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I. INTRODUCTION

Every morning thousands of residents arise and bring in the morning newspaper to check the most important news of the day: last night's score of the home team's major league baseball game. Baseball's prominent part in American life should not obscure the fact that baseball is big business. The economic impact of a major league baseball team affects the players, owners, and fans directly involved in the game. This impact also significantly affects the commercial life of the cities in which they play.[1]

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1. The Milwaukee Braves, a National League franchise, reported that from 1953 to 1965 the team brought the city of Milwaukee over $77.5 million in income that the city would not have otherwise realized. Robert Nathan, an economist, concluded that the team's estimate was too modest. The team's presence was actually worth $18 million a year to the city of Milwaukee. L. SOBEL, PROFESSIONAL SPORTS AND THE LAW 508 (1977); *see also* N.Y. Times, Mar. 8, 1966, at 34, col. 7; N.Y. Times, Aug. 20, 1957, at 30, col. 3 (stating that the Mayor of San Francisco estimated that the franchise coming to the city would bring $25-40 million into the city's economy); N.Y. Times, Nov. 13, 1966, § 3, at 11, col. 7 (noting that the

There are now 26 major league baseball teams housed in 24 cities. Fourteen are in the American League and twelve are in the National League.[2] Metropolitan areas often compete for an opportunity to house a major league baseball team.[3] Professional baseball can bring a city unique entertainment, an increased sense of civic pride, and publicity and prestige that expand commercial activity and tourism.[4]

A city has essentially two approaches for obtaining a major league baseball franchise: expansion or franchise relocation. This article focuses on franchise relocation. The article will first examine the major league's requirements for relocating a franchise. Second, the article will review each of the relocation requests formally acted upon by baseball club owners and the considerations that went into each one of those decisions. Third, the article will determine the impact of the Congress and judiciary on baseball franchise relocation, recently discussed in *Los Angeles Memorial Coliseum Commission v. National Football League*.[5] Finally, the article will set forth a recommended course of action for major league baseball in its franchise relocation decisions.

II. MAJOR LEAGUE BASEBALL RULES

Each owner in major league baseball holds a franchise that entitles the owner to operate a team in a geographical region designated by agreement of the member clubs. Any request to move a franchise must be voted upon by the other team owners.

Prior to 1952 the rules of organized baseball required that a franchise move have the unanimous approval of all owners in the league to which the team belonged, and majority consent by the owners in the other league. After 1952, the rules were relaxed to

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arrival of major league baseball in Atlanta directly resulted in over $9 million in revenues, and indirectly generated an additional $30 million for people in the city).

2. American League teams currently include the Baltimore Orioles, Boston Red Sox, California Angels, Chicago White Sox, Cleveland Indians, Detroit Tigers, Kansas City Royals, Milwaukee Brewers, Minnesota Twins, New York Yankees, Oakland Athletics, Seattle Mariners, Texas Rangers, and Toronto Blue Jays. National League teams currently include the Atlanta Braves, Chicago Cubs, Cincinnati Reds, Houston Astros, Los Angeles Dodgers, Montreal Expos, New York Mets, Philadelphia Phillies, Pittsburgh Pirates, St. Louis Cardinals, San Diego Padres, and San Francisco Giants. The only metropolitan areas housing two franchises are Los Angeles and New York, although San Francisco and Oakland are often considered one metropolitan area (the Bay Area).

3. *See* Sullivan, *Jersey Makes Pitch for Team*, N.Y. Times, Nov. 9, 1985, at 49, col. 6 (12 metropolitan areas made proposals for expansion franchises to a committee of major league owners).

4. Note, *Can We Save Our Ball Club?* 2 COMM./ENT. L.J. 97, 97 (1979).

5. 726 F.2d 1381 (9th Cir.), *cert. denied*, 469 U.S. 990 (1984).

require a three-fourths majority in the moving club's league.[6]

These rules remained essentially the same until 1983 when the requirement of majority consent from the other league was reinstated. The current rules, therefore, require an affirmative vote by three-fourths of the clubs in the league affected plus a majority vote in the other league to approve movement of a franchise.[7] There are two exceptions to this rule. First, three-fourths of the clubs in the unaffected league must give their consent when a club wishes to move into a city with a population less than 2.4 million in which the unaffected league has a club.[8] Second, if a club proposes a move to an area near an existing team, that team has veto rights over the move.[9]

There are no specific criteria for approval or disapproval of franchise relocation requests. When a team applies for relocation of its franchise, the president of the affected league requests all information relevant to the proposed relocation and the effect and consequences of the relocation upon members of the league. The league president then evaluates this information and makes a recommendation to the members of the league.[10]

The Commissioner of Major League Baseball also is involved

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6. Quirk, *An Economic Analysis of Team Movements in Professional Sports*, 38 LAW & CONTEMP. PROB. 42, 49 (1973). In 1956, the National League changed the rule back to requiring an unanimous vote. McGowen, *Dodgers Buy Los Angeles Club, Stirring Talk of Shift to Coast*, N.Y. Times, Feb. 22, 1957, at 1, col. 2. In 1958, before final approval of the moves of the Brooklyn Dodgers and the New York Giants, the league amended the rule back to a three-fourths vote. Perlmutter, *2-Week Delay Given To Dodgers Move*, N.Y. Times, Oct. 2, 1958, at 1, col. 8.

7. Major League Agreement, art. V, sec. 2 (b)(3), *as provided in* 1987 BASEBALL BLUE BOOK 507 (1987). *See Hearings on Professional Sports Community Protection Act of 1985 Before the Senate Committee on Commerce, Science, and Transportation*, 99th Cong., 1st Sess. 58-9 (1985) (statement of Edwin Durso, General Counsel, Major League Baseball) [hereinafter *Hearings*].

8. Major League Rules I(c)(1), *as provided in* 1987 BLUE BOOK, *supra* note 7, at 511-12. There are several other requirements to be complied with in this situation, *see* note 9, *infra*, but the population requirement is the primary one. The rules also do not allow any city to have more than two major league clubs.

9. National League Const. & Rules art. 3.2 (1962) (within 10 miles) and American League Const. & Rules art. 3.2 (1966) (within 100 miles), *cited in* Note, *The Super Bowl and The Sherman Act: Professional Team Sports and the Antitrust Laws*, 81 HARV. L. REV. 418, 429 (1967); Major League Rules I(c)(I)(iii) (club of one league cannot move within five miles of the stadium of a club in the other league unless that club agrees), *as provided in* 1987 BLUE BOOK, *supra* note 7, at 511. *See also Hearings*, *supra* note 7, at 59 (statement of Durso).

10. *Hearings*, *supra* note 7, at 56 (statement of Peter Ueberroth, Commissioner, Major League Baseball). According to Ueberroth, the recommendation of the league president and the league's decision are based on such considerations as the support and commitment the home community has given to its franchise, the existing stadium lease, and the effect a move may have on the structure and divisional alignment of the league. *Id.*

in this process. The Commissioner is empowered to investigate, either upon complaint or his own initiative, any act which is charged or suspected to be not in the best interests of baseball.[11] This power has been interpreted to extend to the aspects of a proposed relocation that may affect baseball.[12]

The owners regard their teams as a "single entity" and thus require these rules on franchise relocation. The teams jointly produce a product which no one team can produce alone. According to the single entity theory, the financial success or failure of each franchise affects the fortunes of the other teams in the league. This impact is felt directly through the revenue sharing of national television contracts and gate receipts, and indirectly through public confidence.[13] The success of the venture, therefore, depends upon each team being financially stable.[14] Franchising decisions significantly affect a club's financial return and that of the league in general. Rules governing franchise relocation have thus been developed to protect the financial stability and integrity of the leagues.[15]

There are four specific reasons for the restraints on franchise relocation. First, the restraints work toward competitive scheduling. Every team has an interest in where its games are played. Territorial restraints promote general agreement on where teams play. Teams must have definite home sites. Further, they want to make travel between games as easy and economical as possible. Unrestrained movement could result in unmanageable travel conditions.[16] For example, in 1953, Clark Griffith, owner and president of the Washington Senators, opposed a move of the St. Louis team to Kansas City. At the time St. Louis was the westernmost city in the American League. Griffith complained that Kansas City was

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11. Major League Agreement, Art. I, sec. 2, *as provided in* 1987 BLUE BOOK, *supra* note 7, at 501. *See Hearings, supra* note 7, at 56 (statement of Ueberroth).

12. *Id. See infra* notes 174, 184, and accompanying text.

13. J. WEISTART & C. LOWELL, THE LAW OF SPORTS 799 (1979). Receipts from national television contracts are shared equally among major league baseball clubs even though some clubs make a disproportionate contribution to the production of televised events. Each club keeps its local television revenues, but gate receipts are split 85 percent for the home team and 15 percent for the visiting team. The purpose of these rules is to offset part of the disadvantage which some clubs have by being in more marginal markets. *Id.*

14. Kempf, *The Misapplication of Antitrust Law to Professional Sports Leagues*, 32 DE PAUL L. REV. 625, 629 (1983).

15. *See id.* at 626-32; Kurlantzick, *Thoughts on Professional Sports and the Antitrust Laws: Los Angeles Memorial Coliseum Commission v. National Football League*, 15 CONN. L. REV. 183, 196-99 (1983); Glick, *Professional Sports Franchise Movements and the Sherman Act: When and Where Teams Should Be Able to Move*, 23 SANTA CLARA L. REV. 55, 80-86 (1983).

16. Glick, *supra* note 15, at 80.

"not in our circuit geographically" and would therefore increase travel difficulties.[17]

The second reason for restraints on franchise relocation is establishing league legitimacy. Certain markets, such as New York and Chicago, are necessary for league credibility, and restraints on movement can ensure league stability by keeping teams in such markets. Even though a league is already "established," interest in team stability is still great for, as stated, the economic success of each team depends on the strength and stability of other teams. Every team that moves and fails decreases overall competition and hurts the league's image of stability.[18]

The third reason for franchise relocation restraints is community support and public service. If teams moved too often, cities would be less likely to invest in the league, making it difficult for the league to place teams in certain markets.[19] Further, it is common practice for public agencies to finance construction of stadiums. Unrestrained team movement could leave the taxpayers supporting a limited-use facility that may be incapable of generating other revenues. If a team could move anytime it wished, fans would probably be less enthusiastic in their support of the team. Unrestricted team movement would damage the league's goodwill and threaten the development of fan loyalty and traditional rivalries.[20] By limiting transfers, professional baseball avoids ill will, resentment and potential lawsuits.[21]

The last reason for restrained movement of baseball franchises is profitability. Clubs must be in a market area which has the capability of supporting a franchise.[22] By providing each club with territorial exclusivity, the league is able to avoid destructive intraleague economic competition. This protection is considered necessary to encourage financial investments in franchise operations.[23] The strategic placement of franchises can also generate the nationwide interest critical to obtaining network television contracts, a major source of baseball's revenue. Geographic and competitive balance is necessary to attract and keep the public watching professional baseball games on television in major media

17. N.Y. Times, July 23, 1953, at 29, col. 3.

18. Glick, *supra* note 15, at 81-82.

19. Glick, *supra* note 15, at 82-84.

20. Kurlantzick, *supra* note 15, at 196.

21. Kurlantzick, *supra* note 15, at 196; J. MARKHAM & P. TEPLITZ, BASEBALL ECONOMICS AND PUBLIC POLICY 106 (1981).

22. J. MARKHAM & P. TEPLITZ, *supra* note 21, at 90.

23. Kurlantzick, *supra* note 15, at 197; Glick, *supra* note 15, at 85-86.

markets.[24]

III. Franchise Relocations

From 1903 to 1953 there were no franchise expansions or moves in professional baseball. The same sixteen teams in the same sixteen locations comprised the two major leagues.[25] Since 1953, however, the major leagues have expanded by ten teams[26] and ten franchises have relocated.[27] League franchise owners voted down only two proposed moves. The proposal to move the St. Louis Browns to Baltimore for the 1953 season and later for the 1954 season failed, as did a proposal to move the Kansas City Athletics to Louisville for the 1964 season.

