



January 1978

Book Review

Recommended Citation

Book Review, 31 Sw L.J. 1177 (1978)

<https://scholar.smu.edu/smulr/vol31/iss5/11>

This Book Review is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in SMU Law Review by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

BOOK REVIEW

PROFESSIONAL SPORTS & THE LAW. BY LIONEL S. SOBEL. New York: Law—Arts Publishers, Inc. 1977. Pp. xxviii, 839.

For a book that contains an introduction by Howard Cosell and a preface on "Sports and the Arts" by an unknown pundit who sounds like Professor Irwin Corey or Foster Brooks of nightclub fame, this volume's strange mixture of gossip and research comes across better than one would expect. The structure for a serious text on the laws affecting professional sports exists in skeletal form, reverentially and duodecimally arranged: a chapter on tax problems; a discourse on league wars; a section on immigration; and a disquisition on sports broadcasting. The work, however, is neither journalism nor jurisprudence. Some chapters provide a useful collection of cases and others suggest the areas of pivotal disputes, but a number of sections are superficial in analysis, incomplete in their practical application, and fail to demonstrate the capacity to anticipate or interpret the flow of developments in the law.

We are given blow-by-blow accounts of the battles between an errant linebacker or a peripatetic basketball player and the clubs competing for their talent and their discarded contracts; but the chapter on collective bargaining (ch. 4), for example, fails to detect the ultimate solution of the reserve clause problem which was projected and implemented in the *Mackey v. National Football League*¹ and *Robertson v. National Basketball Association*² decisions. What emerges from a careful reading of this tome is popular history, and the kind of popular history that is vented on weary night school students eager for an "inside" view that does not harm the cerebral processes. As popular historian, which is the most charitable title I can award him, Mr. Sobel has rather obvious heroes: Gary Davidson, the pied piper who led the outlaw leagues to bankruptcy or merger; Bill Bradley and Bernie Parrish, who, accompanied by their legal champions, made the Sherman Antitrust Act into a civil rights statute to free the "player slaves"; and Messrs. Noll and Okner, who created the statistical data and mathematical economics to support the player assaults on league mergers, reserve systems, players' drafts and the Rozelle rule.³ In his introduction, Howard

1. 543 F.2d 606 (8th Cir. 1976).

2. [1977] TRADE REG. REP. (CCH) ¶ 61,474 (2d Cir. June 19, 1977).

3. GOVERNMENT AND THE SPORTS BUSINESS (R. Noll ed. 1974). Mr. Sobel relies heavily upon the Noll results (see, e.g., pp. 243, 544, 549-55). As to their validity see *Hearings Before the House Select Comm. on Professional Sports (Sisk Comm.)*, 94th Cong., 2d Sess., pt. 2, at 148 (1976) (supplementary material addressed by Hamilton Carothers to Rep. John F. Seiberling):

Since the publication of his book in 1974, Dr. Noll has become a familiar figure in the sports world. He has appeared as a witness [in 6 different proceedings involving professional sports]. In the course of these various appearances Dr. Noll has been thoroughly examined on the theories and commentary set forth in his book and on the research and investigation which preceded the book's publication. It has been established that the book was edited and published with the

Cosell growls: "Sportswriters and sports announcers now have a place to turn to so that they can discover . . . what the law is all about . . ." (p. xvi). Well, what is it all about?

I. CHANGE AND OBSOLESCENCE

Writing a book on professional sports is like trying to take a photograph of Concorde with a Brownie camera: things go flying by too fast. Since the publication of this book many of the decisions and facts upon which Mr. Sobel's comments are based have become stale. For example, much of chapter 10, covering professional sports broadcasting, has been rendered obsolete (in particular §10.3 and §10.4). By denying certiorari on October 4, 1977, in *Home Box Office v. FCC*⁴ the Supreme Court let stand the decision of the Court of Appeals for the District of Columbia holding invalid the FCC's anti-siphoning rules, thus frustrating that agency's attempt to prevent the move of sports programming from "free" television to pay cable.

