

ANTITRUST LAW: PROCEDURAL SAFEGUARD  
REQUIREMENTS IN CONCERTED REFUSALS TO  
DEAL: AN APPLICATION TO PROFESSIONAL  
SPORTS—*DENVER ROCKETS V. ALL-PRO  
MANAGEMENT, INC. (C.D. CAL. 1971).*

Professional sports are a continually growing source of entertainment for millions of Americans. Going hand in hand with this growth has been a number of complex and heretofore unresolved legal disputes. Perhaps the most important of these disputes is the role that antitrust laws will play in the area of professional sport leagues and associations. For example, it is argued that provisions such as reserve and option clauses, college player drafts and eligibility requirements are designed to increase integrity and competition in the leagues, a necessity for maximum fan enthusiasm and a successful sports industry. Others believe that these regulations are unduly restrictive towards athletes, are necessary only to increase the profit of the hierarchy of professional sports, and are violative of the antitrust laws. The debate and litigation is continuing. In *Flood v. Kuhn*,<sup>1</sup> a case which many thought would provide a solution in this area, the Supreme Court of the United States failed once again to give an adequate answer to the question of antitrust laws as applied to professional sports.<sup>2</sup> Nonetheless, the extent of the antitrust laws' role in the sports industry must be decided if one is to chart the future of professional sports in this country. A possible indication of future judicial response in this area has emerged in *Denver Rockets v. All-Pro Management, Inc. (Haywood)*.<sup>3</sup> In that case, the court found an established National Basketball Association<sup>4</sup> rule to be in violation of

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1. 407 U.S. 258 (1972).

2. The court rested its decision on an exemption that baseball has long enjoyed from the antitrust laws. See *Federal Baseball Club v. National League*, 259 U.S. 200 (1922); *Toolson v. New York Yankees Inc.*, 346 U.S. 356 (1953).

3. 325 F. Supp. 1049 (1971). The case was concerned with litigation between Spencer Haywood, the National Basketball Association and the Denver Rockets.

4. Hereinafter cited as N.B.A.

the antitrust laws and declared the rule illegal. The significance of the *Haywood* court's analysis is found in the tremendous impact that the decision should have on the entire professional sport industry.

The *Haywood* case revolves around the N.B.A.'s four-year college rule.<sup>5</sup> The rule does not permit an athlete to play with any N.B.A. team until his high school class would graduate from college, regardless of the fact that a particular athlete may choose not to attend college. This provision is designed to prevent professional teams from negotiating for a ballplayer's services while he remains in school, presumably for the protection of the student-athlete. An interesting series of occurrences led Spencer Haywood to attack this rule in a court of law.

In 1970, Haywood<sup>6</sup> entered into a lucrative contract with the Denver Rockets of the American Basketball Association.<sup>7</sup> When Haywood discovered that he would never realize the full compen-

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5. The specific provisions under attack are Sections 2.05 and 6.03 of the National Basketball Association By-laws.

Section 2.05: "*High School Graduate, etc.* A person who has not completed high school or who has completed high school but has not entered college, shall not be eligible to be drafted or to be a Player until four years after he has been graduated or four years after his original high school class has been graduated, as the case may be, nor may the future services of any such person be negotiated or contracted for, or otherwise reserved. Similarly, a person who has entered college but is no longer enrolled, shall not be eligible to be drafted or to be a Player until the time when he would have first become eligible had he remained enrolled in college. Any negotiations or agreements with any such person during such periods shall be null and void and shall confer no rights whatsoever; nor shall a Member violating the provisions of this paragraph be permitted to acquire the rights to the services of such person at any time thereafter."

Section 6.03: "*Persons Eligible for Draft.* The following classes of persons shall be eligible for the annual draft:

- a) Students in four year colleges whose classes are to be graduated during the June following the holding of the draft;
- b) Students in four year colleges whose original classes have already been graduated, and who do not choose to exercise remaining collegiate basketball eligibility;
- c) Students in four year colleges whose original classes have already been graduated if such students have no remaining collegiate basketball eligibility;
- d) Persons who become eligible pursuant to the provisions of Section 2.05 of the By-laws."