A. *Boston Braves to Milwaukee (NL), 1953*

Little more than one month before the start of the 1953 season, the National League owners unanimously approved the Bos-

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24. Kurlantzick, *supra* note 15, at 199; Glick, *supra* note 15, at 86.

25. American League teams included the Boston Red Sox, Chicago White Sox, Cleveland Indians, Detroit Tigers, New York Yankees, Philadelphia Athletics, St. Louis Browns, and Washington Senators. National League teams included the Boston Braves, Brooklyn Dodgers, Chicago Cubs, Cincinnati Reds, New York Giants, Philadelphia Phillies, Pittsburgh Pirates, and St. Louis Cardinals. Five metropolitan areas had two or more teams. New York had three, and Boston, Chicago, Philadelphia, and St. Louis each had two.

26. American League expansion franchises include the Washington Senators (1961), California Angels (1961), Seattle Pilots (1969), Kansas City Royals (1969), Seattle Mariners (1977), and Toronto Blue Jays (1977). National League expansion franchises include the New York Mets (1962), Houston Astros (1962), Montreal Expos (1969), and San Diego Padres (1969).

27. The 10 franchise relocations are as follows:

	Team	League	Year	Vote
1)	Boston Braves to Milwaukee	NL	1953	unanimous
2)	St. Louis Browns to Baltimore	AL	1954	unanimous
3)	Philadelphia Athletics to Kansas City	AL	1955	6-2
4)	Brooklyn Dodgers to Los Angeles	NL	1958	unanimous
5)	New York Giants to San Francisco	NL	1958	unanimous
6)	Washington Senators to Minnesota	AL	1961	6-2
7)	Milwaukee Braves to Atlanta	NL	1966	unanimous
8)	Kansas City Athletics to Oakland	AL	1968	7-3
9)	Seattle Pilots to Milwaukee	AL	1970	unanimous
10)	Washington Senators to Texas	AL	1972	10-2

In 1966, the Los Angeles Angels moved from Los Angeles to Anaheim, 25 miles south, and became the California Angels. This was only a move to a different stadium in the same metropolitan area. The author will not consider this a franchise move. *See* N.Y. Times, Aug. 9, 1964, § 5, at 2, col. 6. In 1973, the National League club owners conditionally approved the sale and relocation of the San Diego Padres to Washington. This arrangement fell through when the new ownership failed to arrange for indemnity of the league in the event of any lawsuits resulting from the move. *See* L. Sobel, *supra* note 1, at 513-33.

ton Braves' move to Milwaukee.[28] From 1946 to 1950 the Braves' attendance averaged over one million. Attendance decreased below 500,000 in 1951. By 1952 it plummeted to 281,000, resulting in a total loss of over $700,000 in 1951 and 1952.[29] Lou Perini, owner of the Braves, explained that, "since the advent of television Boston has become a one-team city and the enthusiasm for the Boston National League club has waned [while the enthusiasm for the Boston American League club has continued]. The interests of baseball can be best served elsewhere and Milwaukee has shown tremendous enthusiasm."[30] The Braves' owner undoubtedly regarded Milwaukee's offer to set rent for its new five million dollar stadium at $1,000 a year for the first two years, and then at five percent of the gross receipts for the next three years, as part of this "enthusiasm."[31]

After the National League owners approved the Braves' move to Milwaukee, league president Warren Giles concluded that "the fine standing and prestige of Perini in our league was a great factor" leading to league approval.[32] Giles also indicated that the owners were concerned about the effect the move would have on scheduling and team commitments, but releases were eventually obtained from local radio and television contracts. Although the timing was inconvenient, the National League owners decided that it was prudent to establish a major league baseball team in a thriving Midwestern city.[33]

B. *St. Louis Browns to Baltimore (AL), 1954*

The National League's approval of the move to Milwaukee was surprising because it came within days of the American League's rejection of the St. Louis Browns' request to move to Baltimore. St. Louis, like Boston, was a two-team city, housing the Browns and the National League's Cardinals. The Browns lost $400,000 in 1952. Its president, Bill Veeck, complained that St. Louis could not support two teams even if both were pennant winners. Veeck felt that the Browns' financial problems were due to the Cardinals' televised away games. Only a move out of St. Louis

28. Effrat, *Braves Move to Milwaukee; Majors' First Shift Since '03*, N.Y. Times, Mar. 19, 1953, at 1, col. 2.

29. *Id.*; Quirk, *supra* note 6, at 52-53.

30. Effrat, *supra* note 28.

31. N.Y. Times, Mar. 18, 1953, at 42, col. 1.

32. Effrat, *supra* note 28.

33. Effrat, *supra* note 28. The metropolitan area of Milwaukee had a population of 871,000. One and a half million people resided within a 100 mile radius of the city. *Id.*

could save the Browns.[34]

The Browns originally wanted to move to Milwaukee, but the Milwaukee franchise of the American Association, which was owned by Lou Perini, effectively blocked that effort.[35] The Browns then turned their attention to Baltimore. The Maryland city offered a 10-year lease with a 10-year option on a modern 39,500 seat stadium. A second tier would be added to the stadium increasing the total capacity to 62,000.[36]

Approval of this move appeared to be a virtual certainty.[37] The owners, however, voted 5-2 against the move. As a result, the American League president, Will Harridge, issued this statement:

> The league decided that the numerous problems involved precluded a transfer of the franchise by reason of the short period of time before the opening of the 1953 season. In view of the improved attendance of the Browns [from 289,000 in 1951 to 518,000] in 1952 and the urgent requests from the numerous St. Louis fans for retention of the club in St. Louis, the league looks forward to increased support of the St. Louis fans.[38]

Harridge further explained that there were complications involving television commitments, schedules, ticket sales, the possibility of lawsuits, and general uncertainty of leaving a city in which the league had been for 50 years.[39]

A noted sports columnist of the time, Arthur Daley, offered his own interpretation of why the American League team owners refused the Browns' request. "Personality had much to do with it because Wild William [Veeck] and his unpredictable way of both operating and popping off haven't endeared him to his fellow-owners."[40] Veeck apparently antagonized other club owners by his irreverent approach to baseball and his demand for sharing television revenues.[41] Daley also identified the idea of a last minute

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34. Effrat, *Transfer of Browns to Baltimore Rejected by American League Club Owners*, N.Y. Times, Mar. 17, 1953, at 32, col. 1.

35. N.Y. Times, Mar. 4, 1953, at 32, col. 5. Perini also owned the then Boston Braves. He wanted Milwaukee to be an escape hatch for his Boston club. Perini relocated the Braves to preempt Veeck. Daley, *Discordant Notes From Musical Owners*, N.Y. Times, Sept. 24, 1971, at 49, col. 1.

36. Effrat, *supra* note 34.

37. *See* N.Y. Times, Mar. 14, 1953, at 20, col. 1; N.Y. Times, Mar. 15, 1953, § 5, at 1, col. 1; N.Y. Times, Mar. 16, 1953, at 24, col. 1.

38. Effrat, *supra* note 34.

39. N.Y. Times, Mar. 17, 1953, at 32, col. 2.

40. Daley, *The Reluctant Tenant*, N.Y. Times, Mar. 17, 1953, at 33, col. 2.

41. *See* Quirk, *supra* note 6, at 50; Note, *supra* note 9, at 429 n.59.

change as a factor in the decision.[42]

After drawing only 311,000 fans in 1953, Veeck again requested approval of a shift to Baltimore.[43] This time the American League team owners rejected the request by a 4-4 vote. The reasons given for the rejection were Baltimore's close proximity to two struggling franchises, Philadelphia and Washington, and the intriguing aspects of the Los Angeles market.[44]

Two days after the rejection vote, Veeck sold his controlling interest in the Browns to a Baltimore syndicate. After 90 minutes behind closed doors, the other owners reconsidered and unanimously approved the move.[45] The league noted that Baltimore had the enthusiasm, resources and facilities for a team. It also took steps to alleviate the two concerns expressed after the last rejection vote. As a concession to those favoring movement to the West Coast, the league voted to expand to ten teams if it determined bringing baseball to that part of the country would be desirable. Further, the league promised to make efforts not to have the new Baltimore team and the neighboring Washington team play home games on the same dates.[46]

The team owners' initial rejection of the Braves' move to Baltimore may be attributed to concerns regarding the home stadium being ready for operation, and other logistical considerations.[47] The second rejection, however, clearly resulted from the American League owners' desire to force Veeck out of the league. Obviously, Baltimore's enthusiasm did not change in two days, and neither did the concessions granted suddenly become available.[48]

C. *Philadelphia Athletics to Kansas City (AL), 1955*

Two teams in one city also presented a problem for the Phila-

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42. Daley, *supra* note 40. *See also* Daley, *After the Knockout*, N.Y. Times, Mar. 18, 1953, at 42, col. 2.

43. Sheehan, *Baltimore Gets St. Louis Browns As Syndicate Buys Veeck Interest*, N.Y. Times, Sept. 30, 1953, at 1, col. 4.

44. Sheehan, *Shift of Browns to Baltimore Rejected*, N.Y. Times, Sept. 28, 1953, at 28, col. 1. The owners heard delegations from five cities other than Baltimore, including Los Angeles.

45. *Id.* In comparison, the league owners spent five hours in discussion before rejecting the Browns' first request. Effrat, *supra* note 34. They spent 10 hours in discussion the second time. Sheehan, *supra* note 44.

46. Sheehan, *supra* note 44.

47. Sheehan, *Relocation of Team in Missouri Third Major Shift in 10 Months*, N.Y. Times, Nov. 9, 1954, at 33, col. 4.

48. For Veeck's account, *see* W. VEECK & E. LINN, VEECK-AS IN WRECK 270-90, 299-305 (1962).

delphia Athletics. The Mack family, owners of the American League Athletics, felt that the National League Phillies hindered the Athletics home attendance.[49] The citizens of Kansas City were actively seeking a team at this time. Prior to the league approving a franchise, the citizens of Kansas City voted in favor of a two million dollar bond issue to buy the Kansas City Blues Stadium and to prepare it for major league baseball.[50] The Kansas City Merchants Association collected over one million dollars in ticket sales for the next season's games.[51]

The Macks tentatively sold the Athletics to Chicago industrialist Arnold Johnson, who was planning to move the team to Kansas City. The American League unanimously approved the shift to Kansas City. One member of the Mack family, however, later tried to sell the team to a Philadelphia syndicate.[52] The American League owners subsequently rejected the latter sale. Apparently the owners felt the Macks were unable to agree on a buyer. This resulted in the Macks retaining control of the debt-ridden club. The proposed sale to Johnson and shift to Kansas City then went back to the league owners for a vote. They approved the sale unanimously, and also approved the shift 6-2.[53]

In voting for the shift to Kansas City, some owners apparently were concerned that Arnold Johnson owned Yankee Stadium. Johnson agreed, however, to divest his interest in the stadium. This commitment swayed the Detroit team to vote for approval.[54] Voting against the shift were the owners of the Washington Senators and the Cleveland Indians. Clark Griffith of Washington based his opposition on the view that there are "bigger towns [such as Toronto, Los Angeles, and Montreal . . .] that would give our league better balance,"[55] and that there would be added travel burdens.[56] The obvious contradiction between Griffith's interest in having a team in Los Angeles and his concern over travel burdens indicates that these reasons were probably a smokescreen. Appar-

49. *See* N.Y. Times, July 2, 1954, at 12, col. 4 (the owners warned the Philadelphia mayor that the team would move or be sold if attendance did not increase).

