

# A CELEBRATION OF BASEBALL UNIONISM

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## PREFACE

We are proud to begin this issue of the *Journal of Legislation and Public Policy* with a unique collection of materials that recount and honor the contributions and impact of the late, great Marvin Miller. Mr. Miller served as the Executive Director of the Major League Baseball Players Association (MLBPA) from 1966 until his retirement in 1983. His accomplishments as the leader of that union are too numerous to recount in this brief preface and, in any event, are much more articulately and authoritatively described in the pages that follow. For now it will suffice to say that when a contemporary described Mr. Miller as “the Moses who led Baseball’s children of Israel out of the land of bondage,”<sup>1</sup> he was not alone in the effusiveness of his praise, nor unusually hyperbolic in his assessment.<sup>2</sup> To put it simply: Marvin Miller revolutionized America’s pastime.

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1. Richard Goldstein, *Marvin Miller, Union Leader Who Changed, Baseball, Dies at 95*, N.Y. TIMES, Nov. 27, 2012, [http://www.nytimes.com/2012/11/28/sports/baseball/marvin-miller-union-leader-who-changed-baseball-dies-at-95.html?hp&\\_r=2&](http://www.nytimes.com/2012/11/28/sports/baseball/marvin-miller-union-leader-who-changed-baseball-dies-at-95.html?hp&_r=2&) (quoting Peter Seitz, Letter to the Editor, *Miller and Kuhn: New Free Agents*, N.Y. TIMES, Jan. 9, 1983, <http://www.nytimes.com/1983/01/09/sports/1-miller-and-kuhn-new-free-agents-154451.html>).

2. For example, Bob Locker, a former player, said of Miller: “He ought to have a statue in front of the Baseball Hall of Fame—and every other sports hall of fame.” Richard Sandomir, *Grudges Loomed Large in Hall’s Snubs of Miller*, N.Y. TIMES, Nov. 28, 2012, at B15. Arthur Ashe—never a member of the Players Association—has said that, “Marvin Miller [did] more for the welfare of black athletes than anyone

Last April, Mr. Miller returned to his *alma mater*, New York University, to participate in “A Celebration of Marvin Miller & Baseball Unionism: The Rise and Role of the Major League Baseball Players Association”—a panel discussion hosted by the Center for Labor and Employment Law at the N.Y.U. School of Law. In remarks delivered that evening, Mr. Miller reflected on his role as the Executive Director of the Players Association, and recounted the history of the union’s early efforts to win benefits and bargaining rights for major league baseball players. Following Mr. Miller’s remarks, a panel of distinguished contemporaries, sportswriters, and professors, including current Players Association Executive Director Michael Weiner and former General Counsel Richard Moss, discussed Mr. Miller’s legacy and impact on the MLBPA. Altogether, the event provided a fascinating first-hand account of some of the most formative events at the intersection of American sports and labor. And although we could not have known it then, the event sadly also marked one of the last times Mr. Miller would publicly discuss his part in this history before his passing on November 27, 2012. Accordingly, we were honored when the organizers of the event, Professor Ross Davies and N.Y.U. Law Professor Samuel Estreicher, approached us about publishing some of what we had witnessed.

We jumped at the chance for several reasons. For one, baseball holds a unique place in the history of American labor law, and the Players Association is one of the great success stories of the American labor movement. This connection is most adeptly explained in Professor Davies’ opening essay, *Along Comes the Players Association: The Roots and Rise of Organized Labor in Major League Baseball*, which provides a sweeping historical account of labor’s role in baseball and baseball’s role in labor. But the story of the Players Association is in many ways Mr. Miller’s story, and his account adds first-person detail and context to important events in the union’s history. Some of that history is captured in the transcript of Mr. Miller’s remarks, entitled *Reflections on Baseball and the MLBPA*, which are preceded by a touching introduction written by Mr. Miller’s son, Peter. Also in-

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else.” *Supreme Court Sluggers – Slugger’s Special, Marvin Miller*, THE GREEN BAG, <http://www.greenbag.org/sluggers/sluggers/Miller-012/cards/Miller%20special%20edition%202012.pdf>.

Bill James, baseball’s foremost statistician added: “If baseball ever buys itself a mountain and starts carving faces in it, one of the first men to go up is sure to be Marvin Miller.” *Id.* And Hall of Famer Brooks Robinson assessed Mr. Miller’s impact on baseball this way: “[T]here have been three men that have made [baseball] better: Babe Ruth, Jackie Robinson and Marvin Miller.” THANKSMARVIN.COM, <http://www.thanksmarvin.com/index-main.html> (last visited Apr. 16, 2013).

cluded in this issue is an edited version of the panel discussion which immediately followed Mr. Miller's remarks. That transcript, entitled *Roundtable Discussion on Marvin Miller, the MLBPA, and Baseball*, includes additional insights into Mr. Miller's role in the history of the Players Association. Finally, we conclude with *Marvin Miller's Lasting Legacy*, an essay by current MLBPA Executive Director Michael Weiner, which explains the enduring imprint that Mr. Miller left on baseball, its union, and its players.

As we hope our readers will agree, the significance of Mr. Miller's contributions to the field of labor is reason enough to chronicle them in any law journal. But in closing we offer the following by way of explanation for featuring them here, in a journal dedicated to the study of legislation and public policy. Most practically speaking, few areas of American life have been as closely regulated as labor, and the regulation of labor has been a centrally important issue in the fields of legislation and public policy throughout our history,<sup>3</sup> and during our present.<sup>4</sup> The materials that follow chronicle one small part of that history, but they also reveal an inside look at the often overlooked human element of labor relations. The internal conflicts felt by labor leaders, the risks borne by union members, and the courage required to act for the benefit of future tradesmen are all colorfully illustrated in the pages that follow. In this regard, we trust that these materials will serve as a resource to scholars not just of baseball, but of labor law and labor relations more generally.

Finally, and on a lighter note, we would be remiss if we failed to note that, while it may not be immediately self-evident, there are a great many connections between baseball and our legislative process. For example, members of Congress have quite literally dropped everything to play ball nearly every summer since 1909, when Representative John Tener, a former professional ballplayer from Pennsylvania, organized the first game between House Democrats and Republicans.<sup>5</sup> In fact, in 1914, so many members of the House turned up to play or watch that no quorum was even present to vote on a pressing appropriations bill. Thus, as it is with so much of American life, baseball is intertwined not just with the objects of our legislation, but with its means of production as well.

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3. See, e.g., *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937); *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957); *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975).

4. See Employee Free Choice Act of 2009, H.R. 1409, 111th Cong. (2009).

5. *History*, THE ANNUAL CONGRESSIONAL BASEBALL GAME FOR CHARITY, <http://www.congressionalbaseball.org/history.html> (last visited Feb. 19, 2013).

With that short overview and explanation, we present *A Celebration of Baseball Unionism*.

Paul D. Brachman  
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# ALONG COMES THE PLAYERS ASSOCIATION: THE ROOTS AND RISE OF ORGANIZED LABOR IN MAJOR LEAGUE BASEBALL

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On April 24, 2012, Marvin Miller delivered a speech at New York University in which he reflected at length on the history of the Major League Baseball Players Association (MLBPA) and his role in the development of the labor union he led from 1966 to 1983. This article is an introduction in two parts to that speech and the panel discussion that followed it. Part I is a chronology of highlights of labor-management relations in major league baseball. Part II draws inferences about the MLBPA from events on that timeline. It is not the entire story of organized labor in major league baseball, or even of Miller and the union he led. But it is enough, I hope, to put his recollections and the subsequent discussion in mature perspective.

## I.

### TIMELINE OF BASEBALL'S LABOR-MANAGEMENT HISTORY

The history of labor-management relations in major league baseball is very long, often complicated or obscure (in part because the documentary record is incomplete), and occasionally exciting. There is enough of it to fill volumes. It has. And some of them are very good, including Charles Korr's *The End of Baseball as We Knew It* (2002), Lee Lowenfish's *The Imperfect Diamond* (1980, 2010), Marvin Miller's *A Whole Different Ball Game* (1991, 2004), and Brad Snyder's *A Well-Paid Slave* (2006). But the very length and complexity of that history, and the depth of the storytelling about particular parts of it, can leave the observer unable to get a sense of the larger picture—of the essential characteristics of the relationship between laboring players and managing owners, and of the large movements and major changes in those relationships over nearly 150 seasons of work that is called play. This article-in-the-form-of-a-timeline is an attempt to provide that absent sweeping portrait of a long relationship. Each

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\* Professor of Law, George Mason University; Editor-in-Chief, *The Green Bag*. Thanks to Paul Brachman, Samuel Estreicher, Steve Fehr, Daniel Friedman, Bert Forsythe, Paul Haas, Bob Harris, Kevin McGuiness, Arthur Miller, Peter Miller, Howard Rosenthal, Brad Snyder, Torrey Whitman, and Brian Wood.

entry is necessarily a little sweeping brush stroke of its own—a small and selective collection of fact and commentary and sources relating to an episode and its context. The intended result is (1) generally a study that can be viewed from 20,000 feet or at close range, which can be a useful resource to scholars of baseball, labor, and law at either altitude, and (2) particularly a portrayal of the workplace into which Marvin Miller stepped in 1966 and which he left behind in 2012.

Two important themes will be glaringly obvious from a quick read of the timeline below. They, and the most obvious question they point toward, are worth considering summarily upfront.

First, in 1885, major league baseball players (that is, people trying to make a buck in baseball as athletes, hereafter “players”) began trying to coordinate their dealings with major league baseball team owners (that is, people trying to make a buck in baseball as entrepreneurs, hereafter “owners”).<sup>1</sup> Generally speaking, the players were not very successful in their dealings with the owners for the next eighty years or so.<sup>2</sup> Then, in 1966, the players hired Miller to help them coordinate their dealings with the owners.<sup>3</sup> Ever since, the players have been pretty successful in their dealings with the owners, working through the MLBPA and executive directors Miller (1966–1983), Donald Fehr (1983–2009), and Michael Weiner (2009–present).<sup>4</sup> Correlation does not necessarily indicate causation, but the standard view among experienced observers of professional baseball is that the players’ failure-then-Miller-then-success sequence in labor-management relations is indeed causal. Miller himself was always modestly dismissive on the subject, but he did not deny it either.

Second, the following chronology contains plenty of evidence showing that from early on both the players and the owners recognized (a) the potential power of an organized body of players—the power to influence, if not dictate, the conditions of the players’ working lives and the return on the owners’ investments; (b) the most effective means of exercising that power—by allocating their labor, and sometimes withholding or at least threatening to withhold it; and (c)

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1. *History of the Major League Baseball Players Association*, MAJOR LEAGUE BASEBALL PLAYERS ASS’N, <http://mlbplayers.mlb.com/pa/info/history.jsp> (last visited Apr. 12, 2013).

2. *Id.*

3. *Id.*

4. *Id.* Fehr served on an interim basis for the first two years of his tenure. *Don Fehr Announces Retirement*, MAJOR LEAGUE BASEBALL PLAYERS ASS’N (June 22, 2009, 5:32 PM), [http://mlb.mlb.com/pa/news/article.jsp?ymd=20090622&content\\_id=5470258&vkey=mlbpa\\_news&fext=.jsp](http://mlb.mlb.com/pa/news/article.jsp?ymd=20090622&content_id=5470258&vkey=mlbpa_news&fext=.jsp).

the most important factors limiting that power—the availability of substitute labor and the unavailability of alternate employment.

And the question: Why then did it take so very long for the players to effectively organize? To say that they were waiting for Marvin Miller all those years but did not know it is to simultaneously give Miller too much credit and to make light of his contributions. He was an important figure in his own time, but he was not some sort of magical labor elf. He came to his job at the MLBPA as an expert and experienced labor leader, and did work in that capacity that contributed to the success of the MLBPA. The question here is about the forces that were in play before his time—from the players' perspective, the forces that made it hard to build a union; and from the owners' perspective, the forces that made it hard to anticipate and thus perhaps forestall the union that was to come—and, to a lesser extent, the conditions under which players' professional lives changed so much during and after his tenure at the head of the MLBPA.

There probably is no such thing as a complete answer to that question, but the chronology presented here may help. A cautionary note for seasoned consumers of law-and-baseball scholarship: the baseball antitrust exemption (with its famous trio of Supreme Court cases) is important to the chronology, but it does not enjoy its customary position at the center of the story. The centerpiece here is the evolving collective organization and action of working players. The antitrust exemption is undoubtedly an important feature of the environment in which major league baseball owners and players operated and operate, but its importance should not be exaggerated. Consider, for example, that in 1975—shortly after the Supreme Court (in *Flood v. Kuhn*<sup>5</sup>) reaffirmed the antitrust exemption and its empowerment of baseball team owners to impose the reserve clause on players—the players nevertheless extricated themselves from most of the constraints of the reserve clause via collectively-bargained arbitration.<sup>6</sup> In other words, the National Labor Relations Act enacted by Congress and the President in 1935 (which protects most workers' unions and collective bargaining<sup>7</sup>) enabled the players' union to trump—or at least work around—the antitrust exemption created by the Supreme

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5. 407 U.S. 258, 267–69 (1972).

6. *Nat'l & Am. League Professional Baseball Clubs v. Major League Baseball Players Ass'n*, 66 Lab. Arb. Rep. (BNA) 101 (1975); *Kansas City Royals Baseball Corp. v. Major League Baseball Players Ass'n*, 532 F.2d 615 (8th Cir. 1976).

7. 29 U.S.C. §§ 151–169 (2006).

Court in 1922 and 1953 (which protects only major league baseball owners' monopoly).<sup>8</sup>

**September 1879:** The National League owners secretly agree to honor each other's reservation of a limited number of players—five per team. That is, the owners promise to refrain from competing for the services of each other's star players.<sup>9</sup>

**February 1883:** The National League, American Association, and Northwestern League enter the first "National Agreement" among the major leagues, under which the owners agree, among other things, to expand the reservation system to cover eleven players per team—at a time when eleven was the size of a standard team roster.<sup>10</sup> According to John Montgomery Ward, the first baseball labor leader, who was also both a star player and a successful lawyer:

By reservation is meant the privilege each club has of claiming for each succeeding year the services of its players, and this "right" is founded, primarily, on an agreement between the clubs themselves of each association. Its effect is that a contract for one season is made perpetual, at the option of the club, and a player, once signed by a club, belongs to the club forever. There is no escape for him, except by the consent of the club which owns him; and if, for any reason, he does not want to engage with the same club, for another year, he is forced out of base-ball [*sic*] entirely.<sup>11</sup>

"Forced out . . . entirely" is, in this context, a euphemism for blacklisting.<sup>12</sup>

**October 1884:** Labor-management relations in the major leagues draws the color line. The release of catcher Moses Walker by the Toledo Blue Stockings of the American Association marks the end (until 1947) of employment in the major leagues for players of recognized

8. Fed. Baseball Club v. Nat'l League, 259 U.S. 200 (1922); Toolson v. N.Y. Yankees, Inc., 346 U.S. 356 (1953).

9. Reserve Agreement Among National League Owners (Sept. 30, 1879), in ROBERT P. GELZHEISER, LABOR AND CAPITAL IN 19TH CENTURY BASEBALL 176 (2006); see also H.R. REP. NO. 82-2002, at 22–24 (1952); Ed Edmonds, *Arthur Soden's Legacy: The Origins and Early History of Baseball's Reserve System*, 5 ALB. GOV'T L. REV. 38, 48–50 (2012).

10. H.R. REP. NO. 82-2002, at 24; Agreement Among National, American, and Northwestern Leagues (1883), in EARLY INNINGS: A DOCUMENTARY HISTORY OF BASEBALL, 1825–1908, at 127–30 (Dean A. Sullivan ed., 1997); see also *The Commissionership: A Historical Perspective*, MLB.COM, [http://mlb.mlb.com/mlb/history/mlb\\_history\\_people.jsp?story=com](http://mlb.mlb.com/mlb/history/mlb_history_people.jsp?story=com) (last visited Apr. 15, 2013).

11. John Montgomery Ward, *Our National Game*, THE COSMOPOLITAN, Oct. 1888, at 443, 446.

12. H.R. REP. NO. 82-2002, at 24.

African descent,<sup>13</sup> a practice that had been extremely rare even before then.<sup>14</sup> Although a few prominent whites in the major leagues (including Ward in the late 19th century and New York Giants manager John McGraw in the early 20th) make some small noises about breaking the color line, there is no doubt that players and owners (both individually and in their respective organized forms) share responsibility for drawing the line, and for the decades of race discrimination that followed.<sup>15</sup> Indeed, every success, and every failure, by major league players, owners, and teams from this time until at least 1946 should be read with an asterisk.<sup>16</sup>

**October 1885:** The Brotherhood of Professional Base Ball Players—the first baseball labor union—is formed in secret by Ward and eight of his teammates on the New York Giants, who then organize chapters at other major league teams. The Brotherhood goes public in August 1886.<sup>17</sup>

**November 1887:** The Brotherhood and the National League negotiate a new player contract, in which “[c]oncessions were made on both sides, and the result is a more equitable form of agreement between the club and the players.” The contract includes the reserve clause, which perpetuates each owner’s control over the movement of individual players on that owner’s team (and thus also players’ compensation).<sup>18</sup>

**June 1889:** The *Sporting News* reports that “the players . . . known as the Brotherhood are about to inaugurate a strike which will

13. SOL WHITE, *SOL WHITE’S OFFICIAL BASE BALL GUIDE* 81 (1907); see also DAVID W. ZANG, *FLEET WALKER’S DIVIDED HEART: THE LIFE OF BASEBALL’S FIRST BLACK MAJOR LEAGUER* 45 (1995).

14. BILL JAMES, *THE NEW BILL JAMES HISTORICAL BASEBALL ABSTRACT* 166 (2001) (“Segregation in baseball dates back at least to 1867; Cap Anson’s famous refusal to play against black players, which came twenty years later, is more properly described as a time when efforts to break the color line were turned back, rather than the time when the color line was established.”).

15. ROBERT PETERSON, *ONLY THE BALL WAS WHITE: A HISTORY OF LEGENDARY BLACK PLAYERS AND ALL-BLACK PROFESSIONAL TEAMS* 16–34 (1970); WHITE, *supra* note 13, at 81–87.

16. See LESLIE A. HEAPHY, *THE NEGRO LEAGUES, 1869-1960*, at 141 (2003); Edward McClelland, *Satchel Paige vs. Babe Ruth: Integrating Major League Baseball Retroactively with Strat-o-Matic Cards*, *SLATE* (Oct. 28, 2009), [http://www.slate.com/articles/sports/sports\\_nut/2009/10/satchel\\_paige\\_vs\\_babe\\_ruth.html](http://www.slate.com/articles/sports/sports_nut/2009/10/satchel_paige_vs_babe_ruth.html).

