriously deficient” including the intentional sales of out-of-date beer. Anheuser-Busch sold the Gainesville/Ocala market to two distributors for approximately $13 million. One of the buyers was a close friend of August Busch III.
The federal litigation and appeal involved a complex analysis of vertical, non-price restraints. A seven-week trial resulted in a verdict for Anheuser-Busch on those issues left after the parent company's victory on a number of key summary judgment motions. The appellate court affirmed the trial court's determination that Maris Distributing did not show that Anheuser-Busch possessed the requisite market power that was central to their Sherman Act claim despite a number of imaginative arguments. The district court directed a verdict in favor of Anheuser-Busch on that issue. Despite that analysis, the district court still allowed the jury to consider whether Maris had proven actual anticompetitive effects due to the public ownership restriction in the Anheuser-Busch agreement. The jury determined that Maris had not carried the burden of proof. The trial and appeal to the Eleventh Circuit Court of Appeals proved to be extremely costly. The appellate court rebuffed attempts by Maris Distributing to reduce the cost of travel for Anheuser-Busch witnesses, costs associated with expedited transcripts used by Anheuser-Busch lawyers, and the depositions of fifteen individuals, including eight Marises, that were not used at trial.

The state litigation, however, proved to be more successful for the Maris family. Maris Distributing sued Anheuser-Busch on grounds of breach of contract, tortious interference with business relations, and wrongful termination. The Maris family hired Willie E. Gary, a Florida lawyer noted for defeating large corporate clients. Gary represented six businessmen who won a $240 million verdict against Walt Disney Co. in an intellectual property claim involving the concept for the Wide World of Sports Complex. Anheuser-Busch countered with veteran Washington, D.C. attorney Peter Moll, who had successfully represented the brewery for more than 25 years. Judge R. A. "Buzz" Green was forced to issue contempt citations early in the trial against the two attorneys and some of their associates. When that action failed to correct the behavior of the lawyers, Green appointed Stephen N. Bernstein to serve as special master to investigate the activities surrounding the trial. In his 35-page report, Bernstein concluded that the actions of the lawyers were "an insult to the integrity of the legal system."

Opening arguments commenced on May 2, 2001. The jury failed to accept Anheuser-Busch's claim that the termination was for cause despite testimony about the poor condition of delivery trucks, warehouses, and grounds surrounding the company, the repackaging and sale of out-of-date beer, the lack of attention by the Marises to recommendations from St. Louis, and fraudulent marketing practices. The jury delivered its verdict on August 3, finding that the fair market value of the business taken by the St. Louis brewer was $50 million and damages for lost sales amounted to $89,698,500. The larger award was quickly nullified as unavailable under Florida law, but Green added $22.6 million in interest charges.

On August 29, Judge Green denied a request by the Maris family to reinstate the original jury verdict of $139,658,500 and to rule that Anheuser-Busch violated Florida's Deceptive and Unfair Trade Practices Act. The later ruling deprived the Maris group of attorneys' fees. Green also rejected Anheuser-Busch's request for a new trial and a ruling that Maris Distributing had violated the Deceptive and Unfair Trade Practices Act. In response to out-of-court statements about the business practices of the Maris family, they filed a $1 billion defamation suit. No final resolution has yet been reached, and the Maris family has not collected on its judgment. As the former Yankee slugger's family remains mired in its long legal struggles with a corporate giant, the Yankees reentered the antitrust arena when they chose to increase their local broadcasting revenue.
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XVII. Cablevision and Yankees Entertainment & Sports Network

Despite having the most lucrative local baseball television broadcasting deal, George Steinbrenner decided in the late 1990s to regain control of the rights to Yankees games from fellow-Cleveland native and Cablevision chairman Charles Dolan and Dolan's son James, the CEO of Cablevision. On June 21, 2001, the team agreed to pay Cablevision, the parent company of Madison Square Garden (MSG) Network, $30 million to regain the rights beginning with the 2002 season. The payment came two days before a deadline set in April to resolve litigation involving the rights to Yankees broadcasts. During that litigation, the 2001 rights fees owed to the Yankees by MSG were established as $52 million for 85 games. Coupled with the successful reacquisition of 65 games broadcasted on over-the-air channel 5 in New York, the Yankees could repackage the local deal by moving approximately 130 games to cable with an additional 20 to 25 games on an over-the-air channel. Industry specialists predicted that a successful deal with each of the local cable providers in the metropolitan New York area could generate nearly $100 million more than the previous package for YankeesNets, the holding company formed in 1999 to oversee ownership of the Yankees, the NHL's New Jersey Devils and the NBA's New Jersey Nets.

Yankees telecasts were acquired in 1988 by Garden president Bob Gutkowski for $487 million. By adding the Yankees to the television rights for the NBA's Knicks and the NHL's Rangers, MSG created a powerful local network. Steinbrenner, for his part, used the money to acquire top free agents that pushed the Yankees back amongst the elite franchises in Major League Baseball.

