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APPLYING A LEGAL MATRIX TO THE WORLD OF SPORTS

*Elsa Kircher Cole**

LEVELING THE PLAYING FIELD: HOW THE LAW CAN MAKE SPORTS BETTER FOR FANS. By *Paul C. Weiler*. Cambridge: Harvard University Press. 2000. Pp. ix, 351. Cloth, \$29.95.

The intensity of fans' love for sports is no modern phenomenon. In ancient Rome, fierce rivalries existed between fans of the Red, Green, Blue, and White factions in chariot racing. Even emperors had their favorites. A foul in a race by a member of one faction could spark a riot in the stands. Winning charioteers would have their busts displayed in public places and were paid salaries far beyond that of the average citizen. Juvenal complained in his *Satires* that a chariot driver might earn 100 times more than a lawyer! The best drivers even achieved free agency and could choose which faction to race for.¹

The natural excitement in sports is hard to duplicate in any other form of entertainment. The fast pace of most sporting events sets pulses racing, shifts in leads accelerate the tension, and the knowledge that the event has a finite time or distance limit heightens the drama.

One measure of how sport dominates our lives is the frequency of sports metaphors in our conversations, particularly those sayings that are shorthand for standards of excellence and esteemed virtues. We talk of "stepping up to the plate" when we speak of showing courage and strength of purpose in the face of adversity. We "raise the bar" when we want to strive for further excellence. Even the apostle Paul used sports metaphors to describe a life virtuously lived in the Christian faith: "I have fought the good fight, I have finished the race, I have kept the faith."²

Today almost every paper in America, no matter how small, has a sports section. Local television newscasts usually devote five to ten minutes of their scant half hour to cover sports news, generally through a dedicated sports reporter, although the rest of the news

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1. *The Glory of the Games*, in *WHAT LIFE WAS LIKE WHEN ROME RULED THE WORLD: THE ROMAN EMPIRE, 100 BC-AD 200* Ch. 4 (Time-Life Books ed., 1997).

2. 2 *Timothy* 4:7 (Revised Standard).

team is small in number. With the proliferation of hundreds of television cable channels, network executives are hungry for product that will capture viewer interest, and sports provide a natural audience draw.

The recent NCAA/CBS negotiations that resulted in a record \$6.2 billion contract for the right to broadcast, inter alia, the Men's Division I Final Four Basketball Championship over an eleven-year period, is an example of the value quality sports events have in today's media market. These media megamillions, along with those made from commercial product tie-ins, fuel big time sports' controversies — legal and moral. Neither fan loyalty nor player skill, but rather issues surrounding money have propelled sports law (sometimes coupled with entertainment law) into a separate legal discipline.

But for sport to maintain its exalted position, the leagues, associations, and organizations that host sporting functions must run efficiently and fairly, and somehow grapple with the burdens that accompany fan devotion and large bestowments of money. Because the value of sports for both the live fan and the one who never gets inside a sports venue depends upon the uncertainty of the outcome of any particular contest, the need for a "level playing field" for the contestants is primary. The most skillful player cannot prevail when the field is fixed, and few will maintain interest in lopsided, unfair contests. Professor Paul C. Weiler³ recognizes the importance of that concept in the title of his book, *Leveling the Playing Field: How the Law Can Make Sports Better for Fans*.

Weiler looks at sports with the dual lenses of a sports fanatic and a lawyer. That he fails to look at them also through the eyes of an educator is surprising. Although he is a university professor, Weiler fails to acknowledge sports' ability to educate and teach life lessons. Instead, Weiler focuses exclusively on sports as a business. In this light, he is troubled by many aspects of modern sports. Prompted by his love for the game, he uses his legal skills to find solutions to them, but his answers are directed always toward improving the enjoyment of the game for the fans.⁴

Weiler aims his book at the broad audience of sports fans, not just academics or practitioners, to whom he recommends *Sports and the Law*, the textbook he co-authored with Gary Roberts (p. ix). Indeed,

3. Henry J. Friendly Professor of Law, Harvard Law School.

4. While the focus on the fan is understandable when critiquing the world of professional sports, Weiler's failure to distinguish between that and the intercollegiate sports experience is disappointing. Fan enjoyment is not a guiding principle in decisionmaking at the collegiate level. Rather, the integration of the student-athlete into student life and intercollegiate sports into the educational mission of the institution is the primary goal. Weiler does not address the subsidiary role of the fan in that milieu, nor does he explain how the educational mission results in different decisions about the integrity of the game and what is appropriate morally.

the ratio of *facts* to *law* in *Leveling the Playing Field* is evident by a quick look at the book's index. The term "antitrust" is referenced eighteen times but the "New York Yankees" are referenced forty-three times. The *Violence Against Women Act* is mentioned once, while the movie *Jerry Maguire* is discussed five times. The case that exempted baseball from the application of the antitrust laws, *Federal Base Ball*,⁵ although referenced throughout the book, is not in the index at all, but "Federal Base Ball League" appears and has five citations.

Although Weiler fills the book with details about the history of litigation and labor negotiation in professional football, baseball, hockey, and basketball, it may be a difficult read for his intended audience of sports fans. Weiler faces the always hard task of explaining complicated legal concepts to nonlawyers. A careful reading by sports fans will be necessary to understand the theories on which Weiler bases his many recommendations of how the law should be used to improve sports enjoyment for the fans. The non-sports fan lawyer must search through a myriad of facts, and back and forth between chapters, to find the legal concepts that Weiler uses as the foundation for his recommendations. It is almost as though Weiler was so eager to share his wealth of sports lore and legal erudition that the material poured forth in a stream of consciousness that later was organized into topical areas.⁶

To avoid that same problem, this Review's headings correspond to issues in the order that he raises them. Amateur sports issues will be discussed first, followed by those of professional sports.

I. MONEY AND COMPETITION

Weiler begins his work by introducing one of the themes that he will revisit: how sport compares and contrasts to the entertainment world of the movie, television, and music industries. For example Weiler claims that the public fails to recognize the law's involvement with the entertainment industry, while its interaction with the sports world is well known (pp. 1-2). Yet, this observation seems at odds with the content of such popular publications as *People* magazine, and television shows like "Entertainment Tonight." The media is fascinated with the drama legal encounters provide in both the sports and enter-

5. *Fed. Base Ball Club v. Nat'l League*, 259 U.S. 200 (1922).

6. Furthermore, Weiler's pride in the number of Harvard Law School-trained lawyers who have played a role in major sports negotiations or litigation is evident. He never misses an opportunity to identify them as such throughout the book. At times he refers to the school just as "HLS," which may be mystifying to the nonlegally trained sports fan at whom the book is aimed.

tainment worlds. A fan of a particular actor is as likely to follow the actor's legal woes as a sports fan is those of his or her sports hero.