The author's reliance upon "per se-ism" in his discussions of antitrust and professional sports has been tainted by several court actions. Two federal district courts have upheld the validity of NHL by-law 12.6, prohibiting one-eyed hockey players from being eligible for play in the NHL, as a reasonable rule unrelated to anti-competitive purpose, despite a Sherman Act attack on the by-law as being invalid per se.⁵

The insulation against antitrust attack of a collectively bargained player draft, option system, and Rozelle or compensation rule for player losses has been authorized by the Eighth Circuit in *Mackey*; such provisions have been implemented by collective bargaining agreements in basketball, football, and hockey. At least as to those agreements arising from the settlement of litigation and challenged by individual dissenting players, the decision of the Court of Appeals for the Second Circuit in *Robertson* and the decision of Judge Larson in *Kermit Alexander v. National Football League*⁶ support approving the settlement and collective bargaining agreements reached fol-

authors having practically no information whatever relating to professional football. Dr. Noll's source materials consisted almost entirely of the World Almanac, newspaper clippings, a 1967 financial statement of the Philadelphia Eagles (obtained in a bankruptcy proceeding), and an out-of-date annual report of the New England Patriots. It was also established that Dr. Noll devoted less than six weeks of his time to the book's preparation—a period which allowed him approximately ten days for a study of each of the four different professional sports he purported to 'analyze.'

Compare Dr. Noll's response, *id.* at 158. My own examination of the Noll-Okner work disclosed some serious errors in my own field. For example, no financial data for specific National Hockey League teams was examined by the authors, although a number of the clubs are publicly held and publish annual reports. As to the authors' suggestion that the domination of the league standings by the Montreal Canadiens demonstrates that reserve systems do not produce competitive balance, the authors failed to note (and perhaps had not discovered) that for many years, through 1969 (a recent year in their data), the Canadiens had a prior right, regardless of league finish, sponsorship of clubs, minor league affiliations, or the common draft, to the first two choices of French Canadian sons of French Canadian fathers!

4. 2 MED. L. REP. 1561 (D.C. Cir. 1977), *cert. denied*, 46 U.S.L.W. 3084 (U.S. Aug. 30, 1977).

5. *Neeld v. National Hockey League*, Civ. No. 77-32 (W.D.N.Y. Sept. 19, 1977) (decided largely on *res judicata* grounds); *Neeld v. National Hockey League*, No. 75-1873 RHS (N.D. Cal. Sept. 23, 1976); *cf. Neeld v. National Hockey League*, Civ. No. 77-544 (W.D.N.Y. Oct. 25, 1977) (preliminary injunction granted under New York Human Relations statute).

6. No. 4-26-Civil 123 (D. Minn. July 29, 1977).

lowing remand from the court of appeals decision in *Mackey*. The "per seism" on which Mr. Sobel relies for his judgment on the antitrust invalidity of these essential parts of the professional sports structure has itself been reexamined and modified in a related area by a June 1977 decision of the Supreme Court.⁷ In overruling *United States v. Arnold Schwinn & Co.*⁸ the Court opened the field of territorial allocation to the rule of reason, thus casting further doubt on Mr. Sobel's castigation (pp. 502-05) of a California federal court's holding that the league's refusal to permit the transfer of an NHL franchise from Oakland to Vancouver did not violate the antitrust laws.⁹

Now before us is the wild and woolly free agent market of baseball resulting from the arbitrators' findings in the Messersmith and McNally matters, that baseball's "reserve clause,"¹⁰ theretofore thought to be perpetual, was only enforceable as a one-year option. The results of the American League baseball races in the past two years—with the New York Yankees buying "free agent" slugger Reggie Jackson and free agent pitchers Gullett and Hunter, and thus buying themselves a pennant—will (notwithstanding the Sobel commentary) confirm the fears and trepidations of all the sports owners who assert that their leagues cannot survive loss of the draft, reserve, and compensation system. These are essential factors in preserving competitive balance and the incentive to invest in the professional sports industry.

