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Repository Citation

J. Gordon Hylton, *Why Baseball's Antitrust Exemption Still Survives*, 9 Marq. Sports L. J. 391 (1999)

Available at: <http://scholarship.law.marquette.edu/sportslaw/vol9/iss2/11>

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WHY BASEBALL'S ANTITRUST EXEMPTION STILL SURVIVES

J. GORDON HYLTON*

Although the Curt Flood Act¹ 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.

The Flood Act does seal the coffin of the perpetual reserve clause that from the 1880s to the 1970s completely restricted the ability of major league players to move from one team to another in search of higher wages or a preferred playing environment. Had this act been in effect in 1970 when Curt Flood filed his famous lawsuit against major league baseball, Flood would almost certainly have prevailed.² However, in 1999, the statute has no practical effect. As any knowledgeable baseball fan knows, the ability of the major league owners to impose restrictions of this sort on their players has been a dead letter since the McNally-Messersmith Arbitration of 1975.³ What major league baseball players could not obtain in the courtroom, they have won at the bargaining table. While a limited form of the reserve rule remains in place in major league baseball—it still applies to players with less than six years experience in the majors—it exists as part of the collective bargaining agreement and with the approval of the Major League Baseball Players Association.⁴ In 1971, Michael Jacobs and Ralph Winter predicted that the role of antitrust law in professional sport labor relations was coming

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1. The Curt Flood Act of 1998, Pub. L. No. 105-297, 112 Stat. 2824.

2. *Flood v. Kuhn*, 407 U.S. 258 (1972).

3. For the general history of labor-management relations in baseball, see LEE LOWENFISH, *THE IMPERFECT DIAMOND: A HISTORY OF BASEBALL'S LABOR WARS* (Rev. ed. 1980) & JOHN HELYAR, *LORDS OF THE REALM: THE REAL HISTORY OF BASEBALL* (1994).

4. The Major League Baseball Players Association under the leadership of Marvin Miller actually preferred a partial retention of the reserve clause as a way of insuring that the market not be flooded (no pun intended) by free agents. See MARVIN MILLER, *A WHOLE DIFFERENT BALL GAME: THE SPORT AND BUSINESS OF BASEBALL* 258-59 (1991); HELYAR, *supra* note 3, at 181-82.

to an end.⁵ It seems quite likely, given the progress that the Major League Baseball Players Association had made between 1966 and 1975, that the players would have eventually have secured significant modifications, if not the outright termination, of the reserve system without either the Flood lawsuit, the above mentioned arbitrations, or the Curt Flood Act.⁶

The limited effect of the Curt Flood statute raises the question of why Congress has steadfastly refused to abolish baseball's antitrust exemption even though the United States Supreme Court has recognized the anomalous (and allegedly illogical) character of the exemption (which does not extend to other professional team sports).⁷ Labeled a "walking zombie" in 1949, the exemption will clearly survive into the 21st century.⁸

Neither Congressional inertia nor the power of Organized Baseball can explain the persistence of this exemption. When Congress has felt the need to modify the application of antitrust rules to professional sports it has been able to do so quite expeditiously.⁹ Moreover, for all its power and influence, the National Football League has never been able to persuade Congress to grant it an exemption of the type enjoyed by Major League Baseball.¹⁰

The key to understanding the persistence of baseball's antitrust exemption is the fact that the exemption applies not just to Major League Baseball but to a much more complex entity known as Organized Baseball. Unlike the National Football League, the National Basketball As-

5. Michael S. Jacobs & Ralph Winter, *Antitrust Principles and Collective Bargaining: Of Superstars in Peonage*, 81 YALE L. J. 1 (1971). The availability of the decertification option has arguably prolonged the life of antitrust actions in the realm of sports labor-management relations beyond what Jacobs and Winter predicted. Under this approach, a players' union "decertifies" itself as the proper collective bargaining representative of its constituents who then file an antitrust action against their employers (who are no longer protected by the non-statutory exemption from the federal antitrust laws). Although this approach has been tried by the players of the National Football League and was contemplated during the recent NBA lockout, the viability of this tactic is questionable. See generally, PAUL C. WEILER & GARY R. ROBERTS, *SPORTS AND THE LAW* 204-11 (2nd ed. 1998).

6. See *supra* notes 3-4.

7. *Flood*, 407 U.S. 258.

8. The quotation is from Judge Jerome Frank's opinion in *Gardella v. Chandler*, 172 F.2d 402 (2nd. Cir. 1949), at 408-09.