6. Haywood is a basketball player with tremendous talent. His playing ability has not and can not be questioned. Among his accomplishments are: Junior College and Major College All-American, outstanding basketball performer in the 1968 Olympics, leading scorer, rebounder, Rookie of the Year, and Most Valuable Player in the American Basketball Association during the 1969-70 season.

7. 325 F. Supp. at 1052-1054.

sation promised him, he rescinded his contractual ties with the Rockets, refusing under any circumstances to render his services for that team. Late in 1970, Haywood signed a contract with the Seattle Supersonics of the rival N.B.A.; however, N.B.A. Commissioner Walter Kennedy, noting that Haywood's high school class had yet to graduate from college, invoked the four-year rule, thereby declaring Haywood ineligible to compete for the Seattle team.<sup>8</sup> The issue was whether application of antitrust provisions would render the four-year rule illegal. Judge Ferguson, issuing a partial summary judgment in favor of Haywood, stated

1. Section 2.05 and 6.03 of the by-laws of the National Basketball Association are declared to be illegal under Section 1 of the Sherman Act. 15 U.S.C. §1<sup>9</sup>

The *Haywood* decision left no doubt that Section 1 of the Sherman Act<sup>10</sup> was applicable to professional basketball. In dealing with this preliminary issue, the court noted that for the Act to apply: ". . . (1) There must be some effect on 'trade or commerce among the several States', and (2) there must be sufficient agreement to constitute a 'contract, combination . . . or conspiracy' 15 U.S.C. § 1."<sup>11</sup> There can be little serious argument with the court's reasoning that the nationwide activity of professional basketball, specifically the N.B.A., coupled with the agreement of concerted action on the part of the N.B.A. teams, through the league's by-laws, clearly brings professional basketball under § 1 of the Sherman Act.<sup>12</sup> Although it is evident that the N.B.A.'s four-year rule falls under the auspices of the Sherman Act, the question of whether the rule is in violation of the Act remains.

Judge Ferguson defined the four-year rule in terms of a con-

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8. After much litigation, Haywood was granted an injunction which allowed him to compete for the Seattle Supersonics pending final determination of his action. *Haywood v. National Basketball Association*, 401 U.S. 1204 (1971).

9. 325 F. Supp. at 1067.

10. "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. . ." Sherman Act §1, 26 Stat. 209 (1890), as amended 15 U.S.C. §1-7 (1970).

11. 325 F. Supp. at 1062.

12. The lack of interstate commerce was the rationale used to grant baseball its exception to the antitrust laws, and is generally regarded as an aberration. See *Federal Baseball Club v. National League*, 259 U.S. 200 (1922); *Toolson v. New York Yankees Inc.*, 346 U.S. 356 (1953).

certed refusal to deal.<sup>13</sup> That is, “. . . the actors at one level of a trade pattern (NBA team members) refuse to deal with an actor at another level (those ineligible under the NBA’s four year rule).”<sup>14</sup> The fact that the N.B.A. will deal with any athlete if he meets the prerequisite condition of being out of high school for four years makes little difference, as it has long been held that a group’s refusal to deal except on certain terms falls under the definition of a concerted refusal to deal.<sup>15</sup> At this point in *Haywood*, the court, for the first time, defined the principal controversy in the case as being whether the N.B.A. could justify its actions by alleging reasonableness and necessity or whether all concerted refusals to deal are illegal *per se*.