YankeesNets worked throughout the summer to find a minority partner to help infuse additional capital into the new broadcasting entry. On September 10, 2001, the Yankees Entertainment and Sports Network (YES) was officially launched under the leadership of former AT&T Broadband president Leo Hindery, Jr. Hindery was part of a group that also included Goldman Sachs & Co., Quadrangle Group LLC, and Amos Hostetter, Jr. that purchased a 40% interest in the enterprise for approximately $350 million. Hindery immediately staked out his negotiating posture by arguing that YES should be included as part of the basic cable package on a similar footing with Fox Sports New York, MSG, and ESPN. Hindery balked at the prospect of accepting a less advertising-friendly premium slot that would not provide access to the huge New York area cable subscriber base. Hindery opened with an asking price of approximately $2 per subscriber, significantly higher than the $1.25 paid in the New York area for ESPN. Cablevision, with 2.9 million subscribers in the Bronx, Brooklyn, Long Island, Westchester County, Connecticut, and New Jersey countered by arguing that YES should only be available to their subscribers as part of a premium package. Within two weeks, Quadrangle and Hostetter had pulled their $190 million out of the deal and walked away forcing Goldman Sachs to increase their contribution. Cablevision and YES were squarely at odds as the New York community was devastated by the tragedy of September 11.

In November, YES reached a three-year agreement with WCBS-TV (Channel 2) to broadcast at least 20 games over-the-air. The deal solidified the 130–135 game package that YES expected to launch on cable or pay TV in March 2002. About 12 additional Yankees games were set to appear on national ESPN or Fox broadcasts.

In early February 2002, YES reached its first distribution deal with DirecTV and followed the deal quickly by signing up RCN with its coverage of Manhattan, Queens, sec-
tions of New Jersey, and Carmel, New York. Time Warner, with 1.7 million customers, and Comcast, with 500,000 subscribers quickly agreed to YES' demand that their programming be available on expanded basic cable. Time Warner and RCN quickly announced rate increases for their customers. Hughes Electronic and AT&T Broadband (Connecticut) also accepted YES' terms. Cablevision, however, refused to accept the YES offer. On March 26, Cablevision offered YES a premium channel spot with the rights to keep all revenues generated from Cablevision subscribers. However, YES argued that it deserved the opportunity to join MSG on Cablevision's basic plan. As the new baseball season drew near, YES ran full-page ads in local New York area newspapers targeting Cablevision for being the only major cable provider in the region without Yankees games. At the same time, Cablevision saw the value of their shares drop 52% from the previous year.

On April 9, Lenard Leeds of Leeds Morelli & Brown filed a lawsuit in federal district court in Central Islip on behalf of five New York residents against YES and Cablevision seeking both unspecified damages and a court order requiring an arbitrator to end the stalemate. The five also wanted to force the two parties to televise the games while negotiations continued. District Court Judge Thomas Platt was assigned the case and told Leeds on April 22 that he saw little merit in the action but gave Leeds three days to decide if he wished to pursue a class-action suit. YES and the Yankees were dropped from the action within a month of the original filing, squarely resting the plaintiffs' sole remedy on Cablevision. On June 15, Platt dismissed the suit.

On April 30, YES filed an antitrust lawsuit against Cablevision in federal district court in Manhattan. David Boies, lead counsel for Al Gore in the contested 2000 presidential election actions in Florida and for the federal government in its antitrust lawsuit against Microsoft, argued in his complaint that Cablevision was abusing its monopoly power in the cable market by refusing to negotiate with YES. The complaint attacked Cablevision for its ownership of the Knicks, Rangers, MSG, and FSNY as a monopoly, abusing its power in the local sports broadcasting market by favoring its own sports properties in an attempt to prevent YES from establishing its business. By filing its antitrust suit, YES was employing a time-honored technique to force a resolution of a business conflict. YES holds monopsony power with respect to the broadcast rights to the Yankees. By refusing to offer its product except on its own terms of price per subscriber and its basic cable demand as opposed to a premium offering, YES appears to be on no stronger antitrust grounds than Cablevision. Although both sides have argued about the number of consumers who opted for DirecTV's alternate outlet for access to the Yankees games, an analysis of the antitrust claims must consider the impact of that outlet on Cablevision's monopoly power.