50. N.Y. Times, Aug. 4, 1954, at 24, col. 3. As further inducement, the city offered the Athletics a two-year lease for $25,000 a year. N.Y. Times, Jan. 12, 1964, § 5, at 2, col. 2.

51. N.Y. Times, Oct. 9, 1954, at 14, col. 2.

52. N.Y. Times, Oct. 21, 1954, at 35, col. 6.

53. N.Y. Times, Nov. 9, 1954, at 33, col. 1. Kansas City officials went so far as to assure the American League that the club could leave the city if it did not draw one million fans a year for the first three years. N.Y. Times, Nov. 7, 1954, § 5, at 1, col. 2.

54. N.Y. Times, Nov. 9, 1954, at 33, col. 1.

55. N.Y. Times, Nov. 5, 1954, at 25, col. 4.

56. N.Y. Times, Sept. 24, 1953, at 29, col. 5.

ently, Griffith's real reason for opposing the move was that Kansas City would replace Baltimore as a Western division team. With Baltimore as an Eastern division team, many of its home games would conflict with those of Washington.[57]

D. *Brooklyn Dodgers to Los Angeles (NL), 1958*
New York Giants to San Francisco (NL), 1958

By 1958 both leagues thought of entering the expanding markets on the West Coast, but it was the National League that acted first. The Brooklyn Dodgers laid the groundwork. They "traded" their Texas League franchise in Ft. Worth to the Chicago Cubs in exchange for the Cubs' Pacific Coast League franchise and ballpark (Wrigley Field) in Los Angeles. After the "trade," Walter O'Malley, president of the Dodgers, said that the team had no immediate plans to move, but "I have tried to make people aware that a serious condition faced us in Brooklyn, an inadequate and outmoded park and especially the lack of parking facilities."[58] By acquiring the Los Angeles franchise and park, the Dodgers increased pressure on New York City to back the team's plan of building a stadium in the heart of downtown Brooklyn as part of a comprehensive rehabilitation of the area.[59]

At the same time, the New York Giants[60] were also in need of a new stadium. The Giants' existing stadium, the Polo Grounds, was obsolete, had traffic problems, and lacked adequate parking space.[61]

After meeting with Giants president Horace Stoneham, San Francisco mayor George Christopher commented, "We are prepared to pay the bill and when we get a club . . . we'll make a first division team of it."[62] Christopher also authorized an appropriation of five million dollars to build a modern stadium on a suitable site contingent on obtaining a team in San Francisco. Christopher further stated that "[i]f that is not sufficient, we are prepared to go beyond that amount as much as necessary.[63]

Shortly thereafter, the National League owners voted unani-

57. *See* N.Y. Times, Nov. 9, 1954, at 33, col. 1.

58. McGowen, *supra* note 6.

59. N.Y. Times, Mar. 25, 1957, at 27, col. 1.

60. New York was also the home of the American League's Yankees.

61. Sheehan, *New York's Baseball*, N.Y. Times, May 30, 1957, at 17, col. 3. An alternative for the Giants was to share Yankee Stadium with the Yankees. The Giants apparently regarded this as an undesirable situation and did not seriously pursue it. *Id.*

62. N.Y. Times, May 11, 1957, at 16, col. 3.

63. *Id.*

mously to grant the move of the Dodgers and Giants to Los Angeles and San Francisco respectively. The league conditioned its affirmative vote by requiring that the requests to move be filed before October 1, 1957, and that the teams make the move together. If only one team decided to move, the league would meet to reconsider its position.[64] The sentiment of the owners appeared to be that anything the owners of the Dodgers and Giants wanted to do with their clubs was acceptable.[65]

Both teams were receptive to the idea of change. The Dodgers' attendance the last six years averaged approximately 1.1 million, a drop from its average of approximately 1.5 million the previous six years.[66] The Giants, meanwhile, were concerned because in 1956 their attendance dropped below 800,000 (629,000) for the first time.[67] Sportswriters attributed the attendance problems of both teams to obsolete facilities, saturation with televised baseball,[68] inadequate parking and transportation,[69] and the presence of harness racing.[70]

Television money was another reason the teams were receptive to moving. The Dodgers and the Giants realized $750,000 and $600,000 respectively from their television contracts in New York.[71] In the proposed locations both teams were negotiating ten year pay-television contracts for two million dollars a year.[72]

The Dodgers and Giants tried to work with city officials to

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64. Sheehan, *Dodgers, Giants Win Right to Shift if They So Desire*, N.Y. Times, May 29, 1957, at 1, col. 2. The teams were to move together in order to save money on travel expenses. Each National League team played every other team eleven times at home and eleven times away with four trips to each city in a year. A trip to the West Coast would cost approximately $40,000 a year and with two teams located on the West Coast this cost would be offset by anticipated gains in attendance. Sheehan, *supra* note 61.

65. Sheehan, *supra* note 64.

66. Quirk, *supra* note 6, at 52; Sheehan, *supra* note 61. Despite declining attendance, the Dodgers had been one of the most profitable franchises in baseball. Perlmutter, *Dodgers Accept Los Angeles Bid to Move to Coast*, N.Y. Times, Oct. 9, 1957, at 1, col. 1; Quirk, *supra* note 6, at 48, 53.

67. Quirk, *supra* note 6, at 52; Sheehan, *supra* note 61.

68. Sheehan, *supra* note 64. In New York, local stations televised 270 baseball games including 231 home games. N.Y. Times, May 29, 1957, at 19, col. 4.

69. *See* Mooney, *Stoneham Favors Giants' Transfer*, N.Y. Times, July 18, 1957, at 1, col. 5.

70. N.Y. Times, May 29, 1957, at 19, col. 4. Harness racing in New York outdrew all three New York baseball teams combined. Boston and Philadelphia had major horse racing. A franchise from each of these cities subsequently moved to Kansas City and Milwaukee, cities without major horse racing. *Id.*

71. Benjamin, *Mayor To Stress Baseball-TV Link*, N.Y. Times, May 31, 1957, at 1, col. 2.

72. Benjamin, *Closed TV Linked to Baseball Shift*, N.Y. Times, June 1, 1957, at 1, col. 4.

solve their problems,[73] but these efforts were unsuccessful. The Giants were the first of the two teams to decide to make the move. According to Stoneham, the Giants lost money in six of the last eight years. Low attendance forced the Giants to move. Stoneham believed that the team would realize a profit of $200,000-$300,000 in San Francisco. In part, the agreement between the club and the city of San Francisco provided for the following: 1) construction of a stadium with a seating capacity of 40,000-45,000; 2) a 35-year lease at five percent of receipts after taxes and visiting club and National League shares, with a minimum rental guarantee of $125,000; 3) team operation and collection of revenue from all concessions; 4) the city will equip the stadium with everything needed for operation; 5) the city will also maintain the physical property, but the club will pay for maintenance during the season; and 6) the mayor will appoint a committee to promote the sale of season tickets before the 1958 season.[74] The team was to play in 22,000-seat Seals Stadium until the city could construct the new stadium.[75]

The Dodgers followed suit when the Los Angeles City Council approved an ordinance embodying the terms of a contract previously agreed upon by the club. The city agreed to provide a 185 acre tract of land in Los Angeles and two million dollars of preliminary grading for the proposed stadium site. The county agreed to provide 2.75 million dollars in access roads. In return, the Dodgers would construct a ten million dollar stadium with a capacity of 50,000, give the city the PCL park, and construct recreational facilities in conjunction with the stadium.[76] Warren Giles, president of the National League, summed up the moves: "The transfer of the Giants and the Dodgers means that two more great municipalities are to have major league baseball without depriving another city of that privilege."[77]

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73. *See* N.Y. Times, February 22, 1957, at 16, col. 4; N.Y. Times, Mar. 25, 1957, at 27, col. 1; Knowles, *Wagner Striving to Keep Dodgers and Giants Here*, N.Y. Times, May 30, 1957, at 1, col. 5; N.Y. Times, July 18, 1957, at 51, col. 1.

74. Becker, *Giants Will Shift to San Francisco for 1958 Season*, N.Y. Times, Aug. 20, 1957, at 1, col. 1.

75. N.Y. Times, Jan. 16, 1958, at 43, col. 1.

76. Hill, *Dodger Pact Wins Los Angeles Vote*, N.Y. Times, Oct. 8, 1957, at 1, col. 1. The Dodgers wanted 300 acres of land and the city promised to do what it could to facilitate the acquisition of the other 115 acres from private landholders at a reasonable price. *Id. See also* N.Y. Times, Sept. 17, 1957, at 37, col. 5.

77. Perlmutter, *supra* note 66.

E. *Washington Senators to Minnesota (AL), 1961*

Calvin Griffith, owner of the Washington Senators, tried for many years to move his team. Finally, in 1960, the American League approved a shift of the franchise to Minneapolis-St. Paul (the Twin Cities) by a 6-2 vote.[78] The Twin Cities guaranteed one million in attendance for the next five years, greatly increased TV and radio revenues,[79] and a new bond issue for expansion of the stadium.[80] Griffith stated that the move was for the "betterment of our corporation."[81]

F. *Milwaukee Braves to Atlanta (NL), 1966*

The Braves started the wave of franchise relocations in 1953 with its move from Boston to Milwaukee. In its first season in Milwaukee, the Braves set a National League record for attendance by drawing over 1.8 million fans.[82] Braves' attendance peaked with 2.2 million in 1957 and then declined steadily.[83] Over its 12-year period in Milwaukee, the Braves averaged more than 1.5 million fans a year, 31 percent above the National League average.[84] Nonetheless, the team reported losses of over $43,000 in 1963 and over $45,000 in 1964.[85]

A new ownership group took over the Braves in 1962. They showed interest in moving to Atlanta in 1963.[86] In 1964 Atlanta tried to pry the team from Milwaukee by offering an 18 million

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78. Drebinger, *American League, in '61, to Add Minneapolis and Los Angeles*, N.Y. Times, Oct. 27, 1960, at 1, col. 4. Club owners approved this move in conjunction with a decision to award expansion franchises to Washington and Los Angeles for the 1961 season. *Id.*

79. *Id.*

80. N.Y. Times, Oct. 27, 1960, at 46, col. 6. Minneapolis-St. Paul built the stadium in 1956 with a capacity of 22,000. The Twin Cities planned to expand the stadium to seat 40,000. Drebinger, *supra* note 78.

81. Drebinger, *supra* note 78.

82. Sheehan, *supra* note 43.

83. Durso, *Braves Ready to Transfer Franchise From Milwaukee to Atlanta Next Year*, N.Y. Times, July 3, 1964, at 15, col. 1; Quirk, *supra* note 6, at 52.

84. L. SOBEL, *supra* note 1, at 506.

85. N.Y. Times, Mar. 7, 1965, § 5, at 2, col. 4. Had the Braves capitalized scouting expenses as sound accounting methods require, the team would have realized net income of approximately $170,000 in 1963 and $151,000 in 1964. The reported losses were also partly due to reducing income by the interest paid on funds borrowed to purchase the team, and expenses associated with relocation. Wisconsin v. Milwaukee Braves, Inc., 31 Wis. 2d 699, 709, 144 N.W.2d 1, 6 (Wis.), *cert. denied*, 385 U.S. 990 (1966). *See* N.Y. Times, Mar. 3, 1966, at 38, col. 3 (Ralph Delforge, secretary and assistant treasurer for the Milwaukee Braves from 1961-65, stated that the team realized profits of $66,000 in 1963 and $73,000 in 1964).

