A NEW BALL GAME: HISTORY OF LABOR RELATIONS IN THE NATIONAL BASKETBALL ASSOCIATION (1964-1976)

A Master's Thesis

by

OGÜN CAN ÇETİNER

Department of History

İhsan Doğramacı Bilkent University

Ankara

August 2020

OGÜN CAN ÇETİNER

A NEW BALL GAME

Bilkent University 2020

To my family

A NEW BALL GAME: HISTORY OF LABOR RELATIONS IN THE NATIONAL BASKETBALL ASSOCIATION (1964-1976)

The Graduate School of Economic and Social Sciences

of

İhsan Doğramacı Bilkent University

by

OGÜN CAN ÇETİNER

In Partial Fulfillment of the Requirements for the Degree of

MASTER OF ARTS

THE DEPARTMENT OF HISTORY

İHSAN DOĞRAMACI BİLKENT UNIVERSITY

ANKARA

August 2020

ABSTRACT

A NEW BALL GAME: HISTORY OF LABOR RELATIONS IN THE NATIONAL BASKETBALL ASSOCIATION (1964-1976)

Çetiner, Ogün Can

M.A., Department of history

Supervisor: Asst. Prof. Dr. Owen Miller

August 2020

Professional basketball players in the National Basketball Association (NBA) founded the National Basketball Players Association (NBPA) in 1954. The first collective act of professional basketball players under the NBPA was a threat to strike just before the 1964 NBA All-Star Game. Eventually, they had achieved to get the pension plan that they hoped for many years. Larry Fleisher, the general counsel of the NBPA, and Oscar Robertson, the president of the NBPA, were determined to abolish the reserve clause in basketball. The reserve clause restrained the free movement of professional athletes for many years, and NBA players were the ones who established staunch struggle against it, in various ways, including litigation. The NBPA filed a class-action lawsuit, also known as the Oscar Robertson lawsuit, against the merger between two basketball leagues, the NBA, and the ABA (American Basketball Association) in April 1970. Thus, professional basketball players were able to prevent the merger. After five years, Judge Robert L. Carter ruled that the reserve clause was illegal. Eventually, the NBA and the NBPA reached a settlement and removed the reserve clause from their collective bargaining agreement. This thesis argues that the NBA players gained the right of free agency through strong leadership and collective bargaining despite proven customer discrimination. The NBPA's actions demonstrate that it is possible to gain rights without a strike.

Key words: Collective Bargaining Agreement, Free Agency, NBA, Oscar Robertson, The Reserve Clause

ÖZET

YENİ BİR MAÇ: AMERİKAN ULUSAL BASKETBOL LİGİ'NDE İŞÇİ VE İŞVEREN İLİŞKİLERİ TARİHİ (1964-1976)

Çetiner, Ogün Can

Yüksek Lisans, Tarih Bölümü

Tez Danışmanı: Dr. Öğr. Üyesi Owen Miller

Ağustos 2020

Amerikan Ulusal Basketbol Ligi'ndeki (NBA) profesyonel basketbolcular 1954'te Ulusal Basketbol Oyuncuları Birliği'ni (NBPA) kurdu. Basketbolcuların NBPA çatısı altındaki ilk toplu eylemi, 1964 NBA All-Star maçında hemen önceki bir grev tehdidiydi. Böylece, yıllarca bekledikleri emeklilik planını elde etmeyi başardılar. NBPA genel danışmanı Larry Fleisher ve NBPA başkanı Oscar Robertson, basketboldaki serbest dolaşımı engelleyen rezerv maddesini kaldırmaya kararlıydı. Bu madde, profesyonel sporcuların serbest dolaşımı uzun yıllar engelledi ve NBA oyuncuları buna karşı, hukuksal yollar da dahil, sıkı bir mücadeleye giriştiler. Oyuncular birliği, rakip iki basketbol ligi olan NBA ve ABA (Amerikan Basketbol Birliği) arasındaki birleşmeye karşı, Oscar Robertson davası olarak da bilinen, bir toplu dava açtı. Böylece profesyonel basketbolcular iki ligin birleşmesini engelleyebildiler. Beş yıl sonra Yargıç Robert L. Carter, rezerv maddesinin hükümsüz olduğuna kanaat getirdi. Nihayetinde, NBA ve NBPA anlaşmayı varıp, rezerv maddesini toplu iş sözleşmelerinden çıkardılar. Bu tez, kanıtlanmış müşteri ayrımcılığına rağmen, NBA oyuncularının güçlü liderlik ve toplu pazarlık yoluyla serbest dolaşım hakkı elde ettiklerini savunmaktadır. Oyuncular sendikasının eylemler, greve gitmeden de hak elde etmenin mümkün olduğunu göstermektedir.

Anahtar Kelimeler: NBA, Oscar Robertson, Rezerv Maddesi, Serbest Dolaşım Hakkı, Toplu İş Sözleşmesi

ACKNOWLEDGMENTS

I would like to thank my advisor Asst. Prof. Dr. Owen Miller, especially for his enthusiasm about helping my thesis and my aspirations for the last two years. I would like to also thank Asst. Prof. Dr. Kenneth Weisbrode, for his guidance and patience during the process of writing this thesis. His utmost support and meticulous approach to the study of history have been invaluable throughout my master's degree. I would like to thank my examining committee member Assoc. Prof. Dr. Hakan Övünç Ongur for taking the time to read and evaluate my thesis.

