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## The Changing Face Of Baseball: In An Age Of Globalization, Is Baseball Still As American As Apple Pie And Chevrolet?

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# **THE CHANGING FACE OF BASEBALL: IN AN AGE OF GLOBALIZATION, IS BASEBALL STILL AS AMERICAN AS APPLE PIE AND CHEVROLET?\***

**JASON S. WEISS\*\***

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*University of Miami International and Comparative Law Review*, for his assistance in preparing this article for publication.

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## I. INTRODUCTION

When describing the United States, the first thoughts that often come to mind are baseball, apple pie, and Chevrolet. Baseball is commonly referred to as America's national pastime, the sport at which Americans excel, and the sport that most children grow up wanting to play. American children grow up with idols such as Babe Ruth, Mickey Mantle, and Mark McGwire. For better or for worse, all of this has changed in the past decade, and Major League Baseball is no longer just a North American sport. It is now an international sport with spectators and participants all over the world.

In addition to Major League Baseball's international appeal, baseball can no longer be viewed as merely a game. Indeed, baseball reflects a myriad of domestic and international legal issues. A modern observer of baseball will quickly encounter issues such as salary arbitration, contract negotiations, and numerous other domestic and international legal issues that are inherent in dealings between players and coaches from foreign backgrounds and their American counterparts.

From its beginning, Major League Baseball has always grappled with many of the same legal issues that were present in American society, such as the heinous system of racial discrimination that barred African-Americans from participating in the Major Leagues and instead restricted them to play within their own separate Negro League. In addition, the same crime scene scandals that plagued the United States in the early twentieth century also afflicted baseball. For example, in 1919, several members of the Chicago White Sox were involved in a scandal commonly referred to as the Black Sox Scandal. Eight players on the Chicago White Sox fixed the outcome of the 1919 World Series, thus causing the White Sox to lose to the Cincinnati Reds, five games to three.<sup>1</sup> Prior to the World Series, various gamblers had persuaded enough players on the Chicago White Sox to lose

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<sup>1</sup> See Eliot Asinof, *Eight Men Out: the Black Sox and the 1919 World Series* (1963).

the 1919 World Series in exchange for economic incentives. The players, who were dissatisfied with the policies and the running of the team, accepted the offer from the gamblers and proceeded to lose to the Cincinnati Reds.<sup>2</sup>

On August 2, 1921, a jury found that the members of the Chicago White Sox were not guilty of "intent to defraud the gambling public."<sup>3</sup> However, the Commissioner of Baseball did not feel the same way as the jury on the case, and decided instead that although the court system was not able to protect Major League Baseball, baseball was sufficiently competent to protect itself.<sup>4</sup> The players were suspended from the game and were banned from play in the Major Leagues.<sup>5</sup> Occurring in the same city that came to harbor Prohibition-era gangsters, the Black Sox scandal was indicative of the climate of impunity that often surrounded criminals (such as the late Al Capone until his conviction on tax evasion charges) in the American legal system throughout the early twentieth century.

These are just a few of the many examples of how baseball serves as a tool for studying various legal issues, which are both domestic and international in scope. Just as Americans have come to face the challenges of globalization in trade, Americans are increasingly aware that the baseball of the 1920s or even of the 1980s is not the baseball of today. Since Major League Baseball in the United States and Canada now involves players and coaches from around the world, a survey of the sport offers fascinating insights on international legal issues such as immigration, transnational litigation, and international transactions.

### *A. The Expansion of Major League Baseball*

In 1922, the United States Supreme Court granted certiorari in order to determine whether the movement of players across state

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<sup>2</sup> *Id.*

<sup>3</sup> See JEROME HOLTZMAN, *THE COMMISSIONERS: BASEBALL'S MID-LIFE CRISIS* 31 (1998). When the trial was finished, the members of the jury came over to the players to congratulate them and to request photographs with the players. In addition, the judges thanked the jury for rendering such a fair decision. See HAROLD SEYMOUR, *BASEBALL: THE GOLDEN AGE* 329 (1971). There have been allegations that the same parties that were responsible for paying off the Chicago White Sox players also influenced the jurors' decision.

<sup>4</sup> Judge Landis Bars "Clean" Sox From Baseball Forever, N.Y. World, Aug. 3, 1921, at 3.

<sup>5</sup> *Id.*

lines constituted an interference with commerce among the states.<sup>6</sup> In *Federal Base Ball Club of Baltimore, Inc.*, the Supreme Court held that the movement of the players across state lines was not an interference with interstate commerce, and was rather an unavoidable aspect of the game. Prior to the Supreme Court's ruling, the Court of Appeals' held that baseball is "still sport, not trade."<sup>8</sup> This ruling provided evidence that in the 1920s the Supreme Court viewed baseball as a game and not as a business.

One possible reason why the court decided in 1922 that baseball was a game rather than a business reflects that era's general lack of commercialization of the sport. Whereas Major League Baseball games are now televised, with television stations charging thousands (and tens of thousands) of dollars for thirty-second commercial spots, baseball in the 1920s was largely commercial-free. Only in the 1950s (when the television set became a common American household item) did baseball begin to exhibit an ever-increasing commercial side. As the television stations started charging significant sums for commercials, baseball players and coaches understood that their services attracted the same viewing audience that watched the television networks' expensive commercials during their commercial breaks. Thus, the advent of the television age undoubtedly contributed to the "commercialization" of baseball in ways that the Supreme Court in its 1922 decision of *Federal Base Ball Club of Baltimore, Inc.* could have hardly imagined.

Despite numerous challenges to the Supreme Court decision of 1922, the most successful attempt to classify baseball as a business and not merely as a game came in 1972. In that year, the Supreme Court ruled in *Flood v. Kuhn*<sup>9</sup> that although "[p]rofessional baseball is a business and it is engaged in interstate commerce,"<sup>10</sup> the sport is "an exception and an anomaly,"<sup>11</sup> and therefore enjoys an "exemption from the federal antitrust laws."<sup>12</sup> This decision was the first significant step towards the idea that

<sup>6</sup> *Federal Base Ball Club of Baltimore, Inc. v. National League of Prof'l Base Ball Clubs*, 259 U.S. 200 (1922).

<sup>7</sup> *National League of Prof'l Base Ball Clubs v. Federal Base Ball Club of Baltimore, Inc.*, 269 F. 681 (1920).

<sup>8</sup> *Id.* at 685.

<sup>9</sup> *Flood v. Kuhn*, 407 U.S. 258 (1972).

<sup>10</sup> *Id.* at 282.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

baseball may actually be more than just a game, and rather that it represented big business.

In addition, by 1972, television had become a major part of Americans' lives. In addition to buying television commercial time, corporate sponsors purchased advertising space on stadium walls that thousands of spectators at home and at the ballpark could see. Both advertising on television and at stadiums required the services of baseball team lawyers, who negotiated contracts and agreements between the teams and their corporate sponsors.

As baseball steadily evolved from a sport into a highly lucrative business, players began demanding contracts with greater remuneration from their employers, the teams. The players reasoned that because baseball fans were coming to the stadiums and watching games on television to see them play, the teams' owners should not be the only people who benefited financially. Rather, the players argued for a greater share of the teams' profits and began employing professional sports agents (many of whom had law degrees) in order to negotiate with each player's respective team counsel.<sup>13</sup>

These agents also represented the players when the players agreed to endorse certain products. The agents would finalize the arrangements in contracts that would often prove highly lucrative for the players who were asked to make the endorsement. As the increasing commercialization of baseball brought about by the age of television had proved, and as confirmed by the Supreme Court in *Flood v. Kuhn*, baseball was clearly no longer just a game, and was instead a highly profitable and rapidly expanding business.

On October 27, 1998, baseball's complete exemption to antitrust legislation came to a grinding halt.<sup>14</sup> President Clinton and Congress signed the Curt Flood Act of 1998, which "overrides part of a 1922 Supreme Court ruling that exempted baseball from antitrust laws."<sup>15</sup> For the first time in the history of the sport, baseball's antitrust exemption for labor matters was removed. Baseball was no longer an anomaly and, like every other professional sport, became subject to antitrust legislation.

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<sup>13</sup> The increased need and use of player agents could possibly be one of the reasons contributing to the increase of the amount of lawyers in the United States, and is once again a reflection of how trends in baseball mirror trends in the society of the United States (particularly in a legal context).

<sup>14</sup> See 144 Cong. Rec. H9942-03 (1998).

<sup>15</sup> Sonya Ross, *Clinton Signs Bill Removing Baseball Antitrust Exemption For Labor Matters*, San Diego Source (Oct. 27, 1998) <<http://www.sddt.com/files/librarywire/98/10/27/fav.html>>.

President Clinton stated that "[i]t is sound policy to treat the employment matters of Major League Baseball players under the antitrust laws in the same way [that] such matters are treated for athletes in other professional sports."<sup>16</sup> This decision re-enforced the idea that baseball is no longer just a game, but rather is a profit-seeking commercial activity. Similar to other for-profit commercial activities, baseball must examine and abide by the legal rules and regulations, both on a domestic and international level, of its policies and practices.

Since Major League Baseball is a for-profit enterprise, the parties involved with its running and operations continuously seek out new ways to expand and increase profits. Since the end of the 1992 season, Major League Baseball has expanded from twenty-six teams to thirty teams, and is contemplating further growth. Baseball scouts travel all over the world looking for potential players from foreign leagues in search of new talent. Currently, Major League Baseball is considered a North American sport because the league consists solely of teams located within the United States and Canada. However, like any big business, Major League Baseball does not want to limit itself, and is taking steps in the direction of eventually having the World Series actually become just that: a series of the world's best.

In the *Basic Agreement Between The American League of Professional Baseball Clubs and the National League of Baseball Clubs and the Major League Baseball Players Association*, effective as of January 1, 1997, (the "Collective Bargaining Agreement") an entire section is devoted to "International Play",<sup>17</sup> which supports the possibility of Major League Baseball's expansion. The Collective Bargaining Agreement addresses how games would be conducted if a city outside of the United States and Canada received rights to a team. In addition, the Collective Bargaining Agreement sets forth how to handle the expenses, funds, and revenues that International Play generates.<sup>18</sup>

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<sup>16</sup> *Id.*

<sup>17</sup> "International Play" is defined as any game or series of games played by a Club (any team comprising the American or National League), Clubs, or groups of players, such as All-Star squads, outside of the United States and Canada, or within the United States or Canada against a foreign team or teams. See *Basic Agreement Between The American League of Professional Baseball Clubs and the National League of Baseball Clubs and the Major League Baseball Players Association* 44 (effective Jan. 1 1997) [hereinafter C.B.A.]. The terms "Club" and team are synonymous in this article. The "League" consists of all of the teams that comprise the American and National Leagues. *Id.*

<sup>18</sup> *Id.* at 44-46.

The strongest support of Major League Baseball's possible expansion into the international market is the creation of the International Play Committee.<sup>19</sup> The Committee, which meets at least once every three months, is responsible for keeping the League informed of all the contemplated international activities and states in pertinent part that "no later than September 1 of each calendar year, the Committee shall discuss and decide upon a plan of international activities"<sup>20</sup> to be carried out during the following year.<sup>21</sup> However, baseball must be cautious in its attempt to expand to the international market. International business can be legally complex, as it involves the legal systems of more than one country, whose laws often conflict. The Committee must keep this fact in mind when considering the expansion of Major League Baseball.

*B. The Emergence of Foreign Players and the Major League Baseball Participants' Reaction.*

A recent phenomenon in Major League Baseball has been the more prominent role of the foreign player. Baseball has been a popular sport throughout the world for a long time, but recently, an increasing number of foreign players have left their homelands to come play Major League Baseball in the United States or Canada. These players have grown up in their countries playing baseball as a part of their daily routine. They are drawn to the United States and Canada by the chance to participate in the sport that they love while availing themselves to the tremendous economic and professional opportunities that far surpass those offered by their native lands.

Even though foreign players have played a significant role in baseball for quite some time, until recently, few foreign players were seen as the stars of the team. In the 1990s, foreign players began to emerge as stars, and have become virtually as common as American-born stars. Examples of these players include Sammy Sosa from the Dominican Republic, Hideki Irabu from Japan, Juan

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<sup>19</sup> In order to develop the sport internationally, the Association and the Play Relations Committee (PRC), on behalf of the Clubs, will designate representatives to constitute and International Play Committee within thirty days from the date of execution [January 1, 1997] of this Agreement. *Id.* at 45.

<sup>20</sup> *Id.*

<sup>21</sup> There have been numerous discussions about the San Diego Padres hosting some regular season games outside of the United States in Monterrey, Mexico, and the Seattle Mariners opening the regular season in Japan. In April 1999, Major League Baseball's San Diego Padres and the Colorado Rockies opened their seasons in Mexico.



Gonzalez from Puerto Rico, Chan Ho Park from Korea, and both Livan Hernandez and Orlando Hernandez from Cuba, just to name a few.

One of the reasons why these players may have emerged is because of the rapidly changing demographics of the United States. Spanish radio and television stations in South Florida that cover the Florida Marlins' baseball games often refer to the Marlins as "our team" ("nuestro equipo" in Spanish) because of the large number of Hispanic players that are on the team. The Marlins' fans want to see players from their native countries achieve success in the United States and Major League Baseball. This bi-national fan loyalty (that is, to the American team and to its foreign players) further exemplifies how baseball has become a business in a globalized and integrated economy where sports (as well as other service industries) seek to meet the wants and desires of diverse ethnic constituencies.

Despite the fact that Major League Baseball employs foreign players from all over the world, the focus of this article remains on Hispanic players, particularly those from Cuba. At the start of the 1992 season, there were eighty-five Hispanic<sup>22</sup> baseball players who were not raised or educated in the United States or Canada on the opening day twenty-five-man rosters (or disabled lists).<sup>23</sup> During the 1996 season, Hispanics made up seventeen percent of Major League Baseball's opening day rosters, up from eight percent<sup>24</sup> in 1986.

Major League Baseball has recognized the increased presence of Hispanic players in the League, and the League has responded by implementing certain special arrangements for Hispanic players. For example, Article XV(F) of the Collective Bargaining Agreement provides that "[t]his Agreement and the notices listed in Attachment 9<sup>25</sup> shall be translated and printed in Spanish, and

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<sup>22</sup> This number does not include players such as Jose Canseco, who fled his country at a young age and was raised in the United States.

<sup>23</sup> Dave Nightingale, *Baseball is Striking Out When it Comes to Helping Hispanic Players Adjust to a Different Culture, Which too Often Leaves Them LOST IN AMERICA*, Sporting News, Aug. 3, 1992, at 11. This made up about thirteen percent of the players in the Major Leagues.

<sup>24</sup> Suman Bandrapalli, *Major League Baseball Teams Tap Into Latin American Talent*, Christian Science Monitor, Nov. 17, 1997. This eleven percent increase is an increase from about fifty players to about 120 players.

<sup>25</sup> Attachment 9 provides that the Notice of Assignment of a Player's Contract, Notice of Election of Free Agency-3-Year Player, Notice of Election of Free Agency-Second Outright Assignment, Request for Consent to Assignment (Articles XIX(A)(2&3), Request for Consent to Rehabilitation Assignment, Invitation to Attend Spring Training, and the Notice of Club

shall be made available to all Spanish-speaking Players.”<sup>26</sup> Furthermore, the costs involved in translating and providing the required forms shall be shared equally between the Clubs and the Major League Baseball Players Association.<sup>27</sup> However, if a conflict arises between the English version and the translated Spanish version of the Agreement, the English version shall govern.<sup>28</sup> The translated Agreement allows Hispanic players, some of whom do not read or speak English, to be informed of their rights and obligations, putting them on the same level as their English-speaking counterparts.

Another requirement, pursuant to the Collective Bargaining Agreement, is that each Club is responsible, at the start of each season and at its own expense, to provide an English as a Second Language (ESL) course to all non-English speaking players, provided that at least one player on that Club requests such a course.<sup>29</sup> Each Club’s adherence to this Major League Baseball policy assists foreign players in becoming part of their team’s community and in allowing them to communicate more effectively with their coaches, managers, and fellow players.

Both the League and the League’s individual teams have taken the initiative to provide services that surpass the minimum requirements mandated by Major League Baseball for foreign players. While some teams still believe that a foreign pitcher needs to know no more than signals (for example, that one finger means throw a fastball and two fingers means throw a change-up), a majority of the teams are taking a more pro-active approach. In the fall of 1991, Don Fehr, the Executive Director of the Major League Baseball Players’ Association, hired former player Tony Bernazard to act as the Players’ Union’s Hispanic Troubleshooter.<sup>30</sup> Fehr designed this position in order to inform the Players’ Union of Hispanic players’ special needs and requests.