Finally, *players* themselves have, since the publication of this book, negotiated the details of and approved (for a quid pro quo or as part of collective bargaining of other issues) varying versions of the Rozelle rule in each of the baseball, basketball, football, and hockey collective bargaining agreements.¹¹ This suggests that the players recognize the importance and reasonableness of this concept for the economic health of their own sports and the security of their own competitive position and salary.

The largest part of Mr. Sobel's volume is devoted to the reserve clause, the draft, labor law matters, and the concomitant use of these issues as weapons of attack in the interleague "wars." This era, and concern with these problems, may be coming to an end. In the face of the excessive and unrealistic salary levels produced by the promoters and the uneconomic bidding practices of the "outlaw" leagues, all of the new leagues of recent vintage have either expired, merged, or been absorbed (or in the case of the WHA flirted with such absorption). The collective bargaining solutions of the disputes over the draft, the option system, and the Rozelle rule (what the

7. *Continental T.V., Inc. v. GTE Sylvania, Inc.*, 97 S. Ct. 2549, 53 L. Ed. 2d 568 (1977).

8. 388 U.S. 365 (1977).

9. *San Francisco Seals, Ltd. v. National Hockey League*, 379 F. Supp. 966 (C.D. Cal. 1974).

10. In essence, the reserve clause prohibits a player who has been "reserved" by his team from signing with any other team for a period beyond the fixed term of his contract.

11. NFL Collective Bargaining Agreement (CBA) dated 3/1/77, art. XV; NHL CBA dated 5/4/76, § 9.03, approving NHL by-law 9A; Baseball CBA effective 1/1/76, art. XVII C(2); NBA CBA dated 4/29/76, art. XVI(c) (providing for a phaseout, however, after the 1980-81 season). The CBA's are reprinted in PLI HANDBOOK NO. 84, REPRESENTING PROFESSIONAL & COLLEGE SPORTS TEAMS & LEAGUES (1977).

NHL calls its "equalization" by-law)—solidified by the court approvals in the *Kermit Alexander* and *Robertson* cases—may have removed these issues from the litigating arena and placed them at the bargaining table where both parties have an interest in such rules, an idea originally suggested by Justice Thurgood Marshall in his dissenting opinion in *Flood v. Kuhn*.¹² To be sure, there will be problems of interpretation and application, and, five to ten years from now when extensions or modifications of the union contracts must be negotiated, disputes may flare up again. Mr. Sobel's chapter on collective bargaining, again superficial and limited in scope, rejects the approach of Justice Marshall in *Flood* and the seminal article by Jacobs and Winter delineating the interplay of the national labor policy in favor of collective bargaining with antitrust doctrines.¹³ The court of appeals in the *Mackey* decision accepted this solution, and the players and owners implemented it and received the imprimatur of the courts in *Robertson* and *Alexander*.

II. TAXATION

The chapter on "tax aspects of team and league operations" (ch. 9) is typical of Mr. Sobel's scope and depth. One would hope for a practical or thoroughly researched analysis of the many areas in which tax laws impact the acquisition of a franchise, the operation of a team, or the negotiation of a player's contract. Instead, one finds an uncritical and superficial apeing of the attack on depreciation or amortization of player contracts first mounted by the NBA Players' Association in the hearings on the first proposed ABA/NBA merger before the Senate Judiciary Committee.¹⁴ At the hearing, the NBA Players' Association countered the claim by the ABA and NBA owners that the merger was required to avoid the bankruptcy of the numerous losing franchises with the charge that, when amortization of players' contracts was added back to produce "cash flow," the book losses did not demonstrate the real financial result of the operations of the teams proposing the merger and the teams were not suffering as much as they claimed.¹⁵ The players' star witness, Roger Noll, probably did not intend to produce the elimination of a claimed unfair tax advantage to owners; but his analysis, repeated in a study with his colleague, Benjamin Okner, under the distinguished auspices of the Brookings Institute,¹⁶ had that unfortunate consequence. It must be recognized that the practice of basketball in the allocation of cost to players' contracts represented one of the more extreme examples of tax "planning," and the Noll-Okner table showing as much as 100 percent for one team and an average for all NBA clubs of 85.4 percent of purchase cost allocated to player contracts reappeared in and was quoted

12. 407 U.S. 258, 294 (1972).