9. See for example, Sports Broadcasting Act (1961); AFL-NFL Merger Act (1966); and the Curt Flood Act (1998).

10. For the history of National Football League efforts to lobby Congress on behalf of a more favorable antitrust position, see LIONEL S. SOBEL, *PROFESSIONAL SPORTS AND THE LAW* 33-54, 381-92 (1979) & DAVID HARRIS, *THE LEAGUE: THE RISE AND DECLINE OF THE NFL* (1986).

sociation, and the National Hockey League which operate as self-contained entities, Major League Baseball is merely one part of an elaborate structure of leagues bound together contractually by the National Agreement (also known as the Major-Minor League Agreement).¹¹ Under this arrangement several hundred teams playing in several dozens of leagues agree to abide by common rules designed to insure the economic viability of all members. From the time of the first National Agreement in 1883, member teams and leagues have agreed to respect the territorial rights of other teams and to refrain from competing for the services of players except by those rules specifically set out in the agreement.

Key to the operation of this system have been the concepts of league classification, salary caps, and reserved rights to players. Minor leagues are classified at different levels based on the population of the member teams, and players are expected to advance from lower classifications to higher ones (and eventually to the Major Leagues) if their abilities warrant. Minor league players are normally paid at a fixed rate depending on the classification of the league, and team owners have generally been prohibited from paying salaries in excess of the allotted amount.¹²

Independent minor league teams, once the dominant type but now relatively rare, have the right to sell their players to other teams and are thus protected from losing their entire investment in a player once his contract expires. On the other hand, to gain this level of protection, minor league teams have long permitted higher ranking teams to "draft" their players at the end of every season (which has the effect of a forced sale at a price set by the agreement). Minor league teams which are affiliated with major league teams ("farm clubs") typically do not control the contracts of their players but receive players on assignment from major league organizations. This system obviously reduces the labor costs of minor league teams, but operates only because the major league team has the power to recall the player at any time and may assign him to another team. Major league teams can afford to have large numbers of minor league players under contract at any given time because of the low fixed salaries and because other teams are prohibited from bidding for

11. AGREEMENT OF THE NATIONAL ASSOCIATION OF PROFESSIONAL BASEBALL LEAGUES (1987).

12. For a description of the structure of minor league baseball, see ANDREW ZIMBALIST, *BASEBALL AND BILLIONS: A PROBING LOOK INSIDE THE BIG BUSINESS OF OUR NATIONAL PASTIME* 179-80 (1992).

the services of these players.¹³ To guarantee compliance, players who refuse to accept approved contracts are prohibited from playing on any team in any affiliated league and any team that would attempt to sign such a player is subject to expulsion from Organized Baseball. Since 1965, North American amateur players have been subject to a major league draft which has the effect of limiting to one the number of teams with which an amateur player can negotiate with at any given time. (Prior to 1965, players who had never signed a professional contract had the right to negotiate with any major [or minor] league team).

Obviously, such a system raises serious antitrust problems, relying as it does on rules granting team's exclusive territorial rights and restricting the freedom of players to sell their services on the open market. On the other hand, the structure of Organized Baseball has long been accepted by the American public and the sporting public which has rarely complained about the way in which it restricts the occupational mobility of players. Moreover, the belief that minor league baseball is a proper testing ground for young players and a place of respite for players near the end of their career is deeply ingrained in the landscape of American sports. On top of this, most fans, and probably most players, have accepted the conventional wisdom that the stability of professional baseball has been possible only because of these very restrictions.

Whether the structure of Organized Baseball could have survived without such restrictions is difficult to say, in part because there were so few challenges to it in the first half of the twentieth century. The 1903 National Agreement, which marked peace between the National League and affiliated minor leagues and the upstart American League, ushered in a period of remarkable stability. Whereas team failures had been quite common in the nineteenth century, from 1903 until 1953, no major league team went out of business or even relocated to a new city. The only serious effort to establish a major league outside the parameters of the National Agreement—the Federal League of 1914 and 1915—ended with the termination of the League and the absorption of several of the league owners into the existing structure. Although there was always a fairly high degree of turnover in minor league franchises, the minor leagues survived two world wars and a Great Depression. A few of the higher ranking leagues (the International League, the American Associ-

13. Rules now permit a limited form of minor league free agency, but only for those players who have played more than six years in the minor leagues and who have not been placed on a major league roster. While it is possible for major league teams to draft the minor league players of another team, rules requiring drafted players to be added immediately to the major league roster of the existing team make this a rarely exercised option.