The Department of History in Bilkent University has provided me with a marvelous and challenging postgraduate experience. Many thanks go to Asst. Prof. Dr. Paul Latimer for his generous help anytime I need, Asst. Prof. Dr. Oktay Özel and Professor Özer Ergenç for many enjoyable Ottoman History courses, Asst. Prof. Dr. Luca Zavagno for his eye-opening Modern Europe course and Asst. Prof. Dr. David E. Thornton for teaching many aspects of methodology in history. A special thanks to Füsun Tevhide Yurdakul from Bilkent University Library for her patience—despite my endless requests—and for her assistance with resources.

I would like to thank my friends and colleagues for all their help. Many thanks to my proofreader Marium Soomro, Widy Novantyo Susanto, Yağmur Fakıoğlu, Hamdi Karakal, Harun Çelik, Cihad Kubat, Burak Yemenici, Egemen Gürgen, Dilara Erçelik, Hazal Saral and Umer Hussain. I have learned many interesting things and they made all the courses I took much more enjoyable. I am also grateful to my longtime friends from the Republic, Ekin Erdolu, Serra Baykal, Yağızhan Yılmaz, Öncü Erge Morkoç, Emir Olgun, Halil Burak Yılmaz, Kıvanç Güldürür, for all their support throughout the years.

Above all, I am deeply grateful to my family and Elif, whom I could not thank enough. I would like to thank my father and my sister for their love and encouragement. I would like to thank my mother for her being my source of inspiration to write every day. I could not have completed this thesis without them. Their never-ending belief in me is what makes this thesis possible.

TABLE OF CONTENTS

LIST OF ABBREVIATIONS

ABA	American Basketball Association
ABL	American Basketball League
ABPA	American Basketball Players Association
AFL	American Football League
FSA	Federal Sports Act of 1972
Inquiry into Pro Sports	Inquiry into Professional Sports, Final Report
MLB	Major League Baseball
NBA	National Basketball Association
NBPA	National Basketball Players Association
NFL	National Football League
NLRA	National Labor Relations Act
OPTS	Organized Professional Team Sports
PB1	Professional Basketball, Part 1
PB2	Professional Basketball, Part 2
PMABA/NBA	Proposed Merger of the ABA/NBA

GLOSSARY

Antitrust Exemption: It is a concept which provides a branch of business immunity from antitrust laws. The structure of sports leagues creates a market which makes teams both competitors and collaborators simultaneously. The major sports leagues perform as a monopoly in the business of professional sports and antitrust exemption gives these leagues to operate within legality, since each league collectively bargain with its players (or employees). Although exemptions usually do not apply to businesses that engage in interstate commerce, professional sports leagues benefit from some immunity from antitrust laws due to the fact that labor union are exempt from antitrust laws—a large union is much better to workers which differ in skill.

Collective Bargaining Agreement: It is a legally enforceable commercial agreement that commanding the labor relations between employer(s) and employees. In case of professional sports, owners, and players (Players Association) negotiate their terms and conditions that would in effect for a specific period. The first collective bargaining agreement in American sports was the 1967 Collective Bargaining Agreement between the NBPA and NBA.

NBA All-Star Game: A basketball exhibition game which a selection of the NBA's best players played in the middle of regular season. Participants selected by either fans or coaches with the aim of rewarding best performers of the season.

Sherman Antitrust Act: An act which aims to protect free competition in trade and forbids any contract in restraint of trade or commerce, while protecting the individuals' rights such as freedom of contract and testing the market for the highest bidder for their skills.

The Option Clause: A clause which limits a team the right to renew a player's contract to one year.

The Reserve Clause: A clause which gives a team the perpetual right to renew a player's contract.[1]

[1] Definitions derived from Corcoran, "When Does the Buzzer Sound: The Non-statutory Labor Exemption in Professional Sports," *Columbia Law Review* 94, no. 3 (April 1994): 1045-1075. For further research on the terms of labor relations in professional sports, see John C. Weistart and Cym H. Lowell, *The Law of Sports* (Charlottesville, Va.: Michie Company, 1985).

DRAMATIS PERSONAE

Bill Bradley: Rhodes scholar, U.S. Senator (Dem.) from New Jersey, and professional basketball player for the New York Knicks between 1965 and 1977. One of the key figures during congressional hearings, lobbied in Congress on the behalf of professional basketball players.

Bill Russell: The greatest winner in American professional sports. One of the most vocal athletes during the Civil Rights Movement.

Bob Costas: Former broadcaster with Spirit of St. Louis of the ABA. He later worked for the NBC as broadcaster of NBA games.

Bob Cousy: The founder of the NBPA and one of the most skilled players in NBA during 1950s. He helped his counterparts to improve working conditions, including meal allowances, limiting exhibition games, traveling expenses.