In contrast, there is validity in another of Weiler's introductory comments about the differences between sports and other forms of entertainment. He states that sports need organizations, leagues, associations, and conferences in order to provide the product of sport, while there is no equivalent need for "joint effort," as that term is understood in antitrust law, to produce product in the entertainment world. Thus, Weiler first introduces the reader to a discussion that will recur throughout his book — a discussion of antitrust law. Intrinsic to sports is the proposition that teams and individuals must abide by the same rules of the game in order to have fair competition (p. 5). Weiler recognizes that without this, contests will not be challenging to players or attractive to spectators.

The courts, too, have been sympathetic to this need and have exempted this type of concerted action from the application of the anti-trust laws. In reviewing the activities of the National Collegiate Athletic Association (NCAA), the U.S. Supreme Court said in *NCAA v. Board of Regents*:

What the NCAA and its member institutions market in this case is competition itself — contests between competing institutions. Of course, this would be completely ineffective if there were no rules on which the competitors agreed to create and define the competition to be marketed. A myriad of rules affecting such matters as the size of the field, the number of players on a team, and the extent to which physical violence is to be encouraged or proscribed, all must be agreed upon, and all restrain the manner in which institutions compete.⁷

While Weiler correctly identifies this need, he chooses a poor example in the NCAA's "restricted earnings coaches" rule⁸ to demonstrate how such joint power can be abused (p. 3). The rule was intended to create entry-level coaching positions and to maintain competitive balance among college basketball programs — legitimate goals for the NCAA, and certainly in keeping with Weiler's professed interest in leveling the playing field. The rule was adopted in the context of cost-saving efforts, however, which made it easy for the courts and critics to analogize to price-fixing. Thus, although only a few coaches actually had their compensation reduced by the rule and many entry-level jobs were created, the courts viewed it as a commercial effort by buyers of services with market power to jointly reduce their cost of purchasing a

7. 468 U.S. 85, 101 (1984).

8. NCAA Bylaw 11.02.3, adopted by the NCAA's member institutions at its 1991 annual convention, limited the compensation of a coach designated by an athletic department as a "restricted earnings coach" ("REC") to \$12,000 during the academic year and \$4,000 in the summer. Each sport had a cap on the number of coaches allowed, the last of which were set aside for the RECs, e.g., the ninth through twelfth coaching slots in I-AA football, the fourth slot in men's basketball, the third slot in women's lacrosse.

key input, compared it to a monopsony cartel, found it illegal, and permitted the award of extraordinary damages.

The case of Pete Gaudet at Duke University, cited by Weiler as a victim of this “egregious” rulemaking (p. 3), actually illustrates the way NCAA member schools sidestepped the rule, thus failing to level the playing field. Rather than using the rule to provide an opportunity for an entry level coach to join the profession, as was intended, Duke chose to keep all six of its highly paid coaches on staff and rotated the “restricted earnings” coach position between two of its coaches. It paid one of them the restricted salary and the other a salary higher than normal so that over two years the two salaries would average the same as was paid before the rule. It just happened that it was Pete Gaudet’s turn to be paid the lower salary the year he had to replace the head coach due to health problems. The previous year and the one following, Gaudet was paid more than his regular salary so that he did not suffer any long-term financial consequences because of the rule.

While sports leagues’ and associations’ efforts to protect and promote competition occupy a good portion of Weiler’s introductory thoughts, he also spends considerable time exploring some of the most contentious of modern sports controversies. The next portion of this Review discusses that portion of the book.

II. MAINTAINING SPORT’S INTEGRITY

A. *Misconduct & Discipline: A Mixed Bag*

While not the primary focus of *Leveling the Playing Field*, Weiler spends some time discussing the integrity of sports. He begins by examining the notorious misconduct by eminent sports figures, like Latrell Sprewell,⁹ Roberto Alomar,¹⁰ and Mike Tyson,¹¹ and the lack of meaningful discipline meted out in their cases. He also decries the lack of consistency in sanctions for misconduct across sports (pp. 15-16). In response, he suggests all player suspensions should be served during the regular season rather than the playoffs to ensure that the punishment is actually borne by the player who was guilty of the misconduct, instead of his team (p. 11), and that conduct against third par-

9. An NBA player who, in the midst of an argument, choked his coach and had to be physically restrained. Pp. 9-10. Sprewell was suspended from the league for one year and, upon reinstatement, was traded to the New York Knicks, where he has enjoyed success and popularity.

10. A professional baseball player who gained notoriety for spitting in an umpire’s face during an argument regarding a disputed call. Pp. 10-13.

11. A professional boxer convicted of rape in Indiana and sentenced to a multi-year jail term (p. 15).

ties should be dealt with more severely than against fellow players or coaches (p. 15).

These suggestions are valid and ones that the NCAA, for example, seeks to follow in its infractions process. Because of student-athlete privacy rights under the Federal Education Rights and Privacy Act¹², however, unhappy fans often are not aware of all the facts, and they decry the NCAA's decisions. This does not diminish the NCAA's advantage over professional sports, which are unable to issue uniform sanctions through a unified enforcement staff, infractions committee, and appeals board. Such a framework allows the NCAA to compare one student-athlete's misconduct with another's across different types of sports, and to mete out consistent penalties for similar misbehavior. If member schools are dissatisfied with the penalties handed out, they can vote to change the NCAA rules to "decriminalize" the behavior for all student-athletes. Professional leagues can only regulate within their own bodies and thus must always be at a disadvantage compared to the NCAA.

In addition, professional leagues, and colleges and universities who deal with nonathlete students, are under more pressure to find the quick fix to a misconduct problem than the NCAA. Weiler notes that in order to reach a reasonable response to misconduct, sports authorities must take time to think through the complexities of the issues, rather than react hastily to the public swell of emotion (p. 30). This is difficult to do in our media-rich culture that thrives on controversy and dispute. The disciplining authorities need to realize, as the NCAA does, that the likelihood is that the public will have an imperfect understanding of the facts, and any sanction chosen will be unsatisfactory to some. Therefore, the sanction needs to be selected because it is the right one, not because it will mollify the fans or the media.¹³

12. 20 U.S.C. § 1230 *et seq.* (1994).

13. The NCAA is able to insulate itself from media pressure by having sanctions for misconduct determined by a committee of jurists and educators unassociated with the school or conference where the misconduct occurred. Professional leagues lack similar independent bodies to determine sanctions. Further, when application of the rules results in sanctions the institutions believe are unfair, the institution can propose rule amendments and lobby and vote for their implementation.

For example, during the 1999-2000 men's basketball season, the NCAA's staff dealt with some men's basketball eligibility cases involving improper receipt of education expenses. The student-athletes had received benefits, such as payment for tuition at a preparatory school, from individuals who were not parents or legal guardians or established family friends, before they entered college. The student-athletes were required to repay at least some portion of the expenses and were withheld from contests.