*Haywood* refused to extend a test of reasonableness to all group boycotts. This so-called rule of reason was first introduced early in the history of antitrust law by *Standard Oil Co. v. U.S.*<sup>16</sup> which sought to define antitrust violations in terms of weighing the possible justifications of an act against the potential harm which it may cause.<sup>17</sup> In following what has become a standard argument in order to discount this theory, *Haywood* noted that a determination of all relevant facts and individual motives in many cases, *Haywood* included, would be a tremendously difficult, if not impossible, task for a court of law. Moreover, due to the fact that this apparent difficulty outweighs any potential benefits derived from concerted refusals to deal, group boycotts are one category of antitrust violations held to be illegal *per se*.<sup>18</sup>

*Fashion Originators’ Guild v. F.T.C.*<sup>19</sup> and *Klor’s, Inc. v. Broadway-Hale Stores, Inc.*<sup>20</sup> were cited in *Haywood* as cases supporting the premise that all concerted refusals to deal are illegal *per se*,<sup>21</sup>

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13. Throughout this article the term “group boycott” will be used interchangeably with the term “concerted refusal to deal.”

14. 325 F. Supp. at 1061.

15. *Paramount Famous Lasky Corp. v. United States*, 282 U.S. 30 (1930).

16. 221 U.S. 1, 60 (1910).

17. “The true test of legality is whether the restraint imposed is such as merely regulates and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition. To determine that question the court must ordinarily consider the facts peculiar to the business to which the restraint is applied; its condition before and after the restraint was imposed; the nature of the restraint and its effect, actual or probable. The history of the restraint, the evil believed to exist, the reason for adopting the particular remedy, the purpose or end sought to be attained, are all relevant facts.” *Chicago Board of Trade v. United States*, 246 U.S. 231, 238 (1918).

18. 325 F. Supp. at 1063-1064.

19. 312 U.S. 457 (1941).

20. 359 U.S. 207 (1959).

21. *Standard Manufacturing Co. v. United States*, 226 U.S. 20 (1912), may have been one of the first cases expounding such a theory. The court speak-

and there is little doubt that these cases did, at least in dictum, stand for such a premise. In *Fashion Originators*, possible good intentions or valid moral reasons were insufficient to offset the illegality of a group boycott.<sup>22</sup> In *Klor's* the court found that group boycotts “. . . have not been saved by allegations that they were reasonable in the specific circumstances. . . .”<sup>23</sup> Thus, there is illegality in these cases regardless of reasonable motives or intent. Although *Fashion Originators* and *Klor's* do not stand alone,<sup>24</sup> such a strict approach to an area of law presents potential problems. For example, in *Molinas v. National Basketball Association*,<sup>25</sup> Molinas, a professional basketball player was barred from further participation in the N.B.A. for admittedly gambling on league games. This league action was in effect a concerted refusal to deal on the part of the N.B.A. against Molinas. If a *per se* approach were adopted by the court, as Molinas argued it should be, the action taken by the N.B.A. would necessarily be declared illegal, dealing a severe blow to the integrity of the sport. Perhaps in recognition of this problem, the *Molinas* court completely avoided any mention of the *per se* doctrine and instead explained that the N.B.A.'s ruling was clearly reasonable and should be upheld.<sup>26</sup>

Other cases support *Molinas'* apparent application of the rule of reason in group boycott situations. In *Deesen v. Professional Golf Association of America*<sup>27</sup> the governing body of professional golf chose to take the “approved player” status from golfer Herbert Deesen, thereby making it impossible for him to pursue a permanent career as a touring golf professional. Although the Association's action was not arbitrary,<sup>28</sup> Deesen argued that since there

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ing of the Sherman Act, stated that the Act “can't be evaded by good motives. The law is its own measure of right and wrong, of what it permits, or forbids, and the judgment of the courts cannot be set up against it in a supposed accommodation of its policy with the good intention to parties, and it may be, of some good results.” *Id.* at 49.

22. 312 U.S. at 468.

23. 359 U.S. at 212.

24. See, e.g., *White Motor Co. v. United States*, 372 U.S. 253, 263 (1963); *Washington State Bowling Proprietors v. Pacific Lanes, Inc.*, 356 F.2d 371 (9th Cir. 1966), *cert. denied*, 384 U.S. 963 (1966).