Connie Hawkins: A New York playground legend, Hawkins played both in the ABA and NBA. He filed a lawsuit and won against the NBA due to the former's blacklisting activity without investigation.

David Halberstam: Journalist and one of the best sportswriters in the United States. His book, *The Breaks of the Game*, considered one of the best basketball books of all time.

David J. Stern: The longest tenured NBA commissioner who worked between 1984 and 2014, considered one of the best commissioners of all time in the business of professional sports. Alongside professional basketball players and Larry Fleisher, Stern helped NBA basketball to extend its global reach.

Ed Macauley: Former basketball player of the Boston Celtics and St. Louis Hawks. One of the players who testified together with Bob Pettit and Maurice Podoloff during Congressional Hearings before the House of Representatives in 1957.

Fred Zollner: Former owner of the Fort Wayne Pistons (later Detroit Pistons). Famously known by his staunch opposition to unions in both in his company and in his professional sports team.

George Mikan: Legendary basketball player of Minneapolis Lakers of the NBL, BAA and NBA. The first commissioner of the ABA.

J. Walter Kennedy: Commissioner of the National Basketball Association from 1963 until 1975.

Jerry West: Legendary player of the Los Angeles Lakers who played between 1960 and 1974. After his playing career, he worked as coach, executive in many NBA teams. One of his photographs used as the logo of the NBA.

John Havlicek: One of the most important players of the Boston Celtics team that won many championships in the 1960s and 1970s. One of the fourteen plaintiffs of the Oscar Robertson lawsuit, Havlicek was active in NBPA and helped his counterparts to abolish the reserve clause.

Julius Erving: Erving considered as one of the greatest players in both ABA and NBA history, known as Doctor J.

Larry Fleisher: The general counsel of the NBPA and one of the primary figures who helped professional basketball players to gain their rights. He worked as an agent as well and he was one of the pioneers who helped players all around the world to become NBA players.

Larry O'Brien (Lawrence Francis O'Brien): The commissioner of the NBA between 1975 and 1984.

Lenny Wilkens: He was one of the NBA All-Stars in 1964 and was an eyewitness of what happened before and after the game. He was a player-coach during the final phase of his career, between 1969 and 1975.

Leonard Koppett: Journalist who covered litigation regarding American sports and wrote many books about the nature and business of professional sports.

Lew Alcindor (Kareem Abdul-Jabbar): One of the greatest college players and one of the greatest NBA players of all time. During the bidding wars between the NBA and ABA,

Maurice Podoloff: The first commissioner of the NBA who worked between 1949 and 1963.

Ned Irish: The owner of Madison Square Garden Company and the New York Knicks. Considered one of the key figures in popularizing the NBA.

Oscar Robertson: Third president of the NBPA. Leading plaintiff of the class action lawsuit which prevented the merger between the NBA and ABA. One of the best all-around players in NBA history.

Red Auerbach: Legendary coach and executive of the Boston Celtics who was part of 16 championships in 29 years

Rick Barry: First NBA player to jump to the ABA. He involved in many litigations throughout his professional career.

Robert L. Carter: US District Judge of the US District Court for the Southern District of New York and advocator of racial desegregation in education. Carter handled the Oscar Robertson case and presided over the merger between the NBA and the ABA.

Sam Ervin Jr.: Sam Ervin Jr. was a US Senator from North Carolina between 1954 and 1974. He was famously known as the defender of Jim Crow laws and racial segregation. He also led the investigations at the Senate Watergate Committee, an independent-minded libertarian who championed individual freedom and disdained government intervention on free will of individual.

Sam Smith: Journalist who worked in Chicago Tribune many years, Author of few books, including Jordan Rules, and Hard Labor: The Battle That Birthed the Billion-Dollar NBA

Tommy Heinsohn: The second president of the National Basketball Players Association (NBPA). One of the players who threaten to strike before 1964 NBA All-Star Game and helped professional basketball players to have pension plan.

Walter Brown: The owner of the Boston Garden and the Boston Celtics. He was the first owner who drafted (with Red Auerbach) an African American basketball player.

CHAPTER I

Introduction

1.1. Objectives

Larry Fleisher once asked his first client, Bill Bradley, "Did you ever see the movie called *The Organizer*," during one of the collective bargaining negotiations. "No, what is it," Bradley asked.

> It was about a labor organizer who comes into a community where there is gross exploitation and manages to organize a union and union gets better working conditions and the lives are better and the organizer is voted out. Like Churchill was voted out after World War II. Ideas fade fast with people. People have short memories. But you have to believe, as I always said in politics, that what you are doing advances our collective humanity one inch. I really do think the fight for the reserve clause was one of those moments where there was a lot at stake and like a great team we stuck together.[2]

Bradley knew him since he was twenty-two when he first signed with the New York Knicks. Both did not know that in less than a decade, they would be together in congressional hearings and court halls. Indeed, during the period between the mid-1960s and 1970s, professional basketball players were determined to get rid of the infamous rule that restricted their freedom to choose where to work: the reserve clause. First, they filed a class-action lawsuit—also knowns as the Oscar Robertson lawsuit—to prevent the merger between the National Basketball Association (NBA)