86. *Milwaukee Braves*, 31 Wis. 2d at 703, 709, 144 N.W.2d at 2, 5.

dollar, 50,000-seat stadium and a seven state television network to broadcast games. In contrast, teams in Minneapolis, 400 miles to the west, and Chicago, 90 miles to the south, limited the Milwaukee television market.[87]

On October 21, 1964, the Braves' Board of Directors voted 12-6 to request permission to shift to Atlanta.[88] William Bartholomay, the Braves' chairman of the board, explained the vote as being based on economic considerations.[89] The Milwaukee County Board of Supervisors fought the decision to move in the courts. The County Board sought to require fulfillment of the team's stadium lease. Eugene Grobschmidt, chairman of the County Board, alleged that local citizens supported the team and the recent drop in attendance was due to "inexperienced management." Grobschmidt further stated that the team was moving for the "lure of fast money."[90]

The National League unanimously approved the Braves' move for the 1966 season, but in response to the county's lawsuit, ruled that the team must stay in Milwaukee for the 1965 season to fulfill its stadium lease obligations. Warren Giles stated "it was in the best future interests of baseball to have the club move to Atlanta in 1966."[91]

Ford Frick, commissioner of the major leagues, defended the right of the Braves to move on the basis of an owner's responsibility to himself, his partners, and the team's shareholders: "He has no responsibility to lose money, or stay where he can't get by, or [stay] where it appears a city will not support big league baseball."[92] The feeling among the other owners was that an owner has the right to move a club and they will not stand in the way, provided the city to which the owner wishes to move promises reason-

87. Durso, *supra* note 83.

88. The directors voting against the shift indicated that moving the Braves at this time was a violation of a public trust. N.Y. Times, Oct. 22, 1964, at 28, col. 2.

89. Durso, *Braves Put Off Request to Move to Atlanta Because of a Restraining Order*, N.Y. Times, Oct. 23, 1964, at 48, col. 1.

90. *Id.* Attendance for the Braves in 1963 was 773,000, and 911,000 in 1964. *Id.* Bill Eberly, ticket manager and business manager of the Braves, believed that the drop in attendance was due to a variety of reasons. He cited the slump in the team's performance, management's failure to pass a reduction in federal excise tax on to season ticketholders, the departure in 1959 of a popular general manager, an increase in ticket prices in 1961 and 1962, and the club management's refusal to permit televising games for the first 10 years in Milwaukee. N.Y. Times, Mar. 8, 1966, at 34, col. 7.

91. N.Y. Times, Nov. 8, 1964, § 5, at 1, col. 1. The team's move to Atlanta for the 1966 season came after additional legal complications. *See Milwaukee Braves*, 31 Wis. 2d 699, 144 N.W.2d 1; L. SOBEL, *supra* note 1, at 505-12.

92. N.Y. Times, Nov. 13, 1965, at 21, col. 5.

able support for the team.[93] Philip Wrigley, owner of the Chicago Cubs, was more blunt as he explained that he would approve the move because "I don't know anything about the business of the other nine National League teams, and I don't pretend to be able to tell them how to run their businesses."[94]

Specifically, the team owners justified the move on the basis that despite fan support, attendance had been declining. Further, no sizable radio-TV package was possible in an area so close to Chicago. They also noted that owners had a right to move their investment to a more promising locale, and a club is not bound to a city where offers to remain in that city are unsatisfactory.[95]

G. *Kansas City Athletics to Oakland (AL), 1968*

Charles O. Finley, owner of the Kansas City Athletics,[96] received the only other rejection of a formal request for franchise relocation. Finley was at odds with Kansas City officials on the terms for renewal of the stadium lease which expired on December 31, 1963. After several rounds of negotiations,[97] the city offered to set the rent at five percent of the paid attendance plus 7.5 percent of the concession revenue for a four or five year period with options. Finley agreed to the terms of the rent but not to the length of the lease. He wanted only two years with no options. The city refused a short-term contract because it would keep alive the threat of club relocation.[98]

Finley considered moving the team since 1961.[99] His reaction to the stalemated negotiations was to sign a contract with the state of Kentucky to move the team there for the 1964 and 1965 seasons. The Athletics agreed to sign a two-year lease to play at the State Fairgrounds in Louisville and to pay rent under the same terms

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93. N.Y. Times, Oct. 15, 1964, at 45, col. 8.

94. N.Y. Times, Oct. 22, 1964, at 28, col. 2.

95. Koppett, *Senators Make Bid Today for Shift to Texas*, N.Y. Times, Sept. 21, 1971, at 47, col. 5. *See also Milwaukee Braves*, 31 Wis. 2d 699, 144 N.W. 2d 1.

96. *See* N.Y. Times, Jan. 12, 1964, § 5, at 2, col. 2 (Finley became sole owner of the team after pledging to keep the team in Kansas City).

97. *Id.*

98. N.Y. Times, Jan. 4, 1964, at 18, col. 8.

99. In 1963, Finley's informal canvassing of owners about a move was thwarted. N.Y. Times, Jan. 12, 1964, § 5, at 2, col. 2. Some believe Finley never intended to renew the lease. Finley may have used his negotiations with Kansas City officials as publicity to win American League sympathy, and to create hostility with the city council. *Id.* For a more extensive account of lease negotiations and threats to move, see H. MICHELSON, CHARLIE O 121-30 (1975).

discussed with Kansas City.[100]

Before the owners voted on the proposed move, Arthur C. Allyn, owner of the Chicago White Sox, commented, "Finley is a fool and his action is inexcusable. He has no right whatsoever to attempt such a move. He has an obligation to the people of Kansas City and he had better make it good."[101] Joe Cronin, president of the American League, expressed similar sentiments: "It is my personal opinion that the American League will not make a checkerboard of this franchise by moving it from place to place from year to year. I would be very much against using the Kansas City franchise . . . as a wedge of a hammer against the Kansas City people."[102]

The American League owners voted 9-1 against the move. Finley cast the only vote in favor of the move. The league warned Finley that he had two weeks to solve the problems with his lease. Otherwise, he could face expulsion from the league and forfeiture of his franchise.[103] After the denial, Cronin stated that the league partially based its decision on the fact that the Athletics outdrew several other teams. Further, surveys showed that baseball generated interest among people in Kansas City.[104] Finley reacted strongly and threatened legal action: "I don't feel baseball has the right to force me to stay in the city where I am continually losing money."[105] Finley eventually accepted Kansas City's proposal for a lease.[106]

Attendance in Kansas City suffered after Finley's attempted move.[107] With Oakland as the intended destination, Finley again tried to move his team.[108] In a compromise decision, the American

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100. N.Y. Times, Jan. 7, 1964, at 29, col. 1.

101. *Id.*

102. *Id.*

103. Drebinger, *American League Bars A's Move to Louisville in 9-1 Vote*, N.Y. Times, Jan. 17, 1964, at 26, col. 1; H. MICHELSON, *supra* note 99, at 131-32.

104. Drebinger, *supra* note 103.

105. Finley claimed to have lost over $1 million in three years in Kansas City. *Id.*

106. N.Y. Times, Feb. 24, 1964, at 33, col. 1; N.Y. Times, Feb. 29, 1964, at 15, col. 1.

107. The team drew only 528,000 fans to the park during the 1965 season, but improved to 774,000 the next year. Attendance dropped by over 100,000 fans in 1967. N.Y. Times, Sept. 29, 1967, at 59, col. 1. The team drew over one million only in its first two years (1955 and 1956). Team performance did not aid attendance. The team finished at or near the bottom of the American League every year. Its best finish was sixth place in 1955. *Id.* After 1964, however, team management did little to promote the team. H. MICHELSON, *supra* note 99, at 133-34.

108. The city of Oakland originally made overtures for the team in 1964 after club owners turned down Finley's request to move to Louisville. Cronin refused to consider Finley's bid to make the move. N.Y. Times, Jan. 28, 1964, at 38, col. 5; N.Y. Times, Feb. 19, 1964, at 45, col. 1.

League voted 7-3 to allow the move and to expand to 12 teams, locating the new franchises in Seattle and Kansas City.[109] Two teams explaining their votes were the Minnesota Twins and the Baltimore Orioles. The Twins voted for the move because team owner Calvin Griffith previously obliged his support for any future request to move in exchange for support for his request to move from Washington to the Twin Cities. The Orioles, however, voted against the move because they feared that it would hurt the San Francisco Giants. The Orioles also believed that the Athletics had conducted inadequate market studies on the effect of the move.[110]

H. *Seattle Pilots to Milwaukee (AL), 1970*

The Seattle Pilots came into existence as an expansion franchise in 1969 as part of the compromise allowing the Kansas City Athletics to move to Oakland for the 1968 season.[111] The Pilots had immediate financial problems. In the first year the team lost $850,000. The Pilots attracted only 678,000 fans to its modified minor league park which had a seating capacity of only 22,000.[112] There was friction between the team's owners and city officials about rent and reconstruction of the park. Plans for a domed stadium ran into political roadblocks. Personality differences and political rivalries between city officials and the team's

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109. Koppett, *American League Approves Shift of Athletics to Oakland*, N.Y. Times, Oct. 19, 1967, at 61, col. 1. The owners voted on the move and expansion as a single question. Originally they approved the matter based on expansion occurring "no later than 1971." The league received considerable pressure on behalf of Kansas City, particularly from congressmen, to continue baseball in the city without interruption. Consequently, the league vowed it would take all action within its powers to field a team in Kansas City in 1969. Koppett, *Giles Calls American League Expansion Plan Hasty, Urges Reconsideration*, N.Y. Times, Oct. 20, 1967, at 59, col. 1; Koppett, *Transfer of Pilots to Milwaukee Seen as Likely*, N.Y. Times, Oct. 21, 1969, at 55, col. 5. *See* H. MICHELSON, *supra* note 99, at 136-39. Part of the pressure undoubtedly arose when Kansas City voters approved a bond issue for a 45,000 seat stadium with a sliding roof. *See* N.Y. Times, Sept. 15, 1967, at 60, col. 5.

110. H. MICHELSON, *supra* note 99, at 137. The San Francisco Giants protested to the commissioner, General William Eckert, that the move to Oakland was an invasion of its territory. The commissioner did not allow the protest since the move did not violate the territorial limits set by the American League. *See also supra* note 9 and accompanying text. *Cf.* Goldpaper, *Nets Seeking to Move to Jersey, Sue Knicks Over Effort to Block It*, N.Y. Times, July 7, 1977, at 1, col. 2.

111. The American League move into Seattle may have been premature. The league wanted to beat the National League into the market and moved in earlier than it desired. The American League needed a twelfth team for balance after creating a team in Kansas City to replace the club it allowed to move to Oakland. Koppett, *Transfer of Pilots to Milwaukee Seen as Likely*, N.Y. Times, Oct. 21, 1969, at 55, col. 5.