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Request for Unconditional Release Waivers must be translated for Spanish-speaking players. *See* C.B.A., *supra* note 17, at 121.

<sup>26</sup> *Id.* at 43. Although most of the players have an English-speaking agent who handles their contract, Major League Baseball still wants to insure that the players have the opportunity to know exactly what they are signing.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Nightingale, *supra* note 23.

Similarly, many teams have increased the number of managers and coaches who are fluent in Spanish.<sup>31</sup> Many foreign coaches are just as competent as their American colleagues, but can use their unique language skills in order to assist foreign players in making a successful transition to professional life in the United States or Canada. Teams such as the Los Angeles Dodgers, Oakland Athletics, and Toronto Blue Jays have played active roles in softening the often-rocky transition that foreign (most often Hispanic) players experience in adapting to the cultures of the United States and Canada.<sup>32</sup>

Once the Texas Rangers recognized that it would become a bilingual team operating in a largely bilingual community, it took measures to accommodate the needs of its Hispanic players.<sup>33</sup> The Rangers already had scouts and coaches who were bilingual, but that level of bilingualism was not enough. The team took further steps to assist Hispanic baseball players at the Major League level by hiring Luis Mayoral,<sup>34</sup> who is originally from Puerto Rico, to help its Latin American stars interact with the media and the community.<sup>35</sup> Similarly, former Rangers Manager Bobby Valentine took a two-week intensive Spanish course during the off-season<sup>36</sup> so he could interact with the team's non-English speaking players.

Finally, the Rangers saw this trend towards hiring bilingual coaches as an opportunity to promote the highly skilled Ray Ramirez, a Minor League assistant trainer who is originally from Puerto Rico, to an assistant trainer at the Major League level.<sup>37</sup> These efforts to court both Hispanic players and fans evidence the fact that the Hispanic market<sup>38</sup> (both in the United States and in

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<sup>31</sup> Some teams, like the Montreal Expos, have even hired coaches such as Felipe Alou, who was born in the Dominican Republic. *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Luis Mayoral is often referred to as Puerto Rico's "Mr. Baseball". *Id.*

<sup>35</sup> Jerry Crasnick, *Lost in America - South-of-the-Border Players Searching for Better Treatment*, Denver Post, Aug. 8, 1994, at D1.

<sup>36</sup> *Id.*

<sup>37</sup> Ramirez was the first person from Puerto Rico to achieve Major League status as a trainer. *Id.*

<sup>38</sup> Major League Baseball has also begun a tradition of honoring the Most Valuable Latin American Baseball Player each April. See *Baseball Caught on the Fly*, The Sporting News, May 7, 1990 at 27.

Latin America) is increasingly a high priority for profit-seeking enterprises such as Major League Baseball. Gone are the days in which baseball was segregated, with African-Americans banished to the "Negro League" and Hispanic players not even recruited.<sup>39</sup>

## II. THE MAJOR LEAGUE BASEBALL DRAFT AND HOW IT WORKS

Before discussing how foreign players are able to enter Major League Baseball, an explanation of the Major League draft and free agency is necessary. The Major League Baseball draft (the "Draft") is a vital component of Major League Baseball because it promotes a sense of equality among the teams. The Clubs in the Major Leagues do not have equal financial capabilities, so the Draft mandates equality in signing new talent. Pursuant to the Draft, Clubs that have less money to spend can remain on par with Clubs that have greater financial resources. Furthermore, the Draft allows a smaller franchise with fewer assets to sign some of the most sought-after new talent just as easily as a larger Club could. Without a Draft, the wealthier teams could monopolize the rookie talent.

The Draft allows each Club to pick one player, and once each Club has made a selection, it repeats the process for a set number of rounds. The order in which each Club selects players is based upon each Club's standings at the completion of the prior baseball season. The lower the team was ranked, the higher its draft pick. As noted earlier, the Draft remains one of the primary ways to insure that the less financially secure teams can compete with the financially secure teams, both on and off the field.

When a player wishes to play baseball for either a Major League or Minor League Club, the Club (whether Major League or Minor League) is responsible for making certain that the player meets the conditions set forth in Rule 3(a)(1) of the Major League Rules (the "Rules").<sup>40</sup> The Club must determine if the player is

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<sup>39</sup> From this point forward, this article will only focus on Cuban baseball players and their difficulties in achieving a foothold in the Major Leagues. Their hardships tend to stem from political situations as opposed to economic or skill-related restrictions that other foreign players may encounter. Although the island of Cuba is faced with numerous economic hardships, members of the Cuban national team receive relatively generous compensation, at least with regard to Cuban salaries, for their prized baseball skills. This level of compensation reflects the fact that to Cuba's leader, Fidel Castro, baseball is not merely a game, but rather an instrument in gaining international acclaim for the Cuban baseball team's prowess and a means of solidifying national sentiment among Cubans on the island.

<sup>40</sup> Subject to High School, College, Junior College and American Legion Rules listed in Rule 3(a) of the Major League Rules, a Major or Minor League Club may contract with a player under the conditions and restrictions set forth in

considered a citizen or resident of the United States, which includes the District of Columbia, Puerto Rico, or any other Commonwealth, Territory, or Possession of the United States.<sup>41</sup> The Club may consider a player a United States resident if the player enrolls in a United States high school or college, or if the player establishes a legal residence in the United States on the date of the player's contract or within one year prior to that date.<sup>42</sup> If the player is considered a resident of the United States and has not previously contracted with a Major League or Minor League Club, then he may sign a contract to play Major League Baseball only after becoming eligible for selection in the Rule 4<sup>43</sup> Draft.<sup>44</sup>

Once a player has been in the Major Leagues for more than six years, he becomes eligible for free agency.<sup>45</sup> The Collective Bargaining Agreement states that "following the completion of term of his Uniform Player's Contract, any Player with six or more years of Major League service who has not executed a contract for the next succeeding season shall be eligible to become a free agent."<sup>46</sup> A player who is eligible for free-agency "may give notice<sup>47</sup> of his election of free-agency within the fifteen-day period beginning on October 15 (or the day following the last game of the

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Rule 3. A player may be subject to one or more of the following rules and may contract with a Major or Minor League Club only if the conditions and restrictions of all Rules applicable to the player are satisfied. It is the responsibility of the contracting Club to determine that a player is eligible to sign in accordance with Rule 3. Major League Rules (Effective February 1998) Rule 3(a)(1), at 19.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> The Rule 4 draft states that a Major or Minor League Club may contract with a player who is a resident of the United States or Canada and who has not previously contracted with a Major League or Minor League Club. Major League Rules (Effective February 1998), Rule 4, at 36.

<sup>44</sup> Major League Rules, (Effective February 1998), *supra* note 40, Rule 3(a)(1), at 19.

<sup>45</sup> There are many intricacies involved with the free-agency process, such as assignments of contracts, rights of former clubs, and compensation, which this article does not address because they are far too encompassing to discuss. However, they are but another example of how baseball reflects a myriad of domestic and international legal issues. For detailed information concerning the above listed areas, see C.B.A., *supra* note 17, at 54-64.

<sup>46</sup> See C.B.A., *supra* note 17, at 54.

<sup>47</sup> The player shall notify the Association by telephone or any other method of communication. *Id.*

World Series, whichever is later).<sup>48</sup> Once a player has become a free-agent, he is allowed to talk with representatives from any Club about a possible contract. However, the player and the Club are prohibited from negotiating a contract until the fifteen-day election period has terminated.<sup>49</sup> This procedure allows the player to talk with numerous Clubs and to explore all of the available possibilities. Likewise, the procedure allows a player to receive the optimum salary available because numerous Clubs will be competing for his services and are therefore likely to make him lucrative offers.

If the player that the Major League or Minor League Club wishes to sign is not a United States resident, the Club may sign the player to a contract if the player is at least seventeen years old at the time of signing,<sup>50</sup> or if the player is sixteen years old at the time of signing, but will turn seventeen prior to either the end of the effective season for which the player has signed or September 1 of such effective season, whichever is later.<sup>51</sup> Proof of a player's age can be in the form of a birth certificate or any other appropriate government documentation.<sup>52</sup>

A non-resident of the United States becomes subject the Rule 4 draft only if the non-resident enrolls in and attends class as a full-time student "in a United States [or Canadian] high school, junior college or college, or establishes a legal residence in the United States on the date of the player's contract, or within [a] one year period to that date."<sup>53</sup> Unless the non-resident of the United States falls within the listed category, he is not subject to the Draft and can come to the United States as a free-agent. The Major League Rules do not make any other mention of how to treat a foreign player who wishes to play baseball in the United States, which allows for agents to loosely interpret how a foreign player should be treated. This loose interpretation, which is known as Major League Baseball's loophole, has lead to foreign players receiving a financial incentive to join the Major Leagues.

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<sup>48</sup> *Id.*

<sup>49</sup> The former Club with which the player signed is allowed to negotiate a contract with the player before the expiration of the fifteen-day election period. *Id.*

<sup>50</sup> Major League Rules, (Effective February 1998), Rule 3(a)(1)(B)(i), at 19.

<sup>51</sup> Major League Rules (Effective February 1998), Rule 3(a)(1)(B)(ii) at 20.

<sup>52</sup> *Id.*

<sup>53</sup> Major League Rules (Effective February 1998), Rule 3(a)(1)(A) at 19.

## III. THE HANDLING OF THE FIRST CUBAN DEFECTOR IN MAJOR LEAGUE BASEBALL

Due to the fact that the guidelines for foreign players entering Major League Baseball are not very restrictive, foreign players have been able to develop a strong and respected presence within the Major Leagues. However, Cuban baseball players, who are known for their exceptional talents, because of Fidel Castro's strong support of the sport, have not been able to travel freely to the United States in order to achieve success in the Major Leagues. Similar to other Communist countries, Cubans cannot legally leave the island without receiving express permission from the Cuban government. Usually, the only people who are granted permission to leave the island are high-ranking government officials who are loyal to Castro's government; those on cultural, athletic, or academic exchanges; or those involved in commercial activities who also work for the Cuban government.

For these reasons, if a common citizen of Cuba (such as an architect) wanted to leave Cuba, that person would have to escape from the island without seeking permission from the government.<sup>54</sup> If that person were indeed successful in leaving the island, he or she could be prosecuted upon returning to the island.<sup>55</sup> As a result, people who leave Cuba without the consent of the Cuban government usually defect from the island and attempt to go to the United States or other countries, such as Spain or Venezuela, so that they can begin a new life.

Due to the travel restrictions that the Cuban government has placed on Cuban residents who seek to leave the island, Cuban baseball players have often encountered obstacles in achieving a satisfactory position within the Major Leagues. In the past, Cuban baseball players who managed to escape the island were not considered to be free-agents by Major League Baseball, and were subject to some form of the Draft. For example, in 1991, Rene

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<sup>54</sup> There are other ways for persons to leave the island, such as the United States lottery, pursuant to which 20,000 visas per year are awarded to Cubans, or when United States citizens or residents claim their Cuban relatives. However, in order for a Cuban to utilize these methods, both the United States government and the Cuban government must first consent to the person's leaving the country.

<sup>55</sup> Dana Calvo, *Castro Orders Ban on Visits By Cuban Exiles*, The Sun Sentinel, September 2, 1999 at 13A. This is a rather new development that Castro has enacted. Previously, a Cuban who wanted to return to the island would have to request a visa. Castro would usually allow these Cubans who were abroad to return to the island because they would spend money in Cuba and help the economy. *Id.*

Arocha defected from Cuba<sup>56</sup> to the United States with the sole intention of playing Major League Baseball. In July 1991, after participating in a baseball series against the United States, Arocha and the rest of the Cuban baseball team changed planes at Miami International Airport on the way back to Cuba.<sup>57</sup> After wandering away from his teammates, Arocha immediately requested political asylum.<sup>58</sup> The Immigration and Naturalization Service, in keeping with the policy of granting asylum to those who flee Castro's regime, granted Arocha political asylum,<sup>59</sup> and he was allowed to remain in the United States and play baseball in the Major Leagues. In an effort to accommodate Arocha, Major League Baseball arranged a special lottery<sup>60</sup> to allow interested teams the right to negotiate with the recently arrived Cuban.<sup>61</sup>

Arocha's defection caused concern among some Major League Clubs about the League's policy of the scouting of foreign players and the Clubs' ability to compete for foreign players. Major League Baseball addressed these concerns in a memorandum,<sup>62</sup> which set forth guidelines for Major League Clubs

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<sup>56</sup> Arocha was the first baseball player to defect from Cuba since the Fidelists took power in 1959. See Kevin Baxter and Fernando Dominguez, *Baseball Si, Cuba No – Castro's Island May be a Gold Mine for Major League Talent, but Under his Regime, We May Never Know to What Extent*, The Sporting News, Mar. 21, 1994 at 1214.

<sup>57</sup> *Id.*

<sup>58</sup> Any alien who is physically present in the United States may request political asylum. See Immigration and Naturalization Act (INA) §208 (1998). Asylum may be granted, at the discretion of the Attorney General, to any person who is outside any country of the person's nationality and who is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. See INA § 101 (a)(42)(A) (1998); see also *supra* notes 328-339 and accompanying text.

<sup>59</sup> By granting Arocha political asylum, the Attorney General may not remove or return Arocha to Cuba, and instead authorized him to engage in employment in the United States and travel abroad when the proper consent is received. See INA§208(c)(1).

<sup>60</sup> In Arocha's case, the St. Louis Cardinals, one of eight clubs that chose to participate in the special lottery, won and eventually agreed to sign him. See Baxter, *supra* note 56.

<sup>61</sup> *Id.*

<sup>62</sup> Memorandum from William A. Murray to All Major League Chief Executive Officers, General Managers, and Scouting Directors (Aug. 9, 1991) (on file with the Major League Baseball Commissioners Office).



and their scouts. The guidelines state, in pertinent part, that "no Major League Club may scout, negotiate, or sign native players in a country where any Major League Club would be prohibited from entry<sup>63</sup> or doing business,"<sup>64</sup> but native players may be scouted outside of their country if and only if all Clubs have an opportunity to scout these players.<sup>65</sup> Furthermore, a Club may not "negotiate or sign a native player . . . who is outside his native country, unless his residence and employment status would permit such a signing, all Clubs are notified of the player's availability, and all applicable draft and signing rules are observed."<sup>66</sup>

Shortly after dealing with Arocha's defection and implementing a new foreign player policy, Major League Baseball had to deal with other defectors. In October 1993, three Cuban baseball players<sup>67</sup> defected from Cuba and traveled to Mexico. Once inside Mexico, they snuck across the Mexican border into the United States,<sup>68</sup> and elected not to report to the Immigration and Naturalization Service.<sup>69</sup> The agent of these three defectors argued that according to Major League Baseball's Eligibility Rules, the status of the aliens as defectors made them free-agents, and not subject to the Rule 4 Draft.<sup>70</sup> The Commissioner's Office responded to this claim by stating that the three defectors from Cuba were to be treated as no more than immigrants who came to the United States without the required documents and without being properly inspected, and warned Major League Clubs not to

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<sup>63</sup> *Id.* at 2. All clubs are advised that they may not scout in Cuba.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* Since most scouts are employed by a United States-owned entity, and business transaction restrictions preclude spending money in Cuba, United States Clubs may not legally send employees to Cuba for business purposes because to do so would violate United States Treasury regulations that require a special license in order to spend money in Cuba. *Id.*

<sup>66</sup> Baxter, *supra* note 56.

<sup>67</sup> Alexis Cabreja, Osmani Estrada, and pitcher Ivan Alvarez. *Id.*

<sup>68</sup> By crossing the United States border without being inspected, these Cubans were not considered to have been admitted into the United States. See INA §101(a)(13)(A), stating that an admitted alien is a person who lawfully enters into the United States after inspection and authorization by an immigration officer.

<sup>69</sup> An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than designated by the Attorney General, is per se inadmissible. INA §212(a)(6)(A)(i); 8 U.S.C. §1182.