17. HARRY CLAY PALMER ET AL., *ATHLETIC SPORTS IN AMERICA, ENGLAND AND AUSTRALIA* 144–50 (1889); DAVID STEVENS, *BASEBALL’S RADICAL FOR ALL SEASONS: A BIOGRAPHY OF JOHN MONTGOMERY WARD* 42 (1998); JOHN MONTGOMERY WARD, *BASE-BALL: HOW TO BECOME A PLAYER WITH THE ORIGIN, HISTORY, AND EXPLANATION OF THE GAME* 32 (1888).

18. LEONARD KOPPETT, *KOPPETT’S CONCISE HISTORY OF MAJOR LEAGUE BASEBALL* 57–58 (2d expanded ed. 2004); WARD, *supra* note 17, at 32.

be the biggest thing ever heard of in the base ball world” in response to a new salary cap system imposed by the owners.<sup>19</sup>

**November 1889:** The strike does not happen. Instead, Brotherhood members, led by Ward, announce the formation of their own league—the Players’ National League of Base-Ball Clubs—which will operate competitively during the 1890 season.<sup>20</sup> Players who move to the Players’ League enjoy nearly complete success defending lawsuits filed against them by National League owners who claim that the reserve clause in their contracts bars the players from working for any professional baseball team other than the National League team with which they have contracted.<sup>21</sup>

**November 1890:** Under financial strain and suffering from a combination of mismanagement and defections to the National League by both owners and players, the Players’ League folds. The Brotherhood does the same.<sup>22</sup>

**June 1900:** After “incubating for several years,” a second union is formed—the Players’ Protective Association:

Team meetings were held from time to time [during the 1900 season] to consider a plan of organization submitted by President [Samuel] Gompers, of the [American] Federation of Labor. When everything had been shaped up for organization a meeting of delegates from every team in the National League was held at the Sturtevant House, in New York, June 10th. At this meeting the League Players’ Protective Association was permanently organized with Charles Zimmer, president; William Clarke, treasurer, and Hugh Jennings, Secretary. Ex-player Harry L. Taylor, of Buffalo, was elected attorney for the Association. Later the American

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19. *Big Strike Imminent*, SPORTING NEWS, June 22, 1889, at 1; see also Ethan Lewis, “A Structure to Last Forever”: The Players League and the Brotherhood War of 1890 (1995) (unpublished M.A. thesis, Princeton University), available at <http://www.ethanlewis.org/pl/ch1.html>.

20. PALMER ET AL., *supra* note 17, at 125–29, 146–50 (reproducing and explaining the players’ November 4, 1889 announcement); GELZHEISER, *supra* note 9, at 116–45.

21. See, e.g., *Metro. Exhibition Co. v. Ewing*, 42 F. 198 (C.C.S.D.N.Y. 1890); see also ROGER I. ABRAMS, *LEGAL BASES: BASEBALL AND THE LAW* 19–21 (1998). It is during the period from the 1880s to the turn of the century—beginning well before the key federal antitrust laws were even enacted (the Sherman Act in 1890 and the Clayton Act in 1914)—that the nearly perpetual agitation, litigation, and negotiation between players and owners relating to the reserve clause dates. See, e.g., *Allegheny Base-Ball Club v. Bennett*, 14 F. 257 (C.C. Pa. 1882); *Philadelphia Ball Club v. Lajoie*, 51 A. 973 (Pa. 1902).

22. *The Closing Rites*, SPORTING NEWS, Nov. 22, 1890, at 2; *Ward’s Funny Break*, SPORTING NEWS, Nov. 22, 1890, at 1; see also JOHN THORN, *BASEBALL IN THE GARDEN OF EDEN: THE SECRET HISTORY OF THE EARLY GAME* 236–42 (2011).

League and Eastern League players were organized into separate branch organizations.<sup>23</sup>

In a new environment of league competition for players, territory, and attendance (primarily within and between the established National League and the new American League), the Players' Protective Association has some leverage, and thus also some success in negotiations with the leagues (gaining some limitations on involuntary transfers of major league players to minor league teams, for example) during its first two years of existence.<sup>24</sup>

**July 1903:** After the American and National Leagues negotiate a "peace treaty" in January 1903,<sup>25</sup> the Players' Protective Association loses much of its bargaining power and many of its gains in working conditions. The union soon folds: "A meeting in New York to reorganize the Players' Protective Association is slimly attended and results in a fizzle."<sup>26</sup>

**July 1905:** Although the players are without a union, mixed news about organizing continues to percolate. For example, on July 10, the *Pittsburgh Press* reports that, "Herman Robison of the American Federation of Labor who has been trying to organize the professional baseball players into a union says that he has given up the scheme as a bad job and that the players do not take kindly to his proposition." And then the next day the same newspaper reports that, "Two of the most prominent players on the New York National League team [the Giants], whose names cannot be used for obvious reasons, are said to be working for the formation of a baseball players' branch of the American Federation of Labor . . . ." <sup>27</sup> And so it is not clear whether

23. *The Players' Protective Association*, in REACH'S OFFICIAL BASE BALL GUIDE FOR 1901, at 13 (1901). Zimmer, Clarke, and Jennings were all prominent players at the time. See *Boileryard Clarke*, RETROSHEET, <http://www.retrosheet.org/boxesetc/C/Pclarb103.htm> (last visited Apr. 15, 2013); *Chief Zimmer*, RETROSHEET, <http://www.retrosheet.org/boxesetc/Z/Pzimmc101.htm> (last visited Apr. 15, 2013); *Hughie Jennings*, RETROSHEET, <http://www.retrosheet.org/boxesetc/J/Pjennh101.htm> (last visited Apr. 15, 2013).

24. See, e.g., REACH'S OFFICIAL AMERICAN LEAGUE BASE BALL GUIDE FOR 1902, at 7–14, 17, 25, 32, 35, 37, 46–47, 117–125 (1902); see also J. Gordon Hylton, *The Historical Origins of Professional Baseball Grievance Arbitration*, 11 MARQ. SPORTS L. REV. 175, 179–80 (2001).

25. *The American-National Peace Treaty*, in REACH'S OFFICIAL AMERICAN LEAGUE BASE BALL GUIDE FOR 1903, at 122–32 (1903).

26. *The Chronology of 1903*, in REACH'S OFFICIAL AMERICAN LEAGUE BASE BALL GUIDE FOR 1904, at 79 (1904) (entry for July 29); see also LEE LOWENFISH, *THE IMPERFECT DIAMOND: A HISTORY OF BASEBALL'S LABOR WARS* 62–66 (3d ed. 2010).

27. *New York Giants Plan to Form a Labor Union*, PITTSBURGH PRESS, July 11, 1905, at 14; *Toothsome Tid-bits*, PITTSBURGH PRESS, July 10, 1905, at 12. I thank Bob Harris for bringing this to my attention.

the players have given up on unions for the time being, or whether organized labor has given up on the players.

**April 1911:** Pitcher Addie Joss of the Cleveland Naps (now Indians) dies of tubercular meningitis. His teammates announce their intention to attend his funeral in Toledo, although they are scheduled to play the Detroit Tigers that day. American League president Ban Johnson insists that the game be played. The Naps players announce they will strike. The game is postponed. Johnson announces that “[t]here is no strike, dissatisfaction or misunderstanding over that game,” which “will be played later in the season.”<sup>28</sup>

**September 1912:** After a season in which the members of the Detroit Tigers strike in support of teammate Ty Cobb, and are fined for doing so,<sup>29</sup> players from both major leagues meet in secret to plan a new labor union. The Fraternity of Professional Baseball Players of America—the third baseball labor union—is formed under the leadership of lawyer and former major league player Dave Fultz, with Christy Mathewson, Jeff Sweeney, Mickey Doolin, and Ty Cobb on its board.<sup>30</sup>

**January 1914:** Like the Players’ Protective Association a decade earlier, the Fraternity of Professional Baseball Players enjoys early success at the bargaining table due at least in part to interleague competition for players (in this case between the established American and National major leagues and the new Federal League, which had been founded in 1913). After the Fraternity sends a list of seventeen proposals to the major league owners in November 1913—accompanied by a promise that members of the union will refuse to sign their employment contracts for the 1914 season (that is, strike) until the players’ concerns are addressed—the union and the leagues negotiate the “Cincinnati Agreement.” It embodies several of the proposals (mostly

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28. *Addie Joss Buried at Toledo, Big Crowd Pays Its Last Respects, Game Put Off So Players May Attend*, SPORTING NEWS, Apr. 20, 1911, at 1; see also MICHAEL COFFEY, 27 MEN OUT: BASEBALL’S PERFECT GAMES 34–35 (2010).

29. The Tigers use replacement players for the one-game strike, and lose that game to the Philadelphia Athletics on May 18, 1912 by a score of 2–24, supplying evidence that (a) owners are willing to use replacements and there are replacements willing to play and (b) replacements are not as good as regulars. See George Gipe, *Ty Cobb’s Anger Led To Baseball’s First Strike, A Comedy Of Errors*, SPORTS ILLUSTRATED SI VAULT (Aug. 29, 1977), <http://sportsillustrated.cnn.com/vault/article/magazine/MAG1092763/index.htm>; *Events of Saturday, May 18, 1912*, RETROSHEET, [www.retrosheet.org/boxesetc/1912/05181912.htm](http://www.retrosheet.org/boxesetc/1912/05181912.htm) (last visited Apr. 15, 2013).

30. Francis C. Richter, *The “Base Ball Players’ Fraternity”*, in THE REACH OFFICIAL AMERICAN LEAGUE BASE BALL GUIDE FOR 1913, at 11–12, 79 (1913); see also Scott Longert, *The Players’ Fraternity: They fought the good fight*, 30 BASEBALL RES. J. 40 (2001); Brian McKenna, *Dave Fultz*, SABR BASEBALL BIOGRAPHY PROJECT, <http://sabr.org/bioproj/person/1857946b> (last visited Mar. 7, 2013).

those involving communications and working conditions) but leaves the reserve system and league governance practically intact.<sup>31</sup>

**July 1914:** Minor league first baseman Clarence Kraft is transferred from a double-A team to a single-A team in violation of the Cincinnati Agreement. (The union represented minor-leaguers as well as major league players.) Fultz warns American League president Johnson (who sits on the National Commission that governs some of the minor leagues) that all members of the union will strike if the Cincinnati Agreement is not followed in the Kraft case. Johnson arranges for Kraft to be dealt with according to the Agreement, and the strike does not happen.<sup>32</sup>

**February 1915:** “[T]he Base Ball Players’ Fraternity, which has come to be a power in the game to be reckoned with,” sends a list of nine more proposals to the owners in late 1914. But the owners, perhaps anticipating the failure of the Federal League, indefinitely postpone consideration of the new proposals at their annual winter meeting. The meeting itself is delayed from its normal January date until February by proceedings before Judge Kenesaw Mountain Landis relating to an antitrust lawsuit filed by the Federal League against the major leagues in the United States District Court for the Northern District of Illinois.<sup>33</sup>

**November 1916:** The Fraternity of Professional Baseball Players presents several more proposals to the owners. But with the demise of the Federal League after the 1915 season, market pressure on owners to accommodate players has eased, the Fraternity has lost much of its leverage in negotiations,<sup>34</sup> and labor-management tensions have risen (including strike rumors in the spring).<sup>35</sup> Three of the four proposals relate to the minor leagues, and they are promptly rejected by the mi-

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31. *The Base Ball Players’ Fraternity*, in THE REACH OFFICIAL AMERICAN LEAGUE BASE BALL GUIDE FOR 1914, at 7, 11, 194–202, 214–25, 533–34, 539–41 (1914); see also DANIEL R. LEVITT, THE BATTLE THAT FORGED MODERN BASEBALL: THE FEDERAL LEAGUE CHALLENGE AND ITS LEGACY 71–75 (2012).

32. *Evil Days for Base Ball: The Kraft Case Will Have Its Aftermath*, SPORTING LIFE, Aug. 1, 1914, at 3; THE REACH OFFICIAL AMERICAN LEAGUE BASE BALL GUIDE FOR 1915, at 416 (1915); THE REACH OFFICIAL AMERICAN LEAGUE BASE BALL GUIDE FOR 1916, at 18 (1916); see also Longert, *supra* note 30, at 43.

33. THE REACH OFFICIAL AMERICAN LEAGUE BASE BALL GUIDE FOR 1915, *supra* note 32, at 366–67, 416–21; see also H.R. REP. NO. 82-2002, at 56–57 (1952); G. EDWARD WHITE, CREATING THE NATIONAL PASTIME: BASEBALL TRANSFORMS ITSELF 1903–1953, at 104–08 (1996).

34. Herbert Daly, *The Magnates and the Players*, SPORTING LIFE, Jan. 22, 1916, at 7.

35. *Federal League Funeral Is Postponed*, SPORTING LIFE, Mar. 4, 1916, at 7; *Kauff and Johnston*, SPORTING LIFE, Mar. 11, 1916, at 2.

nor league owners.<sup>36</sup> *Sporting Life* reports that the Fraternity is prepared to call a nationwide major league/minor league strike if the four proposals are not accepted.<sup>37</sup>

**January 1917:** Samuel Gompers, president of the American Federation of Labor, announces his support for the Fraternity of Professional Baseball Players:

I heartily approve of the action of the Players' Fraternity in threatening to strike. I have consulted with [president of the Fraternity] Mr. Fultz many times about the new organization and I am familiar with its troubles. The fraternity will have our support in any action it may take to improve existing conditions.<sup>38</sup>

Owners and league officials respond that they will use replacement workers and break the union. American League president Ban Johnson tells *The New York Times*:

I cannot believe the players will go through with this strike that has been threatened. If they do, it will mean the elimination of Fultz and the elimination of the fraternity. Organized ball cannot and will not tolerate any such action by the players. If the players want to strike, let them go ahead. There will be baseball just the same this Summer.<sup>39</sup>

Fultz announces plans to affiliate with the AFL in order to "bulwark us up," and sets a strike date of February 20.<sup>40</sup>

**February 1917:** The Fraternity's affiliation with the American Federation of Labor falls through, apparently because the White Rats—the vaudeville performers union within the AFL that has jurisdiction over all "entertainers" represented by the AFL—has asserted that "baseball is an amusement, and that the players are entertainers. As such they would be classified the same as vaudeville performers, and if they join the American Federation of Labor they would be compelled to come in under the White Rats' charter."<sup>41</sup> Fultz is surprised

36. THE REACH OFFICIAL AMERICAN LEAGUE BASE BALL GUIDE FOR 1917, at 114, 117 (1917).

37. Frederick G. Lieb, *Players Take Drastic Action*, SPORTING LIFE, Nov. 25, 1916, at 5; see also Frederick G. Lieb, *Base Ball Danger Not Averted*, SPORTING LIFE, Dec. 2, 1916, at 4; Frederick G. Lieb, *Fultz on Players' Attitude*, SPORTING LIFE, Dec. 16, 1916, at 11.

38. *Baseball Players to Join Ranks of Organized Labor*, N.Y. TIMES, Jan. 16, 1917, at 1.

39. *Id.*

40. *Id.*; Frederick G. Lieb, *News of Players' Fraternity*, SPORTING LIFE, Jan. 27, 1917, at 8; see also Frederick G. Lieb, *Affairs in American League*, SPORTING LIFE, Jan. 27, 1917, at 6.

41. *Not Opposed to Players*, N.Y. TIMES, Feb. 8, 1917, at 15; *Players May Have to Pet White Rats*, N.Y. TIMES, Jan. 30, 1917, at 10.

by this development and by Gompers's backpedalling on his expressions of personal and AFL support for the Fraternity and its strike.<sup>42</sup> (Small wonder that in later years the players will commit to an independent union, rather than affiliate with a large labor conglomerate.) At the same time, the major leagues formally cut off all ties to the Fraternity and abrogate the Cincinnati Agreement of 1914.<sup>43</sup> Support for the strike collapses as more and more players sign contracts for the 1917 season.<sup>44</sup> This is as close as the players will get to establishing a strong and durable labor union until they elect Marvin Miller executive director of the MLBPA in 1966.

**April 1917:** Marvin Miller is born in the Bronx.<sup>45</sup> He will “gr[o]w up in Brooklyn, not far from Ebbets Field[,] . . . one of the countless kids who felt intimately connected to the fortunes of the Dodgers.”<sup>46</sup>

**Summer 1918:** The Fraternity “passe[s] away out of existence” after the United States enters World War I. The \$2,234 in member dues the union still holds is donated to the YMCA and the Clarke Griffith Bat and Ball Fund.<sup>47</sup>

**July 1921:** Members of the 1919 Chicago White Sox are acquitted of criminal charges relating to their alleged throwing of the 1919 World Series.<sup>48</sup> Although there does not appear to have been any connection between the labor movement in baseball and the “Black Sox”

42. *Not Opposed to Players*, N.Y. TIMES, Feb. 8, 1917, at 15; *Players May Have to Pet White Rats*, N.Y. TIMES, Jan. 30, 1917, at 10.

43. THE REACH OFFICIAL AMERICAN LEAGUE BASE BALL GUIDE FOR 1917, at 279–82 (1917).

44. *Id.* at 346; see also ROBERT PEYTON WIGGINS, THE FEDERAL LEAGUE OF BASE BALL CLUBS: THE HISTORY OF AN OUTLAW MAJOR LEAGUE, 1914-1915, at 300–02 (2009); THE REACH OFFICIAL AMERICAN LEAGUE BASE BALL GUIDE FOR 1918, at 22 (1918); *Doings in the National League*, SPORTING LIFE, Feb. 17, 1917, at 3.

45. Richard Goldstein, *The Bargainer Who Remade the Old Ball Game*, N.Y. TIMES, Nov. 28, 2012, at A1; *Marvin Miller Interviewed by David Davis*, THE BASEBALL RELIQUARY INC. (JULY 2003), <http://www.baseballreliquary.org/MarvinMiller-Interview.htm>. There does not appear to have been any regular professional baseball played in the Bronx at that time, but in 1923 two prominent teams would move in: the Cuban Stars of the Negro National League (Catholic Protectors Oval) and the Yankees of the American League (Yankee Stadium). See PHILIP J. LOWRY, GREEN CATHEDRALS: THE ULTIMATE CELEBRATION OF MAJOR LEAGUE AND NEGRO LEAGUE BALLPARKS 158–59 (2006).

46. MARVIN MILLER, A WHOLE DIFFERENT BALL GAME: THE INSIDE STORY OF THE BASEBALL REVOLUTION 12 (2d ed. 2004).

47. *A Worthy Donation*, in THE REACH OFFICIAL AMERICAN LEAGUE BASE BALL GUIDE FOR 1919, at 214 (1919); see also WIGGINS, *supra* note 44, at 300–02.