ation, the Pacific Coast League, the Southern Association, and the Texas League) operated continuously throughout the same period. With only a few small disruptions, the minor leagues continued to develop players for the majors. Although Minor League Baseball was always a financially risky venture (at least at the level of the lower minors), there were no serious internal challenges to the existing system, and until recently, only a handful of professional leagues attempted to operate without the benefits of the National Agreement.¹⁴

In the governmental arena, it has been the unwillingness of Congress and the Supreme Court to risk the consequences of subjecting the structure of Organized Baseball to the federal antitrust laws that has prolonged the life of baseball's antitrust exemption. That there would be no governmental interference or tampering with the basic structure of Organized Baseball became apparent in the 1950s when the sport's business and labor practices were subjected to unprecedented public scrutiny.

At mid-century, the fate of the exemption seemed anything but settled. In fact, when minor league pitcher George Toolson filed an antitrust action against Organized Baseball in 1950, there was every reason to believe that the federal courts would let his challenge proceed. The conceptual underpinnings of *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs et al.*,¹⁵ the 1922 United States Supreme Court decision which had held that baseball was not a form of interstate commerce, had been seriously eroded by the Court's expanded definition of interstate commerce in the 1930s and 1940s and by the post-1922 increase in interstate radio and television broadcasting of baseball games.¹⁶ In 1949, the United States Circuit Court for the Second Circuit had held that these factors meant that baseball was no longer exempt from antitrust actions. Afraid of an adverse Supreme Court decision, Organized Baseball had chosen not to appeal the ruling but instead settled the case brought by former New York Giants outfielder Danny Gardella who had been blacklisted for signing a contract with the independent Mexican League while still under reserve to the

14. For one such example, see R.G. UTLEY & SCOTT VERNER, *THE INDEPENDENT CAROLINA BASEBALL LEAGUE, 1936-38: BASEBALL OUTLAWS* (1998). In recent years, the number of independent minor leagues has risen dramatically. In 1992, there were no such leagues; in 1996, there were eight. *ENCYCLOPEDIA OF MINOR LEAGUE BASEBALL* 634-36 (LOYD JOHNSON & MILES WOLFF, eds., 2nd ed., 1996).

15. 259 U.S. 200 (1922).

16. For an example of the expanded definition of commerce, see *United States v. Southeastern Underwriters Association*, 322 U.S. 533 (1944). In that case, the Supreme Court reversed several earlier cases in which it had ruled that the sale of insurance did not constitute interstate commerce.

Giants.¹⁷ Moreover, in the late 1940s, the United States Justice Department had begun an investigation of the antitrust implications of major league baseball's broadcasting policies without any apparent concern about baseball's immunity. (In fact, rather than contest the authority of the Justice Department, Major League Baseball agreed to modify its broadcasting rules to comply with the Justice Department's requests.)¹⁸ In addition, scholarly opinion seemed clearly of the view that the exemption should be abolished.¹⁹

Buoyed by the belief that Organized Baseball was no longer immune from antitrust liability, a number of disgruntled minor league players and officials decided to follow Gardella's example and filed antitrust actions. By July of 1951, eight such cases were pending in federal courts. That same month, the Subcommittee on Monopoly Power of the House Judiciary Committee began hearings on the baseball business. The Subcommittee was chaired by Brooklyn Congressman Emmanuel Celler who was on record as saying, "[i]f baseball is illegal, then we must prosecute the owners or change the law."²⁰

The issue returned to the United States Supreme Court in 1953 when the court heard the case of minor league pitcher George Toolson. Toolson had pitched for the Newark Bears of the International League in 1949, a AAA (the highest minor league level) affiliate of the New York Yankees. The Yankees dropped their affiliation with Newark the following year, and Toolson was reassigned to Binghamton of the Class A Eastern League, a team two levels lower than his previous team. Toolson refused to report to Binghamton and tried to obtain a position with a team in the AAA Pacific Coast League. However, in May of 1950, he was placed on the ineligible list which prevented him from entering into a contract with any other major league organization or minor league team. In response to his blacklisting, Toolson filed an antitrust action against the Yankees and Organized Baseball in California.²¹

Toolson's lawsuit struck at the heart of the structure of professional baseball in the United States, since he was effectively challenging the

17. *Gardella v. Chandler*, 79 F. Supp. 260 (S.D.N.Y. 1948); *judgment reversed* by 172 F.2d 402 (2nd Cir. 1949).