25. 190 F. Supp. 241 (1961).

26. *Id.* at 244.

27. 358 F.2d 165 (9th Cir. 1966), *cert. denied*, 385 U.S. 846 (1966).

28. The Professional Golf Association took care in considering all relevant facts concerning the particular circumstances surrounding Deesen prior to reaching their decision. *Id.* at 167-168.

was a concerted refusal to deal on the part of the Professional Golf Association, the action should be illegal *per se*. The court, however, held that an association is entitled to adopt reasonable measures in order to promote integrity and competition in the sport and that the action against Deesen was such a measure.<sup>29</sup> In *Florists' Nationwide Telephone Delivery Network v. Florists' Telegraph Delivery Association* (F.N.T.D.N. v. F.T.D.A.)<sup>30</sup> the rule of reason was applied<sup>31</sup> in upholding certain regulations of F.T.D., defined by the court as group boycotts, which allegedly impaired F.N.T.D.N.'s business. That court specifically rejected the *per se* theory and distinguished itself from *Fashion Originators* and *Klor's* by stating that "[t]he classes of restraints involved [in *Fashion Originators* and *Klor's*] were on their face unduly restrictive in relation to the particular industry."<sup>32</sup> This authority would indeed have allowed the *Haywood* court to determine the legality of the four-year rule in light of the rule of reason.

Although *Haywood* refuted the rule of reason, the court did foresee that possible problems might arise through the use of a strict *per se* approach, thereby necessitating a compromise position. *Haywood* found an answer in *Silver v. New York Stock Exchange*.<sup>33</sup> In that case the Supreme Court of the United States adopted the position that group boycotts are illegal *per se* ". . . absent any justification derived from the policy of another statute or otherwise."<sup>34</sup> Commentators have agreed that the term "otherwise" refers to industries, such as sport leagues and associations, whose structure necessitates self-regulation.<sup>35</sup> Although the leagues may enjoy exemption from *per se* illegality, *Silver* still requires more than merely a test of reasonable actions with minimum restraint. Specifically, *Silver* pronounces a requirement of procedural due process if a concerted refusal to deal is to be upheld by the courts as justifiable. Following this line of reasoning, *Haywood* adopts a

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29. *Id.* at 170.

30. 371 F.2d 263 (7th Cir. 1967), *cert. denied*, 387 U.S. 909 (1967).

31. "We perceive nothing in the case which impairs the validity of *Board of Trade*, *supra*." *Id.* at 269; see *Chicago Board of Trade v. United States*, 246 U.S. 231 (1918).

32. 371 F.2d at 268.

33. 373 U.S. 341 (1963).

34. *Id.* at 348.

35. See Bird, *Sherman Act Limitation on Non-Commercial Concerted Refusals to Deal*, 1970 DUKE L.J. 247, 290 (1970); Note, *Association Exclusionary Practices: An Affirmative Role for the Rule of Reason*, 66 COLUM. L. REV. 1486, 1505-1506 (1966). "A similar standard would prevail where collective action is inherent in the basic structure of the industry; a goal prompted by the economic necessity of ordering competition within the market would be justified." *Id.*

three part exception to the *per se* rule: (1) There must be legislation allowing an industry to regulate itself or the structure of an industry must necessitate self-regulation; (2) The goals and implementation of the collective action must be reasonable and restraint must be at a minimum and (3) Procedural due process must be afforded to a "victim" of a group boycott.<sup>36</sup> If these points are satisfied then, and only then, will the rule of reason be applicable to group boycott situations and justification for the act may be possible.<sup>37</sup> Since there was no opportunity for Haywood to present any case to the N.B.A., the four-year rule failed to meet the procedural due process requirement.