NCAA member institutions asked that possible changes be made to the preferential treatment bylaws. As a consequence, a proposed bylaw change is now before the members for a vote that would allow a prospective student-athlete to accept education expenses, including tuition, fees, room and board, and books, from individuals or entities who directly provide the funds to the school the prospect is attending.

B. *Race and Disability*

Weiler also expresses consternation over the treatment of racial minorities and handicapped athletes in sports. He notes the small numbers of managers, coaches, and highly paid management folk who are black or minorities in sports where a high percentage of the athletes are of color (pp. 20-23). This is a major concern of the NCAA as well. Although the percentage of minorities in administrative positions in the national office staff exceeds their percentage in the population, this representation is not duplicated in the athletics departments of member colleges and universities.

One only needs to look at the 2000 NCAA football season to see the problem. At season's end, eleven new head football coaches were hired in Division I. None were black, although the sport's student-athletes are 50% African-American. The NCAA can only use moral persuasion to increase the numbers of minorities, and women, in higher education athletics administration. If schools can commit time and money to find and recruit talented women and minority athletes, they should be willing to make a similar commitment to their athletics staff.

In a similar vein, Weiler discusses the Casey Martin case and the need for sports to be tolerant of disabilities that do not affect the integrity of the game (pp. 27-30).¹⁴ He lauds the NCAA's treatment of Martin, as it conducted a physical examination of him and determined a cart was medically justified and did not present a competitive advantage (pp. 17-18). The appropriate questions to consider are what are the essential features of the game, and whether an accommodation interferes with the integrity of the sport. Sport presents special difficulties in making accommodations because it is essentially a conservative activity with set rules that are rigorously followed. Creativity must be employed to convince those who have grown up playing a sport a certain way to recognize that an accommodation can be made that will not destroy its essential nature.¹⁵

14. *Martin v. PGA Tour, Inc.*, 204 F.3d 994 (9th Cir. 2000), *cert. granted*, 121 S.Ct. 30 (2000). The case asks whether the Americans With Disabilities Act applies to the PGA rule that requires golfers to walk the course rather than use a golf cart. Mr. Martin has an atrophied leg due to Kipple-Treanoney-Weber syndrome. The Supreme Court should decide this case by the end of June 2001.

15. As an example, I once had to advise an NCAA swimming rules committee on the use of a wooden paddle strapped to the arm of a handless student-athlete. When concern was expressed that the surface of the paddle would provide a competitive advantage, I asked whether the paddle could be perforated to replicate the spaces between fingers so that no advantage would occur. All found this an acceptable solution.

C. Gambling

In his discussion of integrity, Weiler next deals with "the deadliest sin in sports," gambling. He discusses the inconsistency between the public's desire to keep sports pure from outside gambling interests while simultaneously increasing legal gambling venues nationwide (pp. 43-46). Weiler notes the acceptability of gambling in today's society, and tries to find a way to allow the moderate or casual gambler to legally bet on sports while still maintaining sport's integrity. He suggests that the government issue licenses to gamblers that would allow them to win, or lose, a certain amount each year (p. 49). While recognizing that illegal gambling would still likely occur, he believes ninety-five percent of noncompulsive gamblers would use such a mechanism, withering away the illegal market (p. 50).

Unfortunately, Weiler's solution would not address the integrity or moral issue of gambling in sports. College athletics has as its purpose not just entertainment for the fans, but also the character development of young people through the values gained through sports competition. The NCAA has taken an active role in its education and legislative anti-gambling campaign because of its concern over the increase in gambling by college students.¹⁶ This is consistent with the aggressive posture that college administrators have taken, after years of tolerance, against hazing and binge drinking on campus. Compulsive gambling is the next big issue to be tackled by student-life professionals.

The NCAA considers a player who bets on his or her own game to be an anathema to sport. Unlike the professional athletes that Weiler claims are unlikely to come under the influence of the gambling mafia because they are already so well paid, the college student-athlete has limited resources and can more easily be trapped by debt and be forced to throw a game or shave points to pay off debtors. The NCAA knows that point-shaving scandals hurt the integrity of the game for the players and fans, and they have long-term effects. Today the NCAA's Final Four is the penultimate goal of the college basketball player, but that is a fairly recent phenomenon. In the 1940's, the Na-

16. The NCAA's Position on Gambling, approved by the NCAA Administrative Committee on March 19, 1997, says:

The NCAA opposes all forms of legal and illegal sports wagering. Sports wagering has the potential to undermine the integrity of sports contests and jeopardize the welfare of student-athletes and the intercollegiate athletic community. Sports wagering demeans the competition and competitors alike by sending a message that is contrary to the purposes and meaning of "sport." Sports competition should be appreciated for the inherent benefits related to participation of student-athletes, coaches and institutions in fair contests, not the amount of money wagered on the outcome of the competition.

For these reasons, the NCAA membership has adopted specific rules [Bylaw 10.3] prohibiting athletics department staff members and student-athletes from engaging in gambling activities that relate to intercollegiate or professional sports events.

Position on Gambling, Op. NCAA (March 19, 1997).

tional Invitational Tournament (NIT) was the premiere college basketball event, and the NCAA tournament did not have much status. But the 1951 City College of New York's point shaving in the NIT tournament for gambling purposes materially harmed the fans' faith in that tournament and contributed, in part, to the ascendancy of the NCAA tournament.

Weiler criticizes the NCAA's legislative efforts to prevent legal betting on college sports, asserting that it has had no discernable effect on the multi-billion dollar bookie industry, and that it has made some college students illegal bookies or runners (p. 48). Yet the concern that allowing betting on college games will pressure players and others to sway the events' outcomes is a real one. For example, for fifty years, the only state that permits legal betting on sports, Nevada, forbade gambling on its own state colleges and universities' teams, evincing an understanding that legalized betting on college athletics can have a detrimental effect.¹⁷

Weiler appropriately chastises the way professional sports leagues have dealt inconsistently with players who gamble, whether on their own games or otherwise. As with their reactions to other forms of misconduct, the commissioners often appear to be responding to fan emotion or media hype about an event rather than determining if the integrity of the sport will be injured or the playing field made unlevel. This phenomenon is further explored in Weiler's chapters on the sports war on drugs and athletes as role models.