18. For an account of this episode, see SOBEL, *supra* note 10, at 577-78.

19. See for example, Jay H. Topkis, *Monopoly in Professional Sport*, 58 YALE L. J. 691 (1949) & John Eckler, *Baseball—Sport or Commerce?*, 17 U. CHI. L. REV. 56 (1949).

20. LOWENFISH, *supra* note 3, at 174.

21. Facts pertaining to the *Toolson* case are taken from the Supreme Court's opinion and from the official record submitted with the briefs. *Toolson v. New York Yankees*, 346 U.S. 356 (1953).

right of Organized Baseball to place restrictions on the mobility of players. Unfortunately, for Toolson, those who had predicted that the Supreme Court would abolish baseball's antitrust immunity were premature in their judgment. In a brief, per curiam opinion signed by seven justices, the Supreme Court dismissed Toolson's claim on the ground that Organized Baseball did not fall within the ambit of the antitrust laws.²²

The extent to which the Supreme Court's *Toolson* decision changed the rationale for baseball's exemption has not been fully appreciated. In *Federal Baseball*, Justice Holmes had found that the movement of players from one state to another for the purpose of playing of baseball games did not constitute "commerce" in the constitutional sense. By 1953, the Court no longer defined commerce so narrowly, and the *Toolson* court did not attempt to reaffirm the rationale of the earlier decision. Instead, it pronounced that "[w]ithout re-examination of the underlying issues, the judgments below are affirmed 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 of the federal antitrust laws.*"²³ *Federal Baseball* in fact had said nothing about Congress' intent when it enacted the Sherman Act in 1890 or the Clayton Act in 1914. While it is true that the Congressional debates reveal no evidence of an intent to include baseball within the scope of the new statute, that was not Holmes' point. According to Holmes, baseball was not commerce, and Congress therefore could not have made it subject to the antitrust laws even if it had chosen to do so. By redefining the holding in *Federal Baseball*, by insinuating that it was Congress and not the Court that had created baseball's immunity, the Court tossed the issue back to Congress.

Why were seven of the nine Supreme Court justices in 1953 unwilling to subject baseball to the antitrust laws? The only policy justification hinted at in the majority opinion was the fact that the industry had been allowed to develop for the past thirty years "on the understanding that it was not subject to existing antitrust legislation."²⁴ The brief filed by Major League Baseball and an amicus brief filed by the Boston Red Sox of the American League do, however, offer an indication as what argu-

22. *Id.* On appeal to the Supreme Court, Toolson's case was combined with two others. *Toolson v. New York Yankees*, 101 F. Supp. 93 (S.D. Cal. 1951), *aff'd* 200 F.2d 198 (9th Cir. 1952); *Kowalski v. Chandler*, 202 F.2d 413 (6th Cir. 1953); & *Corbett v. Chandler*, 202 F.2d 428 (6th Cir. 1953).

23. *Toolson*, 346 U.S. at 356-57 [Emphasis added].

24. *Id.* at 356.

ments may have persuaded the Court to find that Congress had never intended baseball to be subject to the antitrust laws. Rather than focus on the technical question of the continuing validity of *Federal Baseball's* determination that baseball was not commerce, both briefs argued that the unique character of Organized Baseball required that it receive special consideration under the antitrust laws. While free competition was generally a positive good, the briefs acknowledged, they insisted that baseball could not continue to operate without some restriction on competition for player services. As the amicus brief concluded: "The unique and anomalous characteristics of the baseball enterprise is therefore in itself a reason for not applying to the full extent of their possible literary scope the broad general phrases invoked by the petitioner."²⁵ By holding that Congress had not intended to include baseball under the antitrust laws, the Court was in effect accepting just such an argument. As a appellate strategy, the approach of Major League Baseball in arguing its case in *Toolson* was unconventional, but it worked.

Once the issue returned to Congress, the unwillingness of elected officials to risk shaking the foundations of Organized Baseball became even more apparent. The Celler Committee had concluded its investigations in May of 1952 on a somewhat convoluted note. The Committee's hearings had revealed that there was much greater dissatisfaction with the failure of Major League Baseball to expand into new cities than there was with baseball's labor practices. In fact, with only a handful of exceptions, most of the players who testified before the subcommittee expressed a belief that the reserve clause was necessary for the survival of the industry.²⁶ The Committee concluded that a blanket immunity to the antitrust laws should not be granted to baseball but at the same time decided that the reserve system should not be outlawed by legislation, finding that "professional baseball could not operate successfully and profitably without some form of reserve clause."²⁷ Assuming that the Supreme Court would not uphold *Federal Baseball*, the Committee felt that the proper next step was to test baseball's reserve rules under the "rule of reason" test applied in antitrust cases.²⁸

25. *Id.* Amicus Brief filed by the Boston Red Sox on behalf of the American League, at 16.