13. See Jacobs & Winter, *Antitrust Principles and Collective Bargaining by Athletes: Of Superstars in Peonage*, 81 YALE L.J. 1 (1971), quoted approvingly by Justice Marshall, 407 U.S. at 295, and found not persuasive by Sobel (pp. 323-29).

14. See *Hearings on S. 2373 Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary*, 92d Cong., 1st & 2d Sess. 412 (1971-1972).

15. *Id.* at 341 (statement of Roger Noll).

16. GOVERNMENT AND THE SPORTS BUSINESS, *supra* note 3, ch.5.

specifically by the House Ways and Means Committee in its report introducing the 1975 Tax Reform Bill.¹⁷ Despite strong efforts by the other sports to demonstrate that this extreme practice, coupled with the "revolving door" through which owners went in and out of professional basketball, was not typical of the industry,¹⁸ the Noll-Okner presentation certainly contributed to the enactment in the 1976 Tax Reform Act of sections 1056(d) and 1245(a)(4) of the Internal Revenue Code. The first imposes a rebuttable presumption of fifty percent of the amount of the purchase price which can be allocated to player contracts. The second imposes a special depreciation recapture rule, unlike that imposed on any other industry, requiring that amortization deducted on the contracts of players who were on the original roster of a team at the time it was acquired must be recaptured on the sale of the franchise, even though that sale takes place many years later when those players may no longer be on the roster. Thus, the consequences—which Mr. Sobel does not advert to—of the players' strategy in opposing the merger before Congress has been to discourage the entry of new owners into the professional sports business and to reduce the funds from which the players wish the owners to pay the very high salaries which the players sought to save.¹⁹

Remarkably, there is no consideration in this book of the serious tax problems with which counsel for the professional *athlete* must be concerned. With players' salaries at their present level, counsel must first focus on the maximum tax and the uses of income averaging (which may not be sufficient). If he finds that he can produce a more favorable package for his client, and one more acceptable to the owner, if the compensation is deferred in whole or in part, he must consider the tax consequences of deferment, the uses of unqualified plans, and the knotty problem of how, if possible, to secure or collateralize the payment of the deferred salary or bonus (and the earnings on the amount deferred) without subjecting the player to income tax on the commuted value of the installments in the year they are earned, rather than in the year of payment.²⁰ If his client is sophisticated or has other business interests he must consider the possibility of a playing contract between the club and the player's corporation; conse-

17. H.R. REP. NO. 658, 94th Cong., 1st Sess. 116 (1975) (citing R. NOLL & B. OKNER, *THE ECONOMICS OF PROFESSIONAL BASKETBALL* (1971)).

18. See, for example, the statement of Robert O. Swados filed with the Senate Finance Committee on behalf of the National Hockey League in opposition to provisions of H.R. 10612 affecting professional sports, reprinted in the Sisk Committee Hearings. *Hearings, supra* note 3, at 207-12.

19. In the face of other tax onslaughts, the *Mackey* case may be relevant not only in the antitrust field but in tax controversies. One of the most negative observations in the testimony before the Sisk Committee was the statement by the then counsel for the Joint Committee on Internal Revenue, Lawrence Woodworth (made before the announcement of the court of appeals opinion in *Mackey*). *Id.* at 340. He argued that the recent decisions by the courts under the antitrust laws cutting down perpetual option clauses, invalidating the drafts and the Rozelle rule, indicated that restraints designed to maintain a club's rights to a player's services over a long term were invalid, and that there was, therefore, little justification for the allocation of substantial sums to player contracts on the acquisition of a franchise. The court of appeals decision in *Mackey* may well provide an important rebuttal of this testimony and justification for the allocation and amortization practices of member clubs.