D. *Drugs*

In reviewing the professional leagues' stand on drugs, Weiler concurs with its strong stance against the use of performance enhancing drugs, but then notes the inconsistency in their position when they allow Creatine, an amino acid compound, and Andro, an anabolic agent (p. 76).¹⁸ There is no question that strong regulation is necessary to prevent athletes from unleveling the playing field through the use of nutritional supplements that contain products that artificially enhance strength, endurance, and performance. The pressure to perform better, whether self-imposed or from one's family or teammates, is a comment repeated over and over again by student-athletes who have tested positive in NCAA drug tests. As Weiler points out, in a 1995 poll of aspiring Olympians, more than half said they were prepared to

17. Nevada recently removed the ban on gambling on its own colleges and universities' teams when confronted with its hypocrisy in opposing the extension of that ban to all other states' schools. That move, however, was clearly only taken to prevent the passage of proposed federal legislation to close the Nevada loophole in the Professional and Amateur Sports Protection Act, 28 U.S.C. § 3701 (1994), not because the problem does not exist.

18. The NCAA, on the other hand, bans Andro and does not permit its members to pay for the use of Creatine by its student-athletes.

accept dying from a performance enhancing drug in five years if it would guarantee their winning a gold medal now (p. 77). In the face of such pressures, the NCAA's mandatory drug tests appear warranted, as well as its one-year ban from participation if a drug test proves positive.

The sanctions imposed by the professional leagues for recreational drug use are criticized by Weiler, again for their inconsistency. Weiler correctly argues that violence against third parties, particularly women, has historically been tolerated by the professional leagues while recreational drug use has had mixed sanctions depending on the state of the national war against drugs. He rightly criticizes higher education institutions that have also tolerated student-athletes' violence against others.¹⁹ These behaviors do affect the fans' faith in the integrity of the game, but more from the concern of those who see athletes as role models for young people than any direct impact on sport.

E. *Maintaining Integrity*

Having identified all of these moral behavior issues, Weiler does not present any solutions for consistent sanctions by the professional leagues beyond recognizing the need for strong leadership at the commissioner level. He notes that it is the owners who select the commissioners, and that there must be public limits on such private authority (p. 98), but does not provide a method to do that.

A model that would have been interesting for Weiler to explore would have been one built on the principles of the international arbitration board. Such boards are now dealing with doping issues in international competition in certain sports. To have such a scheme work, players and owners would have to agree on the value of a neutral board of arbitrators that would evaluate proposed sanctions for misconduct and attempt to provide consistency across sports. The value to be gained would be an enhancement of the sport's integrity, certainty of punishment as a deterrent to misbehavior, and better disciplinary decisions that are removed from the pressures of fan emotion and media hype. Weiler's thoughts about the efficacy of such a solution, the practical barriers to be overcome, and a lawful method for creating such an entity would be of interest to those who read this book.

19. The lack of an NCAA policy in this area of misconduct is a source of some confusion for the public. NCAA member schools have chosen to retain control over student-athlete misconduct (and that of coaches and other athletic administrators) that does not impact the integrity of the sport or provide a competitive or recruiting advantage by one school over another or that does not occur in NCAA championship competition. Thus, the NCAA would not have any authority to impose a sanction for a coach who struck a player during the regular season, but would if the coach did so at a championship event.

III. THE ECONOMICS OF SPORT

A. *Money and the Leagues — The History of the Salary Cap*

Weiler spends a majority of his space discussing the economics of sport, the theme that consumes the latter two thirds of his book. He is bemused by the American public that ignores the high salaries paid to entertainers like Tom Cruise or Oprah Winfrey, yet resents similarly high salaries paid to athletes. Weiler explains this phenomenon as the result of the fans' view that their favorite sports are a crucial part of American culture, more akin to religion than to business, more a part of American heritage than movies and television (p. 104).

The phenomenon also might be explained, however, by the attitude that sport is recreational, not serious work. Being paid to do what most people do without compensation (and sometimes after paying high fees for equipment and access to a sports facility) in their free time for fun and excitement sounds to many weekend athletes as too good to be true. In addition, it will always irritate those who see worthwhile professions, such as nursing, social work, and teaching, chronically underpaid for the value that they contribute to society.

Weiler lays the groundwork for his economic assessment of sport by reviewing in his chapter entitled, "Show Us the Money," the history of salary caps in basketball, football, and hockey and the lack of one in baseball.²⁰ Weiler sees salary caps or salary taxes²¹ as a legitimate method to keep player salaries from destroying the equity between the wealthy teams and the poorer ones. He applauds the NBA, which introduced the salary cap, for the balance struck in its current agreement and predicts that, when the NHL's current contract ends in 2004, it will be racked by labor battles caused by its soaring salaries and failure to implement salary taxing or revenue sharing.

Baseball, however, comes in for the brunt of Weiler's criticism about players' salaries. With only a soft salary tax in place, salaries have soared. The result has been that the highest paying clubs are also the best playing teams on the field (p. 117). Weiler is troubled by this and explores in later chapters how this should be remedied.

20. Unlike the NCAA's salary caps on the pay of the lowest level assistant coaches in each sport that were ruled illegal under antitrust laws, which laws salary caps are permitted when they are bargained for by players and owners as part of their union's salary negotiations.

21. Under a salary cap, a ceiling is placed on the total amount of money to be paid to an individual player, or alternatively, the total team payroll, sometimes calculated as a percentage of the league's income from specific sources. Under a salary tax, a percentage of team payrolls must be paid into a common fund that is then redistributed to the teams in the league. For example, under baseball's 1996 agreement, there is a thirty-three percent tax imposed on the amount by which the top five team payrolls exceed the sixth highest.

In an interesting twist, Weiler tells how the salary cap in football was actually sought by the players, not the owners. He describes the absence of a meaningful free agency due to the players' collective bargaining agreement, which allowed for a team losing a free agent player to be compensated for the loss. A labor strike to change the provision proved unsuccessful because star players chose to cross picket lines and play. The players again turned to antitrust law to try to sue the owners to gain true free agency. Despite the players' attempts, the Eighth Circuit ruled that the antitrust law could not provide relief because the provision had been negotiated by the union with the owners.

The players then turned their union into a nonunion to sue the owners under antitrust law. A suit by eight players was successful in persuading a jury to conclude that the plan too greatly restricted the players' ability to secure their fair market value off the field.²² Weiler comments that when the lawsuit was expanded into a class action lawsuit, the league commissioner settled it and other outstanding lawsuits, providing a meaningful salary cap for the league, although the ultimate legal outcome was not a foregone conclusion (p. 109). It would have been interesting for Weiler to explain this remark, because so few of these salary cases go through the appellate process, preventing the creation of a meaningful road map that could predict the success or failure of such actions in the future.