<sup>70</sup> See *supra* notes 43, 50-51, 53 and accompanying text.

sign the three Cuban defectors until they received work authorizations<sup>71</sup> from the Immigration and Naturalization Service.<sup>72</sup> This situation created a standoff between the Cuban defectors and Major League Baseball, which almost led the defectors' agent to file a lawsuit against Major League Baseball. Based upon Major League Baseball's rule of free-agency, the agent argued that his players should have been considered free agents. Likewise, the agent believed that his clients were experiencing unfair discrimination because they were foreigners. However, Major League Baseball stood its ground and refused to back down. Consequently, the players filed for political asylum,<sup>73</sup> and were allowed to enter Major League Baseball through the Rule 4 draft.<sup>74</sup>

Since October 1993, Major League Baseball has implemented another new foreign player policy, pursuant to which it refuses to conduct special lotteries similar to the one conducted for Arocha, and instead requires all foreign players that seek to enter the Major Leagues to wait for the June amateur draft. This new policy means that as far as Major League Baseball is concerned, foreign players who want to play baseball in the United States are untouchable until June of each year.<sup>75</sup>

#### IV. THE CURRENT PROCEDURE FOR CUBAN PLAYERS TO ENTER THE UNITED STATES AND JOIN MAJOR LEAGUE BASEBALL

A player who enters either the Major Leagues or the Minor Leagues through the First-Year Player Draft, as set forth in Rule 4 of the Major League Rules,<sup>76</sup> will not be able to secure a contract that is as lucrative as a contract that the player could secure if he were a free agent. When a player enters the Draft, he is restricted to negotiating with only the Club that drafted him. But, if the same player were a free agent, he could have numerous Clubs negotiating for him at the same time, thereby leading Clubs to offer him a salary that would be substantially higher.

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<sup>71</sup> Aliens who wish to enter the United States as professional athletes may obtain labor certification from the Immigration and Naturalization Service. *See* INA §212(a)(5)(A).

<sup>72</sup> Baxter, *supra* note 56.

<sup>73</sup> *See supra* notes 58-59, 325-335, and accompanying text.

<sup>74</sup> *See supra* notes 43 and 50 and accompanying text.

<sup>75</sup> Baxter, *supra* note 56.

<sup>76</sup> *See supra* notes 43, 50-51, and accompanying text.

Recently, baseball players who have defected from Cuba to play Major League Baseball in the United States have been able to enjoy the luxury of not having to enter the Rule 4 Draft.<sup>77</sup> The draft rules contain a loophole that allows the players from Cuba to enter the Major Leagues as free-agents, thereby enabling them to secure lucrative contracts. Rule 4<sup>78</sup> defines the term "United States" to mean "the 50 States of the United States of America, the District of Columbia, Puerto Rico, and any other Commonwealth, Territory or Possession of the United States of America."<sup>79</sup> If a player came from Cuba or any other country not listed in Rule 4, he would not be subject to the Draft. As a result of Major League Baseball's definition of the United States, recent baseball players from Cuba have achieved free-agency status without being in the League for the required six or more years. This is the loophole that exists for foreign players in Major League Baseball. This loophole gives foreign players an economic advantage over players who are considered residents or citizens of the United States.

When a player defects from Cuba, he travels by some type of vessel, most often "a flimsy boat,"<sup>80</sup> or recently, speedboats driven by high-paid smugglers, until the United States Coast Guard picks him up or he touches United States territory. The United States Coast Guard then transports the defectors to the Carmichael Road Detention Center, a Bahamian refugee detention center located near Nassau on the island of New Providence, or to the Krome Detention Center, a United States immigration holding facility located on the outskirts of Miami, Florida.<sup>81</sup> If the player is detained in the Bahamas, he must then wait, along with hundreds of other refugees who have left Cuba for the United States, for either the Dominican Republic or Costa Rica<sup>82</sup> to grant him

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<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> Kevin Baxter, *Throwing Cuban Players a Lifeline; Agent Joe Cubas has Turned Paupers into Princes - But Not Without Raising a Sea of Disturbing Questions*, The Sporting News, Aug.10, 1998 at 16.

<sup>81</sup> *Our View of the Week*, The Sporting News, Apr. 6, 1998 at 10.

<sup>82</sup> The Dominican Republic, Costa Rica, and the Bahamas have hardened their stances against Cuban refugees. Baxter, *supra* note 80; *see supra* note 137 and accompanying text. Although the Bahamas has always had a repatriation policy for Cubans, not until recently did the Bahamas strictly enforce that policy of repatriation. Since March 1998, when Cuban detainees rioted at the Bahamian detention center in response to Joe Cubas' actions, the Bahamian government has carried out its policy of repatriation. Note that the Bahamas' previously lenient repatriation policy benefited all Cubans, and not just those

political asylum or some other form of residency.<sup>83</sup> However, because of his agent's active lobbying and political connections, an unspoken rule allows the player to "move to the head of the line that stretches toward freedom"<sup>84</sup> solely because he can play baseball with a high degree of skill. The agent uses his political ties (and perhaps economic influence) to ensure that the detained player jumps in front of other less athletically-qualified refugees who have patiently waited their turn. Once the player has received entry into a third country,<sup>85</sup> he can begin training and setting up auditions for Major League scouts.<sup>86</sup>

As if traveling on a raft and being detained in a camp that resembles a prison were not enough, a defector who arrives in either Costa Rica or the Dominican Republic faces yet another obstacle. From either of these Latin American countries, the player must apply for entry into the United States under one or more of the available nonimmigrant visa categories.<sup>87</sup> Major League Baseball teams are permitted to bring as many skilled players as they desire to the United States because there is no visa quota system<sup>88</sup> in the Major Leagues because the players are considered proven talent.<sup>89</sup>

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who played baseball. As a result, the Cuban refugees who appear to have a legitimate claim are now brought to the Krome detention center in Miami, Florida. Also, those Cubans who are able to touch United States soil (as happens virtually everyday) are sent to Krome and then released to their relatives, sometimes as soon as the same day as their arrival.

<sup>83</sup> Baxter, *supra* note 80.

<sup>84</sup> *Our View of the Week*, *supra* note 81.

<sup>85</sup> Without third country residency, Major League scouts cannot formally check out a player. See Paul Brinkley-Rogers, *Cuban Players Pin Dreams on Entrepreneur*, *The Miami Herald*, Oct. 26, 1998 at 1A.

<sup>86</sup> *Id.*

<sup>87</sup> In order for a player to qualify for one of the nonimmigrant categories, a United States employer must file a petition with the Immigration and Naturalization Service to determine the player's eligibility. See 8 C.F.R. §214.2(o)(2)(i) (1998).

<sup>88</sup> However, Minor League Clubs are subject to the quota system, and each team only receives about twenty-five visas per year. Joseph Torres, *Latin American Players' First Hurdle: Getting a Visa*, (last modified May 4, 1997) <[http://www.Latinolink.com/opinion/opinion97/0504\\_hive.htm](http://www.Latinolink.com/opinion/opinion97/0504_hive.htm)>. The United States government uses this system to prevent foreign born players from illegally remaining in the United States once they have been released, which in turn avoids the displacement of a large number of United States players. *Id.*

<sup>89</sup> *Id.*

The first category that may be available for an athlete is the "O" Classification, which is divided into three sub-categories.<sup>90</sup> The O-1 classification provides a nonimmigrant visa to an alien "who has extraordinary ability"<sup>91</sup> in . . . athletics which has been demonstrated<sup>92</sup> by sustained national or international acclaim, and who is coming temporarily to the United States to continue work in the area of extraordinary ability."<sup>93</sup> The O-2 classification is designed for an alien who is "coming to the United States to assist in the performance of the O-1 alien, be an integral part of the actual performance, and have critical skills and experience with the O-1 alien which are not of a general nature and which are not possessed by a United States worker."<sup>94</sup> Furthermore, the O-3 classification applies to "the alien spouse or child of an alien"<sup>95</sup> who is a recipient of an O-1 or O-2 visa "and is accompanying, or following to join, the alien."<sup>96</sup>

Similarly, an athlete may be able to come to the United States as a recipient of a "P" nonimmigrant visa.<sup>97</sup> The P-1 classification provides that nonimmigrants are eligible for consideration if the alien is coming temporarily to the United States to perform at "[a] specific athletic competition as an athlete, individually or as part of a group or team, at an internationally recognized level or performance."<sup>98</sup> A petition for a P-1 visa "shall be filed by a United States employer"<sup>99</sup> on behalf of the alien. If the alien is admitted into the United States, he shall have authorization to stay in the United States "for an initial period (not to exceed 5 years),

<sup>90</sup> See INA §101(a)(15)(O); 8 U.S.C. § 1101; 8 C.F.R 214.2.

<sup>91</sup> "Extraordinary ability" in the field of athletics means a level of expertise that indicates that the person is one of the few that have risen to the top of their field. See 8 C.F.R. §214.2(o)(3)(ii). Immigration and Naturalization Services officials make this determination on a case-by-case basis.

<sup>92</sup> See 8 C.F.R. §214.2(o)(3)(iii) for a list of the necessary evidentiary criteria for an O-1 alien of extraordinary ability in athletics.

<sup>93</sup> See 8 C.F.R. §214.2(o)(3)(ii)(A); see also INA § 101(a)(15)(O)(i).

<sup>94</sup> 8 C.F.R. §214.2(o)(4)(i); see also INA § 101(a)(15)(O)(ii).

<sup>95</sup> INA §101(a)(15)(O)(iii).

<sup>96</sup> *Id.*

<sup>97</sup> There are three categories of P visas, but only P-1 visas apply to athletes. See INA §101(a)(15)(P).

<sup>98</sup> 8 C.F.R. §214.2(p)(1)(ii)(A)(1); INA § 101(a)(15)(P)(i).

<sup>99</sup> 8 C.F.R. §214.2(p)(2)(i).

during which the nonimmigrant will perform as an athlete, and such period may be extended by the Attorney General for an additional period of 5 years.”<sup>100</sup>

Once the athlete (in this case, the Cuban baseball player) has received an “O” or a “P” visa, he may travel to the United States to play Major League Baseball. He is no longer subject to the Draft or a lottery, and is free to negotiate with any team that he desires.<sup>101</sup> Not being subject to the Draft gives the player an economic advantage over coming directly from Cuba to the United States and acquiring political asylum or establishing citizenship. This advantage is the previously explained loophole that foreign players have exploited in order to gain certain economic benefits over other first-year players.

## V. EXAMPLES OF HOW THE LOOPHOLE HAS WORKED

The most popular examples of how the loophole has worked in the recent past are Florida Marlins' pitcher Livan Hernandez and New York Yankees' pitcher Orlando “El Duque” Hernandez. Livan Hernandez's story is not typical of Cuban baseball players because he did not escape Cuba on a raft. Rather, he defected during the summer of 1995 when he was with the Cuban national team in Monterrey, Mexico. Joe Cubas, Livan's agent at the time and the front-runner of securing free-agency for Cuban defectors,<sup>102</sup> was waiting for Livan outside of a restaurant in a parking lot in Monterrey. Cubas drove Livan to the Monterrey Airport, where Livan boarded a plane and flew to Venezuela.<sup>103</sup> After arriving safely in Venezuela, Livan Hernandez left for the Dominican Republic, where he applied for and received political asylum.<sup>104</sup> As a result of Cubas' intervention, Livan Hernandez was able to

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<sup>100</sup> INA §214(a)(B).

<sup>101</sup> However, it must be noted that the visa process is not the only way for a Cuban to remain in the United States. Once in the United States, a Cuban may file for residency under the Cuban Adjustment Act or make a claim for asylum. See *supra* notes 328-342 and accompanying text.

<sup>102</sup> For further information on Joe Cubas, see *supra* notes 123-151 and accompanying text.

<sup>103</sup> See Baxter, *supra* note 80.

<sup>104</sup> Bill Chastain, *Bill Safe Alternative for Cuban Players*, The Tampa Tribune (Nov. 8, 1998) <<http://www.tampatrib.com/sports/baselook.htm>>. For a discussion on asylum, see *supra* notes 328-339.

become a free agent,<sup>105</sup> and Cubas proceeded to contact Major League Baseball teams on Livan's behalf.<sup>106</sup> In 1996, Livan signed with the Florida Marlins and received a \$2.5 million signing bonus, the largest for a foreign player in baseball history.<sup>107</sup> He eventually signed a four-year contract, valued at \$4.495 million, to play for the Marlins.<sup>108</sup>

Orlando "El Duque" Hernandez, Livan's half-brother, experienced a more typical defection from Cuba. One year after Livan Hernandez defected from Cuba, Orlando Hernandez was removed from the Cuban national team, and was banned from the sport. Orlando's removal from the team was designed to serve as a punishment for his half-brother's actions, and to deter others who contemplated defection to the United States.<sup>109</sup> Orlando Hernandez secured a new job as a sports trainer in a Cuban mental hospital, and was paid \$10 per day.<sup>110</sup> On December 26, 1997, Orlando Hernandez and seven others escaped from Cuba on a raft.<sup>111</sup> The United States Coast Guard found Orlando and the seven others a few days later on a remote Bahamian island, and turned them over to Bahamian authorities.<sup>112</sup> Orlando and the others sought political asylum in the United States, but only Orlando, his common law wife, and a Cuban catcher named Alberto Hernandez (who is not related to the Hernandez brothers) were granted humanitarian parole<sup>113</sup> and were allowed to enter the United States.<sup>114</sup> The State

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<sup>105</sup> See *supra* notes 45-53 and accompanying text.

<sup>106</sup> *Id.*

<sup>107</sup> See Baxter, *supra* note 80.

<sup>108</sup> Brendan Farrington, 'El Duque' Agrees to \$6.6 Million, Four Year Deal With Yankees (Mar.7, 1998) <<http://www.web4.nando.net/newsroom/ap/b...y/feat/archive/030798/nyy72184.html>>.

<sup>109</sup> *Id.*

<sup>110</sup> *Cuban Baseball Player Asylum Case Garners Headlines*, Siskind's Immigration Bulletin, February 1998. Earning ten U.S. dollars per day is considered to be good wages according to 1999 Cuban standards.

<sup>111</sup> See Farrington, *supra* note 108.

<sup>112</sup> *Id.* The Bahamian government did not begin to strictly enforce its policy of repatriating Cubans back to their homeland until March 1998. See *supra* note 82.

<sup>113</sup> The five other rafters were ignored by United States authorities, and were left to the responsibility of Bahamian officials. See *supra* note 110.

<sup>114</sup> *Id.*

Department explained the decision to grant Orlando Hernandez legal status as follows:

Following the defection from Cuba of Livan Hernandez, Orlando Hernandez Pedroso and Alberto Hernandez Perez were banned for life from organized baseball in Cuba - depriving them of their livelihoods - and subject to harassment. Under ordinary circumstances, these individuals would qualify for U.S. visas issued to persons of extraordinary ability, including in athletics, but the restrictions imposed on them made that impossible.<sup>115</sup>

Orlando decided that he did not want to travel to the United States right away,<sup>116</sup> and instead insisted upon waiting with the five persons with whom he had come and who had not received legal status in the United States.<sup>117</sup> Baseball agent Joe Cubas advised Orlando Hernandez<sup>118</sup> not to travel to the United States because it would be much more profitable for the Orlando to go to Costa Rica, establish residency, and then become a free agent.<sup>119</sup> With the exception of his common law wife,<sup>120</sup> Orlando and his travel partners went to Costa Rica. Orlando Hernandez began training to get back into shape for baseball, and began auditioning for Major League scouts.<sup>121</sup> The New York Yankees eventually signed Orlando to a four year, \$6.6 million contract.<sup>122</sup>

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<sup>115</sup> *Id.*

<sup>116</sup> Hernandez stated that he would not leave the Bahamas unless he was completely sure that his companions would not be returned to Cuba. *Id.*

<sup>117</sup> See Farrington, *supra* note 108.

<sup>118</sup> See *supra* notes 123-151 and accompanying text.

<sup>119</sup> See *Cuban Pitcher, Another Baseball Player Can Enter U.S.*, (Jan. 1, 1998) <<http://www.KentuckyConnect.com/heraldleader/news/010198/ffabase.html>>.

<sup>120</sup> Orlando's wife accepted the United States visa that was offered to her.

<sup>121</sup> Since Hernandez was in a third country, he was eligible for free-agency, could meet with scouts, and did not have to enter the Draft. See *supra* notes 43, 53, 82, 85 and accompanying text.

<sup>122</sup> See Farrington, *supra* note 108.



## VI. THE DISCOVERY AND EXPLOITATION OF MAJOR LEAGUE BASEBALL'S LOOPHOLE

Joe Cubas has been credited with changing the face of baseball in the late 1990s<sup>123</sup> as a result of his dealings with his clients, Cuban defectors, and Major League Baseball. Joe Cubas<sup>124</sup> is the man who, besides the defecting Cuban ballplayers, has most benefited from the previously described Major League Baseball loophole.<sup>125</sup> Cubas, the son of Cuban immigrants, is interested in helping his people, making money for himself and his clients, and "stick[ing] it to the Communist government of Cuban leader Fidel Castro."<sup>126</sup> Cubas has become a success,<sup>127</sup> and he has come to symbolize in the world of Cuban baseball what Don King represents to professional boxing.<sup>128</sup> Cubas is known among his friends and allies as the "man who will give his hand, his heart, everything."<sup>129</sup>

An agent like Joe Cubas is more than just a representative who negotiates with Major League Baseball franchises on his players' behalf. Cubas can be considered more of a personal life manager for his players, at least until the players get settled in the United States. He is responsible for helping his players reach the Bahamas, then the Dominican Republic or Costa Rica, and finally the United States. Likewise, an agent like Joe Cubas has to assist his players in obtaining visas and setting up auditions with Major League scouts. Cubas must act as an interpreter between his players and their respective teams, since a majority of his players do not speak English. Since representing foreign players involves a high level of responsibility and unique skills such as language abilities, other more traditional sports agents shun Cubas' niche

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<sup>123</sup> See Baxter, *supra* note 76.