48. PATRICK K. THORNTON, LEGAL DECISIONS THAT SHAPED MODERN BASEBALL 104–05 (2012); see, e.g., ELIOT ASINOF, EIGHT MEN OUT: THE BLACK SOX AND THE 1919 WORLD SERIES (1963); GENE CARNEY, BURYING THE BLACK SOX: HOW BASEBALL'S COVER-UP OF THE 1919 WORLD SERIES FIX ALMOST SUCCEEDED (2006).

scandal (or any of the other episodes of real or alleged corruption of the game during the 1910s and 1920s), it is hard to argue with the reflections on this episode by labor leader Marvin Miller and management adviser Bill James—two leading baseball thinkers who did not always see eye-to-eye. First, Miller:

I don't want to rehash the 1919 scandal, nor will I deny that there was evidence that gambling interests were a danger to baseball before the 1920s. But we'll never know how many of the Sox were punished unjustly when they were banned from baseball for life *after being cleared* of charges in a court . . . nor will we know to what degree the tightfisted, mean-spirited and questionable tactics [in player employment] of the Chicago [White Sox] owner, Charles Comiskey, contributed to the condition that made the players susceptible to gamblers. But I've always maintained that the question "Why isn't Joe Jackson in the Hall of Fame?" should be supplemented with "Why isn't Charles Comiskey *out*?"<sup>49</sup>

Second, James:

It is not my intention to make apologies for the dishonest ballplayers. But you have to know two things to understand what happened. Number one, there was a generation of players to whom baseball made a lot of promises which it didn't keep. And number two, every baseball headline in the decade [of the 1910s] has a dollar sign attached to it. . . . Stars and superstars—the biggest stars in the game, including Babe Ruth, were auctioned from one set of fans to another for whatever they would bring, and then ordered to report to camp for a fifth or a tenth of that amount. . . . It is hard to know that another man is making money off of your labor, and has no intention of dealing fairly with you. . . . [T]he arch-villain of this villainous era was Charles Albert Comiskey. . . . Comiskey held all the power in the relationship between owner and players, and he had to rub their noses in it. . . . Put Joe Jackson in the Hall of Fame? How about if we kick Comiskey out?<sup>50</sup>

Whatever the unknowable truths of the matter may be with respect to the Black Sox in particular or corruption in baseball in general in those days, the least that can be said here is that the scandal was a reflection of bad labor-management relations before, during, and after the short life of the Fraternity of Professional Baseball Players.

**May 1922:** In *Federal Baseball Club of Baltimore, Inc. v. National League of Professional Base Ball Clubs*,<sup>51</sup> a lawsuit triggered

49. MILLER, *supra* note 46, at 404–05.

50. JAMES, *supra* note 14, at 116; *see also* MILLER, *supra* note 46, at 404–05 ("It wasn't young, reckless players who fell in with the gamblers, but the sour veterans of the decade's bright beginnings.").

51. 259 U.S. 200 (1922).

by conflict over the demolition of the Federal League in 1915, the U.S. Supreme Court rules that major league baseball is neither interstate nor commerce and thus not subject to federal legislation enacted by Congress based on its authority to regulate interstate commerce under Article I, section 8, of the U.S. Constitution.<sup>52</sup> In particular, baseball is not subject to federal antitrust law—the Sherman Act of 1890<sup>53</sup> and the Clayton Act of 1914<sup>54</sup>—prohibiting, among other things, monopolies and other anti-competitive creatures of interstate commerce.

Although *Federal Baseball* is not about labor-management relations in general or the reserve clause in particular, knowledgeable citizens of the baseball and legal communities are well aware of the case's implications for owner control of players.<sup>55</sup>

**August 1922:** The National Baseball Players Association of the United States is established by lawyer and former minor-league player (and future Member of Congress) Raymond J. Cannon.<sup>56</sup> Rumors of a potential strike in 1923, and of affiliation with the American Federation of Labor, begin circulating shortly thereafter.<sup>57</sup>

**Summer 1923:** Under a barrage of threats and promises from the owners, the Players Association dissolves without achieving anything for the players.<sup>58</sup> One of the owners' unkept promises—a fund for needy former players—does take shape the next year under player leadership as the Association of Professional Ball Players of America,

52. *Id.* at 209; see also Samuel A. Alito, Jr., *The Origin of the Baseball Antitrust Exemption*, 38 *BASEBALL RES. J.* 86, 90–92 (2009).

53. Sherman Act, ch. 647, 26 Stat. 209 (1890) (codified as amended at 15 U.S.C. §§ 1–7 (2006)).

54. Pub. L. 63–212, 38 Stat. 730 (codified as amended at 15 U.S.C. §§ 12–27; 29 U.S.C. §§ 52–53 (2006)).

55. THE REACH OFFICIAL AMERICAN LEAGUE BASE BALL GUIDE FOR 1918, at 150 (1918); *Baseball Players' Union Progressing*, N.Y. TIMES, Aug. 17, 1922, at 17; Herbert Daly, *The Magnates and the Players*, SPORTING LIFE, Jan. 22, 1916, at 7.

56. *Baseball Players' Union Progressing*, N.Y. TIMES, Aug. 17, 1922, at 17; see also HAROLD SEYMOUR & DOROTHY SEYMOUR MILLS, *BASEBALL: THE GOLDEN AGE* 354–56 (1989); *Outlines Purposes of Players' Union*, N.Y. TIMES, Dec. 25, 1922, at 20; *New Edition of Oxford's "Baseball" Series Lists Dorothy Mills as Co-Author*, SOCIETY FOR AM. BASEBALL RES., <http://sabr.org/latest/new-edition-oxfords-baseball-series-lists-dorothy-mills-co-author> (last visited Apr. 15, 2013); *Cannon, Raymond Joseph, (1894-1951)*, BIOGRAPHICAL DIRECTORY OF THE UNITED STATES CONGRESS: 1774-PRESENT, <http://bioguide.congress.gov/scripts/biodisplay.pl?index=C000124> (last visited Apr. 15, 2013).

57. *Ball Players Seek to Secure Reforms*, N.Y. TIMES, Oct. 12, 1922, at 30; *Baseball Players' Union Progressing*, N.Y. TIMES, Aug. 17, 1922, at 17; *Unruffled by Talk of Union*, BOSTON DAILY GLOBE, Oct. 12, 1922, at 8.

58. *Johnson Won't Talk on Union's Demand*, N.Y. TIMES, Apr. 3, 1923, at 20.

a purely charitable organization that is still in existence today.<sup>59</sup> At this point the players can look back over the first half-century or so of major league baseball and see that they have organized a union roughly once every dozen years (1885, 1900, 1912, 1922), and disbanded or abandoned each of them within five years or less.

**1938:** Miller graduates from New York University with a bachelor's degree in economics. He never attends law school, although later in life many people he deals with will assume he did.<sup>60</sup>

**April 1946:** The American Baseball Guild is set up by lawyer Robert Murphy.<sup>61</sup> It is the fifth substantial effort to establish a union of major league players.

**June 1946:** There are early signs of interest in acting via the Guild. Most strikingly, members of the Pittsburgh Pirates vote 20-16 in favor of holding out for better pay, pensions, and working conditions. However, since the Pirates players had previously agreed among themselves that a two-thirds supermajority would be required to authorize a strike,<sup>62</sup> there is no strike. Like its predecessor in the early 1920s, the Guild succumbs within a few months of its formation to a combination of strong pressure from the owners, weak support from the players, and ineffective union leadership. This time, however, the owners—sensitized, perhaps, by the close vote in Pittsburgh or more generally by the changing post-World War II society and the growing strength of the broader labor union movement—keep some of their promises, including the establishment and co-funding of a pension plan for players.<sup>63</sup>

**April 1947:** Jackie Robinson plays in his first game for the Brooklyn Dodgers on April 15.<sup>64</sup> Equal treatment in the major leagues without regard to race is not instantaneous, but this is a start.<sup>65</sup>

**March 1950:** After working at the National War Labor Board during World War II, and then for the U.S. Department of Labor, the

59. *Mission Statement*, ASS'N OF PROFESSIONAL BALL PLAYERS OF AMERICA, <http://www.apbpa.org/missionstatement.html> (last visited Mar. 6, 2013); see also ROBERT F. BURK, *MUCH MORE THAN A GAME: PLAYERS, OWNERS, & AMERICAN BASEBALL SINCE 1921*, at 5–7 (2001).

60. Goldstein, *supra* note 45, at A1.

61. See CHARLES P. KORR, *THE END OF BASEBALL AS WE KNEW IT: THE PLAYERS UNION, 1960-81*, at 15 (2002).

62. See *id.*

63. See *id.* at 16–17; DAVID QUENTIN VOIGT, *AMERICAN BASEBALL: FROM POST-WAR EXPANSION TO THE ELECTRONIC AGE 206–07* (1983).

64. *Jackie Robinson Day*, MLB.COM, <http://mlb.mlb.com/mlb/events/jrd/> (last visited Mar. 6, 2013).

65. See, e.g., JACKIE ROBINSON, *I NEVER HAD IT MADE: THE AUTOBIOGRAPHY OF JACKIE ROBINSON* 59 (1995) (describing racist abuse by Philadelphia Phillies players).

International Association of Machinists, and the United Auto Workers, Marvin Miller joins the United Steelworkers of America as a research economist. By the time he leaves the Steelworkers to join the MLBPA in 1966, he is the union's chief economist and one of its top negotiators.<sup>66</sup> During this time he works closely with Arthur Goldberg, general counsel of the Steelworkers and later Associate Justice of the U.S. Supreme Court and still later counsel to Curt Flood in the *Flood v. Kuhn* baseball antitrust and labor case.

**July 1951:** The Subcommittee on Study of Monopoly Power of the Committee on the Judiciary of the U.S. House of Representatives begins hearings on organized baseball. The hearings are prompted by the referral to the subcommittee of three bills designed to explicitly exempt organized baseball from the federal antitrust laws. The bills are prompted by the fear among some members of Congress that one or more of the several federal courts considering challenges to the reserve system under the Sherman Act (including the *Toolson* case discussed below) might find that baseball is engaged in interstate commerce, that it is thus subject to the federal antitrust law, and that the owners who impose the reserve clause on their players are thus in violation of those laws.<sup>67</sup> Nothing comes of the hearings. As a leading sports scholar recently observed, "The oddity here is that the House of Representatives, as a result of hearings conducted by Emanuel Celler's subcommittee on the Study of Monopoly Power in Major League Baseball in 1951, decided not to act on the antitrust exemption, preferring to await the [Supreme] Court's decision in [the *Toolson*] case. So Congress did not act because it believed the court would, and the court did not act because Congress did not."<sup>68</sup> From the 1950s to the 1990s, numerous federal legislators will introduce bills designed to preserve, modify, or destroy the baseball antitrust exemption in whole or in part, and a variety of Congressional committees will hold hearings on some of those bills.<sup>69</sup> Nothing will come of any of them either, until the

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66. MILLER, *supra* note 46, at 22; *see also* ROBINSON, *supra* note 65, at 19–32.

67. H.R. REP. NO. 82-2002, at 1–4 (1952).

68. Richard Crepeau, *The Flood Case*, 34 J. SPORTS HIST. 183, 185 (2007).

69. *See, e.g., The Court-Imposed Major League Baseball Antitrust Exemption: Hearing on S. 415 and S. 416 Before the Subcomm. on Antitrust, Bus. Rights, and Competition of the S. Comm. on the Judiciary*, 104th Cong. (1995); *Organized Professional Team Sports: Hearings on H.R. 5307, H.R. 5319, H.R. 5383, H.R. 6876, H.R. 6877, H.R. 8023, and H.R. 8124 Before the Antitrust Subcomm. of the H. Comm. on the Judiciary*, 85th Cong., pt. 2 (1957); *Subjecting Professional Baseball Clubs to the Antitrust Laws: Hearing on S.J. Res. 133 Before a Subcomm. of the S. Comm. on the Judiciary*, 83rd Cong. (1954); *see also generally* STEPHEN R. LOWE, *THE KID ON THE SANDLOT: CONGRESS AND PROFESSIONAL SPORTS, 1910-1992*, at 12–60 (1995); Christian H. Brill and Howard W. Brill, *Take Me Out to the Hearing: Major League Base-*

consideration and passage of the rather modest Curt Flood Act of 1998.

**August 1953:** After the owners rebuff a set of requests by players that includes appointment of a “players commissioner” to represent the players in league meetings,<sup>70</sup> the players hire lawyer J. Norman Lewis to represent them in dealings with the major leagues.<sup>71</sup> In September, while negotiations with the owners over pensions and other matters are ongoing, Lewis says, “There is absolutely no contemplation of a union. The players don’t want it and I don’t advise it. There is a loose association of players now that is going to be closer knit for the exchange of ideas and mutual help, but definitely no unionization.”<sup>72</sup>

**November 1953:** In *Toolson v. New York Yankees, Inc.*, George Toolson argues that the reserve clause is an illegal restraint of trade under the federal antitrust laws, and thus the U.S. Supreme Court is again confronted with the question presented in the *Federal Baseball* case in 1922: Is major league baseball interstate commerce subject to the Sherman and Clayton Acts?<sup>73</sup> This time the Justices are deliberating in a post-1937 New Deal world in which baseball is unavoidably, indisputably engaged in interstate commerce.<sup>74</sup> They opt to create a special exemption from the antitrust laws for major league baseball by holding that those laws do not apply to baseball “on the authority of *Federal Baseball* . . . so far as that decision determines that Congress had no intention of including the business of baseball within the scope

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*ball Players Before Congress*, 5 ALB. GOV’T L. REV. 90 (2012); Edmund P. Edmonds, *Over Forty Years in the On-Deck Circle: Congress and the Baseball Antitrust Exemption*, 19 T. MARSHALL L. REV. 627 (1994).

70. Louis Effrat, *Players Seek Higher Minimum in Majors, Curbs on Twilight Games*, N.Y. TIMES, July 14, 1953, at 21.

71. *Players’s Aide, Frick To Meet Tomorrow*, N.Y. TIMES, Aug. 23, 1953, at S1.

72. *Ball Players’ Attorney Reports ‘Definite Progress’ on Proposals*, N.Y. TIMES, Sept. 1, 1953, at 26.

73. In 1949, the U.S. Court of Appeals for the Second Circuit had ordered a trial on that question, *Gardella v. Chandler*, 172 F.2d 402 (2d. Cir. 1949), and the opinions by highly-respected judges Learned Hand and Jerome Frank left little doubt that the two judges were inclined to believe the answer was “yes.” *Id.* at 408 (Hand, J.) (“I am therefore in accord with my brother Frank that the defendants are pro tanto engaged in interstate commerce.”); *id.* at 408–09 (Frank, J.) (“*Federal Baseball* [is] . . . an impotent zombie.”). The owners prudently settled before trial. See BRAD SNYDER, *A WELL-PAID SLAVE: CURT FLOOD’S FIGHT FOR FREE AGENCY IN PROFESSIONAL SPORTS* 25–27 (2006); WHITE, *supra* note 33, at 292–95.

74. See, e.g., *Monopsony in Manpower: Baseball Meets the Antitrust Laws*, 62 YALE L.J. 576, 609–10 (1953) (comparing the contemporary baseball business to other businesses that the Supreme Court had recently found to be interstate commerce within the reach of congressional power—including the famous farming in *Wickard v. Filburn*, 317 U.S. 111 (1942)).

of the federal antitrust laws.”<sup>75</sup> Alas, *Federal Baseball* says nothing about congressional intent with respect to baseball. Moreover, there is no evidence in the legislative history of either the Sherman Act or the Clayton Act that anyone in Congress had any intention either for or against including baseball within the scope of those laws.<sup>76</sup> *Toolson* is, in a sense, an oddly magic-legal-realist moment. The Court bases its *Toolson* holding on a non-existent, imagined holding in *Federal Baseball*, which makes the *Toolson* holding itself a product of the Court’s imagination, although not itself imaginary. In any event, the down-to-earth result of *Toolson* at the moment is that the legal status of the reserve clause and all that goes with it in terms of owner control of players, their compensation, and their working conditions remain the same.<sup>77</sup> The Court does invite Congress to step in, adding that “if there are evils in this field [of baseball and the reserve clause] which now warrant application to it of the antitrust laws it should be by legislation.”<sup>78</sup>

**July 1954:** After operating more-or-less informally in their dealings with major league owners on workplace issues since the demise of the American Baseball Guild in 1946, the players form the Major League Baseball Players Association. They retain lawyer J. Norman Lewis, who continues to “den[y] that the player action could be construed as the forming of a union.”<sup>79</sup> Although the union now bears the name it will carry up to the present day, it is (and will remain until Miller arrives in 1966) essentially “a ‘House Union’ guided by a member of the Commissioner’s office and the most influential owner [Walter O’Malley of the Los Angeles Dodgers] of that time”—operating on funds provided and controlled by the owners and permitted to raise issues and participate in negotiations only to the extent allowed by the owners.<sup>80</sup> This is reflected in the deference shown to the owners by the MLBPA’s top staff during the late 1950s and early 1960s,

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75. *Toolson v. N.Y. Yankees*, 346 U.S. 356, 357 (1953).

76. See Kevin McDonald, *Antitrust and Baseball: Stealing Holmes*, 1998 J. S. CT. HIST. 88, 90–91, 101–02. For a short and clear summary of the wackiness of *Toolson*, see SNYDER, *supra* note 73, at 22–23.

77. For a more fully fleshed-out discussion of the oddities of *Toolson*, see Ross E. Davies, *Toolson’s Secrets* (forthcoming) (on file with the *New York University Journal of Legislation and Public Policy*).

78. *Toolson*, 346 U.S. at 357.

79. *Players Organize and Retain Lewis*, N.Y. TIMES, July 13, 1954, at 26. In 1955 the players’ counterparts in professional football will organize “along the lines of the major league baseball union.” William N. Wallace, *N.F.L. Owners, Players to Meet and Air Athletes’ 17 Demands*, N.Y. TIMES, Feb. 20, 1965, at 18.

80. KORR, *supra* note 61, at 2 (quoting Frank Scott, the MLBPA’s part-time director during the late 1950s and early 1960s); *id.* at 147.

part-time director Frank Scott and part-time legal advisor Robert Cannon.<sup>81</sup>

**December 1956:** The MLBPA announces plans to meet directly with all of the owners as a group (rather than with a committee) to present their proposals relating to compensation and benefits. In effect, the players are calling for direct negotiations with the owners of terms of employment. Cleveland Indians pitcher Bob Feller is elected president, and says, “[y]ou cannot carry collective bargaining into baseball.”<sup>82</sup>

**March 1966:** Don Drysdale and Sandy Koufax, star pitchers on the 1965 World Series-winning Los Angeles Dodgers, re-sign with the Dodgers after successfully holding out for several months for higher salaries for longer terms than the team was initially willing to consider.<sup>83</sup> This headline-grabbing instance of labor-management conflict is an unnerving precedent for team owners,<sup>84</sup> and perhaps an influential element of the environment in which the players are considering new leadership for their union.

**April 1966:** By selecting Marvin Miller to serve as its full-time executive director, the MLBPA brings a professional union leader to the table to represent the players for the first time in the history of the major leagues. Shortly thereafter, the owners respond by withdrawing funding for the MLBPA on the (correct) grounds that it is unlawful under federal labor law for management to fund a union, although they had been doing so for several years. The MLBPA responds in turn by launching a licensing program to keep itself afloat until union dues start flowing in. The licensing program soon becomes a major source of cash for the players and the union, and the owners follow suit by setting up a licensing arm for the major leagues.<sup>85</sup>

**February 1968:** The MLBPA and Major League Baseball negotiate the first collective bargaining agreement in any professional sport. “Progress,” Miller would recall, “had been made on all our basic demands, except changes in the reserve rules and shortening the

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81. *Id.* ch. 1.