In his exploration of the NBA, Weiler discusses how basketball's biggest stars traditionally used antitrust litigation. On several occasions, players sued owners, alleging antitrust violations, when they disagreed on salary issues. This practice ceased when the Second Circuit Court of Appeals ruled that, as long as players were part of a union, they had no right to sue under antitrust law. Weiler explains that this has led star players to try to decertify their union in order to sue the owners under antitrust law. Specifically upsetting for the star players was the imposition of a "luxury tax," which a team would pay to its competitors when the payroll exceeded a designated cap. While Weiler recites how this legal tactic made the owners back off and restore the status quo, he does not fully explain why this threat was deemed so severe by the owners that they would rather give in.

Weiler then goes on to discuss the history of salary caps in hockey. Hockey originally had the same kind of free agency as did football; that is, the team losing the player had to be compensated. A successful strike gained hockey true free agency and salaries soared. When the owners tried to impose a salary cap, the players struck again, and, unlike football, no top players crossed the picket lines. In the end, a salary cap was only imposed on rookies, no salary tax was imposed, and salaries rose stratospherically, resulting in franchises moving to larger

22. *McNeil v. Nat'l Football League*, 790 F. Supp. 871 (D. Minn. 1992).

metropolitan markets. This leads to Weiler's prediction of a huge labor battle when the current contract expires in 2004.

Baseball appears to be Weiler's sport of choice and, therefore, he seems more deeply troubled by its salary woes than in other sports. Weiler explains that when the owners tried to impose a salary cap, the baseball players were unable to sue under the antitrust laws, even if they threatened decertification, as basketball and football players had, because of an anomalous decision by the U.S. Supreme Court in the 1920s holding that baseball is not subject to the antitrust laws.²³ The players went on strike, eventually resulting in the owners announcing a salary cap that was challenged in court. The players challenged the owners' action because no impasse had been reached in the labor negotiations. In light of his stated intention to write a book for the non-lawyer, sports fan, it would have been helpful for Weiler to explain the labor law theory requiring an impasse, which would have helped the reader better understand why that decision resulted in the players ending their strike.

B. *Players' Continued Efforts to Organize*

Having mentioned the role of players' unions in Chapter Six, it is somewhat confusing for Weiler to then deal in depth with the history of baseball, football, basketball, and hockey unions in Chapter Seven, "Sports Joins the Union." Weiler describes the early organizing efforts in baseball and how the lack of a competitive league made unionizing efforts in that sport much less effective than in football, basketball, and hockey, which all faced serious challenges from rival leagues in the last forty years. Weiler points out that while the players distanced themselves from the term "union" and preferred the term "players association," the organizing of players should be credited with the rapid increase in athletes' pay.²⁴ Weiler notes that it was the players' unions focusing on the owners' long-time reserve systems that set off the salary spiral that continues today (p. 120).

In Chapter Nine, "Opening the *Flood-Gates*," Weiler continues his discussion of the legal challenges to salary restrictions that he began in Chapters Seven and Eight. He finally explains the legal basis for *Federal 'Baseball's* exemption of baseball from antitrust law: baseball is not the type of commerce among the states that permits federal rather than state regulation (p. 136). Such explication would have been helpful back in Chapter Eight. He points out that the judicial inconsistency in subsequent Supreme Court rulings that refused to exempt football and boxing from the antitrust laws did not prevent the Court in *Flood*

23. *Fed. Base Ball Club v. Nat'l League*, 259 U.S. 200 (1922).

24. In baseball, for example, players' salaries escalated from four times the pay of the average worker in 1947 to fifty-six times such pay in 1999. P. 119.

v. *Kuhn*,²⁵ which dealt with a player's challenge to baseball's reserve system, from once again giving baseball immunity from the antitrust laws.

From a lawyer's point of view, one of the most interesting stories told in this chapter concerns the creation of baseball free agency. Andy Messersmith, a pitcher for the Los Angeles Dodgers in the 1970s, on advice of legal counsel, refused to sign his annual contract and played the 1975 season without one. At season's end, his attorney took the matter to arbitration. He convinced the arbitrator that although the club had the right to renew the contract each year, the option to renew the contract clause was one that had to be renegotiated each year. He also successfully argued that to read another contract clause as saying that the only club with whom the player could deal was the one to which he was under contract or by which he was reserved was incompatible with freedom of contract in the economic and political society in which we live (pp. 139-140).

This creative interpretation of Messersmith's contract resulted in his free agency and the choice by more than half the players to play out their options the next season. While a fascinating story from a lawyer's viewpoint, Weiler is quick to point out that that alone would not have opened the doors to free agency because the owners could have rewritten the contracts to close the loophole. Buoyed by Messersmith's success, however, the players raised issues of free agency when their collective bargaining agreement expired and refused to allow such restrictive language to enter their contracts. The players were further assisted by the economic leverage they gained when the commissioner ended the owners' lockout of the recalcitrant players. Weiler credits the development of free agency for today's high salaries. He is eager to note, however, that the economic problems in baseball are not caused by free agency but by revenue disparities between teams in the smaller and larger markets.

Weiler goes on to describe each of the subsequent strikes in baseball and the owners' collusion in the late '80s, in which they attempted to halt the bidding for free agent stars. The end result was a flurry of lawsuits and their subsequent settlement. The settlements incorporated antitrust-type remedies of treble damages plus attorneys fees for collusion. Weiler credits this background legal framework for a tripling of salaries in less than a ten-year period and urges the reader to consider unionization of their own jobs and collective bargaining if they want to duplicate the success of the players. Weiler then suddenly introduces a new theme, criticizing the minor league system which allows owners to contain the cost of developing talent, while the major league players continue to take the majority share of the available sal-

25. 407 U.S. 258 (1972).

ary money. He suggests it is the players who need to be convinced of the need for reform of this system.

C. *The Return of Antitrust and Its Uneasy Application to Sport*

Having now brought all of these salary issues to the attention of the reader, including a discussion of antitrust law in Chapter Nine, Weiler now confusingly returns to the antitrust law and effects on players in Chapter Ten, "What Antitrust Did for Players." Weiler exhaustively outlines all of the antitrust litigation that has occurred in football, basketball, and hockey, which may be of surprise to the average fan who associates antitrust law only with big businesses like Microsoft. He shows how the combination of union strength, brought about by emerging competitive leagues bidding for player services, combined with the use of antitrust litigation, brought about reform in the Draconian reserve system and introduced salary caps in those sports.

It is at this late point that Weiler finally addresses an important issue for the non-lawyer fan to understand — that there is a labor exemption from the application of the antitrust law. The fact that players cannot use antitrust law to challenge restraints to which they consented in labor negotiations seems intuitive. The fascinating aspect of the story, however, is the players' negotiation savvy. When courts held that the players could not challenge such things as salary caps because the union had agreed to their imposition, the players brought leverage against the owners by beginning a decertification of the union. In short order, the owners folded and the players achieved their goals through compromised settlement negotiations.