26. For a discussion of the Celler Committee hearings, see G. EDWARD WHITE, *CREATING THE NATIONAL PASTIME: BASEBALL TRANSFORMS ITSELF: 1903-1953*, 299-309 (1996).

27. *Organized Baseball: Report of the Subcommittee on the Study of Monopoly Power of the Committee on the Judiciary, House of Representatives*, H. REP. 2002, 82d Cong., 2d Sess. at 228 (1952).

28. *See id.* at 231.

However, once the Supreme Court handed down its *Toolson* decision, Congress undertook no serious efforts to modify the Court's decision or to implement the modest recommendations of the Celler Committee. The apparent consensus, confirmed by the Celler Committee report, that some form of reserve system was essential for the continued economic viability of the sport, suggested that there was no urgent need for reform particularly since baseball was no longer banning players for past breaches of the reserve clause as it had been doing at the time of the Gardella incident. Moreover, there were legitimate reasons to believe that the elimination of restrictions on player movement would destroy whatever competitive balance that remained at the major league level. Eight days before the *Toolson* case was argued in October 1953, the New York Yankees, Major League Baseball's wealthiest and most successful team, had captured its unprecedented fifth consecutive World Series championship. In an era where the cry of "Break up the Yankees" was a common refrain, it hardly made sense to open up the marketplace. While the elimination of the reserve system might have hurt the Yankees in the long run by allowing other teams to raid its talent-laden farm system, in the short run it would allow the sport's strongest team to become even stronger by outbidding its rivals for their best players.²⁹

Furthermore, the principal complaint voiced during the Celler hearings, i.e., that Organized Baseball had too narrowly restricted the geographic location of major league teams, was addressed by the major league owners. In 1952, the Pacific Coast League was reclassified from AAA to "Open," a specially created designation intended to enhance the possibility of that league becoming a third major league. More importantly, between 1953 and 1957, five teams from existing multi-team cities (Boston, St. Louis, Philadelphia, and New York) moved to new locations (Milwaukee, Baltimore, Kansas City, Los Angeles, and San Francisco) resulting in the first new major league cities since 1903.

An even more compelling reason to leave baseball alone was the steady decline of minor league baseball in the 1950s, a fact that was becoming clear by the time that the issue returned to the Congress. In

29. In the four seasons from 1949 through 1952, the Yankees drew a total of 8 million fans in an era when ticket sales still accounted for the lion's share of baseball revenue. With 7 million in attendance, only Cleveland approached the New York total, and only three other teams (Detroit, Brooklyn, and the Boston Red Sox) exceeded 5 million. The poorest drawing team, the St. Louis Browns, drew only 1.3 million fans over the four years. Totals calculated from yearly attendance figures presented in *ENCYCLOPEDIA OF MINOR LEAGUE BASEBALL*, *supra* note 14, at 378, 389, 400 & 412.

1949, there had been 59 minor leagues in 438 cities, and nearly 42 million fans turned out for minor league games that year. Two years later, the number of leagues had dropped to 50, and attendance had fallen by more than 35% to 27 million. Initially, this drop was attributed to the Korean War, but the end of the war did not stop the decline.³⁰ By 1957, the number of minor leagues had dropped to 28 while total attendance fell to 15.5 million. By 1959, seven more leagues had folded.³¹ In the face of new entertainment options, minor league baseball seemed unable to compete in many venues. In 1956, Baseball Commissioner Ford Frick appointed a "Save the Minors Committee," and the following year a half million dollar stabilization fund was established to help shore up the lower minors.³²

In this climate, in which the institution of minor league baseball was valued more in the abstract than in the particular, the idea of severing the slender thread (control of labor costs) that enabled minor league baseball to survive was hardly attractive. Even with the 1950's shake out there were still minor league teams in most states, and few Congressmen wanted to bear the blame for their demise.