20. See Rev. Rul. 72-25, 1972-1 C.B. 127; Rev. Rul. 68-99, 1968-1 C.B. 193; Rev. Rul. 60-31, 1960-1 C.B. 174, ex. 4.

quently, the attorney must also consider: whether the regulations of the league permit such contracts with or without personal guarantees;²¹ whether the corporation will be treated as bona fide by the Internal Revenue Service;²² whether the contract can be used to establish a pension plan and other compensation deferrals; and how to persuade the employer to handle the withholding tax problems created by the corporate plan. If the player is a foreign national or if the league has Canadian cities or international play, he and the club must be concerned with the allocation of income among the countries involved, the foreign tax, and the effect of available credit and treaty provisions. There is no mention of any of these in Mr. Sobel's opus.

III. THE PROBLEM OF FAILING FRANCHISES

There is evidence that no professional sports league can operate successfully if it has competition, and that even with no competing league, the bloom may be off the peach.²³ The World Football League expired only shortly after it emerged from the womb. The AFL disappeared into the older establishment with the help of Congress. The ABA, having withered to four teams, was permitted to enter at least the foyer of the NBA upon the payment of large sums of money as entrance fees, only to find that the honor had become dubious when they were pleading near insolvency six months later.²⁴ The WHA has left a trail of abandoned franchises (in New York, Cleveland, St. Paul, for example) but still survives despite months of discussions aborted by the failure in August 1977 of the NHL Board of Governors to approve a plan of expansion. Even the established leagues can produce losers.²⁵ A writer on the law and professional sports would have done well to deal with the problems of the failing franchises, whatever his "tilt." Does the individual player have a prior or preferred claim for his salary, accrued, deferred, contingent, or unsecured? Does the player have the right to terminate his playing contract in the event of bankruptcy or creditor proceedings? Can the trustee in bankruptcy intervene under the equity powers of the federal court to preserve the players' contracts as a major asset of the bankrupt franchise? Dependent upon the form of the bankruptcy proceedings—straight bankruptcy or reorganization under chapter XI—does the court having jurisdiction over the creditors' proceedings have the power, in effect, to trade the player to a new owner by approving the sale of the player's contract?

21. See NHL by-law 2(e).

22. Compare Rev. Rul. 74-331, 1974-2 C.B. 282, and Rev. Rul. 74-330, 1974-2 C.B. 278, with *Ingmar Johansson v. United States*, 336 F.2d 809 (5th Cir. 1964), and *Borge v. Commissioner*, 26 T.C.M. (CCH) 816, *aff'd as modified and remanded for recomputation of deficiency*, 405 F.2d 673 (2d Cir. 1968).

23. FORTUNE, May 1977, at 295:

But it is a fact that franchise values are not rising the way they used to, and many, in fact, have declined. Ten years ago it was rare to hear of a team in any sport losing so much money as to be heavily endangered; now no sport except football is without at least a couple of marginal teams, and in hockey a majority are losing money. Many franchises in the World Hockey Association, which may have played its last season, have a market value close to zero.

24. N.Y. Times, May 15, 1977, § 5, at 1, col. 2.

25. For example, the former franchise holders of the Pittsburgh NHL Club went through ch. XI proceedings in 1975. No. 75-496 (W.D. Pa. 1975).

Moreover, how about the owner and the league? When the owner defaults in the payment of the player's contract, can the league take over, cure the default, and sell the contract? Some leagues have provisions in their constitution and by-laws giving the governing body of the league the right to terminate the franchise for nonpayment of dues or other default. Is the league's right to terminate superior to that of secured or unsecured creditors? Can the league's attempt to terminate and sell the franchise and player contracts to someone else be obstructed by the equity powers of the bankruptcy court? When the league attempts to sell, must it proceed according to the Uniform Commercial Code standards and how are they applied? Can the league be required on a transfer of the franchise to new owners in a new city to see that all player claims are paid? Mr. Sobel does not effectively deal with these issues.