Weiler is unhappy with the current state of players' legal recourse. When salary and benefits issues arise, the courts have ruled that players must choose between a strike or antitrust litigation instead of being able to use both.²⁶ He points out there are many federal statutes that protect workers, such as the civil rights acts, and workers do not have to choose between enjoying the protection of those laws and their union (p. 167). Of course, this argument ignores the fact that these federal laws are imposed on the employers and employees alike, without their consent, while the contractual terms have been negotiated and accepted by the parties. Why should the harsh treble damage penalties and attorneys fees be available to contest what has been agreed upon?

Weiler answers that players unions are different than most unions because the players want competition for their services while workers' unions do not (p. 168). For most unions, competition drives down prices, and so they are in favor of uniformity in wages. Weiler does not further explain this phenomenon; however, the variance in individual

26. *Brown v. Pro Football Inc.*, 518 U.S. 231 (1996).

talent is so much more important in sports than that, for example, between workers on an assembly line or meat cutters in a plant. The unique services of professional players make competitive bidding for their services a plus rather than a detriment.

D. *Big Contracts, Bigger Controversy*

Weiler accurately predicts the uproar in baseball over the \$252 million, ten-year contract free agent shortstop Alex Rodriguez signed with the Texas Rangers in December 2000, the largest ever in baseball, doubling the previous contract record in a matter of days, as signaling eventual catastrophe for the sport.²⁷ In Chapter 11, "How to Level the Playing Field," Weiler takes issue with those who decry such deals as raising the ticket prices for fans.²⁸ What really drives ticket prices, says Weiler, is the economic well-being of the team, and that depends more on the size of the television deal the team can strike, which depends on the size of its city's television market (p. 184). Weiler says large salary contracts only are redistributing the wealth by giving the players a larger share of the owners' revenue (p. 173).

If Weiler is correct, these large salaries actually should provide a benefit to fans, similar to what happened in college football when a ceiling was placed on the number of players that could be on a team. If a professional team owner uses up much of the team's available revenue to get a top ranked player, the owner will not be able to afford to pay the salaries necessary to keep the second- and third-best athletes who play that position on the team. That will encourage those very good players to become free agents and go to teams where their talent can improve the rosters of those teams. Likewise, when the NCAA placed a limit on the number of college football players that a school could have on its roster, certain coaches could no longer keep players that only sat on the bench and never played just to keep them from playing for any other team. As those players became available to enrich other schools' teams, they eventually helped even up the quality of the other teams in the conference and improved the competitive quality of the game for the fan. In time, this should spread the talent around and improve the competitiveness of the game for the fan.

27. "Contracts like this help us get closer to the days when we all go out of business. It will take something catastrophic to change the system. As long as clubs are willing to lose significant dollars in their quest to win, there is no end in sight." Mel Antonen, *Contract Unnerves Baseball Officials*, USA TODAY, Dec. 12, 2000, at 1C (quoting Gerry Hunsicker, Houston Astros' general manager); "It makes [Major League Baseball Commissioner Bud Selig's] job of bringing financial sanity to the game even more difficult, if not impossible." Hal Bodley, *Rangers' Deal with A-Rod: Insanity*, USA TODAY, Dec. 12, 2000, at 4C.

28. "Rangers fans might think this money is coming out of the owners' pockets when, in reality, it's coming out of their pockets. . . . Tickets cost more, hot dogs cost more — everything about the game costs more. Everything is passed on." Hal Bodley, *Rangers' Deal with A-Rod: Insanity*, USA TODAY, Dec. 12, 2000, at 4C.

IV. MAINTAINING A LEVEL PLAYING FIELD

A. *Making Sense Out of Money*

If high salaries have not hurt the games for the fans, many believe the use of free agency has. Weiler attacks this shibboleth with the facts. As many players were traded by the owners before free agency as have chosen to move afterward (175-76). Weiler also explains that it is more myth than reality that free agency has hurt the quality of the game. What has happened, Weiler argues, is that players are sharing in more of the revenue that used to go to the owners. Ticket sales have increased and television revenues have skyrocketed. That players are being paid now what they are worth, Weiler argues, is substantiated by the increased value of teams to owners and, Weiler says, to fans as well. He illustrates this thesis by pointing out that after free agency, baseball became the most competitive it had ever been, with fifteen different teams winning the World Series over twenty years (p. 183).

Weiler notes that while there is substantial competitive imbalance, some economically well off teams are choosing to reduce salaries due to a distinctive phenomenon of the sports market — the fact that the winner takes the lion's share (p. 186). Winning a championship boosts attendance and television ratings for years to come, he says, and offers tremendous gratification for the owners. This phenomenon is well known in college sports as well. For example, Virginia Tech saw a twelve percent surge in freshman admission applications in the wake of its 2000 Sugar Bowl appearance. While school officials there do not credit it all to football, they acknowledge it had an impact.²⁹ Once a team wins a championship, there is also increased pressure, Weiler points out, to win again the next year. But other team owners do not feel the same pressure; in fact, they may feel the opposite and sell off their good players for future draft picks to build the team up over a number of years. This results in a collective loss for the league as the fans of the lowballing teams have inferior sport to watch, which can result in a revenue loss for that team that can hurt the league more than the superior team helps it.

Weiler sees a “public goods” aspect of the sports market in the need to maintain a quality game for fans while still providing fair salaries for players. He believes that improvements can be made to the current salary system in baseball. He also recognizes that another baseball strike is possible when the current labor agreement expires October 31, 2001. Others support that fear.³⁰

29. Steve Weiberg, *Bowl Games Can Be Costly — Win or Lose*, USA TODAY, Dec. 26, 2000, at A1.

30. “Until some team actually goes under, the situation won't improve. The spending will continue, and I think it's setting up another strike.” Hal Bodley, *Economist Concerned*

Weiler's solution is to have a league wide "payroll standard" (p. 189), rather than a cap or tax. The standard, he says, should be implemented in a way to provide each club with an incentive to invest up to the level needed to build a competitive team, rather than to spend too much on assembling a roster that is too strong or spend too little in a roster that is too weak. He also advocates a meaningful graduated salary tax, applied to the lowest salaries as well as the highest, and taking into account the differences in state taxes rather than imposing a flat tax.

It is difficult to evaluate Weiler's payroll standard because he does not describe it in any further detail. As he often does in his text, Weiler digresses into discussing some fact scenarios, which, while illustrative of the current problems, do not assist the reader in easily understanding how his solution would deal with those issues.

Having recommended a method for sharing of revenues between players and owners in a way that Weiler hopes would provide a better game for fans, he turns to his next subject in Chapter Twelve, "Salary Sharing Among Players." The theme of this chapter highlights the growing inequities between salaries. For example, in 1967, the median pay of a professional baseball player was very close to the average salary, and the top salary used to be twenty times that of the bottom. Now, the median player makes less than a third of the average and the top player makes seventy times the salary of the lowest (p. 198). Weiler says this reflects the difference in salary rules for rookies versus veteran players and those in between.