82. *Players Ask Joint Meeting*, N.Y. TIMES, Dec. 11, 1956, at 64.

83. See James R. Devine, *The Legacy of Albert Spalding, the Holdouts of Ty Cobb, Joe DiMaggio, and Sandy Koufax/Don Drysdale, and the 1994-95 Strike: Baseball's Labor Disputes Are as Linear as the Game*, 31 AKRON L. REV. 1, 33-40 (1997).

84. Jacob F. Lamme, *The Twelve Year Rain Delay: Why a Change in Leadership Will Benefit the Game of Baseball*, 68 ALB. L. REV. 155, 171-72 (2004).

85. MILLER, *supra* note 46, at 93-94, 142-47.

season to its original 154-game schedule.”<sup>86</sup> There would be substantial progress on the first of the two by 1976. On the second, never.

**February 1969:** The MLBPA calls on players to refuse to sign contracts for the 1969 season until the owners agree to an extension of the pension plan. Most players comply and a new deal is completed in less than a week.<sup>87</sup>

**May 1970:** The players and owners sign their second collective bargaining agreement. The owners—concerned, perhaps, to demonstrate a commitment to procedural workplace justice and fair treatment for their player-employees in light of Curt Flood’s recently filed lawsuit challenging the baseball antitrust exemption<sup>88</sup>—agree to grievance arbitration for the first time.<sup>89</sup>

**April 1972:** The players strike en masse for the first time in the history of the major leagues. The strike, which is over the structure and funding of the players’ pension plan, begins on April 1 and ends on April 13 on terms proposed by the players before the strike. Eighty-six games are cancelled.<sup>90</sup>

**June 1972:** The Supreme Court upholds baseball’s exemption from federal antitrust laws in *Flood v. Kuhn*, the last installment of the

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86. *Id.* at 163–64. Miller is assisted in the negotiation of the 1968 agreement by Richard Moss, the recently hired general counsel of the MLBPA who will be Miller’s collaborator at the union for more than a decade. *Id.* at 53, 96–97, 276–80.

87. *Id.* at 166–67.

88. See SNYDER, *supra* note 73, at 316.

89. MILLER, *supra* note 46, at 214; see also EARLY INNINGS, *supra* note 10, at 261 (reproducing and explaining the 1970 Basic Agreement); E-mail from Peter Miller to Ross Davies, Feb. 3, 2013 (on file with the author):

There is an interesting story about this, which I heard from my father in one of our last conversations. The Commissioner had been the “independent arbitrator” of labor-management disputes. This was an obvious conflict-of-interest, as the Commissioner was merely an employee of MLB management. My father used to say that whoever coined the title “Commissioner of Baseball” was a genius, because it carried such a seemingly official aura. When Bowie Kuhn was Commissioner, my father told him “Look, you’ve got a job to do, but you won’t be able to do it. There will be so many grievances filed that you won’t have time for anything else. And you’ll have to decide a case once in a while in favor of the player, just to maintain an impression of fairness. Then that owner won’t like it, and pretty soon you’ll be out of a job. Really, you’ll be a lot better off with truly independent arbitration.” Kuhn took that advice to heart, went back to his employers, and persuaded them to accept truly independent arbitration (that is, with one arbitrator each appointed by labor and management, and the third arbitrator appointed as agreed by the first two).

*Id.*

90. MILLER, *supra* note 46, ch. 11.

baseball antitrust trilogy of *Federal Baseball*, *Toolson*, and *Flood*.<sup>91</sup> In *Flood*, St. Louis Cardinals star outfielder Curt Flood challenges the reserve clause much as George Toolson had twenty years before—as part of an illegal restraint of trade under the Sherman and Clayton Acts. Justice Harry Blackmun’s opinion for the Court restates and relies on *Toolson*’s rationales (Congress should fix our error if error it be<sup>92</sup> and it isn’t an error anyway because the Congresses that enacted the Sherman Act and the Clayton Act wanted a major league baseball exemption<sup>93</sup>), and places a bit of extra emphasis on team owners’ longstanding reliance on the antitrust exemption and the harm (albeit without any evidence on the question) that retroactive application of the Sherman Act at such a late date would wreak on baseball.<sup>94</sup> A bit of background to this last rationale for the perpetuation of *Toolson* reveals a disappointing inconsistency between Blackmun’s opinion for the Court and his private views about the facts of the case—an inconsistency that reveals just how empty Flood’s hope for release from the reserve clause really is. Although Blackmun writes an opinion for the Court that justifies preservation of the baseball antitrust exemption partly on reliance-and-retroactivity grounds, he privately tells at least one of his colleagues (Justice Potter Stewart) at the time that:

The case, supposedly, is critical for the baseball world. I am not so sure about that, for I think that however it is decided, the sport will adjust and continue.<sup>95</sup>

And in a 1995 interview with Yale Law School Professor Harold Koh for the *Justice Harry A. Blackmun Oral History Project*, Blackmun recalls an equally cynical contemporaneous awareness of the futility of punting the baseball exemption to Congress:

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91. The best source of the complete story of Flood and his antitrust, anti-reserve clause case is SNYDER, *supra* note 73.

92. *Flood v. Kuhn*, 407 U.S. 258, 285 (1972) (“[T]he remedy, if any is indicated, is for congressional, and not judicial, action.”); see also Stephen F. Ross, *Reconsidering Flood v. Kuhn*, 12 U. MIAMI ENTMT’G. & SPORTS L. REV. 169, 186 (1995) (“Recent legislative developments concerning the antitrust exemption illustrate how both the ‘positive inaction’ relied on in *Flood* differs from the more typical situation when a variety of factors can explain congressional inaction, and how baseball legislation reflects the public choice model of special interest lobbying.”).

93. *Flood*, 407 U.S. at 285 (citing *Toolson v. N.Y. Yankees*, 346 U.S. 356, 357 (1953)).

94. *Id.* at 273–74, 278–79, 283, 284; see also *id.* at 286 (Burger, C.J., concurring).

95. Memorandum from Justice Harry A. Blackmun, U.S. Supreme Court, to Justice Potter Stewart, U.S. Supreme Court (May 4, 1972), in *Papers of Potter Stewart* (on file with Yale University, Box 257, Folder 3022).

Of course, it was perfectly apparent that Congress wasn't going to act if it could help it. There were too many constituents back home who like baseball, and I think Congress just didn't want to do it.<sup>96</sup>

In any event, the result of *Flood*—like *Toolson*—is that the legal status of the reserve clause and all that goes with it in terms of owner control of players, their compensation, and their working conditions remain the same, although this time with perhaps more harm done to perceptions about the Court's (and especially Blackmun's) capacity for impartiality.<sup>97</sup>

**March 1973:** With spring training approaching and early exhibition games being cancelled,<sup>98</sup> a new major league collective bargaining agreement is reached at the last minute. It leaves the reserve clause intact but provides for salary arbitration.<sup>99</sup> It is in the years after salary administration becomes structured and salary figures become available to players under the 1973 agreement that annual increases in player salaries also becomes and remains dramatic.<sup>100</sup>

**December 1975:** Arbitrator Peter Seitz interprets the owners' unilateral renew-for-one-year clause—the infamous reserve clause—in the standard major league player contract to permit only a single one-year renewal, rather than an unending series of one-year renewals. Federal trial and appellate courts uphold the Seitz decision against challenges by the owners, who choose not to appeal to the Supreme Court, perhaps fearing to put the antitrust exemption at risk again so soon after the *Flood v. Kuhn* decision. The result is free agency for

96. THE JUSTICE HARRY A. BLACKMUN ORAL HISTORY PROJECT 185 (1994–95); cf. EINER ELHAUGE, STATUTORY DEFAULT RULES: HOW TO INTERPRET UNCLEAR LEGISLATION 221 (2008) (explaining general judicial practice of ignoring statutory-interpretation precedent under just the circumstances in *Flood*).

97. See, e.g., *Major League Baseball v. Crist*, 331 F.3d 1177, 1188–89 (11th Cir. 2003); *McCourt v. Ca. Sports, Inc.*, 600 F.2d 1194, 1214–17 (6th Cir. 1979) (Edwards, C.J., dissenting) (*Flood* “has been much criticized both in the courts and in legal literature”); *Amateur Softball Ass'n v. United States*, 467 F.2d 312, 314 (10th Cir. 1972); *Butterworth v. Nat'l League of Professional Baseball Clubs, Inc.*, 644 So.2d 1021, 1024–25 (Fla. 1994); ABRAMS, *supra* note 21, at 69 (“[T]he Supreme Court cannot be proud of an outcome so many have found inexplicable and indefensible”); GLENN M. WONG, ESSENTIALS OF SPORTS LAW 470 (Praeger 3d ed. 2002) (discussing the *Flood* “anomaly” and “contradictions within the Supreme Court”).

98. Murray Chass, *Progress Is Indicated in Baseball Negotiations Here*, N.Y. TIMES, Feb. 22, 1973, at 45.

99. Murray Chass, *Player Unit Votes for Pact, 22-0*, N.Y. TIMES, Mar. 1, 1973, at 33; see also LOWENFISH, *supra* note 26, at 217–18; MILLER, *supra* note 46, at 238–53.

100. Michael Hauptert, *The Economic History of Major League Baseball*, EH.NET ENCYCLOPEDIA, <http://eh.net/encyclopedia/article/hauptert.mlb> (salary figures in table).

FIGURE I: AVERAGE MLB PLAYER SALARIES

<u>Season</u>	<u>Salary</u>	<u>Percent Change</u>
1964	\$14,863	—
1965	14,341	-3.5
1966*	17,664	+23.2
1967	19,000	+7.6
1968	20,632	+8.6
1969	24,909	+20.7
1970	29,303	+17.6
1971	31,543	+7.6
1972	34,092	+8.1
1973	36,566	+7.3
1974	40,839	+11.7
1975	44,676	+9.4
1976	52,300	+17.1
1977	74,000	+41.5
1978	97,800	+32.2
1979	121,900	+24.6
1980	146,500	+20.2
1981	196,500	+34.1
1982	245,000	+24.7
1983	289,000	+18.0

\* The year of Miller's appointment as executive director of the MLBPA.

pitchers Dave McNally and Andy Messersmith,<sup>101</sup> and the prospect of the same status in the very near future for all major league players.<sup>102</sup>

**July 1976:** After a short lockout during spring training in March, the MLBPA and the major leagues negotiate through much of the first half of the 1976 season before signing their fourth collective bargaining agreement—the first with a radically restructured reserve system (really a free agency management system), necessitated by the decimation of the reserve clause in the McNally-Messersmith arbitration and the refusal of the lower federal courts to salvage it.<sup>103</sup>

101. One year earlier, Seitz had arbitrated a dispute between the Oakland Athletics and pitcher Jim Hunter, the result of which was a decision that the team had breached its contract with Hunter and therefore Hunter was a free agent. *See* Ed Edmonds, *At the Brink of Free Agency: Creating the Foundation for the Messersmith-McNally Decision—1968–1975*, 34 S. ILL. U. L.J. 565, 609–11 (2010); *see also* ABRAMS, *supra* note 21, at 108–09.

102. Nat'l & Am. League Professional Baseball Clubs v. Major League Baseball Players Ass'n, 66 Lab. Arb. Rep. (BNA) 101 (1975); *Kansas City Royals Baseball Corp. v. Major League Baseball Players Ass'n*, 532 F.2d 615 (8th Cir. 1976); *see also* FAY VINCENT, *WE WOULD HAVE PLAYED FOR NOTHING: BASEBALL STARS OF THE 1950s AND 1960s TALK ABOUT THE GAME THEY LOVED* 244 (2008).

103. MILLER, *supra* note 46, at 267; *see also id.* at 254–68.

**April 1980:** The players vote almost unanimously (one nay) to hold out for the last week of spring training, play the beginning of the season and then go out on strike on May 23 (the Memorial Day weekend) if a new collective bargaining agreement is not completed by then.<sup>104</sup> Professor Charles Korr describes the denouement as the strike deadline approached:

The proposed strike ended with an almost comic-opera abruptness. When league officials and those of some clubs inquired why players were not heading to the airport to board planes to go to the sites of their next games, they were informed there was no reason to go since the games would not be played. The season was coming to an abrupt halt. The reality of players not getting set to play the next games brought home the fact that the strike was not an abstraction. There was an all-night and early-morning bargaining session on May 22 between principals for both sides. . . . [N]egotiations to end a strike before it started.<sup>105</sup>

The strike does not happen. The parties agree to establish a “Joint Study Committee” to study the key sticking point—compensation to teams losing players in free agency. There is little basis for optimism, given that the two sides were far apart at the bargaining table and both know that if no agreement is reached in early 1981 the owners will have the right to “unilaterally adopt the last compensation proposal they had presented in the spring [of 1980] (or a less harsh proposal)” and that the players’ only options at that point will be to bow to the owners’ wishes or “strike not later than June 1981.”<sup>106</sup> It may well be that both sides misperceive the effect of what they have agreed to. The players may think that the owners will not risk a strike by implementing their proposal in 1981, while the owners may believe that if they implement their pay proposal the players will not dare to strike. But that is in fact what will happen, and the result will be the fifty-day-long strike in 1981.

**June 1981:** The major league players strike for the third time in ten years, but this is the first stoppage to start mid-season.<sup>107</sup> It is the fifth work stoppage during that time—the owners locked the players out in 1976, and a few exhibition games were cancelled in 1973 as negotiations stretched close to spring training. The strike will end on July 31, after 713 cancelled games cause approximately \$100 million in net lost revenue for players and owners. The major area of conten-

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104. *Id.* at 290.

105. KORR, *supra* note 61, at 201–02.

106. MILLER, *supra* note 46, at 291–92; KORR, *supra* note 61, at 202–03.

107. Murray Chass, *Baseball Players Go Out on Strike After Talks With the Owners Fail*, N.Y. TIMES, June 12, 1981, at A1.

tion between players and owners is, as it has been in recent years, free agency and related compensation issues.<sup>108</sup> It is a sign of the rapid and deep changes in labor-management relations in recent years that the standard term in the news media for issues relating to owner control of players is no longer “the reserve system,” but is now “free agency.”

**December 1982:** Miller retires as executive director of the MLBPA.<sup>109</sup> He will briefly un-retire in late 1983 when his replacement departs the MLBPA after a short and unhappy tenure.<sup>110</sup>

**December 1983:** Donald Fehr, longtime in-house legal counsel to the MLBPA, is appointed interim executive director and general counsel. The word “interim” will be removed from the job title in 1985 and Fehr will lead the union until his retirement in 2009.<sup>111</sup>

**August 1985:** After a two-day strike, mainly over revised salary arbitration rules, the MLBPA and the major leagues complete a new collective bargaining agreement.<sup>112</sup>

**1987–90:** Arbitrators repeatedly rule that from 1985 to 1987 owners colluded to lower players’ compensation in violation of their collective bargaining agreement with the MLBPA.<sup>113</sup> The cases eventually settle for \$280 million.<sup>114</sup>

**March 1990:** After a thirty-two-day-long lockout by the owners, a new collective bargaining agreement is completed shortly before the regular season begins. Once again, the main disputes relate to salary arbitration.<sup>115</sup>

**August 1994:** The “big strike” begins, and does not end until April 1995, after the union wins an unfair labor practice case against

108. Murray Chass, *Strike Over, Baseball Resumes* Aug. 9, N.Y. TIMES, Aug. 1, 1981, at A1.

109. MILLER, *supra* note 46, at 323–24.

110. *Id.* at 320–23.

111. *Id.* at 334–35. Fehr’s title will be shortened to Executive Director in 2004 when Michael Weiner is named General Counsel of the union. See *Comings and Goings: General Counsel Appointments*, CORP. LEGAL TIMES, May 1, 2004, at 67.

112. *2nd Baseball Strike Begins as 11th-Hr. Talks Collapse*, L.A. TIMES, Aug. 6, 1985, at 1; Kenneth Reich, *Baseball Strike Settled; Play to Resume Today*, L.A. TIMES, Aug. 8, 1985, at A1.

113. Major League Baseball Players Association and the Twenty-Six Major League Baseball Clubs, Grievance No. 88-1 (July 18, 1990) (Nicolau, Chairman); Major League Baseball Players Association and the 26 Major League Clubs, Grievance No. 87-3 (Aug. 31, 1988) (Nicolau, Chairman); Major League Baseball Players Association and the Twenty-Six Major League Baseball Clubs, Panel Decision No. 76, Grievance No. 86-2 (Sept. 21, 1987) (Roberts, Chairman).

114. PATRICK K. THORNTON, LEGAL DECISIONS THAT SHAPED MODERN BASEBALL 214 (2012); see also *id.* ch. 11.

115. Murray Chass, *Baseball Negotiators Cleaning Up Loose Ends*, N.Y. TIMES, Mar. 20, 1990, at B11.

the major leagues before the National Labor Relations Board and then-Judge Sonia Sotomayor (of the U.S. District Court for the Southern District of New York, now an Associate Justice of the U.S. Supreme Court) enjoins the leagues from unilaterally implementing their preferred terms of employment. The players and owners eventually agree to terms on a new collective bargaining agreement in November 1996.<sup>116</sup>

**October 1998:** Congress and the President enact the Curt Flood Act, the purpose of which is to:

state that major league baseball players are covered under the anti-trust laws (*i.e.*, that major league baseball players will have the same rights under the antitrust laws as do other professional athletes, *e.g.*, football and basketball players), along with a provision that makes it clear that the passage of this Act does not change the application of the antitrust laws in any other context or with respect to any other person or entity.<sup>117</sup>

According to then-MLBPA executive director Donald Fehr, “There is now no doubt that players will be able to consider antitrust litigation as an option in any future dispute . . . Members of Congress came to understand that baseball fans would ultimately be the real beneficiaries of this act.”<sup>118</sup> Not too much should be made of this law, however. It was a step toward abolition of the baseball antitrust exemption, but it was in fact a very small step.<sup>119</sup>

**August 2002:** Hours before a strike deadline, the MLBPA and the major leagues agree to a new collective bargaining agreement.<sup>120</sup>

116. LOWENFISH, *supra* note 26, at 281–99; *see also* Silverman v. Major League Baseball Player Relations Comm., 880 F. Supp. 246 (S.D.N.Y. 1995), *aff’d*, 67 F.3d 1054 (2d Cir. 1995).

117. Curt Flood Act of 1998, Pub. L. 105–297, 112 Stat. 2824, § 2 (codified as amended at 15 U.S.C. § 26b (2006)); *see also* Major League Baseball Antitrust Reform: Hearing on S. 53 Before the S. Comm. on the Judiciary, 105th Cong. (1997) (statement of Sen. Orrin Hatch).

118. *Part of Baseball’s Antitrust Exemption Is Overturned*, L.A. TIMES, Oct. 28, 1998, at S7.