In June, Cablevision requested that District Court Judge Deborah A. Batts grant them nearly two years to prepare for the trial and dismiss almost all of the antitrust claims filed by YES. As the impasse moved into the summer, Major League Baseball and the Players Association reached a new four-year collective bargaining agreement. On September 4, Batts allowed seven of the eight claims to stand while dismissing only one state antitrust claim. YES was given 20 days to file an amended complaint. Meanwhile, Charles and James Dolan were facing criticism as Cablevision's one-year stock loss reached 77% in September and Cablevision completed a method to address a projected cash deficit of over one-half billion dollars. Both YES and Cablevision have suffered severe losses as a result of their refusal to budge in negotiations, but pursuit of antitrust litigation as a method to solve a basic business difference is unlikely to be a major contributor to the resolution of the standoff.
XVIII. Conclusion

Although the broadcasting arm of the Yankees is still fighting an antitrust action, the history of the Yankees at the intersection of antitrust and labor law has been one of great success. From their early years when the acquisition of Carl Mays and Babe Ruth created the championship teams of the 1920s and established Yankees pinstripes as a symbol of excellence through the Steinbrenner Era of salary arbitration and free-agent acquisitions, the team has exploited the legal and business landscape to create one of the greatest traditions in American sports. As the Yankees enter the twenty-first century, there appear to be few obstacles to their continued success.
23. Id.
24. Id. at 41.
25. Id. at 43.
27. Id. 109 Misc. at 140, 179 N.Y.S. at 499–500.
28. Id. at 141–142, 179 N.Y.S. at 500–501.
29. Id. at 143, 179 N.Y.S. at 502.
30. Id. at 144, 179 N.Y.S. at 501–502.
31. Id. at 148, 179 N.Y.S. at 504.
32. Id. at 149, 179 N.Y.S. at 504.
33. Id. at 150, 179 N.Y.S. at 505.
34. Id. at 152, 179 N.Y.S. at 506.
35. Sowell, supra note 21, at 56.
36. In writing this section, I relied upon Marshall Sweeney, The Life That Ruth Built: A Biography (1975). I spent three semesters as an undergraduate in Professor Sweeney’s history classes at the University of Notre Dame.
37. Id. at 131.
39. In writing this section, I primarily used the account of Danny Gardella’s career and lawsuit as discussed in Lowenthal, supra note 5.
42. 172 F. 2d. 408 at 408–409.
43. For my discussion of the Toole case, I have relied on Earl Toole’s brother Bill Toole and son Pete Toole about his career. My interest in seeking out family members was to learn more about the case and to resolve an issue raised by the record of his career contained on his official card housed at the Baseball Hall of Fame Library. The card showed that Earl Toole was a member of the Boston organization for a total of seven years before his trade to the Yankees. During that time, he played for five seasons in the minors and served two years in the military. Also, contrary to nearly every account of his case, he played in the Pacific Coast League for two years after he was supposedly blacklisted for his refusal to report to Binghamton.
44. For a discussion of Greensboro and all other minor league teams in North Carolina, see L. Chris Hopley, Professional Baseball in North Carolina: An Illustrated City-by-City History, 1901–1996.
45. Id. at 47.
48. Id. at 94.
49. Id.
50. Id. at 94–95.
51. 202 F.2d 198 (9th Cir. 1953).
52. 202 F.2d 428 (6th Cir. 1953).
53. 202 F.2d 413 (6th Cir. 1953).
55. Id. at 557.
56. Id.
Endnotes

57. Id.


59. See also Mickey Mantle & Mickey Haasoffmite, All My Octobers: My Memoirs of Twelve World Series When the Yankees Ruled Baseball 97 (1994).


62. Id. at 408.

63. Id. at 410.

64. Id. at 411.

65. Id.


69. Id. at 272–283.

70. Id. at 286.


72. For a discussion of events from Don Drysdale's perspective, see Don Drysdale & Bob Vesi. Once a Bum, Always a Dodger: My Life in Baseball from Brooklyn to Los Angeles (1990), pp. 125–138.


74. Drysdale, supra note 72, at 126.

75. Id. at 129–130.

76. Id. at 136.


78. Id.

79. For this section, I relied on numerous newspaper articles obtained from LexisNexis and Westlaw concerning specific arbitration hearings. For helpful information on the Internet consult Dave Pappas' fussiness of baseball information on arbitration at http://www.fedxphotos.com/baseball/data.htm.


81. Id.


83. Davis Loses in Arbitration, N.Y. Times., §5, at 11.

84. Id.


86. Id.


89. Id.
Chapter 19 Endnotes

1. The John W. and Ruth H. tunaich Professor of Law at Wake Forest University School of Law. The author gratefully acknowledges the research assistance of Nancy Ladd, Jeff Lepchenko and Paul McNamara. The author also wishes to thank Dean Robert K. Walsh and Wake Forest University for providing financial support for this project.
3. Id.
9. Id. at 32.
10. Id. at 30.
11. Tyguel, supra note 6, at 30.
14. Ribowsky, supra note 7, at xiii.
15. Tyguel, supra note 6, at 30.
17. Tyguel, supra note 6, at 33.
18. Id. at 34.