This situation, in what is apparently Weiler's favorite sport, baseball, leaves him particularly unhappy. He argues that the draft should be expanded to encompass foreign players and the entire array of players from high school to the majors. He would limit the rounds in the draft, as football and basketball do. Players not selected should be able to sign with any club. A ceiling should be placed on rookie salaries at a minimum set for first-year players (p. 203).

Weiler understands the difficulty inherent in his suggestions. Major league baseball clubs would not be able to reap the investment they make in their farm clubs where they currently have first access to the rookies they support financially. Weiler's creative solution is to have the owners of major league clubs pay to minor leagues player development money that would have to be used to enhance minor league competitive balance. In return, the majors could draft from the minors without paying release fees.

for Baseball, USA TODAY, Dec. 13, 2000, at C1 (quoting Charles R. Link, University of Delaware economics professor); "These signings have raised the premium on figuring out some way to level the playing field. It puts a great deal of pressure on upcoming negotiations." *Id.* (quoting Andrew Zimbalist, Smith College economics professor).

B. *Some Unanswered Criticism*

Weiler's views on lifting draft restrictions for college students considering professional sports careers are motivated solely from his position as a fan and what he believes is best for the sport, rather than his profession as an educator.³¹ He ignores the value of a college education, often offered for free in return for participation in intercollegiate athletics. He further ignores the fact that few high school students who aspire to a professional career will actually achieve one.

For example, less than three of every 100 high school basketball student-athletes will be good enough to play Division I college level basketball. Of the 2,800 who have the skills to play at the Division I level, there are only fifty rookie slots each year in the NBA. Thus, less than two of every hundred, or 1.8 percent, of collegiate basketball players will make it to the NBA, and not all of them will have the skills to last enough years to make it a career. To advocate changing a system that seeks to integrate the student-athlete into the mainstream of collegiate life and uses sports to teach life skills is very strange for a person who has made a career out of higher education. The extremely few outstanding high school athletes who made it professionally in the major leagues do not make unfair a rule that emphasizes college education.³²

C. *Spreading the Wealth — for Players and Owners*

Weiler lastly addresses the need for more standardization in arbitration of salaries and proposes a formula to do so. He suggests that the remedy to the tremendous disparity between the top salaries and those of the journeyman players is to establish a maximum salary set at about 10 percent of the team payroll cap. He says players will still have an incentive to achieve greatness due to the emotional payoff of leading a team to the championships and the lucrative endorsement deals that would follow. Weiler states such caps can be justified by the "public goods" dimension of professional sports; that is, the need to improve and maintain a game of interest to the fans (p. 216-17).

Having spent the second third of his book on player salaries, Weiler moves to his last subject, the owners. He begins by discussing

31. "Golf certainly would not have been better off if the PGA Tour had told Tiger Woods that he had to complete three years at Stanford before joining the Tour, nor would tennis have improved if the Women's Tennis Association (WTA) had told Venus and Serena Williams to get through college (or even high school) before turning professional." P. 209.

32. Weiler puts the term college "education" in quotes in his text, which demonstrates his disdain for the initial and continuing eligibility rules college presidents have put in place. The NCAA rules were promulgated to ensure that student-athletes truly receive a meaningful education.

franchise free agency in Chapter Thirteen. He relates the story of the Browns who used to play in Cleveland but were moved to Baltimore by their owner when he was offered a better stadium deal. Weiler describes several additional moves made by owners due to increasingly attractive stadium situations, which cost cities in the hundreds of millions of dollars. He decries the present situation that makes the owner the winner in these relocations and suggests a "stadium cap" to replace current stadium taxes, a proposition he spends the remainder of his book explaining.

Weiler traces the origins of this stadium mania to the Dodgers move to Los Angeles from Brooklyn in the late 1950s.³³ The team's owner wanted to own his own stadium, and Los Angeles obliged. Of course, the city and the owner would have been thwarted, but for the help of a court ruling that held that land previously acquired for public housing could be used for the ball park because it served a public purpose. The owner built the stadium with his own funds and paid for its upkeep.

The owner-built stadium has become an anachronism, Weiler explains. Cities, and therefore taxpayers, have been picking up the spiraling cost of more elaborate, sport-specific stadiums, whose life spans have been shrinking (p. 244). As is typical of his confusing organization, Weiler promises at the end of Chapter Fourteen to examine whether the investment in stadiums have provided increased economic return to the community, but saves that discussion until Chapter Sixteen, meanwhile digressing in Chapter Fifteen to discuss how an owner received a court ruling allowing him to move his team against the will of the league.

The case once again involves the use of the antitrust laws and an attempt to block an undesired action — this time brought by an owner against a league. The Oakland Raiders claimed the NFL's refusal to allow it to move from Oakland to Los Angeles was illegal. The appellate court in *Los Angeles Memorial Coliseum Commission v. NFL*³⁴ found the NFL was a joint venture and that it had failed to proffer procompetitive reasons for league control over franchise location.³⁵ Thus, as Weiler points out, the door is not closed to a league subsequently defending a decision not to allow a franchise to move. It sim-

33. This moment in baseball history has personal associations for me. My father drove my family to Chavez Ravine the night of the opening game. There were no tickets available for the game, of course, but it was exciting just to drive around the well-lit parking lot and listen to the game on the radio.

34. 726 F.2d 1381 (9th Cir. 1984); see also *City of Oakland v. Oakland Raiders*, 249 Cal. Rptr. 606 (Cal. Ct. App. 1988); *City of Oakland v. Oakland Raiders*, 220 Cal. Rptr. 153 (Cal. Ct. App. 1985); *City of Oakland v. Superior Court*, 197 Cal. Rptr. 729 (Cal. Ct. App. 1983); *City of Oakland v. Superior Court*, 186 Cal. Rptr. 326 (Cal. Ct. App. 1982); *City of Oakland v. Oakland Raiders, Ltd.*, 176 Cal. Rptr. 646 (Cal. Ct. App. 1981).

35. *Los Angeles Memorial Coliseum Comm'n*, 726 F.2d at 1395-99.

ply needs to advance procompetitive reasons for its position. The league, however, has chosen not to challenge other moves that have taken place since then, resulting in fan misperception that no control is possible over franchise free agency.

Weiler notes that the conventional reading of *Raiders* is that the court was concerned about protecting competitive bidding by cities for scarce teams. Weiler vehemently states that the result of *Raiders* is the antithesis of what antitrust policy is all about. It has allowed the owners to reap huge financial rewards in the growth of their teams' value at the expense of the workers and fans who must come up with more and more money to attract a team to their city. Giving control to the league will not solve the problem, Weiler notes, unless the leagues base their decisions on what makes the most sense for the continuing evolution of the sport based on fan interest and population changes.