119. *See* J. Gordon Hylton, *Why Baseball’s Antitrust Exemption Still Survives*, 9 MARQ. SPORTS L.J. 391, 391 (1999) (“Although the Curt Flood Act technically limits professional baseball’s antitrust immunity, the statute actually reconfirms the sport’s seventy-five year old exemption to the federal antitrust laws. By abrogating only that part of the immunity that applies to labor relations at the major league level, the statute implicitly (and explicitly) leaves intact the remainder of the immunity. The remarkable feature of the Flood Act is not what it did, but what it did not do.”); *see also* SNYDER, *supra* note 73, at 348–49.

120. Murray Chass, *Last-Minute Deal in Baseball Talks Prevents a Strike*, N.Y. TIMES, Aug. 31, 2002, at A1.

**October 2006:** Another collective bargaining agreement is completed, though this time without the cliff-hanging prospect of a strike.<sup>121</sup>

**December 2009:** Donald Fehr retires and is replaced as executive director of the MLBPA by longtime general counsel to the MLBPA Michael Weiner.<sup>122</sup>

**November 2011:** Yet another collective bargaining agreement is completed—the eleventh between the MLBPA and the major leagues—again without a strike looming.<sup>123</sup>

**November 2012:** Marvin Miller dies at the age of 95.<sup>124</sup> Major league baseball players' average salaries have risen nearly 200-fold (from \$17,664 to \$3,213,479) since 1966,<sup>125</sup> and the collectively-bargained league minimum salary has grown to \$480,000 over the same period.<sup>126</sup>

## II.

### FENDING FOR THEMSELVES

Permit me to close by offering three thoughts about the above sprint through the relations of labor and management in major league baseball, all on the theme of fending for themselves.

#### A. *The Owners Had the Power to Act on Their Own*

As my friend, former counsel, and labor activist turned management-side labor lawyer Bill Twomey used to say, over the long haul management usually gets the union it deserves. In other words, management that gives its employees nothing to complain about gets a

121. Joe Lapointe, *Owners and Union Complete 5-Year Deal*, N.Y. TIMES, Oct. 25, 2006, at D2.

122. Bart Hubbuch, *Tough Talk from MLB Union Head*, N.Y. POST, Dec. 3, 2009, at 81. Fehr will later be appointed Executive Director of the National Hockey League Players' Association. Jeff Z. Klein, *The N.H.L. Players Union Votes to Appoint Fehr as Its Leader*, N.Y. TIMES, Dec. 18, 2010, <http://www.nytimes.com/2010/12/19/sports/hockey/19fehr.html>.

123. Adam Kilgore, *MLB, Players Announce a New Labor Agreement*, WASH. POST, Nov. 23, 2011, at D4.

124. Richard Goldstein, *The Bargainer Who Remade the Old Ball Game*, N.Y. TIMES, Nov. 28, 2012, at A1.

125. Michael Hauptert, *The Economic History of Major League Baseball*, EH.NET ENCYCLOPEDIA, <http://eh.net/encyclopedia/article/hauptert.mlb> (salary figures in table); *Average Salary Hits Record \$3.2M*, ASSOCIATED PRESS, [http://espn.go.com/mlb/story/\\_/id/8724285/mlb-average-salary-38-percent-32-million#comments](http://espn.go.com/mlb/story/_/id/8724285/mlb-average-salary-38-percent-32-million#comments); cf. Barry Krissoff, *Society and Baseball Face Rising Income Inequality*, 42 BASEBALL RES. J. 92 (2013).

126. 2012-2016 Basic Agreement 10, available at [http://mlb.mlb.com/pa/pdf/cba\\_english.pdf](http://mlb.mlb.com/pa/pdf/cba_english.pdf).

union that gives management nothing to complain about (which really means no union at all). Twomey was talking about the wisdom of paying workers demonstrably fair wages and providing them with demonstrably fair workplace justice. He was emphatically not talking about giving away the store.

Over the long haul of the past half-century or so, major league baseball has moved from a world in which owners could freely express scorn for their union-free player-employees' suggestion that they ought to get twenty percent of the proceeds from the games they played to a world in which those unionized player-employees are getting roughly fifty percent of the take.<sup>127</sup> These days, reasonable minds may differ over whether the players should be getting a more leonine share. There is no way of knowing how much richer, or poorer, the owners of major league teams would be today if in the 1950s (or earlier) they had fully funded a puny pension plan for players (or even committed to a 25-75 overall income split), or if in the 1960s (or earlier) they had initiated a graduated free-agency system that gave seasoned players a meaningful role in deciding who they would work for (or even abandoned the reserve clause altogether). Those are counterfactuals too far from reality then or now.

### *B. The Big Strikers Have the Power to Act on Their Own*

The big strike of 1994-95 marked the end of what might be called the "Era of Radically Adjusted Expectations in Labor-Management Relations in Major League Baseball" because it was the last strike or lockout (at least up through 2012) in the major leagues. If the trend holds for six more years, then the period of labor-management peace since 1995 will exceed the entire period of strike- and lockout-strewn labor-management conflict from 1972 to 1995. And if the trend holds much longer than that, future commentators will be able to look back on the period from 1972 to 1995 as a comparatively short period of dramatic labor-management unrest during which about 150 years' worth of pent-up imbalances, disputes, and associated work stoppages were crammed into a 25-year period of conflict and resolution.

Of course, the three main—and mutually exclusive—conditions for long-term labor peace are (1) that all parties negotiate deals that they view as acceptable and do not regret deeply afterward, (2) that

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127. KORR, *supra* note 61, at 20 (twenty percent); Liz Mullen, *MLB Players' Share of Leaguewide Revenue at About 52 Percent*, SPORTS BUSINESS DAILY, Dec. 15, 2008, available at <http://www.sportsbusinessdaily.com/Journal/Issues/2008/12/20081215/Labor-Agents/MLB-Players-Share-Of-Leaguewide-Revenue-At-About-52-Percent.aspx>.

one party is repeatedly duped, or (3) that bargaining power between the parties is so lopsided that one is practically unbeatable and another is practically helpless. Only time will tell. Both labor and management in baseball have access to a long historical record of their dealings with each other, and there are plenty of people on both sides of the table with a strong sense of that history. But if keeping all the players, or all the owners, on the same page is difficult—as the former demonstrated long ago and the latter has demonstrated more recently—how much harder will it be to steer a steady course with both?

### C. *The Government Had (and Has) the Power Too*

Finally, there are the strange cases of Congress, the President, and the Supreme Court.

The chronology above shows a legislature filled with interest in spending time in committee rooms with celebrity baseball players. On the other hand, Congress had little interest in granting baseball players the same legal protections enjoyed by practically all other workers in the private sector—at least not until the Curt Flood Act of 1998. The same chronology shows Supreme Court Justices who publish—in *Flood v. Kuhn*—an enthusiastic paean to the game of baseball and the great athletes who have played, while at the same time going to perplexing lengths to perpetuate legal disabilities for those players in order to provide competitive advantages in the workplace to team owners whom the author of the paean does not even believe really need them. And then there is the barkless dog of the chronology. Presidents and the executive branch are almost perfectly absent from this chronology (and also largely absent from the history of labor relations in baseball), despite the fact that whole books have been written about presidential enthusiasm for the game.<sup>128</sup> That cannot be because Presidents believe they are powerless to act upon baseball. Consider the Justice Department, which reached out to protect radio and television broadcasters from anticompetitive behavior by the owners at the same time that it was keeping its hands off the *Toolson* case.<sup>129</sup>

It is a strange thing. All three branches of the federal government have a long history of powerful figures with a deep and often charming enthusiasm for baseball as a game. And an almost equally long history of an intriguing lack of interest in the welfare of baseball players as human beings. In essence, the federal government, having as-

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128. *E.g.*, WILLIAM B. MEAD & PAUL DICKSON, *BASEBALL: THE PRESIDENTS' GAME* (1997).

129. *See* LOWENFISH, *supra* note 26, at 173–74.

served (and often exercised) the power to protect its citizens from monopolists (via the Sherman and Clayton Acts and subsequent related legislation and regulation), has in the past often opted to provide less protection to baseball players than to other working people in the United States (other than the undocumented). Understandably, those who have benefitted from this state of the law—the owners—have made the most of it. That is the way things work in regimes of regulated competition: the participants are expected to play by the rules, and play to succeed. Baseball the game is no exception (see, e.g., infield fly rule<sup>130</sup>), and neither is baseball the business.

All of which suggests a different perspective on the roles of Presidents and Justices and Senators as tossers of first pitches to start major league baseball games. Was there once—and is there still—a whiff of the plantation about the little ceremony in which a smiling worker in the field accepts a symbol of the service to which he is bound from the powerful governmental hand that ensures that the owners of that worker retain their extraordinary powers over him, courtesy of the strong arm of the law? Or does the success of the MLBPA in recent years rebut Curt Flood's description of the major league player as a "well-paid slave"?<sup>131</sup> Is it now the case that while the owners may still be to some extent masters as a matter of law, the players are now just as masterful as a matter of fact?

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130. Rule 2.00, OFFICIAL BASEBALL RULES (2013 ed.), available at [http://mlb.mlb.com/mlb/downloads/y2013/official\\_baseball\\_rules.pdf](http://mlb.mlb.com/mlb/downloads/y2013/official_baseball_rules.pdf); see Neil B. Cohen & Spencer Weber Waller, *Taking Pop-ups Seriously: The Jurisprudence of the Infield Fly Rule*, 82 WASH. U.L.Q. 453, 458 (2004) ("At its core, the infield fly rule is a rule against a form of strategic play that results in a deviation from the normal principle that the offensive team benefits from always seeking to hit the ball in such a way as to maximize the chance of a base hit and that the defensive team benefits from always seeking to field batted balls. Yet, it would be misleading to suggest that the game does not tolerate deviations from that norm. Consider the sacrifice bunt (on offense) or the intentional walk (on defense). These practices (both overrated, suggests modern sabermetrics) are neither condemned as bad sportsmanship nor prohibited.") (footnotes omitted).

131. See SNYDER, *supra* note 73, at 104–05 (quoting Flood's remarks during a January 3, 1970 interview with Howard Cosell for ABC's *Wide World of Sports*, as well as discussing other athletes' and commentators' use of similar language); see also *Player Representation on the Commission*, SPORTING LIFE, Feb. 5, 1916, at 11 (early discussion of "players being poor slaves" by then-president of the National League, and former member of the U.S. House of Representatives, John Tener).

## INTRODUCING MARVIN MILLER

*Peter Miller\**

My father, Marvin Miller, wasn't a lawyer, though his sense of justice changed labor-management relations in baseball more fundamentally than any legislation or court decision. He was an economist who had little or no interest in his own earnings. A trade unionist through and through, he thought a union leader's compensation should be limited to what he could walk away from, in case that became necessary for the sake of union solidarity. He revolutionized two of the most quintessentially American industries—steel and baseball—yet hewed closely to the tenets of free-market capitalism. For all his unionism, he still valued corporate prosperity, and fostered it through profit-sharing and free agency, often in the teeth of management opposition.

Though never a professional athlete, he was a fierce competitor, someone you'd be fortunate to have on your side, and he fully relished his many victories. He worked hard during the week, but took it easy on weekends and vacations, just like any other working man. He enjoyed playing the piano (Cole Porter, George Gershwin), driving (Fords, mostly), taking the family to the zoo, the movies, or the beach, watching TV, and playing tennis. He said that if he hadn't been a labor leader, he would have liked to play piano in a piano bar. Once on a spontaneous whim at a Florida resort, he actually did that for an evening, with no one in the audience the wiser.

Blessed with a superb sense of timing, Marvin Miller grew up in Brooklyn during the heyday of the Dodgers, graduated from N.Y.U., worked for the War Labor Board (barred from military service by a birth injury), and was hired by Philip Murray for the Steelworkers Union in 1950 just as America's postwar prosperity took off. In 1966, veteran baseball players recruited him to turn a company union into a real union capable of securing pension and other long-withheld benefits. By all accounts, he achieved what they had asked of him. The average Major League Baseball salary went from \$19,000 in 1967 to \$3.1 million in 2011, while MLB revenues grew from \$50 million in 1967 to \$7.1 billion in 2011.

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\* Peter Miller is the founder and director of The Kamakura Print Collection, a photogravure etching workshop in Japan. A resident of Japan since 1981, his prints are in numerous private and museum collections. This remembrance of the author's father was written in February 2013, a little more than two months after Marvin Miller's passing.

As important as these gains were, and are, the simple justice of free agency and profit-sharing were more important in my father's view. Free agency, the innovation my father is most noted for, is after all nothing more than the right to offer one's services to any employer in the marketplace. That baseball players were denied this basic right struck him as indefensible, as indeed it proved to be. Free agency was the fruit of a prior innovation, independent arbitration, with the independent arbitrator deciding that a player could be 'reserved' only for one season, not in perpetuity. The strike discussed below in my father's remarks was one crucial step toward these ends of justice.

On the way to the Symposium transcribed in this Journal, my father confided to me that this would be his "last hurrah." And so it was. At ninety-five years of age, recalling contractual details and the circumstances and events that produced them from forty years previously, the evening was a piece of living history. And here perhaps is the final paradox, for if the words of the old labor song "Joe Hill"<sup>1</sup> be fulfilled—"I never died, says he"—then this volume will be part of Marvin Miller's enduring legacy.

February 2013

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1. For more on the life of Joe Hill, an iconic early twentieth-century union organizer, see Steven Greenhouse, *Examining a Labor Hero's Death*, N.Y. TIMES, Aug. 27, 2011, at A10.

## REMARKS: REFLECTIONS ON BASEBALL AND THE MLBPA

*Marvin Miller\**

Thank you all for the very kind remarks. I'm happy to be here and to see all of you again. I really am.

I have a confession to make. The first notices I received about this occasion seemed to me to be saying that we're here to celebrate the 1972 strike. I didn't receive anything in writing. This was by word of mouth, and I probably misunderstood. But I remember feeling very uneasy about celebrating a strike. As a veteran trade unionist, I never did celebrate a strike. And I know that, out there in the conventional wisdom category, there's the people who believe that labor leaders just love to shut down companies and industries and that they just love to have a strike. The point is, I've been a trade unionist all my adult life, and I never met a trade union leader who had a feeling of wanting to have a strike. That's quite absurd when you think about it. But it's like a play on words. I make a sharp distinction between celebrating a strike and celebrating a strike's results. I think that it's most appropriate to do that when the settlement that the strike brought about is a good one, if it meets the legitimate needs and desires of the people you represent. Or celebration is appropriate possibly in a case of a defensive strike, if it manages to cover a whole new field where the unionist may not have had any interest, any background, or any experience.

And the result in the beginning certainly was a very mixed one. There were those journalists who were completely resentful of covering labor-management relations. They felt that they were dealing with a different world, and they resented it, but I understood them completely. I would have resented it too. But there we were. We had people who could cover what went on on the baseball field magnificently. There were people who also handled interviews with the players in clubhouses and elsewhere very well. But suddenly they were dealing with a strange new world. And these were not young people anymore—most of them. They had been a career journalist covering baseball for years. In the 1972 strike, I can't tell you how many came to

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\* Former Executive Director, Major League Baseball Players Association. These remarks were delivered at "A Celebration of Marvin Miller & Baseball Unionism: The Rise and Role of the Major League Baseball Players Association," an event held on April 24, 2012 at the New York University School of Law.

me and said things like, “I understand that the pension issue is an important one on these negotiations,” and “I have a vague idea what an actuary does, but can you tell me what is the relationship between what an actuary does and labor relations in baseball?” And it sounds like a silly question, but it was a legitimate question. I had all kinds of questions along those lines.

I think that it was rather important to note an exception I mentioned before: *The Los Angeles Times* had assigned their labor editor to cover labor management relations. Harry Bernstein was his name.<sup>1</sup> He supplied columns that set forth what was happening that wasn’t happening elsewhere.

But in New York, we were fortunate. We had *The New York Times*, which in those years had a cadre of sports writers that were letter perfect. They really were. Through those years, those early years of the union, the group included some writers you may be familiar with. Leonard Koppett, who really was a student of the game and who picked up on labor-management relations and all that was involved in no time at all.<sup>2</sup> And along with him, there was Ira Berkow, who also had an outlook of his own and was a very efficient journalist.<sup>3</sup> And we had the incomparable Red Smith, also on the *Times* covering this.<sup>4</sup> And a little later, there was George Vecsey, who finally in his later years came to understand the transformational nature of what the union had done. And then of course we had somebody who is here today, Murray Chass, who was formerly of *The New York Times*, and Murray was one who actually made himself an expert in labor-management relations.<sup>5</sup> And I mean that. He taught himself as he went along, and his work showed it, and it stood out and still does. I’m happy to see him here today.

The problem that a journalist has in shifting gears like that, I must make it clear how difficult that is. Every field of endeavor, every occupation, every profession has what might be called its own jargon, almost its own language, and certainly its own history and so on.

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1. Jon Thurber, *Harry Bernstein, 83: Veteran Labor Reporter for the Times*, L.A. TIMES, May 4, 2006, <http://articles.latimes.com/2006/may/04/local/me-berNSTEIN4>.

2. See, e.g., Leonard Koppett, *Flood, Backed by Players, Plans Suit to Challenge Baseball Reserve Clause*, N.Y. TIMES, Dec. 30, 1969, at 42.

3. See, e.g., Ira Berkow, *Sports of the Times; Strike or No Strike, Baseball is Beloved*, N.Y. TIMES, July 15, 2002, <http://www.nytimes.com/2002/07/15/sports/sports-of-the-times-strike-or-no-strike-baseball-is-beloved.html>.

4. See, e.g., Red Smith, *This Time They Just Played Ball*, N.Y. TIMES, Apr. 17, 1972, at 39.

5. See, e.g., Murray Chass, *Exhibitions Off: Owners’ Man Denies They’re Engaging in Union-Busting*, N.Y. TIMES, Apr. 2, 1972, at S1.

Every science, physical or social science, ditto. And I sympathize with the sports writer covering activities on the field or in the locker room, who's suddenly assigned to cover labor management relations. I sympathize with him all the way, from beginning to end.

That brings us to the '72 strike, which is one of those things which I feel was underreported and not fully understood. And to this day, I don't think people understand the '72 strike. It was a peculiar one in the sense that we were not open on the terms and conditions of employment other than what was called the "benefit plan," which contained the provisions on pensions and healthcare.<sup>6</sup> Just two issues, you might say.

The negotiations started early and seemed to be going well. The owners' negotiating committee adopted a practice of following us on our spring training trips, where we met with every team and with all the players. And they followed us so that we would meet with the players in the morning, and in the afternoons and evenings we had negotiating sessions with the owners' committee.

And in the beginning, it went well. On the healthcare issue, the committee recognized the rise in the cost of insurance premiums to cover the healthcare benefits, a rise which had occurred in the three years since we had last negotiated the benefit plan in 1969.<sup>7</sup> Fairly early, they made an offer of meeting the cost of the increased insurance premiums.<sup>8</sup> Thus, when Richard Moss and I began our spring training meetings with the players, we didn't introduce any question of difficulties or possible strike to the first seven that we visited because we were encouraged to believe that things were going well.