IV. AGENTS

One of the other areas neglected by Mr. Sobel's work is the pervasive growth of the player agent and the multiple legal problems created by some cases of duplicity and conflict of interest, and some agents' incompetence or negligence.²⁶ The outlaw league and free agent syndrome create a bidding war at artificial, unrealistic salary levels. An agent, who may or may not be professionally trained, with some flair for haggling like an Oriental peddler, attracts 200 financially virgin athletes with fine athletic skills but with tax planning, investment, cash flow, and money-management problems for which the professional haggler (frequently) has neither expertise nor understanding, neither staff nor the wisdom to delegate. Often, in the earlier years of the "outlaw" league, the haggler is employed as a headhunter for the new league—sometimes with a fixed price paid by the new league or new club for each athlete—a fact sometimes not disclosed to the player. To protect his fee (and no one represents the player in this negotiation) the agent either slices his ten to fifteen percent off the top of the player's salary for the term of the contract ("up front"), or requires the new club to pay him directly (with hope of a deduction). While the player is toiling on the field, the ice, or the court his once-in-a-lifetime compensation is coming not to him, but to the agent's modest office. Suddenly six hundred tax returns must be filed, several hundred security purchases made, and 5,000 checks must be written—for expenses, for investment, for allowances. After the contract publicity comes the deluge of brokers and touts: no unexciting bank accounts for the player's money—tax shelters (uneconomic but so "saving" of taxes), big real estate deals, high fliers in the market. What is the application of trust and fiduciary rules in the player-agent situation? Is there any way for the league or the players' association to police or control the employment of unqualified representatives?

In the bidding competition between two leagues candor is hardly the rule, and the agent may never disclose to the players what the competing league

26. See, e.g., N.Y. Times, Sept. 21, 1977, at 65, col. 3. Agent Richard Sorkin, a former sportswriter, pleaded guilty to the misappropriation of more than \$360,000 from seven players he represented.

proposes. What is the effect of this non-disclosure on the enforceability of the playing contract by the club? Suppose the player wants a "no trade" clause—illegal under the league rules. A frequent practice is to set this forth in a separate letter—never filed with the league office. Is this "no trade" clause enforceable? Is the playing contract valid? Suppose the new club fails to pay the agent? Is this the breach of an obligation which entitles the player to termination—and to become a free agent himself?

Suppose the player still has deferred compensation coming from the old club. A host of problems arise in a trade, a new contract after a jump, or a draft when the new club does not expressly assume the ancient obligation. Can the player terminate his duty to play for the new club if his old employer does not complete the payment of the deferred bonus or salary? Mr. Sobel's book neither solves nor supplies guidelines for these problems.

V. CONCLUSION

This highly promoted industry, important to the world of so many large communities, will never be far from attack. (An owner once told me, noting our attempts at good public relations: "Bob, stop trying to make the fans love you. They love the players; they want to hate the owners!") Even after the serious blows to incentives for investment in sports inspired by the Tax Reform Act of 1976, the United States Treasury is considering new legislation aimed at disallowing or limiting the deduction from federal taxable income of tickets for sporting events and other entertainment.²⁷ Ralph Nader has announced the formation of a task force to expose the "rip offs" in the sports arena, including the declining size of the hot dog (frankfurter, not roll—no argument here), and the trading away of popular players (plenty of argument there!). Perhaps we shall see the day when the Supreme Court will apply a one-fan, one-vote rule to determine whether Sven Svenson, a Swedish hockey player with a United States team shall be traded to the Russian Nationals, and must decide the antitrust law of which foreign state shall be applied?