<sup>124</sup> He is often referred to as "el gordo", the fat man, or more colloquially, "fatso". *Id.*

<sup>125</sup> *From the Editor: The Man Behind the Story*, The Sporting News, Aug. 10, 1998 at 3.

<sup>126</sup> *Id.*

<sup>127</sup> The print version of Cubas' life is expected to start a bidding war at any moment, and Antonio Banderas has signed to play Cubas while Cuba Gooding, Jr. has agreed to play Orlando Hernandez in a motion picture, which has not yet been scheduled for release. See Baxter, *supra* note 56.

<sup>128</sup> *Id.* "He is the self-appointed commissioner and God and everybody rolled into one." *Id.*

<sup>129</sup> *Id.*

and instead focus primarily on negotiating players' contracts and endorsements. At least for now, Joe Cubas does not have to deal with many competitors.

When Rene Arocha wandered away from the Cuban national team in 1991,<sup>130</sup> Joe Cubas saw it as a personal opportunity to succeed.<sup>131</sup> After obtaining a contract for Arocha with the St. Louis Cardinals, Joe Cubas spent the subsequent years in pursuit of other Cuban baseball players. He devoted all of his time and efforts to following the Cuban national team nearly every time it left the island of Cuba.<sup>132</sup> In the summer of 1995, Cubas' work finally paid off, and he received his break when Osvaldo Fernandez and the Cuban national team were in Tennessee. Cubas waited for Fernandez in a Wal-Mart parking lot inside a rental van.<sup>133</sup> Fernandez got into the van, and the two men drove to Miami.<sup>134</sup> Cubas eventually negotiated for Fernandez a three-year, \$3.2 million contract with the San Francisco Giants. Since assisting Fernandez, Cubas has negotiated over a dozen contracts for Cuban defectors, and more than a quarter of his clients have received signing bonuses worth over one million dollars.<sup>135</sup>

Although Cubas has achieved favorable reactions from his clients, he has had the misfortune of dealing with unfavorable reactions as well. The most substantial negative ramifications have come from the governments of the Dominican Republic, the Bahamas, and Costa Rica. The international media attention that Cubas has drawn to these three countries has forced them to harden their stances against Cuban refugees, decisions that directly affect the lives of thousands of Cubans trying to leave the island.<sup>136</sup> Furthermore, Cubas has received resistance in other forms:

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<sup>130</sup> See *supra* notes 56-66 and accompanying text.

<sup>131</sup> See Baxter, *supra* note 80.

<sup>132</sup> *Id.* He traveled to Canada, Japan, Colombia, Argentina, Nicaragua, Panama, Puerto Rico, and Mexico until he finally achieved success. Joe Cubas financed all of his trips with his own money, and almost went broke in the process.

<sup>133</sup> *Id.*

<sup>134</sup> Two months later, Cubas had a similar experience with Livan Hernandez. *Id.*; see also *supra* notes 103-108 and accompanying text.

<sup>135</sup> See Baxter, *supra* note 80.

<sup>136</sup> *Id.* No one is blaming Cubas alone, but the timing is interesting. *Id.*

The Dominican Republic, which once quietly welcomed those fleeing Cuba, recently signed an agreement with the Castro government pledging to repatriate refugees after Cubas based two high-profile training camps for defectors there. The Bahamian government, which has traditionally paid little mind to its repatriation treaty with Cuba, cleaned out the Carmichael Road Detention Center shortly after Cubas' visit caused a riot there in March, and Costa Rica, which warmly welcomed a Cubas entourage as recently as January, refused the agent's request for help with another group of defectors in March.<sup>137</sup>

It is clear that the effects of these newly enforced policies will be felt beyond the baseball diamond, but Cubas' only legal obligation as a sports agent is to represent his clients to the best of his ability.<sup>138</sup>

In addition to the reactions of the governments of the Bahamas, the Dominican Republic, and Costa Rica, Cubas' competitors and non-baseball playing Cubans have severely criticized him. Juan C. Iglesias,<sup>139</sup> an ally-turned-rival of Joe Cubas, doubts whether the economic rewards of Cubas' recruiting efforts outweigh the costs, remarking,<sup>140</sup> "[y]ou look at how many lives have been destroyed and you wonder."<sup>141</sup> Iglesias believes that Cubas is a good negotiator, since he has gotten his players substantial salaries, "[b]ut when you lose that many clients, something is going on . . . I'm sure he must have done something wrong because a lot of people have left him."<sup>142</sup>

Likewise, many Cuban defectors who are still residing at the Carmichael Road Detention Center resent what Joe Cubas does. The numerous defectors who do not play baseball feel that they should not be ignored just because they are not skilled baseball

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<sup>137</sup> *Id.*

<sup>138</sup> *Id.* This is just another example of how the sport of baseball can affect international, political, and legal issues.

<sup>139</sup> Less than a year after Livan Hernandez signed with the Florida Marlins, he and Cubas had a dispute over money, and Livan Hernandez signed with Iglesias.

<sup>140</sup> See Baxter, *supra* note 80.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

players. These refugees who have waited for numerous months inside an overcrowded Bahamian detention center have repeatedly watched as groups of Cuban baseball players<sup>143</sup> move to the head of the line and receive special treatment.<sup>144</sup> The defectors do not believe that baseball players should be treated better than anyone else, and feel that they should be afforded the same rights as the baseball players.<sup>145</sup> They believe that everyone inside the detention center should be treated equally, regardless of their economic or professional background.

While Joe Cubas has made it known that he would like to be able to help all the people who are detained in the camp,<sup>146</sup> his attention remains overwhelmingly directed on Cuban baseball players. Cubas' assistance of Cuban baseball players has not earned him a favorable reputation among persons living in Cuba,<sup>147</sup> nor among those who have been detained. In March 1998, during one of Cubas' trips to the detention center, the detainees decided that they "wouldn't be left behind. First they cajoled Joe Cubas, chanting and singing his name. Next they staged a hunger strike. Eventually they rioted."<sup>148</sup> The message that Cubans received from Cubas' actions was that "[e]quality, whether in a homeland<sup>149</sup> or a detention center near Nassau, depends on how fast you can throw or how far you can hit a baseball."<sup>150</sup> The detainees, in their first dealings with a United States citizen, received the impression that even in the United States not all persons are treated equal.<sup>151</sup>

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<sup>143</sup> *Our View of the Week*, supra note 81.

<sup>144</sup> This holds true in the United States as well. Sports figures receive special treatment, and regulations are not necessarily the same for all. Sashi Kaufman, *Multi-Million Dollar Immigration Exception* (Jan. 27, 1998) <<http://www.coha.org/opeds/BASEBALL.html>>.

<sup>145</sup> *Id.*

<sup>146</sup> *See Baxter*, supra note 80.

<sup>147</sup> In Cuba, Joe Cubas has been called "a vulture" and "a degenerate". *Id.*

<sup>148</sup> *Id.* The riot caused over Cubas' actions led Miami politicians and community leaders to scorn Joe Cubas, which then caused Cubas to file for visas for all of the refugees in the detention center. *Id.*

<sup>149</sup> "Cuban baseball players are the elite of the elite in a country that bestows preferential treatment on its international athletes." *Defective*, *The Sporting News*, Dec.13, 1993, Voices at 7.

<sup>150</sup> *Our View of the Week*, supra note 81.

<sup>151</sup> The Cubans probably knew about inequality in the United States as a result of their learning about the dark sides of U.S. history such as slavery and segregation. The Communist interpretation of history is highly critical of

Despite the opposition that Joe Cubas has faced, he has inspired others to get involved with the exploitation Major League Baseball's existing loophole for foreign players. Nicholas Tanney Nolter, an Internet entrepreneur and the owner of Worldnet Companies, has invested \$175,000 in five players' welfare.<sup>152</sup> Nolter, who is not a sports agent and claims not even to be a big baseball fan,<sup>154</sup> owns a yacht named the Sea Wagon. Nolter alleges that while he was on a trip to see the coast of Cuba, he found five baseball players on a small beach on the western tip of Cuba.<sup>155</sup> He allowed the five baseball players to board his ship, and they all sailed to Nicaragua.<sup>156</sup>

Ninoska Perez, an officer of the Cuban American National Foundation as well as a popular radio host in Miami, met Nolter and the five players in Nicaragua, and offered to help the players get to the United States. Likewise, Nicaragua issued the players thirty-day tourist visas, and offered to consider their applications for residency.<sup>157</sup> Nolter<sup>158</sup> and the five players opted not to accept either offer, and instead traveled in three rented vans to the border of Costa Rica, where they left the vans and proceeded to walk over the mountains for five days in an effort to avoid Costa Rican immigration authorities.<sup>159</sup> Costa Rica has since denied the players visas, but has not ordered them deported. Nolter stated that if the players were deported, he would have an alternative plan, which

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capitalism in general, and has focused on slavery and segregation as examples of how a capitalist government treats its citizens unfairly.

<sup>152</sup> The five players are Osmani Garcia, Jorge Diaz, Angel Lopez, Mike Jova, and Alain Hernandez.

<sup>153</sup> See *supra* note 85, at 1A and 8A.

<sup>154</sup> Nolter arranged a deal with the five player, pursuant to which he would receive five percent of their signing bonuses in exchange for rendering his valuable assistance. *Id.* at 8A.

<sup>155</sup> There have been conflicting accounts as to whether the players and Nolter had met by chance, or if Nolter's "rescue mission" was a planned operation. *Id.*

<sup>156</sup> Supposedly there was a debate between Nolter and the five players about whether the players should seek refuge in Honduras or in Nicaragua. *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> When Nolter was questioned by Perez about who he was, he told her that he represented the players, even though they had not signed any contracts with him. *Id.*

<sup>159</sup> *Id.*

includes using his private jet to bring the players to another country that he has allegedly already selected.<sup>160</sup>

## VII. WHAT FUTURE LIES AHEAD FOR CUBANS WHO WANT TO ENTER THE UNITED STATES TO PLAY MAJOR LEAGUE BASEBALL?

What does the future look like for Cuban baseball players, agents like Joe Cubas, and Major League Baseball? One can only speculate. On January 5, 1999, President Clinton released a statement in which he approved the liberalization of the United States Trade Embargo against Cuba.<sup>161</sup> As a result of Castro's defiant adoption of socialism in Cuba, the United States government enacted the Cuban Assets Control Regulations<sup>162</sup> (the "Embargo").<sup>163</sup> The Embargo seeks "to isolate Cuba economically and deprive it of U.S. dollars."<sup>164</sup> Violators of the Embargo may be (though rarely are) severely penalized with both criminal and civil sanctions.<sup>165</sup> The provisions of the Embargo mandate that no product may be transported to Cuba from the United States, directly or through a third country, unless such product is informational material or a humanitarian good, such as medicine or medical supplies.<sup>166</sup> Likewise, "goods or services of Cuban origin

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<sup>160</sup> *Id.*

<sup>161</sup> *Statement by the President*, reposted from the White House web site (Jan. 5, 1999) <[http://www.state.gov/regions/ara/990105\\_Clinton\\_Cuba.html](http://www.state.gov/regions/ara/990105_Clinton_Cuba.html)>. Pursuant to the policy set forth in the Helms-Burton Act, the President no longer has the authority to completely lift the Embargo by Executive Order. The power to completely nullify the Embargo is retained solely by Congress. See *supra* note 180.

<sup>162</sup> This is administered by the United States Treasury Department's Office of Foreign Assets Control.

<sup>163</sup> See 31 C.F.R. §515.

<sup>164</sup> Cuba, What You Need to Know About the U.S. Embargo: An Overview of the Cuban Assets Control Regulations Title 31 Part 515 of the U.S.C. of Federal Regulations, U.S. Department of the Treasury Office of Foreign Assets Control; see also 31 C.F.R. §515.

<sup>165</sup> *Id.* Criminal penalties range up to ten years in prison and \$250,000 in individual fines and civil penalties up to \$55,000 may be imposed. *Id.* However, these penalties are rarely enforced.

<sup>166</sup> *Id.* An exception to this policy is that one hundred dollars worth of Cuban merchandise may be brought into the United States as accompanied baggage by authorized travelers. In addition, Cuban publications, artistic works, or other informational materials may also be brought into the United States.

may not be imported into the United States either directly or through third countries, such as Canada or Mexico."<sup>167</sup> Furthermore, "no vessel carrying goods or passengers to or from Cuba or carrying goods in which Cuba or a Cuban National has any interest may enter a U.S. port."<sup>168</sup> The Embargo provision was substantially tightened and strictly enforced when President Bush signed the Torricelli Act into law in 1992.<sup>169</sup> The Torricelli Act imposed sanctions against the Cuban government and subsidiaries of United States companies doing business with Cuba as an attempt to encourage the Cuban government to undertake a transition to a democratic form of government.<sup>170</sup> The United States attempted to achieve its goal by imposing severe penalties on countries that traded with Cuba.

Persons who reside in the United States and who are over the age of eighteen may send cash of up to \$300 for the support of a close relative's<sup>171</sup> household in Cuba in any consecutive three-month period, regardless of the number of close relatives residing in that household.<sup>172</sup> In addition, persons who reside in the United States may send up to \$1,000 as a one-time immigration remittance to a close relative in Cuba to assist that relative in emigrating from Cuba to the United States.<sup>173</sup> The money may be transferred to

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<sup>167</sup> Mexico did not agree with the policy of the United States, and firmly rejected any attempt to apply any law in its territory that was enacted in another state. *See Mexico Refuses to Accept Anti-Cuba Torricelli Act*, LATIN AM. REGIONAL REP., Dec.3, 1992 *available in* Lexis-Nexis library, current file.

<sup>168</sup> *See supra* note 164.

<sup>169</sup> *See* 22 U.S.C. §6001-6010.

<sup>170</sup> *See* President Bush's speech, 28 Weekly Comp. Pre. Doc. 2071 (Oct. 23, 1992). The Torricelli Act clamped down on subsidiaries of United States corporations that did business with Cuba through foreign subsidiaries, and imposed restrictions on the docking of foreign ships in United States ports that had been previously docked in Cuba ports during the past 180 days. *See supra* note 169.

<sup>171</sup> "Close relative" means a spouse, child, grandchild, parent, grandparent, great-grandparent, uncle, aunt, brother, sister, nephew, niece, first cousin, mother-in-law, father-in-law, daughter-in-law, son-in-law, sister-in-law, brother-in-law, or spouse, widow, or widower of any of those people. *See supra* note 164.

<sup>172</sup> *Id.* However, no money may be sent to a high-ranking member of the Communist party, even if the member is a close relative.

<sup>173</sup> *Id.*; *see also* Trading with the Enemies Act, 50 U.S.C. §5(b) (1988).

Cuba through a licensed forwarder or carrier, or it may be carried directly on the person who is authorized to travel to Cuba.<sup>174</sup>

In addition to trading with Cuba, travel by United States citizens to Cuba is severely restricted.<sup>175</sup> In order to travel to Cuba, a person must receive a license from the Department of Treasury's Office of Foreign Assets Control ("OFAC").<sup>176</sup> The United States also suspended direct flights to Cuba<sup>177</sup> as a response to the downing of two United States registered aircrafts that were allegedly flying in international airspace.<sup>178</sup> Previously, in order to travel to Cuba, it was necessary for a traveler to fly to a third country, and then take a flight to Cuba from that third country.<sup>179</sup>

On March 12, 1996, President Clinton signed into law the Cuban Liberty and Democratic Solidarity Act (LIBERTAD), which is commonly referred to as the Helms-Burton Act.<sup>180</sup> The Helms-Burton Act codified the Embargo, which was first imposed by President Kennedy on February 3, 1962, and also tightens economic sanctions against Cuba.<sup>181</sup> The Helms-Burton Act is part of a long line of legislation that includes the 1992 Torricelli Act,

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<sup>174</sup> See *supra* note 164.

<sup>175</sup> *Id.*

<sup>176</sup> The only persons eligible for a license are U.S. journalists who are regularly employed in that capacity, official U.S. government travelers on official U.S. government business, members of international organizations of which the United States is a member, and U.S. persons visiting family in Cuba who exhibit extreme humanitarian need. *Id.*

<sup>177</sup> However, this policy has recently changed, and direct flights to Cuba are allowed. Such flights do not have to originate from Miami, and now begin in other American cities such as New York and Los Angeles. See *supra* note 190 and accompanying text.