There are several reasons presented by *Silver*, and adopted *sub silentio* by *Haywood*, which support the need for a procedural due process requirement.<sup>38</sup> There is little doubt that mandatory procedural due process provisions will heighten the integrity of an association, be it the New York Stock Exchange or the National Basketball Association by keeping unsupported accusations and actions at a minimum,<sup>39</sup> and providing an antitrust court with a better foundation on which to base its decision.

[T]he affording of procedural safeguards not only will substantively encourage the lessening of anticompetitive behavior outlawed by the Sherman Act but will allow the antitrust court to perform its function effectively.<sup>40</sup>

There are objections to the procedural due process requirement of *Silver* which the *Haywood* court failed to enunciate. A specific problem was raised in *Silver's* dissenting opinion to the effect that ". . . there might be cases in which the public interest would demand that at least preliminary disciplinary action be taken with swift effectiveness."<sup>41</sup> Such a situation may well have occurred in *Molinas* where there was a necessity for a self-admitted gambler

36. 325 F. Supp. at 1064-1065.

37. It appears that if all three of the points that *Haywood* puts forth have been met, legality under the rule of reason will follow.

38. 373 U.S. at 362-363.

39. The dispute between the N.B.A. and Connie Hawkins is a sobering example of the tremendous harm that can be done by dispensing with procedural safeguards. See D. WOLF, FOUL! THE CONNIE HAWKINS STORY (1972).

40. 373 U.S. at 363.

41. *Id.* at 368 (Stewart, J., dissenting).

to be deemed ineligible to participate in the N.B.A. in order to uphold the integrity of basketball. Although an opportunity to be heard necessitated by procedural due process need not be overly time consuming, it could well be argued that cases such as *Molinas* demand immediate action. The majority opinion in *Silver* also touched upon this problem by concluding that the Security Exchange could offer no justification for acting against Silver without affording him notice and an opportunity to be heard.<sup>42</sup> Is the court conceding that the lack of procedural due process would be acceptable if justification were offered? While the court noted that it was not the antitrust laws which required procedural safeguards, justification of a concerted refusal to deal was considered to be impossible without such a requirement.<sup>43</sup> Perhaps *Silver's* due process requirement should be looked at as just one additional factor which may be considered in applying the rule of reason to a group boycott situation. However, the *Haywood* court, without addressing itself to this problem, agreed with the majority view in this area of the law: Justification of a concerted refusal to deal without procedural due process is not possible. Thus, *Haywood*, although cognizant of the exception from a *per se* approach for the professional basketball leagues, declared the four-year rule illegal due to lack of procedural safeguards and without giving any consideration to the reasonableness, necessity or intent of the rule.

*Haywood* may have attempted to add some justification for its decision in an attempt to avoid controversy in both the legal and sport circles.<sup>44</sup> The court tried to reconcile two seemingly opposite decisions in the area of group boycotts, *Deesen* and *Washington State Bowling Proprietors Inc. v. Pacific Lanes Inc.*<sup>45</sup> In the former decision, as previously mentioned, a professional golfer's "approved player" status was removed and the action was upheld by the court. *Haywood* analyzed this case by stating: a) the industry structure of professional golf necessitated self-regulation, b) the specific action taken by the Professional Golf Association was reasonably related to a proper goal (increased competition in tournaments) and c) *Deesen* was given an opportunity to present his

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42. *Id.* at 365.

43. *Id.* at 364-365.

44. Indeed controversy did arise. For example, Pete Rozelle, Commissioner of the National Football League, reacted to the *Haywood* decision by stating, "I can't believe a practice that is for the protection of the colleges could be legally ruled invalid. If it could be, of course, it would no doubt destroy college football and basketball." quoted in *SPORTS ILL.*, April 12, 1971, at 35. Obviously Mr. Rozelle's view, and many others of similar nature, are a bit extreme.