112. Durso, *American League Balked at Shifting Seattle Franchise by Restraining Order*, N.Y. Times, Mar. 18, 1970, at 54, col. 1.

owners, as well as residual bitterness over competition for the franchise from the defeated groups compounded these problems. The Pilots' ownership determined that there was no likelihood of improving the situation and put the team up for sale.[113]

A Milwaukee group emerged as a willing purchaser. Milwaukee had a stadium ready for occupancy and no political complications.[114] The city also had a good history of attendance while the Braves were there. One of Milwaukee's drawbacks was that American League teams in Minnesota and Chicago had it hemmed in. Further, it was being held out by the Chicago White Sox as a possible escape valve.[115]

The league, however, wanted to keep the team in Seattle[116] and offered the team to a local syndicate at a price which would represent "no profit." The league rejected the syndicate due to financing problems.[117] The league owners then put up $650,000 for the team's current operating expenses in order to keep the team in Seattle for 1970.[118] The owners soon began having second thoughts about throwing "good money after bad." The $650,000 would probably cover only part of the required operating expenses, and there was no clear prospect of the franchise turning around in the future.[119] These thoughts resulted in congressional threats to remove baseball's antitrust exemption, and threats of lawsuits by state and city officials. The owners faced a dilemma: keeping the team in Seattle would avoid threats of congressional retaliation, lawsuits, and criticism for moving the franchise, but it would also cost up to

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113. Koppett, *supra* note 111; Koppett, *Pilots' Owners and Seattle Officials Told to Work Out Agreement*, N.Y. Times, Oct. 22, 1969, at 37, col. 1.

114. Milwaukee's available stadium compared favorably against the troubles with Seattle's domed stadium and the delays in plans for the stadium in Montreal, a 1969 National League expansion franchise. Koppett, *supra* note 111. Moreover, other cities interested in the team, Dallas, Buffalo and Toronto, only had promises for stadiums. Koppett, *Pilots' Owners and Seattle Officials Told to Work Out Agreement*, N.Y. Times., Oct. 22, 1969, at 37, col. 1.

115. Koppett, *Seattle Franchise on the Brink, With Dallas Likely to Catch It*, N.Y. Times, Jan. 23, 1970, at 55, col. 3.

116. The league so desired to avoid the embarrassment of having an expansion franchise fail within one year that it quashed an initial oral agreement to sell the Pilots to interests in Milwaukee. *Id.*

117. Koppett, *New Seattle Group Is Offered Chance to Buy Pilots for $9-Million*, N.Y. Times, Jan. 28, 1970, at 33, col. 1; Koppett, *Pilots Keep Their Seattle Home, But Foundation Remains Shaky*, N.Y. Times, Feb. 13, 1970, at 45, col. 2; Koppett, *Seattle's Choice: Legal or Money Woes*, N.Y. Times, Mar. 12, 1970, at 50, col. 6.

118. Koppett, *Pilots Keep Their Seattle Home, But Foundation Remains Shaky*, N.Y. Times, Feb. 13, 1970, at 45, col. 2.

119. Koppett, *American League Weighs Shift of Pilots to Milwaukee Before Season's Start*, N.Y. Times, Mar. 8, 1970, § 5, at 2, col. 1.

three million dollars in first year expenses and five million dollars over the next five years until the city of Seattle could build the new stadium.[120]

The following considerations weighed in favor of allowing the team to move: 1) the team's ownership would not realize a profit from its failure; 2) the league's efforts to keep the team in Seattle would enable them to defend an antitrust suit; 3) spending money in defense of an antitrust suit seemed better than spending more money on a losing situation and still facing a move the following year; 4) Milwaukee's demonstrated ability to support a team; 5) bringing baseball back to Milwaukee discharged a moral debt; and 6) it is advantageous for radio and television purposes to all other franchises (except California and Oakland) to have a team in the Central Daylight time zone rather than on the West Coast.[121]

The Pilots' owners made the American League owners' decision easy. The Pilots' owners petitioned federal bankruptcy court to sell the club. A federal bankruptcy referee granted the club permission to be sold to Milwaukee, which had made the only actual offer for the team.[122] The American League owners then unanimously voted to approve the transfer.[123]

I. *Washington Senators to Texas (AL), 1972 San Diego Padres to Washington (NL), 1973*

In 1968, Bob Short bought the Washington Senators for $9.5 million. In the next three years he reportedly lost a "substantial amount" of money.[124] Short tried to turn things around by hiring controversial baseball personality Ted Williams as manager, and by acquiring players such as Denny McLain and Curt Flood.[125]

120. Koppett, *Seattle's Choice: Legal or Money Woes*, N.Y. Times, Mar. 12, 1970, at 50, col. 6. The city of Seattle passed a $40 million bond issue for the stadium's construction. The city sold $10 million of the bond issue but more realistic estimates set the stadium's cost at $80 million. Koppett, *supra* note 118. The original agreement with the American League provided that the team could move if construction of the domed stadium did not begin by December 31, 1970. Koppett, *Pilots' Owners and Seattle Officials Told to Work Out Agreement*, N.Y. Times, Oct. 22, 1969, at 37, col. 1.

121. Koppett, *supra* note 118.

122. N.Y. Times, Mar. 25, 1970, at 57 col. 2; N.Y. Times, Apr. 1, 1970, at 59, col. 2.

123. N.Y. Times, Apr. 1, 1970, at 59, col. 2. It is presumed that the vote was unanimous. The vote was by telephone and any owner casting a dissenting vote could have called for a formal meeting. Quirk, *supra* note 6, at 50 n.10. Seattle did file an antitrust suit against the American League for allowing the team to move, but settled when promised an expansion team which it received in 1977. Ringolsby, *Shipwrecked in Seattle*, SPORT, Mar. 1984, at 61, 63.

124. N.Y. Times, July 1, 1971, at 65, col. 8.

125. Durso, *Believed to Have Votes*, N.Y. Times, July 1, 1971, at 67, col. 3. McLain

These moves did little to help attendance. Short testified before Congress that he faced bankruptcy unless he received a new lease for Robert F. Kennedy (RFK) Stadium. He asked that the District of Columbia charge only one dollar per year rent up to one million attendance.[126] Beyond that he would agree to any terms. At the time, Short's lease required an annual payment of $135,000, gave the team only a portion of the concessions, and no revenue from parking.[127]

Short received an offer to move the Senators to Dallas-Ft. Worth. The offer permitted him either to sell the team for $12 million, or retain it and receive more than one million dollars in radio and television rights, and other financing.[128] The team would play in Turnpike Stadium in Arlington which would be expanded to seat 50,000. Rent would consist of one dollar per year until the team's attendance exceeded one million.[129]

Short decided to continue as owner and put the move to a league vote. League owners approved the move 10-2 contingent on the lease terms and the number of spectator seats in the stadium.[130] Most of the owners approved the move because they believed that Short should be able to do whatever he wanted with his club. The other clubs approved the Senators' move because Baltimore's proximity limited radio and television rights in the Washington area, as well as the team's poor attendance history.[131]

Commissioner Bowie Kuhn wanted to keep the team in Washington, fearing that a move would stir up congressional antitrust action. The Baltimore Orioles and the Chicago White Sox cast "no" votes for other reasons. The move to Texas would clear the Washington area for the Orioles, but the Orioles feared that a National League team, probably the San Diego Padres, would move to Washington and hurt their attendance. The friendship between

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lost 22 games for Washington in 1971, and Flood left the team after one month. One columnist said that Short, who acted as the team's general manager, was "hornswaggled in every trade." Daley, *Washington Without a Farewell Address*, N.Y. Times, Oct. 1, 1971, at 49, col. 1.

126. Durso, *supra* note 125. Washington drew over one million fans only in 1946. *Id.*

127. *Id.* The federal government owned RFK Stadium and the D. C. Armory Board administered it. As of July 1971, Short owed $135,000 of the 1970 rent and $26,000 on the 1971 rent. *Id.*

128. Koppett, *Senators Make Bid Today for Shift to Texas*, N.Y. Times, Sept. 21, 1971, at 47, col. 5.

129. Short termed the lease arrangement as putting him in "a more favorable position than any major league operator that I know of." N.Y. Times, Sept. 22, 1971, at 57, col. 8.

130. *Id.*

131. Koppett, *supra* note 128.

White Sox owner John Allyn and Joseph Danzansky most likely influenced the White Sox vote. Danzansky, a Washington businessman, wanted to purchase the Senators to keep baseball in Washington.[132]

In May 1973, Joseph Danzansky reappeared as a potential baseball owner. Danzansky, head of a three man syndicate, agreed to purchase the San Deigo Padres for $12 million from Padres owner C. Arnholt Smith. The sale was contingent on National League approval and the ability to terminate the lease for municipally-owned San Diego stadium. Danzansky intended to transfer the team to Washington, D.C.[133] The Padres made a small profit in 1972, but Smith was suffering from financial problems.[134]

The city of San Diego was upset about the sale. It built a $27 million stadium when the team came into existence as a result of expansion in 1969. Other tenants would not generate sufficient income to justify the stadium's expense. The Padres entered into a 20-year lease through 1988 for the stadium.[135] The city requested an injunction to restrain the team from moving. It alleged that the plans to sell the team constituted a breach of the lease which would result in damages of $12 million.[136]

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132. Koppett, *supra* note 118. Prior to the vote, observers speculated that the Oakland and Cleveland owners might vote against the Senators move to keep Dallas open for potential moves by their teams. *Id.*

133. L. SOBEL, *supra* note 1, at 515; Goldpaper, *Padres Are Sold to a Washington Group*, N.Y. Times, May 29, 1973, at 43, col. 1. Danzansky arranged for a 12-year lease for RFK Stadium in Washington, D.C. He would pay 10 cents per fan up to one million customers and 30 cents per customer over that. He would also receive all concession income. This more attractive lease than the one provided previous owner Robert Short reflected an effort to help the new ownership bring baseball back to Washington. Goldpaper, *Padres Are Sold to a Washington Group*, N.Y. Times, May 29, 1973, at 43, col. 1. There was also congressional pressure on major league baseball to place a franchise in Washington, D.C. *See* L. SOBEL, *supra* note 1, at 526-29; Goldpaper, *Padres Are Sold to a Washington Group*, N.Y. Times, May 29, 1973, at 43, col. 1; *Shift of Padres to Washington a Political Move*, N.Y. Times, Dec. 9, 1973, §5, at 2, col. 1.

134. Goldpaper, *Padres Are Sold to a Washington Group*, N.Y. Times, May 29, 1973, at 43, col. 1. Smith borrowed the $10 million necessary to purchase the expansion franchise. Already experiencing financial difficulties, Smith's resources were being further drained by interest payments of $700,000 on that loan. *Id.*; *San Diego Is Surprised, May Go to Court*, N.Y. Times, May 29, 1973, at 45, col. 1. In contrast, the team realized a profit of $50,000 in 1972. *Id.*

135. L. SOBEL, *supra* note 1, at 515-16; *San Diego Is Surprised, May Go to Court*, *supra* note 134. The city also put $1.5 million into the team as a subsidy to enable the team to promote increased use of the stadium. *Id.*

136. The city initially filed for an injunction on the basis that it would suffer substantial and irreparable harm if the team left, but this injunction was denied. It then amended its complaint to specify damages lost as result of lost revenues over the 15-year balance of the lease. L. SOBEL, *supra* note 1, at 516-22.

The National League owners voted unanimously to give the city 30 days to find a buyer to keep the team in San Diego.[137] The city was unable to do so. The owners then conditionally approved the sale to Danzansky. Danzansky had to indemnify the National League and its teams from any liability that might arise out of lawsuits filed by the city.[138]

The city filed an antitrust action, alleging that the owners conspired to restrain and monopolize major league baseball and the business of operating sports arenas.[139] Danzansky's failure to arrange for the indemnity as required resulted in ownership shifting back to Smith on December 21.[140] Smith eventually sold the team to Ray Kroc, chairman of the board of McDonald's Corporation.[141] Kroc promised to keep the team in San Diego until at least 1980 and to personally pay any indemnity if the team moved thereafter.[142] The National League owners unanimously approved the sale.[143]

IV. Summary of Franchise Relocations

At least one sports law scholar views the two instances where owners voted down moves as punishment for the aberrant behavior of the individuals involved—Veeck and Finley. This is indicated by the owners' unanimous approval of the move from St. Louis to Baltimore once Veeck sold the franchise. Furthermore, the owners approved Finley's move to Oakland only after he suffered four more years of reported heavy losses in Kansas City.[144]

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137. *League Puts Off Verdict On Padres for 30 Days*, N.Y. Times, Oct. 6, 1973, at 12, col. 5.