<sup>178</sup> Cuba does issue entry visas (required for travel to Cuba) to United States and Canadian persons, but the United States government generally recommends against such travel. See *supra* note 62.

<sup>179</sup> Although travel is from a third country, the traveler is still required to obtain an OFAC license, which will usually only be granted on a case-by-case basis if travel is related to humanitarian purposes, professional research or similar acts, or sales for medical or pharmaceutical supplies. *Cuba, What you Need to Know About the U.S. Embargo*, *supra* note 164.

<sup>180</sup> Cuban Liberty and Democratic Solidarity Act (LIBERTAD), Pub. L. 104-114, 110 Stat. 785 (codified at 22 §§ 6021-91 (1995)) [hereinafter "Helms-Burton Act"].

<sup>181</sup> S. Kern Alexander, *Trafficking in Confiscated Cuban Property: Lender Liability Under the Helms-Burton Act and Customary International Law*, 16 DICK. J. INT'L LAW 523 (1998).



which the United States has used to "contain" Cuba. Some observers view such legislation as an attempt by the United States to corral foreign nations into assisting the United States in its efforts to blockade Cuba.<sup>182</sup>

The Helms-Burton Act consists of four titles, each dealing with a different aspect of relations between the United States and Cuba. Title I focuses on tightening the economic Embargo against Cuba by restricting dealings between the United States and Cuba.<sup>183</sup> The provisions of Title I include prohibition on the importation and commercial exchange of merchandise that has been transported, located, or derived in whole or in part from any article that was grown, produced, or manufactured in Cuba; denial of aid to independent states of the former Soviet Union who support military intelligence facilities located in Cuba; prohibition against indirect financing of Cuba; and opposition to Cuban membership in international financial institutions.<sup>184</sup> Title II discusses the intended United States policy upon the extinction of the Castro government regime,<sup>185</sup> and sets forth the United States' policy toward a transition government in Cuba and an eventual democratically-elected government in Cuba; assistance for the people of Cuba; aid programs for Cuba; conditions for the termination of the Embargo on trade with Cuba; and settlement of outstanding claims for wrongfully confiscated property in Cuba.<sup>186</sup> Title III, which has yet to be enacted because of repeated Presidential "national interest" waivers, states that any person who traffics in property which was confiscated from a United States citizen or a person who since 1959 has become a United States citizen, by the Cuban government, on or after, January 1, 1959, shall be liable to any United States national who owns claim to such property for money damages.<sup>187</sup> Finally, Title IV allows for the exclusion of aliens from the United States of aliens who have

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<sup>182</sup> Michelle Arendt, *The Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996: Isolationist Obstacle to Policy of Engagement*, CASE W. RES. J. INT'L L. 251 (1998).

<sup>183</sup> See Helms-Burton Act Tit. I, §101-16, 110 Stat. at 791-805.

<sup>184</sup> *Id.*

<sup>185</sup> See Helms-Burton Act Tit. II, § 201-07, 110 Stat. at 805-814.

<sup>186</sup> *Id.*

<sup>187</sup> See Helms-Burton Act Tit. III, §302(a)(1), 110 Stat. at 815. For further discussion of Title III, see *supra* notes 345-354 and accompanying text.

confiscated the property of United States nationals or who traffic in such confiscated property.<sup>188</sup>

President Clinton's loosening of the Embargo may slowly open the door between the United States and Cuba with regard to trade,<sup>189</sup> and at the same time, will likely have a substantial effect on Major League Baseball. For example, President Clinton authorized additional steps that seek to help Cubans on the island by allowing the following initiatives: (1) the expansion of remittances from any United States resident (rather than only those Cuban-Americans who have family in Cuba) to send limited funds to individual Cuban families, as well as to organizations that are not tied to the Cuban government; (2) the increase in people-to-people contact through two-way exchanges among academics, athletes, and scientists, by making the approval process for such visits easier; (3) the authorization of the sale of food and agricultural goods to independent non-governmental entities, such as religious groups, farmers, and independent restaurants; (4) permission for charter plane flights from U.S. territory to cities in Cuba other than Havana and from cities in the United States other than Miami; and (5) support for efforts to establish direct mail service to Cuba.<sup>190</sup>

One example of the people-to-people contact is President Clinton's decision to allow the Baltimore Orioles the opportunity to play baseball in Cuba, something that no Major League Club has done since the Brooklyn Dodgers held spring training in Havana in 1947. Prior to this announcement, the Orioles had applied to play an exhibition baseball game in Cuba since 1996, but the United States Treasury Department had rejected the team's yearly requests, stating that the idea of playing an exhibition game in Cuba was inconsistent with United States trade policy with Cuba.<sup>191</sup> The Clinton administration, however, views the baseball exchange as a means of "easing the plight at Cubans while maintaining sanctions against the Castro government."<sup>192</sup>

By early 1999, the Baltimore Orioles and the Cuban government had reached an agreement concerning dates, locations, starting times, umpires, visas and the bats (wooden instead of

<sup>188</sup> See Helms-Burton Act Tit. IV, §401, 110 Stat. at 822-824.

<sup>189</sup> See *supra* note 161.

<sup>190</sup> *Id.*

<sup>191</sup> *In Cuba, Orioles Are Team of the Moment*, (Jan. 11, 1999) <<http://www.ESPN.go.com/mlb/news/1999/990105/01028818.html>>.

<sup>192</sup> *Id.*

aluminum).<sup>193</sup> However, there still remained many important issues of concern that would have to be decided before the games were to take place.<sup>194</sup> One issue of heightened concern was the lack of padding on the outfield fences in the Cuban stadium because Major League Baseball and the Players Union insist that all stadiums have some form of padding on the outfield fences.<sup>195</sup> If the Embargo did not allow Cuba to get the padding from the United States, then Cuba would have to import the padding from Japan at an approximate cost of \$400,000.<sup>196</sup>

Another unresolved issue was how the profits of the game would be utilized. The United States wanted all of the proceeds from the games to go to Catholic Relief Services' Cuban counterpart, Caritas,<sup>197</sup> whereas the Cuban government wanted to distribute the proceeds to the Central American victims of Hurricane Mitch. Although Castro welcomed the Baltimore Orioles to Cuba, he seemed pessimistic about the game's purpose.<sup>198</sup> Castro stated that Cuba would not change its requirement that the proceeds from the game go to hurricane victims in Central America and it would not "renounce this just and noble requirement"<sup>199</sup> even if it meant that none of the games could be played.<sup>200</sup> Castro felt that the Cuban government should be allowed to distribute the proceeds any way it desired.

Since the games have President Clinton's backing, the State Department's policies require that none of the proceeds benefit the Cuban government.<sup>201</sup> Therefore, Major League Baseball and the United States government could not agree to Castro's proposals for

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<sup>193</sup> *Id.* Cuban baseball players are accustomed to using aluminum bats, whereas Major League Baseball players use wooden ones.

<sup>194</sup> *Cuba vs. Orioles: Not Just Yet*, (Jan. 19, 1999) <[http://www.sportsline.com/u/ce/multi/0,1329,608862\\_52,000.html](http://www.sportsline.com/u/ce/multi/0,1329,608862_52,000.html)>.

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> *Orioles May Not Fly to Cuba After All*, *The Sporting News* (Jan. 19, 1999) <<http://www.sportingnews.com/baseball/articles/19990202/html>>.

<sup>199</sup> *Id.*

<sup>200</sup> *Id.* The Cuban government has expressed extreme displeasure about the United States' proposals regarding the destination, distribution, and form of the proceeds.

<sup>201</sup> *Id.*

the use of the anticipated profits from the game. After numerous meetings and discussions between Peter Angelos, Major League Baseball, the United States State Department, and the Cuban government, the parties finally decided that the Baltimore Orioles would be the first Major League Baseball team allowed to play baseball in Cuba in more than forty years.<sup>202</sup> The Orioles and Cuba agreed that the profits received from the exhibitions would be used to support baseball and other athletic-related programs in the two countries.<sup>203</sup> This agreement met neither the United States nor Cuba's specific original demands. However, the United States State Department allowed the arrangement because it viewed the revenues generated from the game in Cuba as relatively insignificant and therefore not reason enough to cancel the exhibition games. The State Department did stipulate that if the games were to be televised, the Cuban government was to receive no proceeds from the broadcast.<sup>204</sup>

The reactions to the Baltimore Orioles' planned trip to Cuba were quite mixed. Peter Angelos felt that his team's trip to Cuba would be beneficial for the United States, Cuba, and his baseball organization. He stated that baseball is "a wonderful medium in bringing people together. In that spirit, the Orioles welcome the opportunity to play a part in the efforts to improve relations between"<sup>205</sup> the two countries.

Some observers criticized Angelos' sole motivation as gaining access to the Cuban players' market, giving him a clear advantage over Major League teams that are prohibited from scouting in Cuba.<sup>206</sup> These same critics contend that if and when Cubans receive permission to play baseball in the United States,<sup>207</sup>

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<sup>202</sup> Dave Sheinin and Julie Kay, *Orioles Will Play in Havana*, The Miami Herald, Mar.8, 1999, at 1A. The first game took place on March 28, 1999 in Havana Cuba. On May 3, 1999, the Cuban national team traveled to the United States for the second exhibition game.

<sup>203</sup> *Id.* at 14A.

<sup>204</sup> Dana Calvo, *Baltimore Scrambles to Finalize Games with Cuba*, The Sun Sentinel, Mar. 6, 1999, at 16C.

<sup>205</sup> *In Cuba, Orioles are the Team of the Moment*, *supra* note 191.

<sup>206</sup> Michael Phillips, *Balking at Trip to Cuba*, Miami Herald, Jan. 8, 1999, at 12D. Three years ago, when Angelos wanted to play an exhibition game in Cuba, it was alleged that he was attempting to secure an advantage by bringing Cuban baseball players to the United States. *Id.*

<sup>207</sup> Humberto Rodriguez, Cuba's sports minister, has raised the possibility that Cubans could play baseball in the United States as long as Major League Baseball submits proposals to Cuba that abide by the principles of Cuban

Angelos and the Orioles will have secured an advantage over the other Major League Baseball teams because of the team's 1999 visit to Cuba.<sup>208</sup> Perhaps acknowledging that part of this criticism as accurate, Angelos believes that the exhibition games between the two teams will establish a positive relationship between the Cuban national team and the Baltimore Orioles, which could indeed lead to future business transactions.

The desire to play an exhibition game in Cuba was not shared by all of the participants in the Major Leagues or by all of the members of Congress. Three Cuban-born Major League Baseball players<sup>209</sup> stated that they were "angry and confused that the Baltimore Orioles want to play an exhibition game in Cuba."<sup>210</sup> For example, Rafael Palmeiro, who was born in Cuba but raised in Miami, stated that if he had still been playing for the Baltimore Orioles,<sup>211</sup> he would not have accompanied the team to Cuba. He felt that going back to Cuba ". . . is against everything we stand for and believe in."<sup>212</sup> Livan Hernandez<sup>213</sup> added that he does not want "Castro to get a dime - not a single dime."<sup>214</sup> According to Livan Hernandez, when the Orioles played in Cuba, the families of the Major League Baseball players inevitably spent money there, which supported Castro and his government. Thus, Hernandez felt that the exhibition game in Cuba would allow Castro's government to receive indirect funding from the United States.

Likewise, Jorge Fabregas, who was born in Miami after his parents fled Cuba, said that he is against "anything that benefits the devil over there,"<sup>215</sup> referring to Fidel Castro, because Castro had caused his family and many others to suffer. Juan Iglesias<sup>216</sup> saw

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socialist sports. *Cuban Minister: Players Might be Allowed in the U.S.*, The Miami Herald, Oct. 31, 1998.

<sup>208</sup> Phillips, *supra* note 206.

<sup>209</sup> The three players are Rafael Palmeiro, Livan Hernandez, and Jorge Fabregas. *Id.*

<sup>210</sup> *Id.*

<sup>211</sup> Palmeiro is now a member of the Texas Rangers. *Id.*

<sup>212</sup> *Id.*

<sup>213</sup> See *supra* notes 103-108 and accompanying text.

<sup>214</sup> See *supra* note 193.

<sup>215</sup> *Id.*

<sup>216</sup> See *supra* notes 139-142.

nothing wrong with Major League Baseball's playing exhibition games against the Cuban team, but he did not understand why American teams had to play in Cuba. He felt that the proceeds from the game would not go to humanitarian uses, but rather to Castro's government.<sup>217</sup> Iglesias was against the game because it "... goes against everything we believe in."<sup>218</sup>

Furthermore, nine members of Congress urged the players in the Major Leagues not to participate in the exhibition baseball games scheduled between the Cuban national team and the Baltimore Orioles.<sup>219</sup> The members of the House of Representatives felt that the plans for the game were "grossly insensitive to the brutal abuse of human rights, and specifically, the total lack of labor rights in Cuba,"<sup>220</sup> and reminded the Players' Association to keep in mind that it is banned from conducting union activities in Cuba.<sup>221</sup> Moreover, the day after the announcement that the Cuban national team would play the Baltimore Orioles in Cuba, Cuban-American activists stood outside a Fort Lauderdale Stadium, before a spring training game between the Orioles and the Florida Marlins, and held up signs of protest.<sup>222</sup>

With regard to traveling to Cuba, each member of the Orioles had the right to decide whether to accompany the team to Cuba or to remain in the United States to participate in another scheduled spring training game. The team assured that each player would have the final decision regarding participation in the game.<sup>223</sup> The Orioles organization believes that the players are private citizens, and therefore have the right to make their own decisions concerning the game. The team would thus travel to Cuba with only those players who were willing to participate in the game.

On March 11, 1999, a logistical team from the United States arrived in Cuba and began preparing for the Baltimore Orioles'

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<sup>217</sup> Steve Martinez, *Dealing With Defects; Now That Cubans Have Found Their way Back to the Majors, the Majors Must Find a Better Way to Place Them*, Sporting News, Jan. 22, 1996.

<sup>218</sup> *Id.*

<sup>219</sup> Frank Davies, *Lawmakers: Sit Out Game With Cuba*, The Miami Herald, Jan. 23, 1999, at 19A.

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

<sup>222</sup> Dave Sheinin and Julie Kay, *supra* note 202, at 1A.

<sup>223</sup> *Id.* at 14A.

historic game with the Cuban national team.<sup>224</sup> The main purpose of the logistical team was to meet and discuss the details of the game, and assess the conditions of the Latinoamericano stadium in Havana, Cuba. Among those involved in the trip was a grounds-keeping consultant, who said that the stadium appeared to be well-kept.<sup>225</sup> However, the biggest problem that still remained was the lack of padding on the outfield walls.<sup>226</sup> The Executive Vice President of Major League Baseball at the Commissioners Office, in conjunction with the Commissioner's Office, promised to do everything possible to help Cuban sports officials fix the problem.<sup>227</sup>

As the historic date of the game rapidly approached, controversy about the game increased throughout the United States. One of the most outspoken opponents of the exhibition game between the Orioles and the Cuban national team was Florida Marlins owner John W. Henry. He expressed that he was "somewhat upset that baseball didn't call him before it approved the game, but even more upset that baseball did not ask the players,"<sup>228</sup> particularly Cuban-American players. Henry believed that Major League Baseball had made a decision that would be financially rewarding to Major League Baseball, but had not considered the effect that the game would have on its participants. Furthermore, Henry and many others in the League believed that Angelos was only interested in gaining a competitive advantage, and that these games would allow him to get the Orioles' name viewed across Cuba so that the next Cuban baseball player who defected from Cuba would head straight for Baltimore.<sup>229</sup>

Miami Herald sports writer Dan Le Batard expressed his own opinion of the exhibition game in his March 27, 1999, column. He felt that the game was wrong because Castro "has a past that includes randomly assassinating those who have had the audacity to disagree with him."<sup>230</sup> The decision to play in Cuba was wrong

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<sup>224</sup> *Plans for Cuba Continue*, The Miami Herald, Mar. 12, 1999 at 14D.

<sup>225</sup> *Id.*

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

<sup>228</sup> Michael Phillips, *Henry Blasts Decision to Play in Cuba*, The Miami Herald, March 26, 1999 at 1D.

<sup>229</sup> *Id.* at 17D.