[2] Bill Bradley quoted in Sam Smith, *Hard Labor: The Battle That Birthed the Billion-Dollar NBA* (Chicago: Triumph Books, 2017), 122. Bradley told the same story during the 1991 Basketball Hall of Fame Ceremony, where Larry Fleisher enshrined. Bradley was Larry Fleisher's first client. "Lawrence 'Larry' Fleisher's Basketball Hall of Fame Enshrinement Speech, by Bill Bradley, https://www.youtube.com/watch?v=InVXTH-_42U Oscar Robertson would later write, "It' always bothered me that Larry was not admitted into the Basketball Hall of Fame until 1991, two years after his passing." Quoted in Oscar Robertson, *The Big O: My Life, My Times, My Game* (Lincoln, Nebraska: University of Nebraska Press, 2010), 315.

and the American Basketball Association (ABA). The owners were pushing Congress to pass an exemption from antitrust law for once which would authorize the merger. Their hope depended on the merger between two football leagues in 1966, yet this time both the members of Congress and the Senate were aware that player restrictions would expand if they grant an exemption. Bill Bradley, as one of the fourteen plaintiffs of the Oscar Robertson lawsuit, lobbied against the exemption in Congress. Oscar Robertson, as the president of the National Basketball Players Association (NBPA) and Larry Fleisher, as the general counsel of the NBPA, stood together and fought against the reserve clause in congressional hearings and court halls.

The period between the mid-1960s and early 1970s was specifically important for labor relations in professional sports. Historically, the reserve clause which significantly determined player movement and accordingly player salaries. Under the reserve clause, players could not change their teams, only team managers, and consequently, owners determined these athletes' professional careers. Players could not test their market value, could not choose where to play—or simply, where to work—and did not have any significant pensions or insurance in case of a misfortune. As James Quirk and Rodney D. Fort argue, "before the free-agency era, it was legitimate to talk about the reserve clause as owners' exploitation of players as a group."[3] This thesis covers the period between the 1964 NBA All-Star game and the settlement of the Oscar Robertson lawsuit on June 17, 1976, and explains how professional basketball players in the NBA gained free agency and abolished restrictions of player movement.

This thesis will not focus on the power struggles and disputes among the owners and NBA management. Instead, this study is based on the perspectives of professional basketball players who played in the NBA, and thus will mostly focus on their experiences of them. Biographies, autobiographies, newspaper articles, and congressional hearings shed light on how they abolished the reserve clause and became the world's highest-paid union workers. In short, this thesis will analyze how power had passed from the owners to the professional basketball players and to Larry Fleisher. It is no surprise that between 1964 and 1976, unions in professional sports

[3] James Quirk, and Rodney D. Fort, *Pay Dirt: The Business of Professional Sports* (Princeton: Princeton University Press, 1997), 8.

were getting stronger. yet the NBPA was the one—not the NFLPA or MLBPA—that revolutionized labor relations in American sports the most. "The basic conclusion to be drawn is that when the owners and players enter into formalized collective bargaining, they literally start a new ball game," John C. Weistart and Cym H. Lowell once wrote.[4] This thesis will analyze how professional basketball players have won that ball game. It argues that the NBA players have won that ball game through strong leadership and perseverance despite proven customer discrimination, and the actions of Oscar Robertson and Larry Fleisher demonstrate these qualities.

Dr. Luther S. Gulick, the head of the physical education department at the International YMCA (Young Men's Christian Association) School in Springfield, Massachusetts, asked Dr. James Naismith to organize an indoor physical activity for students who protested activities such as marching and calisthenics. Naismith tried soccer, lacrosse, and rugby but failed because either student physically harmed, or windows were broken in the gym. He invented a new game and wrote its original thirteen rules. The first professional league was formed in 1898, only seven years later Naismith introduced the game to his students. From then on, basketball became much popular, especially after World War II. The NBA, as we call it today, founded in the summer of 1949 with the merger of the BAA (Basketball Association of America) and remnants of the NBL (National Basketball League).[5]

The merger of the BAA and NBL had created a league with seventeen teams. Many pundits argued that college gambling scandals contributed to the rise of the NBA. Although they were not specifically wrong, the financial stability of professional basketball teams was still trembling. Eventually, the number of teams dropped to seven in 1957, and it became burdensome for operating a basketball team in small markets. Surviving teams were mostly owned by the people who also owned an

[4] John C. Weistart and Cym H. Lowell, *The Law of Sports* (Charlottesville, Va.: Michie Company, 1985), 786.
[5] For the early history of basketball and professional leagues, see Leonard Koppett, *24 Seconds to Shoot: The Birth and Improbable Rise of the NBA* (New York: Courier Companies Inc., 1999); Robert W. Peterson, *Cages to Jump Shots: Pro Basketball's Early Years* (New York: Oxford University Press, 1990; Murry Nelson, *The National Basketball League: A History, 1935–1949* (Jefferson, N.C.: McFarland, 2009; Zander Hollander, ed. *The Modern Encyclopedia of Basketball*, 2nd ed. (Garden City, N.Y.: Dolphin Books, 1979). David G. Surdam, *The Rise of the National Basketball Association* (Champaign and Urbana: University of Illinois Press, 2012).