What one misses most of all in this work is an *overview*. That is not to say that Mr. Sobel gives no indication of his bias or tilt. For example, he deals with the right of a professional sports league to restrict the transfer of a franchise from one city to another (pp. 500-12). With the Milwaukee court²⁸ holding that the *grant* of permission to transfer was a violation of the antitrust laws, Mr. Sobel cites with approval a student note²⁹ "holding" that a *refusal* to permit a transfer is a per se violation of the Sherman Act (giving the League only a Hobson's choice), and disdainfully rejecting a ruling to the contrary by the only court that has met the issue head on.³⁰ Again, "tilt"

27. Wall. St. J., Sept. 29, 1977, at 1, col. 3.

28. *Wisconsin v. Milwaukee Braves, Inc.*, [1966] TRADE REG. REP. (CCH) ¶ 71,738 (Wis. Cir. Ct.), *rev'd*, 31 Wis. 2d 699, 144 N.W.2d 1 (1966) (three judges dissenting on ground that exemption for baseball established by Federal Baseball Club v. National League, 259 U.S. 200 (1922), and reaffirmed by *Flood*, preempted state court action).

29. Note, *The Super Bowl and the Sherman Act: Professional Team Sports and the Antitrust Laws*, 81 HARV. L. REV. 418 (1967).

30. *San Francisco Seals, Ltd. v. National Hockey League*, 379 F. Supp. 966, 970 (C.D. Cal. 1974).

is apparent in the book's treatment or characterization of the reserve clause as producing "peonage" or "serfdom" of the player. Sam Ervin's "anti-slavery" constitutional pronouncements *ex cathedra* are reported with full approval (p. 234), but the express rulings of the district court and Supreme Court in *Flood* to the contrary³¹—holding that no issue of involuntary servitude is presented—are not cited at all.

I would suggest as an overview of the field that the antitrust laws as applied to professional sports are like an elephant at the piano. It may be that *Federal Baseball Club v. National League*³² was not Mr. Justice Oliver Holmes' "happiest day"; but it is hard to believe that conservative old Mr. Sherman, with his focus on the giant trusts, could have imagined that the blunderbuss of a statute which bears his name would be used to prevent the punishment of a lady golfer who is charged with surreptitiously moving her ball in the rough,³³ or an attempt to force hockey players to risk blindness for the one-eyed player and injury to themselves,³⁴ or to compel a league to admit an admitted gambler³⁵ and "fixer" to the playing roster. The plethora of antitrust cases in this area and the indiscriminating ways in which counsel have applied the allegations of monopoly suggest that what we have actually had has been abuse, rather than use, of the antitrust laws in sports litigation. Players and owners will welcome the reestablishment of respectability for the rule of reason in professional sports. And writers in the field should do so as well.

Postscript

The following verse is attributed to a mythical owner-cum-tax-lawyer whose venture in professional sports began in confidence with subchapter S and ended with sorrow in chapter XI.

TAKE ME BACK TO THE (FEDERAL) BALL GAME
OR
I NEVER PROMISED YOU A ROSENBLoom³⁶

Players' Pavane

Stars are the greatest;
Agents are knaves;
Owners are ogres;
Athletes are slaves.

Mazurka for Sportswriters

Down with Wayne Valley
Up Walter O'Malley

31. 316 F. Supp. 271 (S.D.N.Y. 1970), *aff'd*, 407 U.S. 258 (1972).

32. 259 U.S. 200 (1922).

33. Blalock v. Ladies Professional Golf Ass'n, 359 F. Supp. 1260 (N.D. Ga. 1973).

34. See Neeld v. National Hockey League, Civ. No. 77-32 (W.D.N.Y. Sept. 19, 1977); Neeld v. National Hockey League, No. 75-1873 RHS (N.D. Cal. Sept. 23, 1976).

35. Molinas v. National Basketball Ass'n, 190 F. Supp. 241 (S.D.N.Y. 1961).

36. Carroll Rosenbloom traded his NFL Baltimore Colts for the Los Angeles Rams in 1972, "tax free," achieving a substantial profit, but deferring the tax on the gain (*see* I.R.C. § 1031).

Whatever they do is *per se*;
Sell half of the gallery
To pay O.J.'s salary—
A star who just wants to be free!

Owner's Coda

Let us bargain together
O super star and serf:
Bury antitrust
Under the astroturf!

*Robert O. Swados**

* B.A., University of Buffalo; J.D., Harvard University. Vice President and Counsel, Buffalo Sabres; Secretary, National Hockey League.