45. 356 F.2d 371 (9th Cir. 1966), *cert. denied*, 384 U.S. 963 (1966).



case before a Professional Golf Association committee.<sup>46</sup> In *Washington Bowling* the association restricted its tournaments to bowlers who had not participated in organized bowling in nonmember establishments.<sup>47</sup> That court refused to allow the association's actions and declared such practice illegal.<sup>48</sup> Again, *Haywood* analyzed this decision in terms of its earlier reasoning, explaining that in *Washington Bowling* there was no provision for procedural due process as found in *Deesen*, thereby rendering the decision consistent with *Haywood*.<sup>49</sup> This attempt at reconciliation, although superficially valid, is not entirely in accord with the cases themselves. In *Deesen* the court makes no mention of a *per se* approach to group boycotts, or any exceptions thereto, instead relying solely on the rule of reason.<sup>50</sup> Conversely, in *Washington Bowling* the court followed a strict *per se* theory, without regard to any requirement of procedural safeguards,<sup>51</sup> and further discounted the possibility that reasonableness of the association's actions was relevant to the outcome.<sup>52</sup> Taken together, the decisions indicate that, regardless of *Haywood's* analysis, there are several approaches to the legality of concerted refusals to deal. Moreover, if *Haywood* is attempting to show that its line of reasoning has been unconsciously followed in previous cases, an impossible task is faced in reconciling *Molinas*. Although *Molinas's* admission was a distinguishing feature of that case, procedural due process requirements were nonetheless found to be unnecessary, at least in this one instance.<sup>53</sup>

*Haywood* briefly concluded that even if procedural safeguards were not required, the four-year rule should be declared illegal. The court commented on the broadness of the rule, which applied to athletes who do not desire to go to college, and concluded that

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46. 325 F. Supp. at 1065.

47. The reason for such a provision was to prevent "sandbagging," a practice of acquiring large handicaps for tournament play. 356 F.2d at 374.

48. *Id.* at 376.

49. 325 F. Supp. at 1065.

50. 358 F.2d at 170.

51. The court further notes that a *per se* approach should be applied to both commercial and non-commercial boycotts, 356 F.2d at 376. *But see* *United States v. United States Trotting Association*, 1960 Trade Cas. ¶ 69,761 (1960).

52. 356 F.2d at 376.

53. 190 F. Supp. at 242.

the four-year rule extends beyond what would be considered a minimum restraint.<sup>54</sup> Further, the financial necessity of the rule to the owners,<sup>55</sup> the desire to allow athletes to complete their education, and the provision of an inexpensive farm system for the N.B.A. do not change the legal status or the four-year rule under any analysis.<sup>56</sup>

Although *Haywood* could have applied the rule of reason to the four-year rule,<sup>57</sup> and probably achieved the identical result, the theory which *Haywood* expounded was supported by recent Appellate and Supreme Court decisions and was based on sound legal reasoning. It is also evident that *Haywood*, by necessitating procedural due process, provides future antitrust courts with less discretion in determining the merits of a group boycott, as lack of notice and an opportunity to be heard will result in the immediate illegality of the concerted refusal to deal. Therein lies the true significance of *Haywood*: viz., how will *Haywood's* rejection of the more flexible rule of reason affect future antitrust problems in the group boycott area, especially in the field of professional sports?

One important ramification of *Haywood* is the potential illegality of the player draft in professional sports. The drafting of players into professional leagues is practiced by all major team sports in the United States. Although each sport may vary its procedure slightly, the player draft basically allows the selection of eligible athletes by teams in inverse order of their previous season's standing in the league. Once selected, no other team may negotiate for the athlete's services. The purpose of this procedure is to allow weaker teams to increase their ability by acquiring the top amateur athletes, thereby increasing competition throughout the league. Whether the draft actually succeeds in its goal is arguable, and for the purposes of this article, immaterial. What is beyond dispute is that the draft results in a situation in which a player may negotiate with only one team in each league.<sup>58</sup> This practice, besides

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54. 325 F. Supp. at 1066.