arena. Teams that operated in larger markets survived through organizing activities in these arenas other than basketball, the most notable one was Madison Square Garden. Only a few owners were "well capitalized" and could survive losses in consecutive years according to Maurice Podoloff, president of the BAA, who would become commissioner of the NBA.[6] Another significant development was the introduction of the 24-second rule by Danny Biasone, owner of the Syracuse Nationals. Many consider Biasone as the person who saved professional basketball from extinction, but another rule was necessary to implement the 24-second rule efficiently, a limit to team fouls.[7]

With these two novelties, the game on the court was on the right track. Yet there was a color barrier which excluded African Americans to play alongside others on the basketball court. There were all-black teams which had competed against all-white teams, most notable of them was the New York Rens (also known as New York Renaissance and Renaissance Big Five), in the 1920s. Their matchups with the New York Celtics in the 1920s influenced Joe Lapchick, one of the members of the Celtics, as coach of the New York Knickerbockers to sign Nat "Sweetwater" Clifton, the first African American ever to play in an NBA game.[8] The color line in American sports was broken by Jackie Robinson in 1947, and he became the first African American to play in Major League Baseball. Yet almost all officials around the BAA, NBL, and lastly the NBA were ambivalent about how predominantly white spectators would receive African Americans. When Walter Brown decided to draft Chuck Cooper during the 1950 NBA Draft, other owners reminded him that Cooper was "colored" but Brown drafted him nevertheless. Cooper was able to sign with Knickerbockers because he bought his contract from the Harlem Globetrotters owned by Abe Saperstein. NBA owners were skeptical about acquiring African American talent from the Globetrotters, they feared to irritate Saperstein, because any given

[6] Podoloff quoted in David G. Surdam, *The Rise of the National Basketball Association* (Champaign and Urbana: University of Illinois Press, 2012), 22; Originally from U.S. Congress, House of Representatives. *Organized Professional Team Sports*. Hearings before the Antitrust Subcommittee of the Committee on the Judiciary. Serial no. 8. 85th Cong., 1st Sess. (Washington, D.C.: Government Printing Office, 1957), 2854.
[7] Leonard Koppett, *24 Seconds to Shoot: The Birth and Improbable Rise of the NBA* (New York: Courier Companies Inc., 1999), 90-92.
[8] Joe Lapchick's son Richard Edward Lapchick wrote *Broken Promises* about racism in American sports and how his father labeled as "nigger lover" after Joe Lapchick signed Nat "Sweetwater" Clifton to play with the New York Knickerbockers. *See* Richard Edward Lapchick, *Broken Promises: Racism in American Sports* (New York: St. Martin's/Marek, 1984), 10.

day, the Harlem Globetrotters were as highly profitable for arena owners, even more than any NBA game.[9]

Professional basketball was segregated just like every other part of American society and African Americans were discriminated. Despite racial relations were slightly getting better each year among fellow Americans, there were still signs of discrimination, predominantly by the spectators. Lawrence M. Kahn and Peter D. Sherer were able to prove that "when performance and market-related variables were equal," African American compensation in professional basketball was 20 percent lower than white Americans. Most of the top-quality basketball players were African Americans, thus they were highly paid, yet "white representation on a team contributes to home attendance, providing evidence consistent with the idea of customer discrimination" according to Kahn and Sherer.[10]

Players were not happy with working conditions, they wanted to reduce the excessive number of exhibition games without any rest, to abolish the "whispering fine" which referees put into action that forces players to pay $15, and to establish an impartial board which would arbitrate player-owner disputes. Bob Cousy, the star player of the Boston Celtics, founded the National Basketball Players Association (NBPA) in 1954 to solve player complaints. He wrote players from each of the league's teams to persuade them to become player representatives, except players of the Fort Wayne Pistons.[11] NBA Board of Governors recognized the NBPA three years later and agreed players' terms to abolish the "whispering fine," to establish an impartial board to solve player-owner disputes and many other financial regulations, but Cousy became fed up because his colleagues did not pay $25 annual dues for the players association, he asked Tom Heinsohn to take over the presidency. Almost every NBA player was a member of the association except for the Fort Wayne Pistons players (from 1957 the franchise relocated to Detroit). They were told they would be released if they involved or supported a union by Fred Zollner, the owner of the Pistons. He even told the Pistons players that he would shut down the team if they unionized. Except for Fred Zollner and Ned Irish, no owner in the league could even

---

[9] Leonard Koppett, *24 Seconds to Shoot*, 40-41.
[10] Lawrence M. Kahn, Peter D. Sherer, "Racial Differences in Professional Basketball Players' Compensation," *Journal of Labor Economics* 6 (January 1988): 41.
[11] Owner of the Fort Wayne Pistons, Fred Zollner, was a staunch opponent of any union activity and threatened his players. This prevented Fort Wayne players from joining the NBPA. Robert Bradley, "Labor Pains Nothing New to the NBA," in http://www.apbr.org/labor.html

imagine shutting down their basketball team. Those were the only ones to have significant income besides basketball, the others had to fight players for every dollar. Ned Irish was the owner of the Madison Square Garden company, and the New York Knickerbockers was secondary in terms of income opportunities. Due to schedule collisions, sometimes the Knicks played their games in different areas. It was strictly business; the Knicks simply could not provide the income that other types of events would did.[12]