Weiler states several times in the latter third of his book that \$11 billion of taxpayers' money has been spent on new sports facilities in the 1990s. He suggests in Chapter Sixteen, "Stadium Socialism or a Stadium Cap?" that the only way to prevent such spending in the future is to pass laws that do away with the tax exemptions for interest paid on bonds issued to finance these deals. Weiler believes in removing the 1986 Federal Tax Reform Act's ten-percent cap on stadium revenues used to repay the bonds so cities have the ability to extract a greater share of the revenue from the team. He argues that these bonds should be designated for "private activities," which qualify for tax-exempt status, a bond category for which the federal government currently places a cap on each state. This would give state voters the ability to decide if they wish to use the tax-free amount contained in the cap for that year on sports facilities or a different type of public work.

Weiler then addresses a myth in sports franchising, that bringing a sports team to town will result in economic growth to a region. While he recognizes it may be a social boon to a city, Weiler puts forth facts that explain that a sports franchise cannot generate sufficient revenue to maintain a top quality sports facility. He argues the money would be better spent for community recreation by building a public park. He points out how few fans actually attend games and that big business often procures the best seats and boxes for its clients (p. 270-71). As a result, the average fan has little opportunity for the prime seating. He explains why investing in attracting a branch of Wal-Mart to a city brings a much better economic return to the community.

Weiler's focus on the economic return as the proper measure of a sports franchise's value to the community is certainly a narrow perspective. There are many other entities whose immediate economic return to the community is slight, but make the city richer. This includes many arts organizations, such as an opera company, a ballet, an art museum, or a symphony orchestra, whose ticket sales do not cover

their cost of operation and that are dependant on civic largesse to continue to survive. Many people never attend any events sponsored by these organizations, but their presence in a city make it a more desirable place to live. Similarly, the excitement and camaraderie created by a professional sports team is an intangible good that makes a city more pleasant place to be and live.

D. *Where the Money Comes From*

Weiler raises the possibility of a stadium cap in Chapter Sixteen, but then, in the manner that he has chosen to parcel out his solutions, states that he will provide his remedy after he discusses other related issues in the next three chapters. He then spends Chapter Seventeen, "Sports in Intellectual Space," describing the monumental increase in broadcast revenues over the last years of this century to be by far the biggest financial feature of the sports world. Those familiar with the NCAA's budget should not be surprised at this. Its contract giving CBS broadcast rights to the Men's Final Four provides almost the entire budget of the association, the vast majority of which goes directly and indirectly back to member colleges, universities, and conferences to help fund their athletics programs.

Weiler discusses the legal underpinnings that give rise to a property interest in broadcast to the teams owners. His explanation of the basis for merchandising rights is simply that consumers should not be sold a product that they identify with their favorite team without securing and paying for the consent of the team's owner. Weiler criticizes the use of trademark law in this way saying, it has strayed far from its original purpose of ensuring that celebrities did not have their names and images used to convey the impression that they were endorsing the product (p. 287).

In this criticism, Weiler ignores a basic purpose of trademark law — to prevent dilution of the goodwill built up in an entity's name by allowing it to be used by those who have not received permission to do so. If the misuse of a name is not challenged, it will cease to have value for its owner if anyone can use it at will. This seems ample justification for application of the trademark law to protect a team's or player's name.

Weiler then promises to discuss reforms in distribution of television and broadcast revenues, but not until the next chapter, "What Should Leagues Be Like?" Weiler returns to the salary cap that he advocated in Chapter Twelve and then notes that leagues must consider whether revenues brought in by one team should be shared with others.

This brings up the question of what a league is, he says. Weiler correctly notes that a sports league is not a clear-cut single entity or a joint venture as those terms are usually defined in antitrust jurispru-

dence. He explores the arguments for considering a league a joint venture and the pro-competitive reasons for its rules. He notes that those that deal with the integrity of the sport should pass antitrust scrutiny while those dealing with the market created by monopoly power are the least defensible. He then cautions courts from being misled by the single entity argument when examining decisions with a fiscal impact on fans.

More revenue sharing in baseball, and less in football, is advocated by Weiler. He supports each team having the right to sell its television and marketing rights but believes the vast differences between teams' revenue needs to be addressed. This would create parity in the type of players that a team can afford, thereby ensuring fan enjoyment in the game. Excessive sharing can have detrimental effects, he notes, because owners will not grow the revenue source that they have to share and will grow the others they can keep, which may not be in the interest of the fans.

In Chapter Nineteen, "Expand or Break Up the Big Leagues," Weiler proposes a dramatic solution to many of the problems addressed in his book. He suggests that Congress should break each league into three or four leagues with eight to ten teams in each. There still could be a championship game, but the artificial scarcity of teams that has driven up prices of stadiums, tickets, and sports-affiliated items would be eliminated (p. 328). Weiler advocates establishing a meaningful standard to determine if a city should have a franchise, but is silent on who would have the authority or interest in doing this. He says that expansion would clearly add to the welfare of fans because there would be more games to watch; it would benefit players because there would be more opportunities to play; and it would reduce pressures on taxpayers to create more lavish facilities to keep or attract a team (p. 319).

Weiler recognizes the huge political hurdles that would have to be surmounted in order for such a plan to occur. Fans will first have to appreciate the price they are presently incurring to preserve monopolies in sports, he says. His biggest concern is the survival of the new leagues — would fans see them as major rather than minor league teams and give them sufficient support in their initial years when they would be more vulnerable to economic stresses?

In addition to the issues Weiler enumerates, there is also the question of whether there are enough exceptional athletes, coaches, and trainers to support such an increase in major league teams. Additionally, there is the value intrinsic in a scarce resource. Once major league teams become commonplace, will they still fascinate the fans or will apathy ensue? Although Weiler does not discuss these issues, he recognizes that enough exist that he ends up just endorsing the more modest proposals he has made throughout his book.

In the final two chapters of his book, Weiler synthesizes the myriad of reforms that he has advocated throughout the text. Because he has scattered his ideas among his chapters and has gone back and forth discussing them throughout the text, it is helpful for the reader to have these summarizing chapters as a way of finding all his ideas in one place.

V. CONCLUSION

Weiler clearly enjoys thinking about the issues in sports and applying the matrix of the law to them as a disciplined way to find solutions. Because the issues are so complex, the fact-rich text makes following his thoughts sometimes difficult. The diligence required of the reader to track all of the factors playing a role in an issue through several chapters and factual side trips makes it questionable as to whether the average fan, without much knowledge of the law, will be able easily to digest the information. The ones who stay the course will be rewarded with a thorough analysis of today's current sports issues and innovative solutions to them.