<sup>230</sup> Dan Le Batard, *Game Only Gives 'Devil' His Due*, The Miami Herald, Mar. 27, 1999, at 1D.

for political reasons, economic reasons, and emotional reasons, and he did not understand how so many Cuban-Americans could be so indifferent to the game in Cuba.<sup>231</sup> Furthermore, he believed that Peter Angelos was participating in this event strictly for selfish reasons:

Baltimore owner Peter Angelos isn't doing this for unity or healing or sharing. He's doing this for himself. He sees that Cuban defector Orlando Hernandez helped win the last World Series, and Cuban defector Livan Hernandez helped win the World Series before that, and he sees that his team, even with the highest payroll in baseball last year, still finished 35 games out of first place. Less interested in bridging the gap between Cuba and the U.S. than he is in bridging the gap between himself and the pennant, Angelos hopes Sunday's game greases the slide enough so that some of those Cuban arms start slipping into his uniform.<sup>232</sup>

Le Batard said that Angelos may have gotten his baseball game, but he did so at the expense of making "an awful lot of people very, very sick."<sup>233</sup>

Despite the hostile relations between Fidel Castro's government and the United States, the exhibition game failed to stir up much nationalist sentiment in Cuba.<sup>234</sup> However, the game did tap feelings that many Cubans say run deeper through their culture than Marxist ideology.<sup>235</sup> A majority of the people who live in Cuba consider baseball the island's national sport, and it has always "been a source of pride that the Cuban national team dominated baseball"<sup>236</sup> in international tournaments. Nearly every male on the island starts playing baseball at a young age, and the level of play is quite impressive.<sup>237</sup> The Cuban fans, who have

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<sup>231</sup> *Id.*

<sup>232</sup> *Id.* at 14D.

<sup>233</sup> *Id.*

<sup>234</sup> James C. McKinley Jr., *Clash of Cultures, Pride and Passion When Cuba Plays United States*, *The New York Times*, Mar.26, 1999 at C-21.

<sup>235</sup> *Id.*

<sup>236</sup> *Id.*

<sup>237</sup> *Id.*



been long deprived of news concerning Major League Baseball because of a Castro-mandated media blackout, were eagerly awaiting the return of Major League Baseball after a four-year absence.<sup>238</sup> "No one knows how this one-game exhibition [will] play out,"<sup>239</sup> but the fans in Havana were filled with both "curiosity and excitement at seeing a major league team in a stadium that has only had amateur international competition for 40 years."<sup>240</sup>

Although Cuba does not have its own major league system, it does have the equivalent, which is known as the National Series. Players at this national level are not considered to be professionals, but they do "receive salaries for no-show jobs as physical therapists."<sup>241</sup> These players also receive cars, apartments, and other benefits from the Cuban government, and the population treats them as royalty. Players for these teams are hand-picked as early as grade school by teachers and coaches who "channel the most talented . . . [players] through a series of academics where they receive intense sports training for half of the day and study regular subjects in the afternoon."<sup>242</sup> When the players turn twenty-two years old, they have either been eliminated from playing baseball on a competitive level, or have earned a spot in the National Series.<sup>243</sup>

Throughout the island of Cuba, "baseball is to fans what soccer is to Brazilians."<sup>244</sup> The fans are loyal followers and are allowed to view their favorite teams and players for one peso (which is equivalent to about four cents in the United States) per game. But the Cuban government announced on March 27, 1999, that tickets for the game between the Orioles and the Cuban national team would not be sold at the stadium.<sup>245</sup> Rather, the Cuban government decided that a laminated neck badge would be

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<sup>238</sup> See Bob Rubin, *Cuba Relives Passion of U.S. Baseball Ties*, The Miami Herald, Mar. 28, 1999, at 14A.

<sup>239</sup> Dave Hyde, *Baseball, Si-Credit Cards, No*, The Sun Sentinel, Mar. 27, 1999, at 1C.

<sup>240</sup> *Id.*

<sup>241</sup> McKinley, *supra* note 234.

<sup>242</sup> *Id.*

<sup>243</sup> *Id.*

<sup>244</sup> *Cuba Aglow with Spirit of Baseball*, The Miami Herald, Mar. 28, 1999, at 14A.

<sup>245</sup> *Id.*

required to gain admittance into the stadium.<sup>246</sup> The badges would be provided to organizations linked to the Cuban government, such as schools and sports clubs. Those fans who were not among the lucky ticket-holders would be able to watch the game on television.<sup>247</sup> Reinaldo Calviac, the director of the International Press Center, explained that when Cuba hosts massive events such as the exhibition game, it is not possible for the entire public to attend, and admittance must be handled by invitation only.<sup>248</sup>

Before arriving in Cuba, the Orioles and the Cuban government made some last minute decisions concerning the game. Both sides agreed to the use of Cuban umpires and Cuban baseballs, which have a reputation of being less lively than Major League baseballs. Likewise, the exact time of the Orioles' arrival in Havana was kept a secret in both Cuba and Miami, where the Orioles' charter plane would take off for the short flight.<sup>249</sup> The Orioles also decided to change the order of their pitching lineup so that Juan Guzman would be saved "the anxiety of having to decide if he would play."<sup>250</sup> Guzman, a Miami resident of Cuban descent, was shifted from the number three spot in the pitching rotation to the number two spot, allowing Scott Erickson to fill the number three position and get the start in Cuba. A reporter asked Guzman if he would travel to Cuba, and he responded that if the team wanted him to go, he would go because that is what he gets paid for. The Orioles organization, however, decided that it would be

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<sup>246</sup> *Id.* In reality, this method for getting tickets is similar to securing tickets for the Superbowl in the United States. In order to attend the Superbowl, a person must be either part of the elite, or have connections to get tickets or a badge to attend. However, the one stark difference between the Superbowl and the exhibition game in Cuba is that, in order to have connections in Cuba or to be considered part of the elite, people must be loyal supporters of Castro.

<sup>247</sup> *Cuba - Orioles Tickets Available to Only Invited*, The Sun Sentinel, Mar. 27, 1999, at 13C. However, scalpers did manage to get their hands on tickets for the game and sold bleacher seats for two dollars and infield seats for five dollars, but most people in Cuba earn less than five dollars each month and could not afford to buy tickets for the game.

<sup>248</sup> *Cuba Bars Regular Fans From Orioles Game*, The Miami Herald, Mar. 26, 1999, at 1A. The Latinoamericano stadium holds about 50,000 people, and among those who were allowed in on game day were about 600 journalists accredited for the event, of which approximately 320 of them worked for the United States media. *Id.*

<sup>249</sup> *Cuba - Orioles Tickets Available to Only Invited*, supra note 247.

<sup>250</sup> *Orioles change Lineup, so Guzman Doesn't Go*, The Miami Herald, Mar. 28, 1999, at 14A.

best if Guzman did not go so that he could stay in Florida and spend the day with his family.<sup>251</sup>

After all of the arrangements were finally complete, there was only one thing left for the Orioles and the Cuban national team to do: Play Ball. After taking batting and fielding practice, the Cuban national team left the field, and allowed the Baltimore Orioles a chance to use the field to warm up. The Cuban fans and players loved Albert Belle, the Orioles' power hitter, because before the game he hit one batting practice home run after another.<sup>252</sup> This was the first opportunity for most of the fans in Cuba to see a power hitter like Albert Belle because the playing style in Cuba concentrates on speed and finesse, whereas in Major League Baseball the game focuses on physical strength.

The United States media took their rare opportunity in Cuba to interview Cuban baseball players, and focused the majority of their questions on how the Cuban players felt about past Cuban players who had defected to the United States to play Major League Baseball. Oscar Machado responded that although he supports the Cuban Revolution, he "couldn't have done what they have done because I want to play with my team all the time and defend the colors of the Cuban flag. I like baseball. That's why I play, not because of the money I get."<sup>253</sup> Yobal Duenas, who won the 1998 Cuban League batting championship, said that the defectors had chosen to take "... their own road .... I feel sorry for them. For myself, I'm here with my country and my people and my family. I don't worry about money."<sup>254</sup> Omar Linares, who has the reputation of being one of the best baseball players in Cuba, did not "seem comfortable discussing the issue"<sup>255</sup> but told

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<sup>251</sup> See *Id.* However, a comment that was made by Orioles' coach Ray Miller was in direct conflict with what the Orioles had stated for the reason behind Juan Guzman's not joining the team in Cuba. Ray Miller told the press that Juan Guzman had chosen not to come and that the team honored his decision. *Cubans Make a Game of It*, USA Today, Mar. 29, 1999, at 12C.

<sup>252</sup> Murray Chass, *Cubans' Defeat to Orioles is Sweet*, N.Y. Times (visited Mar. 29, 1999) <<http://www.NYTimes.com/library/sports/baseball/032999bbo-Cuba.html>>. The Cuban fans and players loved Belle even more during the game when the Cuban pitching staff kept him hitless in five attempts.

<sup>253</sup> Murray Chass, *Defectors Scorn by Cuban Players*, N.Y. Times (visited Mar. 29, 1999) <<http://www.NYTimes.com/library/spor...eball/032999bbo-Cuba-defectors.html>>. Machado went on to inform the press that he makes the equivalent of \$20 in the United States per month for playing baseball, but he was also given a car and a place to live and gets treated quite well.

<sup>254</sup> *Id.*

<sup>255</sup> *Id.*

the press that “[f]or years we have been trying to have this match. I hope that this will not be the last game in which major league teams can play the Cuban national team here.”<sup>256</sup>

Before the first pitch of the game was thrown out, Castro made his way to “his front-row seats behind home plate, where he watched the game with the Commissioner of Baseball, Bud Selig, and the Orioles owner, Peter Angelos, on either side of him.”<sup>257</sup> During the tenth inning of the game, Fidel Castro was spotted turning to Peter Angelos and, through an interpreter, said something. Could Peter Angelos have been trying to make a deal for the Cuban pitcher, who only allowed two hits in eight innings?<sup>258</sup> When asked about this conversation, Peter Angelos said that any proposals for players would have marred the trip. “Some people said the purpose of coming here was to spirit away Cuban baseball players. That was not the purpose.”<sup>259</sup> He then continued by stating that even if there had been some sort of offer for the Cuban pitcher, the Orioles would have turned it down. The game, which was mostly a pitching duel, was eventually won by the Orioles 2-1 in the eleventh inning.<sup>260</sup>

What now lies ahead remains the question that baseball fans in both Cuba and the United States have been asking. The answer: “Trying to set up more games between major-league teams and the Cubans.”<sup>261</sup> Major League Baseball “presidents, owners, general

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<sup>256</sup> Tim Weir, *Orioles Tip Cuba 3-2 in 11*, USA Today, Mar. 29, 1999, at 1C. The interviews with the players from the Cuban national team were evidence of the fact that in order for a person to be able to play baseball in Cuba, he must share the same ideas as Fidel Castro. However, once that player disagrees with the ideas of Castro, or someone in the players’ family does something that the Cuban government does not approve of, that player will be banned from playing baseball. As a result, we do not know if the players expressed their true feelings about the players who defected in the past, or if they were saying what had to be said in order for them to be able to continue playing baseball.

<sup>257</sup> *Id.*

<sup>258</sup> Chass, *supra* note 252.

<sup>259</sup> *Id.*

<sup>260</sup> The author of this article had the opportunity to watch this game on television, and found that the game did not live up to his expectations. Indeed, the author found the game to be quite boring, and thought that the Orioles, whose team’s yearly payroll is over \$80 million, did not outplay the Cuban team, whose players make an average of \$10 a month. The Cuban national team outhit the Orioles 10-6, and the Cuban team’s pitching convincingly overpowered the Orioles’ batting.

<sup>261</sup> *Cuban Trip Deemed a Success*, The Miami Herald, Mar. 30, 1999, at 10D.

managers, scouts, and union executives all seem to agree, for once: The Baltimore Orioles' weekend trip to Havana worked so well [that] more clubs should follow."<sup>262</sup> "Cuban sports officials also seemed satisfied with the first visit by a major-league team in 40 years. They appeared willing to make this an annual event,"<sup>263</sup> and not just limit it to the Baltimore Orioles. Baseball fans in Cuba said that they were hopeful that there would be more games and "ultimately a warming of relations between Washington and Havana."<sup>264</sup> Cubans saw this game as a foundation for possibilities existing between the two countries to have normal, fruitful, and peaceful exchanges based on mutual respect.<sup>265</sup> Joe Cubas, who did not have the opportunity to attend the game played in Cuba, told the press that the only reason that he would not have been in Baltimore for the second game between the Orioles and the Cuban national team would have been if he had died.<sup>266</sup>

#### VIII. CUBANS COME TO THE UNITED STATES TO PLAY BALL

The second meeting between the Baltimore Orioles and the Cuban national team, was scheduled for May 3, 1999, and was rapidly approaching. It appeared as if the historic game would go as planned. However, a few days before the sporting encounter, "Cuban officials threatened to cancel the game to protest the State Department's refusal to issue visas to about one-third of the 335-member Cuban traveling party."<sup>267</sup> Cuban officials delivered a

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<sup>262</sup> *Id.* Tony Bernazard, who works for the Players' Union, said that the union would discuss playing such a game again next year.

<sup>263</sup> *Id.* Cuban fans would love to have the New York Yankees, the island's most popular team, come play in Cuba. However, when George Steinbrenner was asked if this was a possibility, he said that playing in Cuba was not right, and that his team would not go there to play any time soon.

<sup>264</sup> *Cuban Fans Praise 'Great Show'*, The Miami Herald, Mar. 30, 1999, at 14A. The President of the Cuban Parliament said that this game was the perfect example of how it could be possible for Cuba and the United States to develop a relationship. He said that he did not care how many games it would take to fix things between Cuba and the United States, but he did hope that Cuba could win more games than it loses.

<sup>265</sup> *Id.*

<sup>266</sup> Armando Salguero, *A Greater Loss Could Await Cuba*, The Miami Herald, Mar. 26, 1999, at 9A.

<sup>267</sup> Richard Justice and Karen DeYoung, *Cuba Visa Problems Resolved for Game*, Washington Post (visited May 2, 1999), at D9. <<http://www.washingtonpost.com/wp-srv.sports/orioles/daily/may99/02/base2.htm>>.

document to the State Department that listed numerous unsatisfactory conditions that the Cuban team had dealt with, which may have forced them to cancel the game. Besides the lack of appropriate visas, the Cuban national team discussed how the United States refused to allow them to use Cuban national airline planes to fly to the United States, "despite the original agreement that each side could use a national airline for transportation."<sup>268</sup> "Cuban officials were angry because they believed U.S. officials hadn't shown them the same courtesies they extended for the Orioles' game,"<sup>269</sup> and they reminded the State Department that Cuba "turned around visas in six hours for the game in Havana."<sup>270</sup>

The State Department responded to the Cuban officials by issuing all 335 visas for "government officials, journalists, Olympic athletes, retired ball players, and a groups of children who played against American little leaguers in March, when the Orioles became the first U.S. Major League team in 40 years to play in Cuba."<sup>271</sup> The Cubans' contentment did not last long, however, and they became especially angered when "the State Department declined to extend a visa to Ricardo Alarcon, President of the Cuban National Assembly and thought to be President Fidel Castro's successor."<sup>272</sup>

After working out the grievances with the State Department, the Cuban team arrived in Baltimore at 8 p.m., on Sunday, May 2, 1999. The players were originally scheduled to leave Cuba at 9 a.m., but they did not depart the island until after 5 p.m., thereby causing the team to cancel a late afternoon practice session and a reception held in their honor.<sup>273</sup> Peter Angelos and Baltimore Mayor Kurt Schmoke greeted the Cuban national team at the airport when the players arrived and remained at the airport until all of the Cuban players boarded buses to take them to their downtown Baltimore hotel.<sup>274</sup>

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<sup>268</sup> *Id.*

<sup>269</sup> *Id.*

<sup>270</sup> *Id.*

<sup>271</sup> Jefferson Morely, *Cubans Arrive for More Baseball Diplomacy*, Washington Post (visited May 3, 1999), at B1. <<http://www.washingtonpost.com/wp-srv/sports/orioles/daily/may99/03/cubans3/htm>>.

<sup>272</sup> Justice and DeYoung, *supra* note 267.

<sup>273</sup> *See supra* notes 271 and 272.

<sup>274</sup> *Id.*

Among the many visitors and fans who arrived in Baltimore before the game was the much talked-about sports agent from Miami, Joe Cubas. Cubas declined to comment about the game, possible defectors, and what he would do or attempt to do.<sup>275</sup> However, Cubas did make it clear that he would be attending the game and keeping his eye on specific players.