Ironically, Cousy was dissatisfied with his colleagues who refused to pay their annual fees to the NBPA, they were not paying dues because they were not satisfied with him and the NBPA. While Cousy was bragging about his achievements as “my biggest win was getting the meal money bumped from $5 to $7. Getting that concession made me a hero,” the spokesperson for the union’s player representatives, Ed Macauley of St. Louis Hawks, was threatened by the league’s commissioner Maurice Podoloff. Ed Macauley was drafted by St. Louis Bombers in 1949 and the team ceased its basketball operations the year after he was drafted. According to Macauley, before the Bombers folded, Ned Irish, who owned the Knicks tried to buy the whole club to acquire himself. Maurice Podoloff did not allow Irish. At the time, Macauley got an offer from a team in Minnesota to play in the American League. He was also negotiating with the Boston Celtics, when he was in Walter Brown’s office, Maurice Podoloff called and asked to talk with Macauley. “If you so much as think of going to the other league you’ll be sued, you’ll be out of basketball, and your career will come to an end,” Podoloff said. Macauley was really bothered with Podoloff’s attitude and said, “Mr. Podoloff, do me a favor. You sue me. Let’s go to court. Let’s find out whether such things as the reserve clause are legal,” and hung up. Eventually, the Bombers had shut down its basketball operations during the summer of 1950. The whole squad of the St. Louis Bombers went into a pool—this happened to a number of teams in the early fifties, since the number of teams had dropped from seventeen to eight—and Ed Macauley was picked by the Boston Celtics.[13]

[12] Sam Smith, *Hard Labor*, 34; Leonard Koppett, *The Essence of the Game is Deception: Thinking About Basketball* (Boston: Little, Brown & Company, 1973), 226-240.

[13] Charles Salzberg, *From Set Shot to Slam Dunk: The Glory Days of Basketball in the Words of Those Who Played It* (New York: E. P. Dutton, 1987), 86.

Macauley would testify before a congressional hearing in 1957, and he would acknowledge the necessity of the reserve clause. He suggested that he received more money than should have been because of the two leagues, NBL and BAA. If there had been only one league, he would get less. “Most ball players, myself in particular, with the Bombers, were pushed up into an income bracket that the owners possibly could not afford. As a result, I think the salary they paid me in the first year contributed to the end of the club.”[14] Macauley then continued to talk about the necessity of the draft system which “insures a very balanced league.” He then mentioned the incident with Podoloff, “I’ve had a particular situation where it (the reserve clause) became apparent it might be necessary to change the ball clubs or I would not be able to continue playing ball,” Macauley said.[15] Bob Pettit testified before the same hearing and also acknowledged the reserve clause. While Macauley and Pettit underlined the importance of a pension plan and expressed their desire to have pension, they were not militantly advocating player rights against the league. Macaluey, especially, was optimistic because of their (players’) discussions with the owners, “We have been convinced that our problems in the future will always be brought to the attention of the owners and will be acted upon,” he said.[16] Stalling tactics of the owners continued in the following years, and the pension plan would be implemented only seven years later when Macauley was retired for four years.

1.2. Historiography

Although the foundations of professional sports leagues are dated to the late nineteenth century in the United States, diffusion of professional sports and its competitive essence over masses started after World War II. “Sports began the integration of American society in the 1940s and 1950s, and it completed the integration of American popular culture in 1960s and 1970s,” according to Randy Roberts and James Olson. Their work *Winning Is the Only Thing: Sports in America since 1945*, focuses on the rise of the competitive nature of professional sports after

[14] U.S. Congress, House, 1957, OPTS, 2,898.
[15] U.S. Congress, House, 1957, OPTS, 2,899
[16] U.S. Congress, House, 1957, OPTS, 2,899

World War II.[17] Integration of American popular culture created an opportunity for athletes, especially in financial terms. Since they are now leading members of the entertainment business in the country, they could demand what they were worth, in other words, they obtained the right of free agency, similar to other entertainers who could work freely, without any obstacles in terms of where to work. Television was also significant in terms of changes in American society by professional sports and the best account of this phenomenon is Benjamin Rader's *In Its Own Image: How Television Has Transformed Sports*.