But after we had met with seven clubs, we met the night before the eighth one in Sarasota, in Florida, and the negotiating committee of the owners came in, and it was an entirely different attitude—an entirely different agenda. They announced to us that they were going to withdraw the offer they had made to meet the cost of the insurance premiums; they would offer a lesser amount.

And with regard to pensions, where we had asked that they consider increasing the pension benefits to reflect the cost of living that had risen in the three years since we had last negotiated, the owners'

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6. *Id.*; see also WILLIAM B. GOULD, *BARGAINING WITH BASEBALL: LABOR RELATIONS IN AN AGE OF PROSPEROUS TURMOIL* 76 (2011).

7. KENNETH M. JENNINGS, *SWINGS AND MISSES: MORIBUND LABOR RELATIONS IN PROFESSIONAL BASEBALL* 3 (1997).

8. Paul D. Staudohar, *The Baseball Strike of 1994-95*, *MONTHLY LAB. REV.*, Mar. 1997, at 22, available at <http://www.bls.gov/mlr/1997/03/art4full.pdf>.

response was, “Not a cent. We’re not going to do it. Reason? No reasons. The union has gone far enough.”<sup>9</sup>

Well, we had been in existence for six years at that point, and it is true that we had made substantial gains. Nevertheless, it was an important matter never to let pensions fall too far behind the cost of living. Not everyone understands pensions are in a different category than wages and salaries. In baseball, you’re dealing with a very young workforce, even in the major leagues. Most of them are fifteen, twenty, twenty-five years before they’re going to be even eligible for a pension, and then you have to consider all the years of their lifespan after they reach eligibility.<sup>10</sup> And if you allow the cost of living, in inflationary times especially, if you allow that to rise and rise and rise and you don’t react, you sooner or later have pension benefits, which were once adequate, become totally inadequate.

I used to explain that to the players. On one of the recent trips we had made to talk to the players, it had been a year of horrendous inflation in the United States—a most unusual year. Something over twelve percent the cost of living had risen in the prior twelve months. I explained to the players that I didn’t expect inflation to continue at that level in the future but that I had no way of knowing. And if it did, I tried to explain what that meant, that when the cost of living rises twelve percent a year, what it means is that every six years, the cost of living doubles, so that in six years the cost of living is twice as much as before. And after twelve years, the cost of living has quadrupled. And after eighteen years, the cost of living has risen eight-fold. It doesn’t take much arithmetic to tell you what happens to a pension that at that time was a maximum pension of \$250 a month if the cost of living rises eight-fold and the pension doesn’t. And I used to explain to the players that in that unlikely instance, what you could expect was a monthly paycheck that would not fill your automobile’s gas tank, to say nothing of your rent, and your food, and your house, and your clothing, and so on.<sup>11</sup>

So, I think after a while the players really understood that it was not just saying, “we want more.” It was an absolutely defensive move to prevent the benefits not from increasing. I mean, we were not re-

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9. JENNINGS, *supra* note 7, at 3.

10. Steve Treder, *1972: The Year That Changed Everything*, 13 NINE 1, 2 (2005).

11. See generally James Masteralexis, Lisa Masteralexis & Kevin Snyder, *Enough is Enough: The Case for Federal Regulation of Sports Agents*, 20 MOORAD SPORTS L.J. 69, 75 (2013) (arguing that sports agents should have a stronger fiduciary role in ensuring players’ financial well-being and outlining basic programs instituted by NFLPA to promote financial stability).

questing that it be increased. We were requesting that the purchasing power of those benefits be kept the same, which is all that's meant when you say you want to match the rise in the cost of living with the rise in the benefit.

Thus, in a sense the players were prepared on the facts. And Richard and I saw this unexpected turn of events. We decided that we would re-plan our whole trip. That takes a lot of doing, you know. At that point, there were twenty-four clubs. We were already at something like March 9th or 10th. We only had until the end of the month, and we now had to find a way to meet again with those seven clubs that we had already met because we had not really discussed the issues—because they hadn't come up. And then we had to meet with the other seventeen clubs in Arizona and California.

The eighth club was the Chicago White Sox. It was training in Sarasota, and that morning we went out and we explained to the players what had happened the night before, and we discussed it at great length. I said I thought we ought to be at least prepared for bad news for the rest of the month and we ought to take a strike vote. I considered myself at that point to be like a shot across the bow of another ship, not hitting it but kind of pointing at what we were capable of doing. And we left the meeting, and as had been our practice, we never stayed for the vote. We didn't feel that we should try to influence it in any way by our presence. And the White Sox voted unanimously to strike. Now, this was the first time these players had even considered the strike action, and to get a strike vote that was unanimous told us something.<sup>12</sup> It told us that the players had understood what we had been telling them.

All through the month of March, we continued our meetings with the players and negotiations with the owners at night. I realized that since we were only going to meet with each team once during that period, we needed to have a meeting at the end of the period so that we could bring everybody up to date and put everybody on the same page. And so we scheduled a March 31st meeting in Dallas, Texas because the pension plan expired on that day.<sup>13</sup> And so, on the night before the March 31st meeting, Richard and my wife and I sat to determine and discuss a plan of action. My feeling was a very cautious one.

The actual vote of all the players was a vote like I had never seen in all my days with various unions. It was a vote of 663 to 10, to

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12. Treder, *supra* note 10, at 1.

13. *Sequence of Events in Baseball Strike*, N.Y. TIMES, Apr. 13, 1972, at 56.

strike.<sup>14</sup> This, from a group of players being asked for the first time to consider a strike. *Six-hundred-and-sixty-three to ten*. There were four players on the Red Sox who dissented, there were four players on the Los Angeles Dodgers who dissented, there was one player on the new Seattle team, and one player on another team training in Arizona. I've forgotten who now. And every other team was unanimous. And I don't get surprised easily, but it really took me aback.

But as the months wore on, I worried. And I worried because despite the growing maturity and understanding of the players about their situation, they had never actually had an experience of striking, and they therefore couldn't possibly know the types of hardships that can result. I could tell from some of the questions as we went through camps—questions like, “How long do you think it will last?”—that they really did not understand because I tried to explain, “No one can answer that. They . . . it . . . it will last as long as it takes to get a settlement, and you cannot embark on something where you have a date in mind where you will stop. That will be the end of the union. It's . . . it's worse than not having a strike vote at all.”

And that and other things made me realize that this was not a timely strike. We had no strike fund.<sup>15</sup> As Richard Moss mentioned before, our whole staff was he and I, and two secretaries. Sometimes it was two, and sometimes it was one. We had some turnover. And we had no field offices. And we were up against an industry, you know, of twenty-four major league teams of very wealthy owners. We were up against each team with its own legal staff. Each league, American League and National League, with its legal staff. The commissioner's office with its legal staff. And this is not like having the usual kind of strike in a plant where the strikers all live close to the plant and are in constant touch with you. It was clear that if we had a strike that started, our membership would be all over the country, and so our lines of communication were going to be very, very difficult as compared with the owners.

But more than that, I felt that the reality was that we were going to be open on the whole of working conditions in one year, in 1973. And in 1973, we were going to be open again on pensions. Among the active players, obviously, there were no retirees so that not having pensions increased for that year was something that we could correct with retroactive payments the following year.

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14. *Id.*

15. Treder, *supra* note 10, at 4.

We decided that we were going to try, even though we felt it was fruitless, we tried one last resort. We proposed to the owners' committee that we agree to put the dispute to impartial arbitration.<sup>16</sup> Our suggestion was that we ask either the President of the United States, who at that point was Richard Nixon, or the retiring President Lyndon Johnson, with only one stipulation that he appoint a professional arbitrator. And the owners promptly rejected it.<sup>17</sup>

And so that night before the strike, we met—Richard and I and my wife—and we drafted a statement which changed our focus, and in which we explained to the players why we were not recommending a strike despite that almost unanimous vote. We recommended that we should bide our time, that we were not going to be hurt by this, and that we were going to be able to correct it within one year, and in that year we would really prepare.

I just about finished talking at that meeting, which was being attended in Dallas by the elected player reps of the twenty-four clubs and the alternate player reps of the twenty-four clubs. There were forty-eight players.<sup>18</sup> And when I finished talking—I never have been at a meeting like this one. Usually, employees are reluctant to ask for the floor. They have to warm up to the occasion and so on, but the minute I stopped talking, the hands shot up in the air, and people started talking, and talking loudly, and talking over each other. The gist of it was that this was not what we should do. They literally took the meeting out of my hands for the first and last time. And I enjoyed every minute of it. The debate went on and on. The players had been well-aware. Gussie Busch, the owner of the Cardinals, had come out of a meeting in St. Petersburg and been questioned by the press, and he said, well, I can't repeat it all. It was profane. But he said, "We took a vote, and it was unanimous, and we're not going to give the players one damn cent."<sup>19</sup> And the players in effect were saying, "Oh yeah?" The competitive nature and competitive spirit of those players came out in a rush. And the debate grew so long that finally I made a suggestion that we agree that nobody speak a second time until everybody had at least spoken once. They adopted that, and this went on.

Finally, they called for a vote. In effect, they were saying to me, "We respect you, but we think that you have made a misjudgment

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16. Murray Chass, *Exhibitions Off: Owners' Man Denies They're Engaging in Union-Busting*, N.Y. TIMES, Apr. 2, 1972, at S1.

17. *Id.*

18. *Baseball Players to Strike Today Over Pension Issue*, N.Y. TIMES, Apr. 1, 1972, at 1.

19. Treder, *supra* note 10, at 3.

here. You have under-judged our ability to carry out what has to be done, shutting down this industry to show who we are.” There was truth to that and logic to that, and as I say, I exulted in it. It showed such a growing maturity on the part of the players, such an understanding. These were the elected people, and they were calling for a vote, and so we had the vote. They voted forty-seven to nothing, with one abstaining, to strike, in the face of what we had recommended to postpone it a year.<sup>20</sup>

It was a great moment. It really was. Because it really set forth before us how much maturity there was—how much maturity had developed. It really painted a beautiful path to the future, and this was something I didn’t expect and something the owners for sure didn’t expect. They didn’t have the faintest idea. And that was the backdrop to the ‘72 strike.

The strike started on April 1st, the next day.<sup>21</sup> It shut down the remaining exhibition games of the training period, which were four days, and it eventually went on nine days into the championship season.<sup>22</sup> And the owners folded. And when I say folded, I mean folded. We got everything we wanted.<sup>23</sup>

Now the irony of all this is that it became the backdrop for much of the progress that this union made in the years after that, during my tenure, during Don’s tenure, and during Mike’s tenure now. As I say, the irony of it was that it didn’t have to happen at all. It was a monumental misjudgment on the part of the owners as to who the players were and what their resolve was. And, boy, they have paid for it ever since.

The working press, the media covering sports, didn’t quite know how to handle this. For some of them, a strike of their beloved major league baseball was something that had never been thought possible, and there was a mixed reporting of what had happened. They just couldn’t agree. Some of them, they were looking for who was the villain and who was the hero, and they decided that it had to be either the owners or me. Of course, it was neither. The real hero and heroes were the players. There’s just no question about it. They knew what they wanted, they acted resolutely, they took that strike meeting in hand, they voted almost unanimously, they struck, they stayed out and

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20. *Baseball Players to Strike*, *supra* note 18.

21. *Labor Pains*, SPORTS ILLUSTRATED, [http://sportsillustrated.cnn.com/baseball/news/2002/05/25/work\\_stopppages](http://sportsillustrated.cnn.com/baseball/news/2002/05/25/work_stopppages) (last visited Apr. 15, 2013).

22. The strike lasted 13 days, from April 1 to April 12, 1972. *Id.*

23. Treder, *supra* note 10, at 4.

stayed out until the owners folded. I still mean what I mean when I say I don't celebrate a strike, but I do celebrate the results of that one.

There are a couple of other points I would like to make. There were of course other events, which I thought were either not reported or underreported. Let me just touch briefly on a few of them.

The minimum salary in baseball has a fairly long history. And the minimum wage in the United States similarly has a long history. The first federal minimum wage in the United States was in the first Roosevelt administration, Franklin Roosevelt administration.<sup>24</sup> I mention it because there's a relationship here. The first minimum wage, I believe, was about thirty-five cents an hour, believe it or not.<sup>25</sup> Thirty-five cents an hour. And through the years, it has moved up by congressional action, sometimes a few cents at a time. Sometimes a few cents at a time, five cents an hour at a time, ten cents an hour at a time, and so on.

But whatever the increase, it's always preceded by the propaganda blasts from the so-called think tanks of industry, the lobbyists, the established management organizations, like United States Chambers of Commerce, the National Association of Manufacturers. And the propaganda says, "Oh, it's . . . it's counterproductive. . . . You raise the minimum wage and you lose jobs." Then, employers react by just cutting employment and cutting people that they recruit. All of this was reminiscent of what's going on now with lots of money spent on propaganda in the radio and TV, and in newspaper ads, and in speeches everywhere. And there's never any documentation, they just say it. This was meant to frighten the Congress.

I mention this because you would have thought that what has happened in baseball might catch the attention of some of the pundits and some of the writers because in 1967 the minimum salary in major league baseball was \$6,000 a year.<sup>26</sup> That's in the major leagues: \$6,000 a year. It had been raised by \$1,000 a year in the prior nineteen years. That \$6,000 a year on opening day; this year it was at

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24. Laura Fitzpatrick, *A Brief History of the Minimum Wage*, TIME (July 24, 2009), <http://www.time.com/time/magazine/article/0,9171,1912408,00.html>.

25. The first federal minimum wage was \$0.25 per hour under the 1938 Fair Labor Standards Act. *Federal Minimum Wage Rates Under the Fair Labor Standards Act, 1938–2009*, DEP'T OF LABOR, <http://www.dol.gov/whd/minwage/chart.htm#.UO9KY0LN7ww> (last visited Apr. 15, 2013).

26. *Baseball Salary Arbitration – Minimum and Average Salaries: Major League Baseball 1967–2012*, UNIV. OF NOTRE DAME LAW SCHOOL, [http://lawlibrary.nd.edu/baseball\\_salary\\_arbitration/minavg salaries/Minimum-AverageSalaries.pdf](http://lawlibrary.nd.edu/baseball_salary_arbitration/minavg salaries/Minimum-AverageSalaries.pdf) (last accessed Apr. 15, 2013).

\$480,000.<sup>27</sup> Next year, it was \$490,000.<sup>28</sup> And the year following, a cool half a million dollars for the rookies coming up from the minor leagues.<sup>29</sup> Just consider this as an aside for a moment: so much for the critics who say the union does nothing for the minor league players!

You would think that serious people would take a look at a minimum wage, a minimum salary that went from \$6,000 to \$480,000, an eighty-fold increase. It'll be half a million in two years. You would think they'd look at it and say, "My gosh, if . . . if an increase of three cents an hour would cause loss of jobs in . . . in industry generally, what does this do?" And the answer of course is it does exactly the opposite of what the pundits have told us because the minimum salary has risen eighty-fold already. I want to point out the fact that when it was \$6,000 per year, there were twenty major league baseball clubs, and today there are thirty. So we've had a fifty percent increase in the employment of major league players through this rise—through this period of the rise in the minimum salary. We've had a fifty percent increase in the major league coaches, fifty percent increase in the major league managers, trainers, landscapers who take care of the infield and outfield, concessionary workers who man the concessions, and the parking lot employees. All of these categories have increased employment by fifty percent or more. I don't want to leave the management out. There are fifty percent more club presidents, and fifty percent more club lawyers, and so on and on and on like this. And I'm still waiting for the pundits to say, "Hey, there's no iron-bound connection between raising the minimum wage and employment." Nobody has done it yet.

Of course it is not just the minimum wage, minimum salary that has gone up too. That's the foundation. The average salary in 1967 was \$19,000. Last year, the average salary in the major leagues was \$3.1 million per player. The maximum salary in 1967 was \$100,000 a year. And last year it was \$31 million.<sup>30</sup> And the fact that the media still does not understand is evident in that we still get questions like,

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27. The minimum salary for the 2012 season was \$480,000. *Frequently Asked Questions*, MAJOR LEAGUE BASEBALL PLAYERS ASS'N, <http://mlb.mlb.com/pa/info/faq.jsp#minimum> (last visited Apr. 15, 2013).

28. *Id.*; see also Bill Shae, *Tigers Payroll to Expand: 9 Players Eligible for Salary Arbitration*, CRAIN'S DETROIT BUS. (Oct. 21, 2012), <http://www.crainsdetroit.com/article/20121021/FREE/310219941/tigers-payroll-to-expand-9-players-eligible-for-salary-arbitration>.

29. Lily Rothman, *Emancipation of the Minors*, SLATE (Apr. 3, 2012), [http://www.slate.com/articles/sports/sports\\_nut/2012/04/minor\\_league\\_union\\_thousands\\_of\\_pro\\_baseball\\_players\\_make\\_just\\_1\\_100\\_per\\_month\\_where\\_is\\_their\\_c\\_sar\\_ch\\_vez.html](http://www.slate.com/articles/sports/sports_nut/2012/04/minor_league_union_thousands_of_pro_baseball_players_make_just_1_100_per_month_where_is_their_c_sar_ch_vez.html).

30. See sources cited *supra* note 27.

“Don’t you think the union has gone too far?” The question is bothersome for several reasons.

One, it’s bothersome because it shows no understanding of the kind of economy we have. We have a for-profit economy. We have one that says free enterprise is the way we want to be. I am not stating my own preferences now. I’m just stating what seems to be the consensus of this country. There’s no understanding that what people do in a profit economy is to try to maximize profits and try to maximize their own earnings.

Secondly, it indicates, when they say, “Has the union gone too far?” that they don’t seem to understand that in major league baseball, the union has never negotiated salaries above the minimum. That’s always been done individually, and it still is. The union of course has had a very significant role. The union has set the mechanics, or the outline of all of this. The union has created salary arbitration, free agency, impartial arbitration of grievances, dealing with interpreting a player’s contract, interpreting the basic agreement and how it affects a player. The union has policed a free market for players with its insistence upon collusion of the owners ending, and it did that successfully. In short, the union of course has a role in all of this, but to say, “Has the union gone too far?” really misunderstands the situation.<sup>31</sup>

It misunderstands it in another way. I want to make a comparison to you about how advanced the checks and balance system is in baseball compared to other places where high salaries prevail. Let’s take chief executive officers of important corporations, or of the stock exchange, or what have you, or of Wall Street firms, or hedge funds, and so on. The typical way their compensation is set is for the board of directors, most of whom, if not all of whom, have been appointed directly by the CEO, decide what the CEO’s salary should be, or they have a committee, a compensation committee, composed of board members. The first thing about that is that here you have a direct conflict of interest because sitting on a board are executives from other corporations and what they are doing is adding ammunition to their own quest for higher salaries, and such an obvious conflict of interest.<sup>32</sup> It’s awful. Of course they’re going to vote for higher salaries. That’s ammunition that they will use in their own salary quests. But

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31. See generally David J. Faurot & Stephen McAllister, *Salary Arbitration and Pre-Arbitration Negotiation in Major League Baseball*, 45 INDUS. & LAB. REL. REV. 697, 697–700 (1992); Susan H. Seabury, *The Development and Role of Free Agency in Major League Baseball*, 15 GA. ST. U. L. REV. 335 (1998).