138. L. Sobel, *supra* note 1, at 524-25; Koppett, *Padres Shift to Washington Granted*, N.Y. Times, Dec. 7, 1973, at 51, col. 8.

139. L. Sobel, *supra* note 1, at 529-30. San Diego alleged that the National League used its monopoly power to move the franchise without regard to existing legal commitments to remain in San Diego. *Id.*

140. L. Sobel, *supra* note 1, at 530; *League is Reconsidering Padres' Shift*, N.Y. Times, Dec. 22, 1973, at 15, col. 4. Two congressmen assured the league that it would be indemnified by the city of Washington if a lawsuit was brought. *Washington Opens Arms for Padres*, N.Y. Times, Dec. 7, 1987, at 51, col. 5; *Shift of Padres to Washington a Political Move, supra* note 133. Those promises were not kept.

141. L. Sobel, *supra* note 1, at 532. Smith originally announced the sale of the team to Marjorie Everett, but the National League owners voted against the sale. No reason was given, but it was probably due to Everett's involvement in a Chicago racetrack scandal that led to the bribery conviction of former Illinois Governor Otto Kerner. *Id.* at 531.

142. L. Sobel, *supra* note 1, at 532; *Padres' New Owner Expects Approval*, N.Y. Times, Jan. 26, 1974, at 23, col. 6.

143. L. Sobel, *supra* note 1, at 532; *N.L. Owners Accept Sale of Padres*, N.Y. Times, Feb. 1, 1974, at 20, col. 1.

144. *See* Quirk, *supra* note 6, at 50. Owners may have feared an antitrust suit by

Excluding the cases of Veeck and Finley, owners traditionally have not opposed any of the formally proposed moves, including the controversial moves of successful Brooklyn and Milwaukee teams. Team owners approved franchise moves from three cities (Washington, Kansas City, and New York) to which they later gave expansion franchises.

Many observers regard franchise moves as the result of an irresistible offer to an owner to sell the franchise to an offeror based in another city. Actually, only three of the ten franchise moves involved a change of ownership.[145] An ownership change occurred in the Browns' move where the league in effect forced Veeck to sell before the move could be approved. Desperate financial straits encouraged a change in ownership when the Mack family moved the Athletics to Kansas City. The Pilots' ownership group declared bankruptcy, resulting in the move to Milwaukee. Typically, a franchise move occurs because a franchise owner sees higher profit potential in some other location, not because the owner is contemplating a sale to parties in another city.

When an owner determines that greater profit opportunities exist in another city, it is obviously in his interest to move to that city. Moreover, such a move usually supports the interests of the other team owners. First, the owners share the increased gate receipts and network TV revenues. Second, moves which tend to balance revenue potential also tend to balance playing strengths among league members, consequently increasing public interest and total league revenues. Third, by voting for a relocation, owners of marginal franchises establish precedents for future requests to move. Additionally, wealthier club owners may feel that franchise moves delay substantive changes in league rules to share revenues more equally. Fourth, rejecting a proposed move would generate financial losses for both the proposing and visiting teams. Due to these factors, league owners can be expected to routinely approve proposed moves.[146]

Franchise owners usually justify proposed moves with lack of fan support evidenced by low attendance and monetary losses. The proposed move of the St. Louis Browns to Baltimore evidenced a lack of fan support over a number of years. In other cases, such as

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Finley if they rejected his second request to move. Daley, *The General's Hot Potato*, N.Y. Times, Sept. 18, 1967, at 64. col. 2.

145. The proposed move from San Diego to Washington would have involved a change in ownership, but the San Diego owner was stopped by financial difficulties.

146. Quirk, *supra* note 6, at 46-7.

the Boston Braves' move to Milwaukee and then to Atlanta, it only represented a recent trend.[147]

The key factors affecting attendance are team performance and the population of the area market.[148] Six of the clubs that moved (St. Louis Browns, Philadelphia Athletics, Washington Senators (twice), Kansas City Athletics, and Seattle Pilots) were poorly performing teams that would have had difficulty drawing fan support regardless of location. Thus, establishing attendance problems as a true indication of fan nonsupport would have been difficult for these teams.[149] In contrast, four clubs (Brooklyn Dodgers, Milwaukee Braves, New York Giants, and Boston Braves) actually drew substantial crowds until the last two or three years before moving.[150]

A franchise may increase its revenue potential if it moves to an area of greater population. Increased population offers a possibility of greater fan support.[151] Based on this criteria, only the moves from St. Louis to Baltimore, Kansas City to Oakland, and Brooklyn to Los Angeles increased revenue potential. The Athletics' move from Kansas City to Oakland, however, created a two-team area and reduced the drawing potential of the San Francisco Giants. Two franchises moved to areas of significantly greater population, while three others (Boston to Milwaukee, Milwaukee to Atlanta, and Seattle to Milwaukee) moved to cities of essentially equal size.[152]

Notably, five franchises that moved were "second teams" in multiple-team cities. Although these teams relocated to smaller population areas, becoming the only franchise improved their financial viability.[153] Their moves did not deny baseball to anyone, but increased the availability of baseball to the national population.

Franchise owners also justify proposed moves with the lure of increased television revenues. Only four of the ten franchise moves yielded an immediate increase in television revenues.[154] Although

147. Quirk, *supra* note 6, at 51-2.

148. J. MARKHAM & P. TEPLITZ, *supra* note 21, at 67-73.

149. Quirk, *supra* note 6, at 48-9.

150. *Id.* at 51-3.

151. *Id.* at 59; J. MARKHAM & P. TEPLITZ, *supra* note 21, at 72.

152. *See* Quirk, *supra* note 6, at 57, 59. In fact, in eight of the ten moves, the city awarded the franchise had a population less than the league average per franchise. This resulted in two additional franchise moves (Milwaukee, Kansas City). *Id.*

153. J. MARKHAM & P. TEPLITZ, *supra* note 21, at 108.

154. Quirk, *supra* note 6, at 53, 57. For the moves discussed in this article, the impact on television revenues was as follows:

the prospect of pay TV did not live up to its promise, it figured prominently in the moves of the Dodgers and Giants.[155] Similarly, television revenues in Texas remained unchanged though influential in the Washington Senators' move to Texas. Television revenues played an important role in over half of the baseball franchise moves.[156]

Team owners rationalize that stadium problems justify approval of franchise moves. The Brooklyn Dodgers, New York Giants, and Seattle Pilots each contended that they needed a new stadium. Receiving cities offered the Boston, St. Louis, and Milwaukee clubs modern stadiums. Similarly, receiving cities offered the former Philadelphia and Washington teams stadium expansion and improvement. Sweetheart leases often accompanied these stadium inducements, particularly in the Washington move to Texas which involved a dispute over lease terms. Stadium considerations figured in almost all the moves. Cities try to attract or retain teams through construction of publicly financed stadiums or artificially low rental charges.[157]

There is no clear indication from published accounts of the voting on proposed moves how much owners considered any of the above-mentioned factors. The baseball commissioner, when announcing franchise relocation, usually stated that the moves were in the "best interests" of baseball. Many accounts suggest that the owners believe that a team's owner is the best judge of the situation and should be allowed to do what the best interests of their team dictates. Where accounts indicate particular owner concerns regarding moves, the factors considered included proximity to existing franchises, population, potential for fan support, available

-Boston to Milwaukee	−$175,000	(1953 v. 1952)
-St. Louis to Baltimore	+ 257,000	(1954 v. 1953)
-Philadelphia to Kansas City	− 90,000	(1955 v. 1954)
-Brooklyn to Los Angeles	not available	
-New York to San Francisco	not available	
-Washington to Minnesota	+ 400,000	(1961 v. 1960)
-Milwaukee to Atlanta	+ 800,000	(1966 v. 1964)
-Kansas City to Oakland	+ 800,000	(1968 v. 1966)
-Seattle to Milwaukee	− 150,000	(1970 v. 1969)
-Washington to Texas	no change	(1972 v. 1971)

155. *See supra* note 72 and accompanying text.

156. Quirk, *supra* note 6, at 53, 57.

157. This was also the factor presented by Finley as his reason for requesting the move from Kansas City to Louisville. Johnson, *Municipal Administration and the Sports Franchise Relocation Issue*, 43 PUB. ADMIN. REV., Nov.-Dec. 1983, at 519. Similarly, RFK Stadium offered lower rental rates when attempting to lure the San Diego Padres to Washington.

stadium, stadium rent, other attractions competing for the entertainment dollar, and threats of lawsuits and congressional action. Owners considered these factors while acting for the good of the league and their own team. The owners are not consistent in their application of the factors when they consider franchise moves.

It appears that the owners' primary consideration in deciding whether to vote for a proposed move is past fan support and the potential fan support at the proposed site. Owners suggested that fan support was a reason they voted against the only two denied proposed moves. Yet both leagues allowed shifts of adequately supported franchises, such as the Dodgers and the Milwaukee Braves, in the apparent hope of making a quick gain.[158] Financial distress may have been a key factor in the first moves, particularly in the moves from St. Louis to Baltimore and from Philadelphia to Kansas City. As interest shifted to the West Coast, however, the motive for moves appeared to change to television revenues and playing facilities built with public funds.[159] The team owners consistently approved these requests without much opposition or explanation.

V. Developments in Franchise Relocation

A. *Court Cases*

The first court decision regarding a challenge to league restrictions on franchise relocation was in a case brought by the San Francisco Seals of the National Hockey League (NHL).[160] The Seals experienced financial difficulty in San Francisco and perceived greater market potential in Vancouver, British Columbia. The NHL Board of Governors denied the Seals' request to move to Vancouver. The Seals filed suit claiming that the NHL rule requiring unanimous approval of franchise relocations violated federal antitrust laws.[161]

The court granted summary judgment to the NHL. The court noted that to violate the antitrust laws there must be at least two independent business entities, and one entity must be restraining

158. Note, *supra* note 9, at 430.

159. Johnson, *supra* note 157, at 521-22.

160. San Francisco Seals, Ltd. v. National Hockey League, 379 F. Supp. 966 (C.D. Cal. 1974). For a more complete discussion of the case, see J. Weistart & C. Lowell, *supra* note 13, at 698-706.

161. *San Francisco Seals*, 379 F. Supp. at 968.

the operation of the other. It concluded that in this case there was only a single entity. All members of the NHL act together as one single business enterprise. They do not compete with each other. The plaintiff was a member in this enterprise, and therefore, no violation of the antitrust laws was found.[162]

Based on the *Seals* precedent it appears that owners of professional baseball franchises are a single entity, immune from suit against each other for violation of antitrust laws.[163] The Ninth Circuit Court of Appeals dealt the single entity concept a severe blow in *Los Angeles Memorial Coliseum Commission v. National Football League*.[164] This case arose in early 1980 when Al Davis, general managing partner of the Oakland Raiders, announced that the Raiders would move to the Los Angeles Memorial Coliseum to fill the void left by the Los Angeles Rams relocation to Anaheim in 1978. The other NFL owners voted 22-0 (five abstentions) to deny the Raiders permission to move.[165] The Coliseum and the Raiders then initiated suit against the NFL in which they alleged that the system requiring three-fourths vote of the owners to approve a move violated the Sherman Act.