The civil rights movement in the 1960s was another phenomenon that, in a way, ended racial segregation in American sports. One of the best examples of this history was told by Harry Edwards, in *The Revolt of the Black Athlete*. Even the top African American players in professional sports faced discrimination off the court. In 1960, after winning the Most Valuable Player Award, Wilt Chamberlain was turned down when he tried to buy a house in San Francisco, which considered being one of the most liberal cities in the United States. (Edwards, The Revolt of the Black Athlete, page unknown) Bill Russell's book *Go Up for Glory* with William McSweeny was the first account of an African American athlete who faced racism and discrimination, and attempted to illustrate that even a famous athlete like Bill Russell—it was first published in 1966, and Russell had won 8 championships in 10 years, he was by far the best winner basketball had ever seen—had to endure such treatment. Russell was accused of being ungrateful. Another book by Bill Russell, *Second Wind: The Memoirs of an Opinionated Man*, tells about the environment of professional basketball in the 1960s, from Bill Russell's perspective. However, none of these sources above were able to provide the importance of labor relations in professional basketball. While individual accounts and memories provide significant details of discrimination during the 1960s, both *Winning Is the Only Thing* and *In Its Own Image: How Television Has Transformed Sports* mostly focus on the history of baseball and football, while they cover basketball only in few pages. History of labor relations in professional basketball and changes in perception about basketball are marginal in these two books.

---

[17] Randy Roberts and James Olson. *Winning Is the Only Thing: Sports in America since 1945* (Baltimore: John Hopkins University Press, 1989), 187.

Dave Zirin wrote many books about the history of sports, from both players' and fans' perspective, including *What's My Name, Fool?: Sports and Resistance in the United States*, *A People's History of Sports in the United States*, and *Bad Sports: How Owners Are Ruining the Games We Love*. These are significant in terms of documenting how sports are deeply rooted in American culture and illustrating defects of American society through the sports industry. Yet none of his books specifically touch upon labor relations in basketball, for instance in *What's My Name, Fool?: Sports and Resistance in the United States*, Zirin published his interview with Marvin Miller who was the general counsel of the Baseball Players' Association who was a significant part of Curt Flood's struggle in terms of gaining free agency in baseball. In this book and in others, Zirin either neglects or ignores labor relations in basketball in the 1960s and 1970s while substantially focusing on political and social issues in other American major sports such as baseball and football. Nevertheless, these sources are important in terms of establishing a framework for player-owner relations.

There are many basketball biographies or autobiographies of retired basketball players and coaches. Bill Bradley's *Life on the Run*, Oscar Robertson's *Big O: My Life, My Times and My Game* were both written by players themselves and both Bradley and Robertson were significant in the history of labor relations in basketball. These autobiographies are specifically important for two reasons. One, both Bradley and Robertson were part of the fourteen plaintiffs of the lawsuit which blocked the merger between two professional basketball leagues, the NBA and the ABA. Two, both wrote their books by themselves, as witnesses of professional basketball in the 1960s and 1970s, in this manner, these books are different from the biographies below.

Tom Heinsohn's biography with Joe Fitzgerald, *Give 'Em The Hook* is an important source for both the foundation of the NBPA and what happened before the NBA All-Star game in 1964. Ira Berkow's *Oscar Robertson: The Golden Year 1964* provides the story of Oscar Robertson's best year as a professional basketball player. John Taylor's *The Rivalry: Bill Russell, Wilt Chamberlain, and the Golden Age of Basketball* is an account of competition between the best two big men in basketball in the 1960s and Taylor also dedicates a chapter on the events before and after the 1964 NBA All-Star game. Jerry West's story is written by Bill Libby, *Mr. Clutch:*

The Jerry West Story, and by Jonathan Coleman, *West by West: My Charmed, Tormented Life*. West was threatened by the absentee owner of the Los Angeles Lakers, Bob Short before the 1964 All-Star game and West gives some details in the latter specifically. Finally, the legendary coach of the Boston Celtics, Arnold "Red" Auerbach's biography with Paul Sann, *Winning the Hard Way* provides an interesting account of professional basketball, both on and off the court. We learn that there was a silent agreement among team owners that there should be a quota for the number of African Americans in each team. Some of the owners were "moaning about the 'image' of the league," according to Red Auerbach. This topic was even brought up during a league meeting. The most plausible explanation for such a quota was its "possible effect of the rising number of African American players on the box office," but Walter Brown, the owner of the Boston Celtics, and Ben Kerner, the owner of St. Louis Hawks, objected even the discussion of a quota system, they would take anybody who would help them to win. "I'll take anybody who will help me win. I don't care what color he is," Kerner said .[18] Ron Thomas' *They Cleared the Lane: The NBA's Black Pioneers*, is a significant book that provides us the story of racial integration in the NBA and its pioneers.

Three journalists, Leonard Koppett, David Halberstam, and Sam Smith had contributed the subject of this thesis, which is the history of labor relations in basketball, more than any historian. Koppett had followed every congressional hearing about sports as much as possible and wrote two influential books about the history of basketball, *24 Seconds to Shoot: The Birth and Improbable Rise of the NBA*, and *The Essence of the Game Is Deception: Thinking About Basketball*. These two books not only contain historical events around professional basketball but also labor relations in the NBA and business of basketball. Many scholars of sports law and labor relations benefit from books by Leonard Koppett. One of the greatest sportswriters of the twentieth century is David Halberstam and his *The Breaks of the Game* is an extraordinary piece about the environment of professional basketball in the late 1970s. Another significant feature of his masterpiece is that it is the only book that underlines the importance of Larry Fleisher, who was the general counsel of the NBPA and helped professional basketball to become eligible to sign any team