32. See Lucian Ayre Bebchuk & Jesse M. Fried, *Executive Compensation as an Agency Problem*, 17 J. ECON. PERSP. 71 (2003).

more than that, when they set the salary, they don't pay for it. It's paid for by the stockholders, who have had no voice in what the salaries and compensation and perks of the chief executive should be. So in industry generally, we have that kind of structure which hands out salaries in the millions.

Now, compare that to what happens in major league baseball. There always has been a rule that no contract of a player is valid unless it is signed by the franchise owner or somebody designated by the franchise owner in his place. In other words, no salary is put on paper and becomes valid until the man who is going to pay for it, the owner of the franchise, has signed the contract. A better check and balance you can't find anywhere. And that's why I say I don't think people still understand what high salaries in baseball mean. Every once in a while they will get into the business of it. "Do you think that so-and-so who hit only .263 last year deserves this much money?", etc. Well, there are going to be situations of mistakes made. Owners are human beings. I think. We human beings make lots of errors. Sure, there will be some salaries that are agreed upon in error. But that's not the bulk of the salaries. The bulk of the salaries are now set by the free market, and for the first time in the history of baseball since free agency, that's true.

There's a lot more I could say, but I really want to just cut to the chase as quickly as I can here. I think any discussion like this would be incomplete without mentioning collusion. The period in which the owners violated their own basic agreement that each of them had signed and in the process were violating the laws of the United States, namely the Sherman Antitrust Act and the Clayton Antitrust Act. Collusion was an agreement among all of the owners, their general managers, and anybody else who had anything to say about signing or not signing a free agent. It was over a period of years in which the only time they would sign a free agent was based upon a pre-arranged signal. If the club that lost the player said, "It's . . . we understand him. He . . . he did well with us, and we wish him luck," etc., that kind of statement was greeted as a signal you could sign the player. If the club, however, said that they regretted losing him, that this was a terrible system, etc., nobody was to touch him. And that's the way it was for several years.<sup>33</sup>

When I say it was not understood, and not reported, and not reported fully, and was underreported, this is what I mean. There were

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33. See Stephen L. Willis, *A Critical Perspective of Baseball's Collusion Decisions*, 1 SETON HALL J. SPORT L. 109, 120-28 (1991).

writers—and others—who just could not understand that a collusive possibility existed. They did not believe that owners and general managers were competitive people too and could maintain this kind of silence and this kind of airtight control. They just didn't believe it. This happened after I retired. But there were still writers who called me, and I would have discussions with them. I would say:

Why can't you believe it? I mean, look at the quality of some of these free agents and how much it would improve some of these teams, and they are refusing to even talk to the player. And how do you think major league baseball remained lily white for a century or so? And ignored the Negro Leagues, including some of the greatest stars ever seen on a baseball field? Ignoring a Satchel Paige, ignoring a Josh Gibson, and on and on? How do you think they did that except by colluding that nobody would sign him?

And nobody did, and for such a long period. "How come you don't believe they can do that now?" That's what I mean when I say there was no understanding. At any rate, as we all know, this happened during the tenure of Don Fehr, who did a great job in taking the fight to them and sticking with it until there were two arbitrators, two different ones, I believe, ruling on cases spread over three years. There were also owners and club officials who swore under oath—you do swear witnesses in an arbitration—that there was no collusion. Well, the arbitrators found of course that there was collusion, and they set the stage for a settlement, which the union finally made \$280 million plus interest to go to those players who were damaged by the collusion.<sup>34</sup>

When I say the significance is not fully understood, I want to just give you one example of what I mean. We still are told that the worst scandal in baseball ever was the Black Sox scandal, the so-called White Sox Black Sox in 1919, when eight players on the White Sox were accused of throwing the World Series so that the Cincinnati Reds of the National League won the World Series.<sup>35</sup> Now, that was a charge made. I think it's relevant that although they were banned for life by a brand-new commissioner, Judge Landis, Judge Kenesaw Mountain Landis, who later it was felt was clearly a member of the Ku Klux Klan,<sup>36</sup> was the angel on wings who decided that these eight would be banned for life. And they were. And the case went to court.

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34. See Marc Edelman, *Has Collusion Returned to Baseball? Analyzing Whether a Concerted Increase in Free Agent Player Supply Would Violate Baseball's "Collusion Clause"*, 24 LOY. L.A. ENT. L. REV. 159, 162–67 (2004).

35. See generally ELIOT ASINOF, *EIGHT MEN OUT: THE BLACK SOX AND THE 1919 WORLD SERIES* (2000).

36. Following these remarks, Mr. Miller clarified that there were rumors that Landis was a Klan member. See *Marvin Miller Blasts Corporate Pay*, ESPN (Apr. 25,

Landis had banned them before the court case. When the case got to court, the court threw it out for lack of evidence. And that's the way that it stands, except the eight players never came back, including players of the caliber of "Shoeless" Joe Jackson, who to this day still holds the record of the third highest career major league batting average in all of history. The only two ahead of him were Ty Cobb and Rogers Hornsby.

At any rate, realize that what these colluding owners really did and were found guilty of by impartial arbitrators amounted to throwing games. For several years, these owners refused to better their teams. They passed up on talent, and it amounted, in my view, to throwing games. That's what you do when you refuse to improve a team. You purposely will not fill in your weak spots, you purposely will not strengthen it because you have colluded with the others that you would not make any such action. They did this for every championship season over several years, and in the league championship series, and the World Series as well. They put the Black Sox scandal into infancy. This was really a scandal of major proportions, and to this day it hasn't been treated as such, or written about, or really researched, at any time. It's kind of shocking when you think about it.

There is much more that I would love to do, but I do want to come to a close, and I want to point out one final story, if you will, that has been underreported. I've given you some figures about players' salaries, and benefits, and so on. Remember, free agency according to the owners was going to ruin baseball. It was going to be the end of baseball as we knew it, as Chuck wrote about the union in the '72 strike. But this was going to be the end of baseball as we knew it. You actually had people like the commissioner of baseball saying publicly that if there were free agency, "unless we found oil under second base," they would go bankrupt.<sup>37</sup> And Mr. Kuhn testified at the arbitration on free agency, which incidentally was presented to the arbitrator expertly by the gentleman on my right, Mr. Richard Moss, as counsel. But as to these people who were going to go broke, the revenue of baseball back in 1967 of all the then twenty teams combined was less than \$50 million per year. The revenue last year was \$7.1 billion.<sup>38</sup> That's billion with a "b." Now, I want to point out that

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2012, 2:21 PM), [http://espn.go.com/mlb/story/\\_/id/7853268/ex-mlbpa-director-marvin-miller-players-salaries-more-justifiable-ceo-pay](http://espn.go.com/mlb/story/_/id/7853268/ex-mlbpa-director-marvin-miller-players-salaries-more-justifiable-ceo-pay).

37. Murray Chass, *Strange Pairing on Hall Ballot*, N.Y. TIMES, Dec. 2, 2007, <http://www.nytimes.com/2007/12/02/sports/baseball/02chass.html>. See generally BOWIE KUHN, *HARDBALL: THE EDUCATION OF A BASEBALL COMMISSIONER* (1987).

38. Kurt Badenhausen, *Yankees Soar, Mets Plunge On List of Baseball's Most Valuable Teams*, FORBES.COM (Mar. 23, 2011), <http://www.forbes.com/sites/kurtbaden>

if you did a little arithmetic and just subtracted from the revenue the cost of players' salaries and benefits, the resulting figures in 2011 left more money than necessary to pay all other costs plus profit than back in 1967 when the players' salaries were just peanuts. In other words, the gap between players' salaries and other costs and profits has gotten wider and wider. The owners have profited immensely, and there's no admission of this and there never will be I guess. I think at least they've stopped with the crying towels. At least. We used to have that every time there were negotiations. But now we have a commissioner who did announce the revenue in excess of \$7 billion, and he did so with a tone of amazement that he doesn't know where it came from or how it happened.

Just a final thing. I think there is the last of the untold stories. Consider that major league baseball is really a labor-intensive industry. By that, I mean it's an industry where the labor costs are disproportionately more than other costs than in most other industries that are not labor intensive. Yet in a labor-intensive industry with a tremendous rise in players' salaries and benefits, there along with it came this record of attendance and profits and revenue of the owners. In other words, just speaking for myself for the moment, I never before saw such a win-win situation in my life, where everybody involved in major league baseball, both sides of the equation, just still continue to set records in terms of revenue, profits, salaries, and benefits, and so on. You would think that it wasn't possible to do that, but it is possible, and it is an amazing story how under those circumstances—that there can be both management and labor really winning out. And that's a story that ought to be told, and nobody seems to be willing to tell it.

I want to just say one more thing. That is, I do want to thank all of those who worked so hard to put this together. I want to thank the panel members who have spoken and are here, and I do want to thank each of you for coming here. I can't tell you how important it is to me to see again, you know, my family, my extended family, friends, neighbors, members of the media, former colleagues. And I do thank you for coming, and I certainly want you to know I appreciate your kind attention. Thank you very much.

I'm going to stand up, too. Thank you.

## ROUNDTABLE DISCUSSION ON MARVIN MILLER, THE MLBPA, AND BASEBALL

(in order of appearance)

*Samuel Estreicher*

*Ross E. Davies*

*Charles Korr*

*Murray Chass*

*Arthur R. Miller*

*Richard Moss*

*Marvin M. Miller*

*Michael Weiner*

*Robert Boland*

### OPENING REMARKS & INTRODUCTIONS

**Samuel Estreicher:** Good evening, folks. My name is Sam Estreicher. I teach labor and employment law here at N.Y.U., and I'm the director of the Center for Labor and Employment Law, and we are sponsoring this event with Ross Davies from George Mason University School of Law. Ross is a research scholar of the Center. He is an avid fan of the baseball pastime, as we are all. And he's an indefatigable organizer—he organized this entire program. And so, I just want to turn it over to Ross. Ross is a very modest fellow, but Ross is the father, the mother, the organizer of this event. Ross Davies.

**Ross Davies:** Thank you, Sam. I have only one very quick piece of business to conduct before we turn this event over to our speakers and eventually to Professor Arthur Miller, our moderator. And that is to walk you quickly through the agenda and introduce the participants.

Our first speaker will be Professor Charles Korr of the University of Missouri–St. Louis Department of History, without a doubt the leading living authority on the history of the early years of the Major League Baseball Players Union, the author of the authoritative work on the subject. Chuck, the title of your book?

**Charles Korr:** *The End of Baseball As We Knew It.*

**Davies:** A famous line. Thank you.

And after Chuck will come one of the engineers of the end of baseball as we knew it, Dick Moss, who after several years as general counsel of the union in the late sixties and early seventies went on to become one of what has been called the earliest and greatest of the super-agents representing individual players. But as he told me, he

would much rather be remembered as a very good lawyer, which he is, so that should be no problem.

After Dick will come our honored guest, Marvin Miller, the founding Executive Director of the Players Union, and we'll come back to him in a moment.

After Marvin, we may have a few comments from the current Executive Director of the union, Michael Weiner.

And after that, we will turn immediately to the roundtable conducted by moderator extraordinaire and N.Y.U. University Professor Arthur Miller. On the panel, in addition to our speakers, will be Bob Boland of N.Y.U., and Murray Chass, who has been reporting on baseball since . . . 1920?

**Murray Chass:** 1918.

**Davies:** 1918. Very good. Since before the beginning. And he has been simultaneously an iconoclastic and constructive prober of the game, both on and off the field, throughout that time and up to the present. A real giant of sports journalism. And I believe that covers our entire panel.

[*Ed. Note:* The prepared remarks of the panelists have been intentionally omitted.]

#### THE ROUNDTABLE DISCUSSION

**Arthur Miller:** Marvin, I'm sitting here, listening to these wonderful tales, and how you in effect got an eighty-fold increase in players' salaries, and I'm wistfully saying to myself, "God, what you could have done for law professors!" I'm gonna let you rest for a little bit. Just a little bit. You took us largely to '72, the great events of '72. I want to go back to '66. Chuck, why did they hire this man?

**Korr:** Before commenting on that, could I answer your question about law professors? Right after free agency, there was a letter from somebody holding an endowed professorship at the University of Texas, who said that Marvin was a consultant to the union and had been so successful in negotiations concerning members with very different salaries and situations, and would he consider working with a union of professors. Marvin replied, "No, I'm actually a full-time employee of the union, and good luck with what you're trying to do, but there's nothing I can do to help you." Since Marvin's wife Terri was an academic, he had some idea about the problems that the professor described. So, Arthur, somebody thought of it before you, and it just didn't work.

They hired Marvin in great part out of serendipity because the man to whom they'd offered the job in the first place, Judge [Robert] Cannon, who had been the part-time legal adviser and who was more than comfortable in (a) wanting a company union, but (b) he wanted to be the commissioner of baseball in the future. And he turned down the position of full time Executive Director of the MLBPA. He turned it down because he didn't want to move to New York, and he wanted his pension from the union the equal of what he was going to get by being a judge. He was a sitting judge in Wisconsin. So, in a funny way, Marvin is not the last resort but he's the next resort.

**A. Miller:** What did they think they were getting?

**Korr:** They thought they were getting somebody that a professor at the Wharton School had told them was an expert in the kinds of issues that the union was going to face, and by that, he meant basically pensions.

**A. Miller:** Yeah, but it wasn't a union then.

**Korr:** Well, to this day, when I interviewed players who were very active in the sixties and early seventies, the overwhelming majority still talk about it as the players' group or the players' association. There's a kind of in-built reluctance to use the word "union." That's a generational difference. I don't think any of the players who came into the association after '72 or after '76 ever thought about it as anything other than a union.

**A. Miller:** But it wasn't when Marvin comes in, when Dick comes in.

**Korr:** It's . . . well, it's a house union. It's . . . it's a group of people who get together twice a year to be told by the owners what they're going to give them. And what's even worse is they discovered in their first year with Marvin as Executive Director that the union was being funded by the owners. And this is when the owners finally made their . . . well, made their first big mistake. They said, "Well, we just discovered, after years of doing it, that we've been violating Taft-Hartley by paying you \$150,000 a year." Now they just happened to recognize that when Marvin and Richard got there. So I mean, if you need any better evidence to the players to say, "You've been conned all along," it's when the owners take the \$150,000 away.<sup>1</sup>

And I think you can make a case that the union survives in its early years thanks to Coca-Cola and the money coming in from play-

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1. See 29 U.S.C. § 186(a) (2006) (barring conflicted payments to union from management).

ers' images on bottle caps, which provides, I guess, the money to go into the Seagram Building.

**A. Miller:** The thing that's fascinating me is you're describing in '66, at best, a company union. A wimpy organization led by a man who wants another job. And then in '72, you've got this virulent, powerful group of people, who as Marvin himself described reject his recommendation and go off on this frolic known as a strike. What the hell happened between '66 and '72? What is the genius of that man that produced this behemoth of a union?

**Korr:** I think an important consideration is that it does take place in the sixties. And I don't think you can divorce the social consciousness that was surrounding the players. I mean, there is a sense in the broader society of not letting other people tell you what to do, not being taken for granted.

They also looked around and recognized that franchises were now being owned by companies like CBS. Teams were moving. The whole myth of the sportsman owner, the Tom Yawkeys and Bob Carpenters of the world, about whom much could be said, none of it nice by the way, that myth was being destroyed in front of the players' very eyes. Well, if the owners are in it for the money, then why shouldn't the players be in it for the money? Money is no longer a forbidden topic to talk about.

**A. Miller:** Now, Dick, he brings you in when he becomes Executive Director. What did you think you were getting yourself involved in?

**Richard Moss:** Well, I was well aware of what was happening in baseball and the attempts that were made to develop a real union, a real organization that would work for the players.

By the way, if I can go back a step. When I mentioned the story of Richard Nixon's almost-involvement with the Players Association, I forgot to give you the punch line, which is, when Robin Roberts said, "Okay, Marvin, we'll do it your way," at that point, I became the third guy in history to beat Dick Nixon out of a job that he wanted, after Jack Kennedy and Pat Brown. And as some of you may remember, Nixon went on to get a much more important job, which he managed to hold. For a while.

But it was a labor relations scene from the thirties in the sixties, and that was delicious. That was going to be good fun.

**A. Miller:** I see the smile on your face. You've looked back. This was a challenge. You had a plan. You had an agenda. You come into a vapid organization, and the two of you sort of had a plan?

**Moss:** My mother thought I was very foolish. She thought I was on a good career track, and, “Why would I give it up just to represent a bunch of baseball players?”

**A. Miller:** Well, that’s a reasonable question.

**Moss:** She didn’t understand.

**Marvin Miller:** I could add to that. Nobody understood my accepting either. Certainly not my colleagues at the steel workers’ union, who said, you know, “Steel workers are a prestigious union, a very large one.” At the time when I left, they had 1,249,000 members, and it was, as unions go, it was a wealthy union. It had a great reputation in terms of representing people. Philip Murray was an extraordinary labor leader, but my feeling was that I wanted to start something from scratch. I felt that the steel workers’ union was just too big. If you lived to be 1,000 years, you couldn’t meet all the people, and you really had to intuit as to what it is they wanted, what they felt like. And I realized that going into an organization, which at the time had 500 members, that I could actually know every one of them and that I could meet with them. Not just meet them, but meet with them regularly.

**A. Miller:** You were really downsizing.

**M. Miller:** Yeah. And in those days, every major league team came through New York three times during the season. And I encouraged all of the players—when they were playing night games, for example—to come to the office, that it was their office, and to come even if they had no particular purpose. “Just want to shoot the breeze? Fine. But certainly come if you have a problem or if you have something you feel is important to impart, some kind of reaction to something that was done here. Remember, it’s not my union, it’s your union.”

**A. Miller:** Murray, when was the first time you met Marvin and Dick?

**Chass:** It, to me, is one of my favorite stories of all time. I was a young reporter for the Associated Press in the early sixties, and there was a steel workers’ strike in ‘61 or ‘62. And the strike was settled, and there was a news conference at which the steel workers’ representatives were going to explain the details of the agreement. I was sent to cover it. I don’t know why because I had no idea what had happened, but I was sent to cover it. And this gentleman, who was an economist, was the explainer. He explained the details. And I frankly didn’t understand anything he said. And I asked him a question, and he answered it, simplified matters. And the next day, anybody who covered that news conference used his answer to my question as the

lead of their stories. So, all that told me was that nobody else understood it either.