55. "There is nothing in the legislative history or policies of the Sherman Act to indicate that individuals should be privileged to form groups to inflict economic harm on others for their own benefit." Bird, *Sherman Act Limitations on Non-Commercial Concerted Refusals to Deal*, *supra* note 35, at 263.

56. 325 F. Supp. at 1066.

57. See p. 417-418 *supra*.

58. This results in negotiating with only one team in the country, as baseball and football have but one major league. Basketball appears to be in the process of following suit as the proposed merger between the N.B.A. and the A.B.A. has passed the Senate Judiciary Committee, and the culmination of the proposal appears to be merely a matter of time.

restraining an athlete's freedom of choice,<sup>59</sup> eliminates competitive bidding for an athlete's services, thus restricting his salary potential. It is also evident that there is a concerted refusal on the part of the league members to negotiate with an athlete drafted by another team. This is clearly a situation wherein league teams, in concert, refuse to deal with a player unless the particular team has, in fact, drafted the player and is thus a group boycott,<sup>60</sup> much the same as is the four-year rule.<sup>61</sup> It follows that regardless of the reasonableness or benefit of the player draft to professional team sports, under the reasoning of *Haywood*, the lack of procedural safeguards in player drafts will result in the compulsory determination that the practice is illegal under Section 1 of the Sherman Act.<sup>62</sup>

If a court does, in fact, follow *Haywood's* lead in the case of the player draft, professional sport leagues may be forced to revise their strictures. Certainly it is possible that Congress will grant an antitrust exemption for the draft, in an attempt to "save" professional sports. The leagues may revise the draft procedure so as to conform to the law, or athletes may rely on collective bargaining procedures to enact fundamental changes. It is also conceivable that the leagues will be forced to adjust themselves so they are able to operate effectively without the aide of the player draft. This latter alternative may prove to be a difficult task. Without the player draft, and with competitive bidding among all teams for all players, it is possible that outrageously inflated contractual offers to athletes may result in driving financially poorer teams out of the league, and, in the long run, create a small group of "super-teams." However, it is just as plausible that team own-

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59. Sen. Sam J. Ervin (D-N.C.) stated that the draft provisions "are comparable to the newspaper profession deciding that a college journalism graduate could either work for the newspaper in Anchorage, Alaska, at the salary offered or not work at all." quoted in *BUSINESS WEEK*, Oct. 9, 1971, at 60.

60. The player draft has been categorized in other terms. See Jacobs and Winters, *Antitrust Principles and Collective Bargaining by Athletes: Of Super Stars in Peonage*, 81 *YALE L.J.* 1 (1971); Note, *The Super Bowl and the Sherman Act: Professional Team Sports and the Antitrust Laws*, 81 *HARV. L. REV.* 418, 425 (1968).

61. See p. 415-416 *supra*.

62. "There is substantial probability in light of all the evidence presented to this Court that the so-called 'college draft system' . . . constitutes a violation of the antitrust laws." 325 F. Supp. at 1056.

ers, recognizing a potential problem, will revert to a financially prudent and businesslike approach to team management in hopes of keeping the professional league structure much the same as we know it today. In any event if *Haywood's* rationale is adopted by future courts, some changes in the structure of professional sports must follow.<sup>63</sup>

In conclusion, the illegality of the four-year rule represents a significant step toward wider application of the antitrust laws to professional sports. If *Haywood's* reasoning is followed, established procedures of the sports industry, such as the player draft, may also be declared illegal. Such occurrences will certainly lead to new problems which the hierarchy of sports must face. In fact, the key to the future success or failure of professional sports may well be found in the reaction made by team and league officials to these new challenges.

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63. Among the changes, other than the player draft, will be the necessity of applying procedural safeguards to all eligibility and disciplinary regulations. Such a requirement does not seem to put any undue burden upon the leagues and few serious problems should result. Reserve and option clauses may also be declared illegal under *Haywood's* rationale unless collective bargaining or congressional action intercedes.