The Ninth Circuit found that since individual clubs have identities sufficiently distinct from the NFL, the NFL was not a single entity for purposes of the federal antitrust law and, therefore could be held liable for conspiring to unreasonably restrain trade by blocking the Raiders' move into another team's territory.[166]

The court analyzed whether the goals of the franchise relocation rule could be achieved in a manner less harmful to competition. The court recognized that the rule insulated each team from competition within its market. This allowed each team to set monopoly prices in its market and to foreclose competition among stadiums wishing to secure NFL tenants. The court also recognized that there must be some control over placement. Placing limits on

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162. *Id.* at 969-71.

163. For discussion of the advantages of single entity theory, see *supra* text accompanying notes 9-24.

164. 726 F.2d 1381 (9th Cir.), *cert. denied*, 469 U.S. 990 (1984). For more complete discussions of the case, *see* Kurlantzick, *supra* note 15; Glick, *supra* note 15; Weistart, *League Control of Market Opportunities: A Perspective on Competition and Cooperation in the Sports Industry*, 1984 DUKE L. J. 1013 (1984); J. WEISTART & C. LOWELL, *supra* note 13, at 136-62 (Supp. 1985); Lazaroff, *The Antitrust Implications of Franchise Relocation Restrictions on Professional Sports*, 53 FORDHAM L. REV. 157 (1984).

165. 726 F.2d at 1385.

166. The court based this finding on three grounds: 1) each franchise has an independent value; 2) other entities "just as unitary" as the NFL have been found to violate antitrust laws; and 3) other courts have rejected the single entity concept. 726 F.2d at 1388-90.

franchise relocation will, *inter alia*, maintain local confidence, keep up fan interest, allow local governments time to recover the expenditures incurred in getting a team, and ensure NFL popularity in a diverse group of markets for its television contract.[167]

The court concluded that the NFL's goals could be achieved in ways that are less harmful to competition than its current restrictions on relocation. Franchise relocation rules did not set limits or standards to ensure that team owners consider a requesting owner's investment and fan loyalty before voting on proposed relocations. The NFL argued that owners did not need such guidelines because their desire to make profits will lead them to make reasonable decisions. The court responded that in accord with the rule, an opposing owner required only seven friendly votes to keep another team from moving into his market area. The court believed that it could rely on the market to deter unwise moves.[168]

The NFL failed to show that transferring the Raiders to Los Angeles would have a detrimental effect on the league or any other team. The court believed that the market was large enough for two teams. Further, adequate facilities were available, and regional balance would not be disturbed.[169]

The Ninth Circuit explained the significance of the *L.A. Coliseum* decision in *National Basketball Association v. SDC Basketball Club, Inc.*[170] First, the court stated that the rule of reason analysis governs a professional sports league's efforts to restrict franchise movement because the ability of a franchise to move will depend on the facts of each case. The NFL's franchise movement rule was invalid only as applied to the Raiders move to Los Angeles. Thus, a franchise movement rule is not *per se* invalid, but will depend on the reasonableness of the restraint involved.[171] Second, the court tried to guide leagues toward objective factors and proce-

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167. *Id.* at 1395-96.

168. *Id.* at 1396. The court also noted that testimony indicated some owners disliked Al Davis and considered him a maverick. The court commented that the vote against the Raiders' move could have been motivated by animosity rather than by business judgment. *Id.* at 1398.

169. 726 F.2d at 1397.

170. 815 F.2d 562 (9th Cir. 1987). When the San Diego Clippers moved to Los Angeles without prior league approval, the NBA brought a declaratory action seeking to establish its right to sanction unauthorized team movement. The district court granted the Clippers' motion for summary judgment. 815 F.2d at 565. The circuit court reversed the summary judgment and remanded the case to the district court to resolve the "pervasive issues of material fact." *Id.* at 570.

171. *Id.* at 564, 567-68. *See also* Los Angeles Memorial Coliseum Comm'n v. National Football League, 791 F.2d 1381, 1396 (9th Cir.), *cert denied*, 469 U.S. 990 (1984).

dures which will demonstrate procompetitive purposes.[172] It invited leagues to play an active role in evaluating proposed franchise shifts, provided such standards are drawn no more broadly than necessary to protect justifiable league interests.[173]

L.A. Coliseum probably has no legal effect with regard to major league baseball. Baseball, in contrast to football and other sports and forms of entertainment, has long been exempt from the federal antitrust laws. The antitrust issue in baseball came before the Supreme Court in 1922 in *Federal Baseball Club v. National League*,[174] in which a unanimous court found that exhibitions of baseball were purely state affairs, were not trade or commerce in the commonly accepted use of those words, and the interstate transportation of players was merely incidental. Since Section One of the Sherman Act speaks of commerce among the states,[175] baseball was held not to be within the scope of the federal antitrust laws.[176]

The nature of the baseball business has changed dramatically since 1922: players are transported not only across state lines but also international boundaries, materials are purchased in interstate commerce, radio and television activities reach across state lines, and organized "farm systems" of minor league clubs are located across the country.[177] In fact, the Supreme Court has since acknowledged that baseball is a business engaged in interstate commerce.[178]

Nonetheless, the courts have adhered to *Federal Baseball*, refusing to apply the antitrust laws to baseball primarily because baseball has developed by relying on the understanding that it is not subject to antitrust laws and because of the lack of congressional action since 1922.[179] On the other hand, the courts have used modern interpretations of the commerce clause to find that other sports and forms of entertainment are businesses involved in interstate commerce.[180] In the process, court cases exempting baseball

172. 815 F.2d at 568.

173. *See* J. WEISTART & C. LOWELL, *supra* note 13, at 148-52.

174. 259 U.S. 200 (1922).

175. Section One of the Sherman Act, 15 U.S.C. 1 (1986), provides that "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal."

176. *Federal Baseball Club*, 259 U.S. at 208.

177. *See* Toolson v. New York Yankees, 346 U.S. 356, 357-61 (1953) (Burton, J., dissenting); Flood v. Kuhn, 407 U.S. 258, 287 (1972) (Douglas, J., dissenting).

178. *Flood*, 407 U.S. at 282.

179. *Toolson*, 346 U.S. 356; *Flood*, 407 U.S. 258.

180. *See Flood*, 407 U.S. at 282-3; *see also* Radovich v. National Football League, 352

from the antitrust laws have been specifically limited to their facts, that is, the business of organized professional baseball.[181]

The exemption of baseball from the federal antitrust laws clearly applies to "agreements and rules which provide for the structure of the organization of major league baseball and the decisions which are necessary steps in maintaining it."[182] Since franchise relocation decisions concern the structure and organization of baseball, they fall within the sport's exemption from antitrust scrutiny and would not be subject to a successful challenge in court.[183]

Thus far only one court has addressed baseball's franchise relocation procedure. The state of Wisconsin filed an antitrust suit seeking to enjoin the Milwaukee Braves attempted move to Atlanta.[184] The complaint alleged that the National League did not exercise reasonable controls over team movement and did not follow reasonable procedures when issuing new franchises. After finding the attempted move in violation of state antitrust rules, the trial court enjoined the Braves from playing home games in any city or place other than Milwaukee. On appeal, the Supreme Court of Wisconsin dismissed the action on the grounds that baseball was exempt from state and federal antitrust laws and therefore the actions could not be reviewed.[185] Curiously, the Braves move to Atlanta eliminated competition for spectators between Milwaukee County Stadium and the two baseball stadiums in Chicago, Wrigley Field and Comiskey Park.[186] Although this move was inconsistent with the competition issue addressed in *L.A. Coliseum* the court did not reach it in the baseball context because of the antitrust exemption; thus highlighting the inapplicability of the *L.A. Coliseum* reasoning to baseball.

Furthermore, several decisions involving the authority of the commissioner of major league baseball also treat baseball differently than the court treated football in *L.A. Coliseum*. The most recent and significant of these cases was *Charles O. Finley & Co., Inc. v. Kuhn*.[187] In that case, Finley, owner of the Oakland Athlet-

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U.S. 445 (1957); United States v. Shubert, 348 U.S. 222 (1955); Haywood v. National Basketball Association, 401 U.S. 1204 (1971).

181. *Flood*, 407 U.S. at 282; *Radovich*, 352 U.S. at 451.

182. Wisconsin v. Milwaukee Braves, Inc., 31 Wis. 2d 699, 725, 144 N.W.2d 1, 15 (Wis.), *cert. denied*, 385 U.S. 990 (1966).

183. *See* J. WEISTART & C. LOWELL, *supra* note 13, at 157 n.149 (Supp. 1985).

184. 31 Wis. 2d 699, 144 N.W.2d 1.

185. *Id.*

186. 1966 CCH Trade Cases at 82013.

187. 569 F.2d 527 (7th Cir. 1978).

ics, tried to sell the contracts of outfielder Joe Rudi and relief pitcher Rollie Fingers to the Boston Red Sox for $2 million and starting pitcher Vida Blue to the New York Yankees for $1.5 million. Commissioner Bowie Kuhn disapproved the assignments of these contracts "as inconsistent with the best interests of baseball, the integrity of the game and the maintenance of public confidence in it."[188] Oakland filed suit alleging that the act was beyond the scope of the commissioner's authority. The court upheld the commissioner's authority to block the transaction because the league constitution empowered him to prevent actions which he considered detrimental to the best interests of baseball.[189]

Under *L.A. Coliseum*, the Oakland baseball club would have had the right to set its own "independent management policies regarding . . . players."[190] The court could have found the commissioner's assertion of authority improper since the dispute in *Finley* involved players directly under contract with the plaintiff's club and the decision to assign the contracts was intimately involved in the owner's efforts to maximize his economic advantage. The *Finley* court did not find any legal principle limiting the league's exercise of centralized control and therefore held the commissioner's assertion of power proper. Other cases involving the major league baseball commissioner's powers to discipline league clubs and their owners follow a similar line of thought.[191] These cases seem at odds with the finding of club independence in *L.A. Coliseum*, indicating that only in baseball does an individual club not have the right to assert independence on matters that other co-venturers within the league deem important to them. The league is empowered to exercise centralized control.[192]

B. *Congressional Action*

Congress has long been interested in sports and has the power

188. *Id.* at 531. In taking this action, the Commissioner expressed concern for the following: 1) debilitation of the Oakland club; 2) lessening of the competitive balance of professional baseball through the buying of success by the more affluent clubs; and 3) the unsettled circumstances of baseball's reserve system. *Id.*

189. 569 F.2d at 539-40.

190. 726 F.2d at 1390.

191. Atlanta National League Baseball Club, Inc. v. Kuhn, 432 F. Supp. 1213 (N.D. Ga. 1977) (upholding the commissioner's suspension of an owner for violating the Major League Rules and provisions of the Collective Bargaining Agreement); Milwaukee American Ass'n v. Landis, 49 F.2d 298 (N.D. Ill. 1931) (upholding the commissioner's disapproval of an option contract between the St. Louis Browns of the American League and the Milwaukee Brewers of the minor leagues).

192. *See* J. WEISTART & C. LOWELL, *supra* note 13, at 142-43 (Supp. 1985).

to legislate away baseball's antitrust exemption. Congressional threats to do so generally occur after a city loses or fails to obtain a franchise.[193] Recently, Congress considered protecting cities which give considerable financial support to their teams. Congress felt that cities which provide adequate facilities to keep from losing sports franchises to cities promising greener pastures deserved fair and equitable treatment from their teams.[194]

Currently before Congress is S.782, known as the Professional Sports Community Protection Act of 1987.[195] This bill is intended to stabilize community, team, and league relationships by ensuring equitable consideration of community interests while preserving league self-regulation.[196]

The bill stipulates that professional sports leagues may enforce intraleague team relocation rules provided they satisfy certain procedural and substantive requirements. Procedurally, the bill requires the team owner give notice of a proposed change in home territory at least six months before the commencement of the season in which the club is to play in its new location. The bill also requires that the league conduct proceedings on the request.[197] The Act goes on to detail 13 factors that the league should consider when determining whether a change in the location of the home territory is justified.[198] The league's determination on the re-

193. *See, e.g.*, N.Y. Times, Mar. 19, 1953, at 38, col. 2 (Maryland congressmen ask for Justice Department inquiry of rejection of Browns' transfer to Baltimore); Koppett, *supra* note 118 (Senator Magnuson of Washington threatened Commissioner Kuhn with congressional retaliation if Seattle Pilots were allowed to move).