Not knowing what to expect from protesters of the game, supporters of the game, or the Cuban national team, the Baltimore police had "extra officers on duty who had been briefed on procedures should someone approach seeking to defect. The immigration service, which would handle such requests, will have agents on hand, too."<sup>276</sup> Peter Angelos told the press that he was not interested in enticing any of the Cuban players to remain in the United States, and that the goals of the game were to bring the United States and Cuba a little bit closer through the medium of baseball.<sup>277</sup> The State Department released a statement that it planned to handle possible defections exactly as it would handle any other international sporting event in the United States, with "[a]bsolutely standard procedures."<sup>278</sup> Nothing special is being done in the case of this game.<sup>279</sup> However, some observers believe that the presence of the Immigration and Naturalization Service served as an encouragement to the Cuban players to defect to the United States, a clear provocation to the Cuban government.

The Baltimore police were also preparing to handle a huge number of arrests during expected protests.<sup>280</sup> They expected about one thousand protesters who would either be supporting an end to the Embargo or opposing any relations that the United States has with Castro's Cuba.<sup>281</sup> Protesters from both sides came from Miami, Tampa, New Jersey, New York, Washington, and elsewhere, and assembled outside of Camden Yards. Nonetheless, the city of Baltimore was well prepared, and there were as many police officers present outside of the stadium as there were

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<sup>275</sup> Michael E. Ruane, *For Cubans a Chance at Freedom*, Washington Post (visited May 2, 1999), at C1. <<http://www.washingtonpost.com/wpsrv/sports/orioles/daily/may99/02/cubans2.htm>>.

<sup>276</sup> *Id.*

<sup>277</sup> *Id.*

<sup>278</sup> *Id.*

<sup>279</sup> *Id.*

<sup>280</sup> *Orioles, Cuba Clash Tonight*, The Miami Herald, May 3, 1999, at 1A.

<sup>281</sup> *Id.*

protesters to make sure that no civil disturbances would erupt and to show that none would be tolerated. Fortunately, from the large crowd of protesters outside of the stadium, there were no major outbursts, and no arrests had to be made.<sup>282</sup>

Unfortunately, the scene inside of Camden Yards was quite different from the one outside of the stadium. "Bomb-sniffing dogs searched the stadium before the game,"<sup>283</sup> as well as throughout the athletic event, in order to ensure the safety of all the spectators and participants. The hundreds of officers throughout the stadium made certain that banners, which were banned from the stadium for the game, were not present, and "security guards kept a wide buffer between the Cuban players and the rest of the world."<sup>284</sup> The Orioles organization took further precautions to protect the game from potential protests by not allowing large groups "to sit together at the game by selling tickets only in pairs, splitting any opposing factions before they could gain strength."<sup>285</sup>

Even with all of the precautions that the Baltimore police took, several protesters were able to evade the guards and police and "ran onto the field in the fourth inning before being tackled and carried away by the police."<sup>286</sup> These protesters were immediately detained by Baltimore police officers and removed from the stadium. In the fifth inning, "a man jumped onto the field down the right-field line. Carrying a sign that said "Freedom – Strike Out Against Castro, he headed toward short center field."<sup>287</sup> Cuban umpire Cesar Valdez decided to take matters into his own hands, and chased after the fan. When the two men met, they "tangled briefly, then Valdez lifted the fan over his head and threw him down to the ground hard. Valdez began swinging, and appeared to land a couple of blows to the man's head, before Orioles' left fielder B.J. Surhoff rushed in and pulled Valdez

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<sup>282</sup> Mike Lurie, *Voice of Protesters Hear Amid Crack of the Bat*, Sportsline.com (visited May 3, 1999) <<http://www.sportsline.com/u/ce/multi/0,1329,988137/2,000.html>>.

<sup>283</sup> Frank Davies, *Cubans Win on U.S. Soil*, The Miami Herald, May 4, 1999, at 8A.

<sup>284</sup> *Id.*

<sup>285</sup> Mike Phillips, *Another Misplay by the Orioles*, The Miami Herald, May 2, 1999, at 9C.

<sup>286</sup> William E. Gibson, *Baseball Triumphs Over Politics*, The Sun Sentinel, May 4, 1999, at 1A.

<sup>287</sup> *Wild Night at Camden Yards* (May 4, 1999) Sportsline.com (visited May 4, 1999) <<http://www.sportsline.com/u/ce/multi/0,1329,98824952,00.html>>.



off.<sup>288</sup> When asked about his actions, Valdez said that above all, he is a Cuban and he believed that he did the right thing.<sup>289</sup> Police officers then stationed themselves along the left and right field walls in order to prevent any more unauthorized entrances to the field of play. All four people who "ran onto the field were arrested on a charge of trespassing."<sup>290</sup>

Although no lawsuits have been filed yet in connection with the trespassers' actions or the actions by Valdez, it is interesting to speculate what legal claims could have been brought and what would likely result. The two primary suits that could be contemplated are the United States (or the individual) seeking damages from Cuba as a result of a Cuban citizen who, as a visitor in the United States, slammed a United States citizen to the ground during the game, and a suit filed by the Cuban government against the United States government for negligence or recklessness in failing to provide a safe environment for Cuban citizens who were participating in the exhibition game in the United States.<sup>291</sup>

Based upon recent legal conflicts between the United States and Cuba, it is possible to speculate what would happen if the United States filed suit against Cuba for the Cuban umpire's actions during the exhibition game, or if Cuba filed suit against the United States. On February 24, 1996, the Cuban Air Force shot down two unarmed civilian aircrafts, which were carrying four members of the humanitarian organization Brothers to the Rescue.<sup>292</sup> The principle goal of Brothers to the Rescue was to search the waters of the Florida Straights for Cuban rafters who had fled the island of Cuba on makeshift rafts and to inform the United States Coast Guard of the rafters' location so that the rafters could be rescued.<sup>293</sup>

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<sup>288</sup> *Id.*

<sup>289</sup> *El Stink-Os: Orioles Embarrassed by Cuban All-Stars* (May 4, 1999) Sportsline.com (visited May 4, 1999) <<http://www.sportsline.com/u/ce/multi/0,1329,988328-52,00.html>>.

<sup>290</sup> *Wild Night at Camden Yards*, *supra* note 287.

<sup>291</sup> The charges that could possibly be brought by any potential party filing a suit are not as important as what the possible consequences would be if any suits were filed. The analysis of possible outcomes and enforcement of the rulings is more important than the actual charges that could possibly be brought. As of this point in time, no charges have been brought, but there still is a chance that charges could be filed in the near future.

<sup>292</sup> *See* *Alejandro v. Republic of Cuba*, 996 F. Supp. 1239 (S.D.Fla. 1997).

<sup>293</sup> *Id.*

On February 24, 1996, before taking off from Opa Locka Airport in South Florida, the two planes notified both Miami and Havana air traffic controllers of their flight plans, which is a required practice. However, even after the two planes followed the proper procedures,<sup>294</sup> the Cuban Air Force launched two military planes and fired upon the two civilian planes, destroying them instantly and leaving no debris behind.<sup>295</sup> As a result, three United States citizens were killed.<sup>296</sup> The United States government reacted to Cuba's attack by enacting the Helms-Burton Act and by releasing a statement saying that Castro's use of lethal force was inappropriate for the situation and was thus tantamount to cold-blooded murder.<sup>297</sup>

The personal representatives (plaintiffs)<sup>298</sup> of the three deceased individuals brought legal actions against the Cuban government and the Cuban Air Force.<sup>299</sup> The District Court entered judgment for the deceased, and awarded the plaintiffs both compensatory and punitive damages.<sup>300</sup> The District Court found the Cuban government liable to the plaintiffs because the Cuban Air Force was acting as an agent of the government.<sup>301</sup>

After receiving judgment, the plaintiffs filed a motion, pursuant to Rule 69(a) of the Federal Rule of Civil Procedure, Process to Enforce Judgment of Payment of Money, requesting

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<sup>294</sup> There has been substantial debate over whether or not the airplanes were in Cuban territory.

<sup>295</sup> *Id.*

<sup>296</sup> *U.S. Judge / Cuba - 2: Covers 3 Lawsuits*, Dow Jones International New (visited Dec. 17, 1997, available in WL 12/17/97 DJINS 13: 41: 00. In addition, a person who was not a United States citizen was killed, but the United States, under the Terrorism Law, did not have the jurisdiction to address this individual's representatives' claims.

<sup>297</sup> *See Alejandro v. Republic of Cuba*, 42 F.Supp.2d 1317 (S.D. Fla. 1999).

<sup>298</sup> The families did receive \$300,000 each as a humanitarian gesture from fund that the United States government seized from frozen Cuban accounts. However, the plaintiffs said that the money would have no bearing on their case. *Id.*

<sup>299</sup> *Id.* Even though neither of the defendants have appeared in court, the District Court proceeded without the defendants. *Id.*

<sup>300</sup> Plaintiffs received compensatory damages in the amount of \$49,927,911 and punitive damages in the amount of \$37,700,000. *Id.*

<sup>301</sup> *Id.*

that garnishment be issued on certain companies.<sup>302</sup> The plaintiffs alleged that the named companies were indebted to the Cuban government and, as a result, the companies could pay the plaintiffs instead of the Cuban government.<sup>303</sup> Preliminarily, the District Court found that the companies were not indebted to Cuba, but rather Empresa de Telecomunicaciones de Cuba (ETECSA). Ultimately, the court found that ETECSA is not a separate judicial entity from the Cuban Government and ordered that its assets be garnished.<sup>304</sup> In a subsequent appeal to this case, the Eleventh Circuit Court held "ETECSA responsible for the Government's debt on the ground that a contrary holding would unjustly prevent the plaintiffs from collecting their judgment."<sup>305</sup> The Eleventh Circuit Court also "ordered that all amounts owed ETECSA in the possession or control of the garnishees be garnished in aid of execution of the plaintiffs' judgment against the Cuban government."<sup>306</sup>

The Cuban Government reacted to this verdict by suspending direct phone service between the United States and Cuba.<sup>307</sup> Cubans who wanted to get in touch with the United States via telephone "got a recorded message saying that lines were congested and asking them to call back later."<sup>308</sup> Cuba had previously warned the United States that if the Cuban government did not receive the money that it was allegedly rightfully owed, Havana would cut off phone services to the United States. Once the revenue was not received as scheduled, the service was terminated. The only services that were not disconnected were the United States phone company Sprint and Puerto Rico's TLDI because they complied with their financial obligations regarding making timely payment to Cuba.

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<sup>302</sup> *Id.* The companies include AT&T Corp.; AT&T of Puerto Rico, Inc.; Global One Communications, L.L.C.; IDB WorldCom Services, Inc.; MCI International, Inc.; Telefonica Larga Distancia de Puerto Rico, Inc.; WilTel, Inc.; WorldCom, Inc.; The Chase Manhattan Corporation; and CitiGroup, Inc.

<sup>303</sup> *Id.*

<sup>304</sup> *Id.*

<sup>305</sup> *Alejandro v. Telefonica Larga Distancia de Puerto Rico, Inc.*; MCI, 1999 WL 604043 at 3 (11th Cir. (Fla.) 1999).

<sup>306</sup> *Id.*

<sup>307</sup> *Cuban Phone Company Cuts Off U.S.*, Chicago Tribune, Feb. 25, 1999.

<sup>308</sup> *Id.* The Service for cellular phones was interrupted as well.

As previously mentioned, ETESCA appealed the verdict of the District Court to the Eleventh Circuit Court. The Eleventh Circuit Court overruled the District Court, finding that ETESCA was not liable to the plaintiffs.<sup>309</sup> The Eleventh Circuit Court found that under Florida law, when a plaintiff seeks as garnish a debt owed to an entity that was not a party to the underlying judgment on the ground that the entity was an alter ego for the debtor, the plaintiff bears the burden of demonstrating the alter ego relationship. The Eleventh Circuit reasoned that the plaintiffs did not do that in this case.<sup>310</sup> As a result of the Eleventh Circuit's decision, the plaintiffs will not be able to recover the money that is rightfully owed to them. The same would hold true for any potential suit that the trespasser at Camden Yards could bring. The trespasser may be allowed to get a court judgment for damages, but the award would most likely not be enforced.

If the United States courts are unwilling to enforce a judgment for the wrongful death of three United States citizens, then it is unlikely that the same courts will find a way to enforce a judgment as a result of a simple battery action. However, even though enforcement of awards is not likely, there has been a recent trend towards filing lawsuits against Cuba. The plaintiffs in these cases may be searching for either a moral victory, or possibly are hoping that their verdicts will be enforced in a post-Castro Cuba. Furthermore, these suits may be a political protest against Castro and the Cuban government.

Although the Eleventh Circuit denied the plaintiffs the decision that the litigants desired, the court did point out to the plaintiffs an alternative method for them to receive the payment for the damages that they deserve. In footnote seven of its decision, the Eleventh Circuit Court pointed out that EMTELCUBA, a former Cuban government telephone company, is a potential source for the payment of the plaintiffs deserved funds. By writing footnote seven, the Eleventh Circuit indirectly told the plaintiffs that although they could not prove that ETECSA is an alter ego of the Cuban government, EMTELCUBA is owned by the Cuban government and is therefore an alter ego of the Cuban government.<sup>311</sup> In drafting this footnote, the court also told the plaintiffs that it still may be possible for them to receive their damage award, even though their previous efforts failed. Thus, the

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<sup>309</sup> Alejandro 1999 WL 604043.

<sup>310</sup> *Id.*

<sup>311</sup> Allison Klein, *Brothers to the Rescue Survivors Given New Lead on Cuban Payment*, Miami Herald, Aug. 13, 1999 at 4B; see also Alejandro 1999 WL 604043.

Eleventh Circuit used its opinion to steer the plaintiffs towards the possibility of collecting their damages from another source.

EMTELCUBA was established in 1976, and was controlled by the Cuban government until it dissolved in 1994, the year in which ETECSA was formed.<sup>312</sup> Although the Eleventh Circuit suggested that it could be possible for persons to recover damages from the Cuban government, the court has also made it clear that in order to recover anything, the plaintiffs need to make sure that every aspect of their case is perfect. In addition, Victor Diaz, the lawyer for the plaintiffs, stated that he would go after other Cuban money that is being held in the United States, such as the \$150 million that was frozen in 1960 by the United States Treasury Department and has since been increasing as a result of interest.<sup>313</sup>

In a personal injury lawsuit filed in Miami during the first week of August, 1999, Ana Margarita Martinez claimed that the Republic of Cuba is guilty of sexually assaulting her because the man that she fell in love with was not who he claimed to be.<sup>314</sup> Martinez's husband, Juan Pablo Roque, is an agent of Castro's government who used their marriage as a part of a spy mission that he was conducting for the Cuban government.<sup>315</sup> Roque swam to the American Naval Base in Guantanamo, Cuba, in 1992 and requested political asylum on the grounds that he was a former air force major who no longer agreed with the Cuban government.<sup>316</sup>

On February 23, 1996, the day before two Cuban Air Force planes shot down the two civilian planes of the Brothers to the Rescue, Roque disappeared. He told Martinez that he was delivering a boat to Key West, Florida.<sup>317</sup> Two days later, Roque appeared on Cuban television stating that the Brothers to the Rescue program was a terrorist organization and that he was in fact a double agent.<sup>318</sup> Roque's role in the attack of the planes has yet to be determined, but Roque has been named as a defendant in a federal indictment charging a Cuban spy ring with conspiracy to commit murder.<sup>319</sup> Roque, who is in Havana, has not commented

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<sup>312</sup> *Id.*

<sup>313</sup> *Id.*

<sup>314</sup> Mike Clary, *Cuba Charged with Rape*, Miami Herald, Aug. 8, 1999.

<sup>315</sup> *Id.*

<sup>316</sup> *Id.*; see also *supra* notes 328-339 for a discussion on political asylum.

<sup>317</sup> See Clary, *supra* note 314.

<sup>318</sup> *Id.*

<sup>319</sup> *Id.*

on the lawsuit, and has not had any contact with Martinez since the day he left the United States.

As a result of finding out that her husband was a double agent for the Cuban government, Martinez immediately began attending counseling. In addition, she had her marriage to Roque annulled, and authored her own book in which she discusses her life with Roque.<sup>320</sup> Martinez also took legal action, by filing a lawsuit against the Cuban government for sexual battery. Martinez claims that the sex she and Roque engaged in was not consensual because it was derived from fraud and concealment, and that the Cuban government was in essence *raping* her through its agent Roque each time they had sex.<sup>321</sup> Martinez and her attorney claim that they are seeking a moral victory, and are not expecting a financial victory because of the difficulties that others have had encountered in attaining monetary rewards in the past.<sup>322</sup> However, the footnote in the Eleventh Circuit's decision of *Alejandro* may give Martinez some hope in attaining some form of financial compensation.