Nevertheless, the issue of baseball's antitrust exemption was brought back on to the Congressional table by another Supreme Court decision. In *Radovich v. National Football League*,³³ the Court reaffirmed its *Toolson* holding as to baseball, but refused to extend the exemption to professional football. The *Radovich* decision reiterated the special status of baseball, and cited the acquiescence of Congress to the exemption as proof that it should not be overturned by judicial decision. In his opinion for the majority, Justice Thomas Clark explained,

The Court did this [upheld the exemption in *Toolson*] because it was concluded that more harm would be done in overruling *Federal Baseball* than in upholding a ruling which at best was of dubious validity. Vast efforts had gone into the development and organization of baseball since that decision and enormous capital had been invested in reliance on its permanence. Congress had chosen to make no change.³⁴

Although the Court went no further in its explanation, this was another way of saying that the National Football League did not need an anti-

30. See ENCYCLOPEDIA OF MINOR LEAGUE BASEBALL, *supra* note 14, at 347.

31. See *id.* at 100-101; SOBEL, *supra* note 10, at 582.

32. See *id.* at 411. On the decline of the minor leagues in the 1950's more generally, see NEIL J. SULLIVAN, THE MINORS 235-55 (1991).

33. 352 U.S. 445 (1957).

34. ENCYCLOPEDIA OF MINOR LEAGUE BASEBALL, *supra* note 14, at 450.

trust exemption since it was only a single league, rather than a coalition of leagues arranged in a tight hierarchical structure, as was the case with Organized Baseball. (In 1957, the average major league team either operated or had exclusive working agreements with ten minor league teams and had between 200 and 300 players under contract. The typical NFL team had fewer than 40.³⁵) There were no farm systems at all in professional football and basketball; only hockey, whose players in this era were drawn exclusively from Canada, had a minor league system in any way resembling minor league baseball.

Even so, football executives responded to *Radovich* by lobbying Congress for an antitrust exemption comparable to that of baseball. The House Antitrust Committee conducted new hearings in 1957, and the following summer, the full House passed an amendment to the antitrust laws that exempted baseball, football, basketball, and hockey in regard to rules relating to competitive balance (like the reserve clause), territorial exclusivity, and the integrity of the sport.³⁶ Rather than modify baseball's exemption, this bill would have extended its most important features to other sports.³⁷ The Senate Judiciary Committee held hearings on the bill, but the proposal died in its Subcommittee on Antitrust and Monopoly.³⁸

A bill that specifically targeted baseball's organizational structure was introduced in February 1959 by Tennessee Senator Estes Kefauver. Kefauver's bill provided antitrust exemptions for most activities undertaken by professional sports leagues, but specifically denied the exemption to any baseball team that controlled more than 80 players at one time. A revised version of his bill lowered the level to 40 players. Although it appeared to have been advanced for the benefit of minor league players, Kefauver's bill was actually motivated by the belief that the large number of players under contract to major league teams prevented the creation of new independent major leagues. In fact, at the time the bill was introduced, legendary baseball executive Branch Rickey and others were in the process of organizing the Continental

35. *See id.* at 452.

36. *Hearings on H.R. 5307, et al., Before the Antitrust Subcommittee of the House Committee on the Judiciary*, 85th Cong., 1st Sess. (1957).

37. For a discussion of the process by which this bill passed in the House of Representatives, *see* SOBEL, *supra* note 10, at 38-41.

38. *See Hearings on H.R. 10378 and S. 4070 Before the Subcommittee on Antitrust and Monopoly of the Senate Committee on the Judiciary*, 85th Cong., 2d Sess. (1958).

League which was intended to be a third major league.³⁹ However, none of Kefauver's proposals passed either house of Congress, and the Continental League effort was abandoned once Organized Baseball announced that the number of major league teams would be expanded from 16 to 20 in 1961 and 1962.⁴⁰

Although concern that Organized Baseball was abusing its privileged position under the antitrust laws never disappeared completely, by the early 1960s, it was clear that there was no Congressional support at all for a complete repeal of baseball's antitrust exemption. Nearly 40 years later, the situation has not changed. While representatives from areas where there is dissatisfaction with the policies of Organized Baseball (particularly in regard to the location of major league franchises) still threaten to repeal the exemption, such threats are designed to influence baseball policies, and are not motivated by a true desire to do away with the immunity. An elaborate minor league structure still distinguishes baseball from other sports; the romance of minor league baseball remains secure (now epitomized by the movie "Bull Durham"); and as the debate over the Curt Flood Act revealed, Congress has no intention of jeopardizing the future of baseball's traditional structure by subjecting it to antitrust scrutiny.

39. On the Continental League, see JAMES QUIRK & RODNEY D. FORT, *PAYDIRT: THE BUSINESS OF PROFESSIONAL TEAM SPORTS* 319-20 (1992).

40. For a discussion of Kefauver's bills and other legislative efforts during the 86th Congress, see SOBEL, *supra* note 10, at 41-48.