194. *See* Wong, *Flight of the Pro Franchises*, ATHLETIC BUSINESS, Sept. 1986, at 10-14. The *L.A. Coliseum* case triggered Congress' most recent flurry of activity. The Raiders left Oakland with a publicly-financed stadium built especially for the team, and with an annual debt service on that facility of $1.5 million through the year 2006, despite receiving strong fan support and high profits. S. Rep. No. 99-69, 99th Cong., 1st Sess. 2-3 (1985).

195. This legislation currently is in committee with no hearings scheduled. The bill is similar in purpose and structure to S.259, the Professional Sports Community Protection Act of 1985. Hearings were held on that bill and a committee report was issued, but the bill was never passed by Congress. S. 782, 99th Cong. 1st Sess. § 4 (1987).

196. *Id.*

197. *Id.* at § 5.

198. *Id.* at § 6. In determining whether a change is justified, the statute requires that the league consider:

1) the adequacy of the stadium;
2) the adequacy of the facilities related to the stadium;
3) the willingness and ability to remedy any inadequacies in the stadium or related facilities;
4) the extent of the club's public financial support;
5) the effects on any of the club's contracts;
6) the extent to which the club has contributed to the need to move;
7) the amount of the club's operating revenues from sports operations;

location would be subject to judicial review.[199] Professional baseball is conspicuously absent from the list of sports to which this bill applies. This law does not appear to regulate any aspect of baseball.[200]

According to Peter Ueberroth, commissioner of major league baseball, "[b]aseball has a long standing policy of retaining teams in their home area where at all possible" and has a solid record of franchise stability.[201] Ueberroth adopted a strong stance against franchise relocations. He believes that

> teams are part of the community where they are situated. . . . [B]aseball belongs to the community. It belongs to the fans. Maybe not in a legal sense, but in more of a moral sense. So, especially in some of the smaller markets, if they're operated by a group of individuals or an individual and they lose a little money but serve the community well, that's all right as far as I'm concerned.[202]

Teams wanting to move are thus confronted with a commissioner who will "just flat stop them," nor allow a sale to ownership in another city.[203]

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8) the extent of any net operating losses over the last three years;
9) the extent of fan support;
10) the effect on and number of professional teams playing the same sport in the club's home territory and proposed location;
11) any bona fide offer to purchase the club;
12) the extent to which the club has engaged in good faith negotiations to remain in its home territory; and
13) any other factors that the league views as appropriate under the circumstances.

Id.

199. The league decision can be set aside by a court only if the court finds the decision was not supported by substantial evidence or was obtained by fraud or undue means. *Id.* at § 7.

200. S.782 defines "professional sports team" as "any group of professional athletes organized to play major league football, basketball or hockey . . ." *Id.* at § 3 (8). For legislation which included baseball, *see* S.287, 99th Cong. 1st Sess. (1985).

201. *Hearings*, *supra* note 7, at 55 (statement of Ueberroth).

202. Deford, *The Boss Takes His Cuts*, SP. ILLUSTRATED, Apr. 15, 1985 at 100, 104.

203. *Id.* Bowie Kuhn also asserted that he had the right as commissioner to veto any proposed franchise relocation if he determined that such a move was not in the best interests of baseball. Koppett, *supra* note 111.

A move by one of the two teams in the Bay Area is the only possible exception for franchise relocation left open by Ueberroth. Deford, *supra* note 202, at 104. In fact, Ueberroth recently acted to block a potential move. In 1984, there was some concern that the Minnesota Twins would leave Minneapolis, but Ueberroth promised interested parties that an application for transfer would not be approved if a fair purchase offer on terms giving reasonable assurance of a successful operation were available in Minneapolis. Such an offer was made and the team has remained in Minneapolis. *Hearings*, *supra* note 7, at 55 (statement of Ueberroth). *See also id.* at 58 (statement of Durso).

VI. CONCLUSION

It is unfair to deprive baseball businessmen of the opportunity to improve their failing businesses by moving them. On the other hand, a community makes a large investment, financially and emotionally, in the business of baseball and it too should have rights. The institution of baseball has not formally recognized the community's rights. Rather, baseball recognizes the community's rights only when it also serves the league's purposes, resulting in the denial of a relocation request. Owners are unlikely to take a stand to protect the fan's interests. Instead, they tend to rely on their fellow owners' assessment of the situation and support the move to gain reciprocity in the event they may wish to move their own franchise in the future.[204]

Baseball has operated on a rule requiring affirmative votes for relocation without any guidelines for determining the appropriateness of the move. Thus, each club votes on its own subjective interpretation of how a proposed move will affect its own profitability. Factors considered will vary from team to team. Past cases regarding proposed franchise moves give some indication of which factors are considered, but provide no consistent basis for evaluation. Since there are no standards to follow, there is no guarantee the vote will be procompetitive. The vagueness of the system encourages its use as a weapon against unpopular owners.[205] These weaknesses will stand out the next time a baseball team goes to move and that move is challenged in court or by Congress.

The business of professional baseball appears to be stable. There have been no franchise moves since 1972. The threat remains that despite Commissioner Ueberroth's opposition, those teams that are suffering financially may be targets for cities without teams. Any move may render baseball's antitrust exemption subject to attack in the courts and/or Congress. Although the courts have upheld baseball's exemption in the past, they recognize that this exemption is inconsistent with the application of federal antitrust laws to other sports, and the next court challenge may result in a decision to treat baseball like all other sports.[206] At the very least, a court challenge would likely result in a call to Con-

204. Note, *supra* note 9, at 430.

205. *Id.* at 429; L. SOBEL, *supra* note 1, at 491; Glick, *supra* note 15, at 89.

206. *See* Flood v. Kuhn, 407 U.S. 258, 282 (1972). Note that three justices dissented from the court's opinion in *Flood*, indicating that the issue of baseball's continued right to an antitrust exemption is not clear cut. Changes in the court's composition could lead to a change in the outcome of an antitrust challenge.

gress to remedy this inconsistency.[207] In fact, Congress may not even wait for such a call, for the public outcry over a move may spur it to action.[208]

Major league baseball can preempt any court or congressional action and preserve its antitrust exemption by rectifying the weaknesses in its procedures for acting on franchise relocation requests. Refinement of this process so that it is objective, clearly procompetitive and considers all interested parties will allow baseball to avert any threat to its antitrust exemption and thus retain the power to govern itself, determine its structure, and decide on the number, identity and location of its members.[209]

Recognizing the interdependence of a league's members—the need to ensure and preserve financial stability of teams and the general importance of territorial exclusivity to this end—and the consequent need for inquiry when an owner wishes to move, the first part of any changes to the process should be the development of procedures and criteria to guide the inquiry so that a move can be evaluated reasonably.[210]

When a team requests a change in its location, the league should conduct hearings in which interested parties are afforded the opportunity to present oral or written testimony. In making its decision on the request, the league should consider:

1) Qualifications of proposed recipient city
a. Size of market
   1. population
   2. growth rate
   3. affluence of citizens (income statistics)
   4. baseball tradition (number of successful minor league and/

207. Courts have already urged Congress to act: in Wisconsin v. Milwaukee Braves Inc., 31 Wis. 2d 699, 144 N.W.2d 1 (Wis.), *cert. denied*, 385 U.S. 990 (1966), the Wisconsin Supreme Court urged Congress to pass a law which would protect communities like Milwaukee from arbitrary and unfair dealing, and Chief Justice Burger urged Congress to act to remedy this inconsistency. Flood v. Kuhn, 407 U.S. 286 (1972) (Burger, C.J., concurring).

208. Baseball must remember that the Raiders move and most other franchise moves have spurred congressional interest in regulating franchise moves, *see supra* note 193 and accompanying text, and some members of Congress already believe cities and owners should have protection against activities of major league baseball. *See Hearings, supra* note 7, at 3-4 (statement of Senator Slade Gorton).

209. The refinement of the system also makes business sense: it may prevent unsuccessful moves from occurring. *See* Quirk, *supra* note 6, at 59-60 (only five of the 10 franchise moves have been successful).

210. Various other plans have been suggested to guide the league's inquiry so that a move may be reasonably evaluated. *See generally* J. WEISTART & C. LOWELL, *supra* note 13, at 148-55 (Supp. 1985); Wong, *supra* note 194, at 15-16; Kurlantzick, *supra* note 15, at 206-07; Glick, *supra* note 15, at 91-9.

or college teams, TV ratings)
5. available competing leisure time activities, including college teams
6. current teams in same market area
7. television and radio market (projected local revenues)

b. Facilities
1. existing or being developed
2. lease arrangement
3. capacity (compare with attendance required for profitability and stadia in comparably-sized areas)
4. physical condition
5. accessibility (transportation network)
6. adequacy of support services

c. Scheduling
1. regional balance
2. divisional alignments
3. travel costs
4. effect on traditional rivalries

2) Characteristics of original host city

a. Size of market
1. same as for proposed recipient city
2. effect on marketability of national TV broadcasts (is area a major city essential to national credibility as an accepted entertainment product)

b. Available facilities
1. same as for proposed recipient city
2. desire and ability of local officials to correct any inadequacies
3. extent to which team has received public financial support by means of publicly financed stadium and/or special tax treatment

c. Scheduling
1. same as proposed recipient city

d. Local fan support
1. attendance
2. ticket sales

e. Profit/Losses
1. short and long term (preceding three seasons and ten seasons)
2. amount of operating revenue from sports operations (relation to average revenues of other teams)

f. Other factors
1. team won-lost record
2. bona fide offer to purchase club at fair market value and such offer includes continued location in home territory
3. extent to which those involved have engaged in good faith

negotiations concerning arrangements under which the team could stay in its current location
4. effect of change on any contract regarding current location which club has entered
5. extent to which management contributed to circumstances which demonstrate need for move
6. other factors as league deems appropriate

After evaluating these factors, the conclusion should be based on whether the move is "necessary and appropriate." There should be a presumption weighing against the move and in favor of stability and fan loyalty.

A team should be required to stay in one city for a minimum number of years in order to give that area a legitimate chance to demonstrate its financial support of the team. Clubs should be permitted to move before the end of the minimum time only if they can demonstrate special circumstances such as extremely poor attendance, inadequate facilities, or breach of lease. Such a minimum period enhances establishment of fan support, protects the league's goodwill, and protects local government's investments.

Baseball should also remove the veto power held by an owner if a team wants to move into his territory. By allowing such veto power, baseball places the determinative power in the hands of the entity most interested in restricting competition. The owner protecting his territory may use this rule to extract indemnity payments from owners proposing moves into his area.[211]

Courts have determined that major league baseball is unlike any other sport or entertainment business by virtue of its antitrust exemption. Baseball must demonstrate that this trust in its ability to control itself is well-deserved by taking steps on its own to protect its fans and ensure its stability.

211. Kurlantzick, *supra* note 15, at 202-03. In 1976, the New York Knicks of the National Basketball Association permitted the New York Nets to move into Nassau County, New York. The Knicks allowed this move into their home territory after agreeing to an indemnity payment of $4 million. Goldpaper, *supra* note 110.