Now, the irony of that is that with the baseball union—one of Marvin's really great abilities was the way he could simplify complex issues and explain not just to the players but to members of the media. So let's say the strike was '62. Four years later, he's in New York, where by this time I was also, and so I met him again under a different circumstance. And Dick I met around the same time, you know, '66, '67, probably. And one thing that I found about the two of them, and it has stood to this day—I was often accused of being a union guy. I was not a union guy. I was a reporter who tried to be objective. But what I found was that Miller and Moss always told the truth. Fehr told the truth. Michael Weiner tells the truth. I have never found any of them to lie to me. The owners lied all the time. The owners had no credibility; the union had one-hundred percent credibility. And so, it was easy to report what they had to say and trust that they were telling the truth. I couldn't do that with the owners.

**A. Miller:** Yet, most of your colleagues in the press, particularly around strike time, vilified the union, vilified Marvin, Dick.

**Chass:** That was out of ignorance. They resented, first of all, they resented that somebody should come in and take away the game that they loved and they covered. I loved covering labor. I liked being a reporter. To me, it was about what happened off the field more than on the field. But most of the other reporters wanted no part of this. In the 1981 strike, *The New York Daily News* had three baseball writers, none of whom wanted to cover it.<sup>2</sup> And so, they wound up having their labor writer cover it, to which Marvin might have said, "Well, that was an intelligent thing to do." But the owners' chief labor negotiator, Ray Grebey, caught on to this *Daily News* labor writer, realized that he really didn't know what was happening because it was baseball and not some other facet of labor, and conned him into doing a number of stories that were not accurate. I just saw labor as an important facet of baseball, and I enjoyed covering it from a reporter's standpoint. Most of the other reporters wanted no part of it. I experienced it in the N.B.A. and N.H.L. in 1994 when the baseball strike was on and there were no negotiations.<sup>3</sup> I covered talks in those other two sports,

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2. For more on the 1981 baseball strike, see Robert A. McCormick, *Baseball's Third Strike: The Triumph of Collective Bargaining in Professional Baseball*, 35 VAND. L. REV. 1131 (1982).

3. For more on the 1994-95 baseball strike, see Paul Stoudohar, *The Baseball Strike of 1994-1995*, MONTHLY LAB. REV., Mar. 1997, available at <http://www.bls.gov/mlr/1997/03/art4full.pdf>.

and it was incredible that the writers wanted no part in it. They had no idea what was going on, and they didn't take the trouble to find out. I just always made it my business to understand what was happening, and it was something I truly enjoyed.

**A. Miller:** Now Michael, obviously there's a legacy here. Marvin and Dick end in the eighties, Don Fehr moves in, now you're in. As you go to work every day, what of this legacy that these two started and magnified. How does it affect your daily life?

**Michael Weiner:** It affects it every single day, and it affects it every single time we talk to players. You know, we get a chance, as Marvin said, to talk to the players every spring training. And I learned from Don that that's an opportunity to impart the history of the Players Association to the players. It's to make sure that every generation of players understands that all the rights that they currently enjoy that Marvin described, didn't just fall down from the sky, but that they exist because players before them sacrificed, fought, bargained to get all those rights. This includes even the very right to meet as a union on site, on company time. It didn't come from the outside. It came because the players negotiated it. The right to have an agent didn't come from some outside law. It came because the players negotiated it. Everything the players had, we explain in spring training that history. And even this very history that was discussed today, we say to the players—I say to the players—“This union in a real sense was founded around pension.” I remind the players that in '66 when Marvin and Dick took over, players virtually had no retirement benefit other than what they funded out of their own pocket, and that every time we bargain, we have to honor that history. I don't get into the details, but I do explain that the first work stoppage in baseball was over the pension. So, this history informs everything that the union does, and it's something that the players really, really connect with.

**Chass:** Professor Miller, if I could add one thing? You asked before what happened between 1966 and 1972. I think the primary thing that happened was that Marvin Miller educated the players. He took players who were totally ignorant of what he was about to embark on, and he taught them. He taught them so well that one of my favorite, I guess, most vivid memories is during the 1994 strike, there was a player meeting at some point in New York, and one of those in attendance was Dave Winfield, a veteran player who was close to retirement. He had nothing to gain from this strike and in fact had money to lose because he was losing salary that he would never regain. He gave an impassioned speech that explained to the younger players there why it was important to do what they were doing. And,

you know, this was long after Marvin had retired, but this came directly from Marvin.

**Korr:** Could I latch on to that? I probably interviewed thirty-five or forty former players, some of whom were about to retire shortly after Marvin came to the union. And the single thing that comes up the most often when talking about Marvin is (a) he was a teacher, and (b) he never talked down to us. And these are guys who are used to being talked down to. They're used to the society, the broader society, thinking of them as dumb jocks, and they're used to the owners and the press telling them they should feel lucky to be getting paid to play baseball and not rock the boat.

**A. Miller:** And that was part of the strength of what Marvin and Dick did.

**Korr:** They assumed that these guys were smart enough to know what was going on, but more than that, that they actually cared what was going on.

**M. Miller:** Yeah, I just wanted to add: Charles is absolutely right. Educating the players about labor-management relations was one thing, the facts about how the industry really operated was another. It got to the point where I think many of the players knew more about how the industry operated than the owners did.

But we've all left out something, that was always on my mind, and that was to improve the players' self-image as to their self-worth. You have no idea. I mean, some of the writers would paint the players as country hicks, as rubes, and so on. They weren't that. But they were basically beaten down into people who felt that they were just not important in that industry. Even the top stars, some of them. And no wonder. I mean, you gotta remember—I got to know Joe DiMaggio very well—he was no longer a player when I came there, but he was a coach.

**A. Miller:** He was my hero at age five. It's why growing up in Brighton Beach, Brooklyn, I was a Yankee fan and still am.

**M. Miller:** Well, about DiMaggio. I've forgotten whether it was his second or third year in the major leagues. He had two back-to-back years that were just amazing, and he tried to negotiate an increase. He asked for \$40,000. And there's a famous story. And the owner told him, "That's impossible. Lou Gehrig gets \$40,000." And DiMaggio, always the gentleman, said, "That just means that Mr. Gehrig is badly underpaid." But what happened in that particular negotiation is what I mean about being beaten down. This was a star player who clearly was going to be a superstar, and he was told basically, "Look, you have relatives in San Francisco. Some of them are fishermen. Some

have a restaurant. You've got all kinds of possibilities, so why don't you go back to San Francisco and either become a fisherman or work in a restaurant?", and so on.

**A. Miller:** Can I ask you about two players who didn't want to be beaten down?

**M. Miller:** Sure.

**A. Miller:** One is Ted Simmons, who's in the front row this evening with us, and the other is Curt Flood. It is reported that before they undertook the great adventures they did—Simmons playing out his option with the Cardinals, Curt Flood fighting baseball all the way to the Supreme Court—they spoke with you. What were those conversations like, with Curt or with Ted Simmons? What did you talk about?

**M. Miller:** Well, the Curt Flood case was—is—really an interesting one. At the time we're talking about, he had already been hailed as the premier center fielder in baseball. We were in the last playing days of Willie Mays, and Flood was clearly the best. He's a quiet man, a dignified man, an intelligent man. And he simply—you're right—refused to be beaten down. He was so offended, not just by being traded from St. Louis, but he was offended by the manner in which it was done. He learned about it from a reporter waking him up. He had been there, a Cardinal, for twelve years, and the management didn't even have the courtesy to tell him first before they told the press. And he resented it deeply. And very frankly, he told me he didn't want to go to Philadelphia. You know, both St. Louis and the Phillies were in the National League. On his experiences in Philadelphia, he said he had observed that the people at the ballpark, patrons, were as racist as any he had ever met in the south, and he was not going to live there or work there. And the gist of the conversation, Mr. Miller, I tried to talk him out of his idea of filing an antitrust lawsuit. And I tried to do that because I felt it was a losing case. I felt that the Court having ruled on *Federal Baseball*,<sup>4</sup> having ruled on *Toolson*,<sup>5</sup> they were not going to ignore stare decisis and they were just not going to do that. And they were just going to lose.

**A. Miller:** But he rejected your advice.

**M. Miller:** Yes, he did.

**A. Miller:** [pointing to Richard Moss] I see your lawyer is . . . .

**Moss:** That's two of them now. You caught on.

**A. Miller:** But who's counting?

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4. *Fed. Baseball Club v. Nat'l League*, 259 U.S. 200 (1922).

5. *Toolson v. N.Y. Yankees, Inc.*, 346 U.S. 356 (1953).

**Moss:** By the way, the Flood case is regarded as an antitrust case, but Curt felt that it was more of a civil rights case. And Marvin and I agreed that that was a big, big part of it, and it was a very interesting process.

**Weiner:** And I think when you ask, Professor Miller, what happened between 1966 and 1972, it was a combination of Marvin and Dick bringing the principles of union building and organization from the steel workers to the competitive spirit of baseball players, but it was also the example that Curt Flood had set because Curt had talked about taking a stand, talked about saying, "We're not going to accept simply what is dictated to us." Curt put himself out there. And while the Supreme Court case was after the '72 strike, the players saw what Curt had done.

**A. Miller:** And Ted Simmons?

**M. Miller:** Oh, both of them. Just one second. On Curt. Because I've got to tell one story because it really tells what I mean. At a point when it was still possible for me to think that I could get him to understand he was ending his career in doing this, and that I didn't want him to do it because it was a losing case, you know, and he was still insisting, and so I kind of pulled out all the stops, and I said, "You know, I've told you before this is a million-to-one shot in the way things stand, but even if I'm wrong and you're the one in a million, I want you to know that even if you win the case, you're not going to get any damages." And he said to me, "Why is that?" And I said, "Because the Court has many times ruled that what the owners were doing was legal, that the best you could hope for was prospectively to say that this has to stop, and that they couldn't possibly award damages to practices that they said were legal."

And Curt sat there for a minute, and he said to me, "But if we win, it would help my teammates, wouldn't it?" And I said, "Yes." And he said, "And it would help all the players in both leagues?" And I said, "Yes." And he said, "It would help all of the players coming up in the future?" And I said, "Yes." And he said, "That's good enough for me." That was Curt Flood.

**Moss:** He was a very special man.

**A. Miller:** Now Bob, you love the business of sports. I know that by personal experience. There have been very few comments here favorable to the owners this evening. Did this duet do anything for the owners, perhaps inadvertently?

**Robert Boland:** Well, actually, they threaded the ultimate needle in that they made the business, from a union perspective, more competitive and more profitable. That really is the unknown frontier of

labor relations on almost every level. So, it was probably in some ways the ultimate magic trick. And at the same time, over the arc of this career, they've created sports business as we know it. We didn't have that before that. And I was seven years old when the first strike happened, and I couldn't understand who stood between me and my opening day. And over the entire arc of my life, it's been possible to work as an agent, to practice sports law, to teach this subject in sports business now, and this really has been made possible by Marvin Miller and his accomplishments.

**A. Miller:** I hadn't even thought about that. But for these two, you'd be unemployed.

**Boland:** Probably.

**A. Miller:** Now when you say, created business, what do you mean? What's the economic value that they actually created, not simply for the players but for the owners?

**Boland:** Well, for the longest time, and even sometimes today, we never knew quite how much money any of these sports enterprises really made. Oh, we could calculate the hot dogs we thought they sold or the beer that we thought got consumed at the stadium, but we never really knew what they made. We got an idea when they would tout about the broadcast contracts they signed and wrote in the paper about. I always thought Marvin Miller was kind of a genius. He could read the paper too and kind of pick that up. And that was the first thing we went after. But we never knew what these things were worth. And yeah, there was exclusivity, but then we were always told they were loser propositions. They were all about the sportsmanship angle. Well, the Los Angeles Dodgers transacted, or will transact in the next coming days, officially in the neighborhood of \$2 billion. So, in some ways that's the valuation that the value of players asserting their rights, having freedom—now a concept we call free agency—has created. It's created a science and a business that's an important one nationally and globally, and one that keeps growing in importance.

**M. Miller:** I don't want to let the moment go by without mentioning Ted. We skipped over Ted Simmons too fast. When he was a very young player with the Cardinals, and he had had an excellent year, a proposed contract was not to his liking. He discussed it with Joe Torre, who played on the same team, who discussed it with me, and I advised him that they could renew his contract without his signature. That's the meaning of the reserve clause. You're an owner, you put in the figure you want, and you, as the owner, sign it. And without the player's signature, it's a contract. But now we get to the nub of the situation because the reserve rule itself says you can only do that "for

one additional year.” Now the mystery is how did they manage to hoodwink the players into thinking they had lifetime control? And the answer is they made sure that when they renewed it and the player came to play under a renewed contract, they made sure that they then had him sign it after the season started and usually without giving him anything in return.

Ted Simmons was of a different caliber. He was young and inexperienced, but he was not to be taken advantage of. And the Cardinals tried to. They basically said, “This is our last offer, and your contract is renewed and that’s it,” But he knew that if it went the whole year, that he had the potential of being a free agent, and he understood it. And he played it tough.

**A. Miller:** Did you advise him to play it tough?

**M. Miller:** By the time of the All-Star Game, I think it was, they had offered him a much better contract if he would sign it, and he signed it. And it was a courageous thing to do and a smart thing to do. And it worked.

**A. Miller:** You have the most impish expression on your face. You really enjoyed this, didn’t you?

**M. Miller:** Yeah, I did.

**A. Miller:** All right. Then I’m not crazy. That’s all. Just reading your face.

**Moss:** The owners argued that when they had the player sign the contract, even though they had renewed it before, when he signed it, that that renewed the renewal clause, and so it just continued into perpetuity. Ted was the first one who said, “No, I’m not going to sign a new contract even though you’ve renewed my contract.”

**A. Miller:** And then two, three years later, you get Messersmith and McNally, and the walls come tumbling down.

**Moss:** One year later.

**Korr:** Well, Marvin’s advice though varied depending on the player because Al Downing thought about doing it a couple years before Ted did, and Marvin basically said, “You’ve had a lousy year, a couple of lousy years. What the Yankees are going to say is, ‘Thank you very much. Don’t sign the contract.’” So, it also mattered that Ted’s courageous stand was also being taken by a young player who was on his way to becoming one of the two best catchers in baseball.

**A. Miller:** Right. Whereas Downing was in his last . . . .

**Korr:** Downing was superfluous to the Yankees at that time.

**M. Miller:** But they gave Downing an increase in order to persuade him to sign it, and he did.

**A. Miller:** Now Michael, any closing thoughts, since we're well past the allotted time and you're the man in the hot seat at the union right now?

**Weiner:** Look, as I said, the history of this union is its lifeblood. I heard Don say many times that certain things in baseball never change. Everybody thinks the best players are those that came up when they were ten years old, there's never enough pitching, and I'd add a third thing to that, and that is everybody says that each new generation of players doesn't get it, that, you know, the players when I started in '88, those players were too fat and happy. The minimum salary had skyrocketed to \$60,000, ten times what it was in 1966, and those players are the ones that beat back collusion. In the nineties, those were the players who fought back against the unfair labor practices and imposition of the cap. All the way to now, when we heard in this round of bargaining that the minimum salary is close to \$400,000, the average salary is \$3 million, these guys are too fat and happy too quickly, they don't get it.

When I took over, I knew from having watched Don that the only job that I had that actually mattered was making sure the players understood that this was their Players Association. And I borrow shamelessly from Marvin and from Don to pass that message along every time I get a chance to see players. So, this history is not just history. This is front and center, essential to the continued success of this union, and if this union continues to have success, it will only be because we're building on that history and creating new history ourselves.

**Moss:** May I add a personal note about Marvin? The week before last, Marvin had a birthday. And as you can see tonight, he's still going strong and will be doing so in the future for a long time. But it was his ninety-fifth birthday. We should acknowledge that.

**A. Miller:** Well, this has been wonderful.

**Chass:** Professor, if I may interrupt you for one second just with a final comment? Marvin started by saying he doesn't celebrate strikes but he celebrates the results of strikes. In 1994, when the strike began, the owners acted as if they had just won something. I had this image of them high-fiving each other, drinking toasts to each other because they had finally held together and didn't cave in to the players. It was an incredible display of something that they had no business doing. And of course all they did was kill the World Series, create the longest strike in baseball history, and, it was just, you know, a ridiculous response on their part. And so, when Marvin says he doesn't celebrate

strikes, he has things in the proper perspective unlike the owners. But that's just another typical way in which they are different.

**A. Miller:** And thank goodness right now we have peace in baseball, or what passes for peace in baseball. Let me turn it back to Ross, and my personal thanks to this wonderful panel.

**Davies:** Thank you, Arthur. Thanks to our panelists. Thank you especially to Marvin Miller. I believe there are refreshments in back for all of us. Thank you again for coming.

## MARVIN MILLER'S LASTING LEGACY

*Michael Weiner\**

Marvin Miller's legacy on the Major League Baseball Players Association is profound and ongoing. The animating principle that Marvin established is the animating principle of the union today—that this is *the Players Association*, and that the players make all major decisions of the union. Much has changed about the game and the industry since Marvin's tenure, but the fundamental primacy of player engagement and involvement in union affairs has been a constant.

Listening to the players who came to honor Marvin in late January made this manifest. Player after player testified as to how Marvin empowered them to make their own decisions—to learn of their own market value, to set their own priorities in collective bargaining, to make their own determinations on tactical and strategic negotiating matters. Those messages echo as I make my 2013 spring training tour. I have implored the players to get educated about their individual contract negotiations, to get involved in union leadership, to get engaged in the MLBPA issues that matter most to them. This is, as I directly quote and credit Marvin, the *Players Association*.

At times, Marvin had disagreements with the union on substance, but never on process and fundamental union principle. The most significant example was our Joint Drug Agreement—Marvin, to the end of his days, believed the union had made a major mistake in agreeing to random drug testing. The civil libertarian in him cringed at the invasion of privacy. The zealous union leader in him couldn't fathom how a union member could be required to give evidence—a drug test—that might lead to his own discipline.

But while Marvin disagreed with the players' consensus, he would have been proud of how that consensus was formed. As with all issues since Marvin was in charge, the consensus was formed by giving every player—everyone on a forty-man roster—the opportunity to share his input with us. Once that process is complete, however long it takes, the player leadership takes that consensus and translates it into bargaining positions. Historically, at that point, all players stand behind that consensus, whether they agree with it fully or not—because every player knows that he had an opportunity, a real opportunity, to

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influence that consensus position. It's no different than it was in Marvin's day, no different than it was in Don Fehr's day.

Upon reflection, another lesson arose from the remarks of the many players who came to honor Marvin and the union. Those players took the lessons about union engagement and player empowerment into their lives. Marvin, in a real sense, taught these men critical lessons that translated into their post-playing careers, whatever those careers happened to be. In my twenty-five years with the union, I've never known a player who didn't look back on his MLBPA involvement as being a fulfilling chapter in his career. Players relish the opportunity to contribute to the broader cause, and take advantage of the opportunity to learn more about the substantive issues that matter most to them. And when their playing days are over, players pass the baton of union solidarity from one generation to the next, forging an unbreakable chain that bonds for life all those who have played the game. But what's most satisfying—and most long-lasting—is that those players come away from their union involvement with a sense of personal self-worth and accomplishment. That's a direct legacy of Marvin Miller, and all associated with today's union are proud to be a part of it.