Just as the plaintiffs from the United States were not able to secure damages from Cuba, the Cuban government would not likely be able to receive damages from the United States government. On June 1, 1999, the Cuban government filed a lawsuit for "compensation for the deaths of 3,478 Cubans and injuries sustained by 2,099 others as a result of 40 years of aggressive policies."<sup>323</sup> Notice of the trial was served upon the United States government, but no United States representative was present at the trial.<sup>324</sup> In addition, "it appeared unlikely the lawsuit would result in any damages being paid. There are no American funds in Cuba that can be frozen and seized."<sup>325</sup>

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<sup>320</sup> *Id.*

<sup>321</sup> Rick Bragg, *Ex-Wife is Suing Cuba Over a Spy's Deception*, N.Y. Times, Aug. 15, 1999, at 12A. This is believed to be the first suit ever in which a sovereign nation has been charged with sexual battery. See also Clary, *supra* note 314. This is a novel legal issue that should be pursued quite carefully. It needs to be determined if Martinez's claim is reasonable, or if a government can be sued through its agents for crimes such as rape.

<sup>322</sup> *Id.*

<sup>323</sup> Raquel Martori, *Cuba-U.S. (Scheduled) Cuba Sues U.S. for \$181.1 Billion in Damages From 40-Year "War"*, EFE News Service, June 2, 1999 available in WL 6/2/99 EFENEWSERV.

<sup>324</sup> *Cuban Court Hears About Attempts on Castro's Life*, Dow Jones International News, July 20, 1999, available in DJINS 20:34:00. The lawsuit seems to be Cuba's answer to the lawsuit filed in the United States. *Id.*

<sup>325</sup> *Id.*

Following the same line of reasoning behind the present lawsuit against the United States, Cuba would not be able to get any damages from the United States stemming from the exhibition baseball game. Cuba does not have access to any United States funds that it could freeze, and the United States will most likely not pay any money that Cuba could demand. The foregoing means that if Valdez were to bring suit against the trespasser, he would be unable to receive a damage award. Therefore, it seems futile for United States litigants to sue the government of Cuba and vice versa given the fact that any monetary judgments will unlikely be enforced. However, as previously stated, if there are alternative reasons for filing suit, such as receiving damages in a post-Castro Cuba or using the suit as a means of protesting Castro's forty-year dictatorial rule, then it could be beneficial for plaintiffs with such expectations to file lawsuits.

Even though the game ended around midnight, the commotion caused by the long-awaited game did not cease as quickly. The Cuban national team defeated the Baltimore Orioles 12-6, and dominated the game from the second inning until the end of the game. The following morning, the Cuban national team returned to the island of Cuba, and the players were greeted by fans with open arms and handshakes. Even Fidel Castro met the team when they landed at the Cuban airport, and personally congratulated the umpire, Cesar Valdez, for his role in the game. However, six former Cuban players missed the flight home after the game with the Baltimore Orioles.<sup>326</sup> The six Cubans claimed that they had overslept, and had not intentionally failed to check out of the hotel and board the bus to the Baltimore-Washington International Airport with the rest of the team. They left for Cuba the following morning after assuring United States Immigration and Naturalization officials that their return was voluntary and their failure to depart was unintentional.<sup>327</sup>

However, a United States law enforcement official told the press that at least one person was being processed for possible asylum.<sup>328</sup> Roberto Herrera Bentancourt, a Cuban pitching coach and retired Cuban pitcher, walked into a police station the morning after the game and asked for political asylum. The Immigration

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<sup>326</sup> *Six Cubans Miss Flight Home; One Coach seeks Asylum*, (May 4, 1999) <<http://www.sportsline.com/u/ce/multi/0,1329,990085-52,00.html>>.

<sup>327</sup> *Six Cubans Return Home*, (May 5, 1999) <<http://www.sportsline.com/u/ce/multi/0,1329,995694-52,00.html>>.

<sup>328</sup> *Id.*

and Naturalization Service (INS) was contacted, and took custody of Herrera later that morning.<sup>329</sup>

In order for an alien to be eligible for asylum, he must meet the statutory requirements of Section 208 of the Immigration and Nationality Act (Act). Pursuant to Section 208(a) of the Act, the Attorney General may use her discretion in granting asylum to an alien who is physically present in the United States if the alien meets the statutory definition of a refugee.<sup>330</sup> A refugee is an individual "who is unable or unwilling to return to his or her native country or avail himself or herself of the protection of that country because of persecution or well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion."<sup>331</sup>

In order to establish eligibility for asylum, an applicant carries the burden of establishing past persecution or a well-founded fear of persecution.<sup>332</sup> A well-founded fear of persecution is not statutorily defined in the Act, but immigration courts have indicated that an applicant for asylum may establish a well-founded fear of persecution by showing that a reasonable person in his circumstances would fear persecution on account of one of the five grounds<sup>333</sup> specified in the Act.<sup>334</sup> Ordinarily, a well-founded fear must be established through objective evidence supporting either past persecution or risk of future persecution. Ideally, evidence should be presented via documentary evidence. However, in most instances, the alien is unable to secure documentary evidence, and therefore the alien's own testimony, without corroborative evidence, may sufficiently prove a well-founded fear of persecution where the testimony is plausible,

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<sup>329</sup> Although the details of Herrera's claim for asylum have not been released, it is quite important to discuss the requirement for an asylum claim.

<sup>330</sup> See INA §208(a); see also *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987).

<sup>331</sup> INA §101(a)(42)(A).

<sup>332</sup> *Matter of E-P-*, Int. Dec. 3311, at 2 (BIA 1997); INA § 101(a)(42)(A); INA §208(b).

<sup>333</sup> In order to meet the well-founded fear standard, the applicant must establish that: (1) he possesses a belief or characteristic that a persecutor seeks to overcome by means of punishment; (2) the persecutor could become aware that the alien possess the belief or characteristic; (3) the persecutor has the capability of punishing the alien; and (4) the persecutor has the inclination to punish the alien. *Matter of Acosta*, 19 I & N Dec. 211 (BIA 1985).

<sup>334</sup> See *Matter of Mogharrabi*, 19 I & N Dec. 439, 440-441 (BIA 1987); see also *INS v. Cardoza-Fonseca*, *supra* note 330.



detailed, internally consistent, consistent with the asylum application, and unembellished.<sup>335</sup>

There is no universally accepted definition of persecution, but in the United States, persecution is "harm or suffering inflicted on persons in order to punish them for possessing a belief or characteristic a persecutor seeks to overcome."<sup>336</sup> The object of harm must be to punish the victims for possessing one of the characteristics enumerated in the Act.<sup>337</sup> However, persecution does not encompass all treatment that society regards as unfair, unjust, or even unlawful.<sup>338</sup> Persecution encompasses confinement and torture, and can include severe economic deprivation that constitutes a threat to an individual's life or freedom.<sup>339</sup>

Since Herrera is from Cuba, he may qualify for the Cuban Adjustment Act (the "CAA"). The CAA, under Section 1, provides that the Attorney General may, in her discretion, adjust the status of certain Cuban refugees to that of legal permanent residents.<sup>340</sup> To be eligible for adjustment of status pursuant to the CAA, an alien who is a native or citizen of Cuba must: (1) have been inspected and admitted or paroled into the United States subsequent to January 1, 1959; (2) have been physically present in the United States for at least one year; (3) have made an application for adjustment; (4) be eligible to receive an immigrant visa; and (5) be admissible to the United States for permanent residence.<sup>341</sup> An alien who has been detained in a detention center, most commonly Krome, located in West Dade, Florida, and is then released, is considered paroled for purposes of the CAA. In

<sup>335</sup> See *Matter of B-*, Int. Dec. 3251 (BIA 1995). However, where the applicant for asylum has access to corroborative evidence, such as evidence should be submitted. See *Matter of M-D-*, Int. Dec. 3339 (BIA 1998); see also *Matter of Dass*, 20 I & N Dec. 120 (BIA 1989).

<sup>336</sup> *Matter of Acosta*, *supra* note 333, at 214.

<sup>337</sup> *INS v. Elias-Zacarias*, 502 U.S. 478, 482 (1991); *Matter of Fedorenko*, 19 I & N Dec. 57, 69 (BIA 1984).

<sup>338</sup> *Matter of V-T-S-*, Int. Dec. 3308 at 8 (BIA 1997). Also, general conditions of civil unrest, which affect the populace as a whole, are not sufficient to establish a basis for asylum. *Matter of E-P*, Int. Dec. 3311 (BIA 1997).

<sup>339</sup> *Matter of Salama*, 11 I & N Dec. 536 (BIA 1966); *Matter of Eusaph*, 10 I & N Dec. 453, 454-55 (BIA 1964).

<sup>340</sup> See §1, Act of November 2, 1966, P.L. 89-732, 80 Stat. 1161. (8 U.S.C. §1255 note).

<sup>341</sup> *Id.*

Herrera's case, once the INS releases him from its custody, he will have been inspected and either admitted or paroled into the United States. As a parolee, he will be eligible for adjustment under the CAA one year after his arrival date. As a result, if his asylum claim does not allow him to remain in the United States, it is likely that he will be allowed to adjust his status to that of a lawful resident under the CAA.<sup>342</sup>

A few hours before the first pitch of the game was thrown, the Los Angeles Dodgers issued a statement saying that the team was looking into allegations that the Dodgers arranged for secret tryouts for two Cuban Minor League players. The Dodgers organization denied the accusations concerning the secret tryouts, and said that it was "prepared to cooperate with the Commissioner's Office in addressing this matter."<sup>343</sup> If the accusations are indeed found to be true, then the team will be penalized for violating Major League Baseball rules that prohibit scouting in Cuba and violating the Embargo. The two players, Juan Carlos Diaz and Jose Perez petitioned "the Commissioner's Office to declare them free-agents on the grounds that they were signed illegally."<sup>344</sup>

The exhibition game may have had a significant impact on Major League Baseball, but it does not seem to have significantly affected relations between the United States and Cuba. On July 16, 1999, more than two months after the historic exhibition game between the United States and Cuba had finished, President Clinton renewed the waiver of Title III of the Helms-Burton Act for six more months.<sup>345</sup> This is the seventh time since the Helms-Burton Act has been in effect that President Clinton has waived the enactment of Title III.<sup>346</sup>

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<sup>342</sup> It can also be noted that Cubans who are ordered deported or removed from the United States usually never depart the United States. In order for an alien to be returned, his native country must accept him. In the case of Cuba, the Cuban government usually does not accept aliens that the United States wants to return to the island.

<sup>343</sup> *Dodgers Looking Into Allegations of Illegal Recruiting*, (May 3, 1999) <<http://www.sportsline.com/u/ce/multi/0,1329,987641-52,00.html>>.

<sup>344</sup> *Id.* No decisions about the validity of the claims have been made as of this point in time and an investigation is still being conducted. However, rumors have been circulating that the two players filed their complaints because they felt that the Dodgers had not offered them enough money.

<sup>345</sup> *Clinton Gives Cuba, Foreign Companies New Lawsuit Reprieve*, Deutsche Presse-Agentur 16:40:00, July 16, 1999.

<sup>346</sup> *Id.*

Title III of the Helms-Burton Act establishes a private right of action for any United States national to file a claim in a United States federal court against any third country national who traffics in expropriated property.<sup>347</sup> Through Title III, the United States Congress stated that trafficking in confiscated property provides a badly needed financial benefit to the Cuban government and undermines the foreign policy of the United States to bring democracy to the island of Cuba.<sup>348</sup> Title III was meant to serve as a warning to foreign nationals who continued to deal with Cuba and confiscated goods.

In July 1996, President Clinton utilized his authority, under section 306(b)(1) of the Helms-Burton Act, to waive the right to file claims under Title III.<sup>349</sup> The effect of the waiver was for it to serve as a cooling-off period whereby foreign nationals could dispose of expropriated assets and property and continue to work with the United States in formulating political and economic reform in Cuba.<sup>350</sup> If and when Title III does go into effect, and if federal jurisdiction can be asserted over a third party defendant, then a plaintiff would have to establish two elements to prove liability, to wit: (1) that the defendant was trafficking in the properties at issue after the plaintiff's rights to action accrued under the statute, and (2) that the last action of trafficking occurred less than two years before the action was initiated.<sup>351</sup> The plaintiff will then be able to recover costs, attorney's fees, and up to three times the amount of the claim or the fair market value of the property.<sup>352</sup>

President Clinton explained his waiver of Title III to be in America's national interest.<sup>353</sup> However, companies such as Coca-Cola and Colgate-Palmolive, just two of the many companies that had about 1.8 billion dollars worth of assets confiscated when Castro came to power in 1959, do not agree with President Clinton. These companies are conducting legal investigations in order to explore how they can recover their investments. Until Title III is

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<sup>347</sup> See *supra* note 187.

<sup>348</sup> *Id.*

<sup>349</sup> See Helms-Burton Act tit. III, §306(b)(1), 100 Stat. at 821 (codified at 22 U.S.C. §6082(a)). However, if and when Title III is put into effect, plaintiffs will need to wait an additional three months before they can file lawsuits.

<sup>350</sup> See *supra* note 187.

<sup>351</sup> See 22 U.S.C. §6082(a)(5)(B).

<sup>352</sup> *Id.*

<sup>353</sup> See *supra* note 345.

put into effect, these companies cannot take any legal actions against any foreign counterparts who deal in or use confiscated property.<sup>354</sup> However, United States trading partners who allegedly deal in expropriated goods, said that they will not tolerate being sued and that they would retaliate by filing counter-lawsuits.<sup>355</sup> It appears that the exhibition game between Cuba and the United States did not calm the waters between Cuba and the United States after all.

## IX. CONCLUSION

There have been numerous proposals on how to handle the influx of foreign baseball players entering the Major Leagues. One proposal, from Marlins' General Manager Dave Dombrowski, would be for all players, regardless of where they previously resided, to enter baseball through a common draft. Dombrowski's rationale is that "[w]hat's good for baseball is if they come into the whole system and are not free to sign with everybody, . . . otherwise, large market clubs have an advantage."<sup>356</sup> Another similar proposal is to have "a universal draft, inclusive of the Caribbean, Central and South America, Europe and Australia. (Japan would be excluded by an existing agreement)."<sup>357</sup> This idea is supposedly gaining momentum, but such a "reform is likely to encounter resistance from the Players' Union, which opposes restrictions on movement of players."<sup>358</sup> Nonetheless, it is doubtful that the union would present too much resistance because the universal draft would free up money for the players already in the League.<sup>359</sup>

A proposal that has been gaining the support of many fans is to equalize the scouting and player development budgets for all of

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<sup>354</sup> *Id.* These companies have taken a dual stance on this issue. The companies are in support of lifting the Embargo, but at the same time, if the Embargo must be enforced, then they want Title III to be in effect.

<sup>355</sup> The United States has responded to this threat by telling the Europeans that if Europeans sued the United States in the courts of the World Trade Organization, then the United States would withdraw entirely from the World Trade Organization. However, as of now, no lawsuits have been filed and the United States is still a member of the World Trade Organization.

<sup>356</sup> Martinez, *supra* note 217.

<sup>357</sup> *Id.*

<sup>358</sup> *Id.*

<sup>359</sup> *Id.*

the teams in the Major Leagues.<sup>360</sup> This would give all of the teams the same opportunity to scout foreign players. A team that can afford to spend more money on foreign scouts will not have a distinct advantage over teams that cannot afford to do so. This idea will predictably meet considerable resistance from wealthier teams, and will gather support from less affluent ones.

Although there is no solution on how to handle Cuban baseball players who defect to the United States, the best course of action for Major League Baseball is to continue to explore all of the opportunities and alternatives that are available. What effect will the discussion of Major League Baseball teams going to Cuba to play baseball have on Cuban baseball players who defect to the United States? Will agents like Joe Cubas have to find a new loophole to get their players into baseball as free-agents? Will Major League Baseball have to change its definition of a resident within the United States? Will Major League Baseball have to initiate a policy forcing all foreign players into the draft? Did the exhibition games played between the United States and Cuba open the flood gates for games to be played with Cuba? Will the Cuban government allow Cuban players to leave the island to play professional baseball in the Major Leagues?

The exhibition games between the Orioles and the Cuban national team definitely opened the possibility for more games to be played between Major League teams and Cuba in the future. Unfortunately, what is in store for the future is quite speculative, and definite answers cannot be provided at this time. However, these are situations that cannot be ignored and must be dealt with in the near future.

What can be seen by the exhibition games between the Baltimore Orioles and the Cuban national team is that Major League Baseball is not just a mere competition between two North American teams. Rather, Major League Baseball is a business that is rapidly expanding throughout the world and that can teach us about a myriad of international and domestic legal issues. Baseball can be used to study the Helms-Burton Act, lawsuits against Cuba, immigration law, and many other legal concepts. Who would have thought that a sport that originated as a mere game would evolve into such a complex, international legal business?