[18] Arnold Red Auerbach and Paul Sann, *Winning the Hard Way* (Boston: Little, Brown and Company, 1966), 133-134.

once their contract is over. Sam Smith is one of the last remaining journalists who writes about labor relations in professional basketball. His *Hard Labor: The Battle That Birthed the Billion-Dollar NBA* provides the story of fourteen plaintiffs of the Oscar Robertson suit which "created the modern National Basketball Association."[19]

Labor relations in professional basketball contains many legal components but this thesis deals only with the issue of free agency, namely the abolition of the reserve clause. Details of sports law exceeds the knowledge of the author of this thesis. However, there are sources that could provide valuable information about the implication of the reserve clause in professional basketball. John C. Weistart and Cym H. Lowell's *The Law of Sports* and their *1985 Supplement* are valuable in terms of labor law, antitrust law, and collective bargaining in sports. Glenn M. Wong's *Essentials of Sports Law* is another work that provides a framework for labor relations in sports. Michael Schiavone's *Sports and Labor in the United States* dedicates a chapter to the history of labor relations in basketball and provides a chronological narrative of player-owner relations Moreover, three distinguished scholars established labor relations in professional sports as a field of study. William B. Gould IV and Robert C. Berry were professors of law and Paul D. Staudohar is a professor of business administration. Their book, *Labor Relations in Professional Sports*, dedicates a chapter to the issue of labor relations in basketball. In this regard, Paul D. Staudohar wrote and edited two influential books. He wrote *Playing for Dollars: Labor Relations and the Sports Business* and edited *The Business of Professional Sports* with James A. Mangan. William B. Gould IV and Alvin Attles—who played in the NBA in the 1960s—began to teach a sports law seminar with Leonard Koppett at the Stanford Law School. According to William B. Gould IV, Koppett "created a timeline of professional and amateur sports which we distributed with our materials, giving the students a sense of how the major sports had developed. Leonard brought dry case doctrine to life with colorful and sometimes first-hand accounts of the case's background."[20] Thus, the history of labor relations in basketball developed for the most part by Leonard Koppett.

---

[19] Sam Smith, *Hard Labor: The Battle That Birthed the Billion-Dollar NBA* (Chicago: Triumph Books, 2017), 2.
[20] William B. Gould IV's speech during Leonard Koppett's memorial service on July 7, 2003. Printed in William B. IV Gould, "Introduction," *Stanford Law & Policy Review* 15, no. 1 (2004): 4.

Oral histories and works of journalists are significant in terms of providing multiple perspectives of what happened around professional basketball. Terry Pluto's *Loose Balls: The Short, Wild Life of the American Basketball Association* and *Tall Tales: The Glory Years of the NBA, in the Words of the Men Who Played, Coached, and Built Pro Basketball* sheds light on professional basketball in the 1960s and 1970s. Owners, league officials, players, and referees contributed to the works of Terry Pluto, which make it much more valuable for any researcher or historian of the period. Charles Salzberg's *From Set Shot to Slam Dunk* is another book that provides accounts of those who played the game. Although Salzberg's book contains only players from the late 1950s and early 1960s, it illustrates what happened before collective bargaining in basketball in the words of the men who played. The struggle of two African American basketball players and their litigation wars with the NBA, written by Bill Libby in *Stand Up for Something: The Spencer Haywood Story*, and David Wolf, *Foul! The Connie Hawkins Story*. Spencer Haywood was the first student-athlete who was drafted before graduating from college and NBA rules required student-athletes to be four years beyond high school before becoming professional. Haywood's litigation ended with Supreme Court Justice William O. Douglas' rule that the NBA violated antitrust law.[21] Another student-athlete, Connie Hawkins, falsely accused of point shaving in college games and blacklisted many years but won his case against the NBA in courts. These books provide the importance of sports law to understand how labor relations in basketball had developed.

The business of professional sports is another field in which many scholars studied labor relations in sports. There is a chapter called "Racial Discrimination in the National Basketball Association," in *The Business of Professional Sports* which is mentioned above and edited by Paul D. Staudohar and James A. Mangan. In this chapter, Lawrence M. Kahn and Peter D. Sherer investigate racial differences in the NBA by 1985-86 salaries and prove that there was significant customer discrimination in professional basketball and thus, replacing African Americans with white players raises home attendance significantly. According to Kahn and Sherer, team managements' approach to racial differences in professional basketball might

[21] Sarah K. Fields, "Odd Bedfellows: Spencer Haywood and Justice William O. Douglas," *Journal of Sport History* 34, no. 2 (Summer 2007): 193-206.

have been influenced by customer attitude towards African Americans because "draft positions do not indicate discrimination in hiring," and "the compensation and attendance results together are consistent with the idea of customer discrimination."[22] In other words, "many white fans may have found it difficult to identify with a sport in which the players were more than 75 percent black."[23]

There are few unpublished master's theses and dissertations that, in a way, deal with labor relations in basketball. Two master's theses, Mario R. Sarmento's *The NBA On Network Television: A Historical Analysis* and Jonothan Lewis' *Running Up the Score: How the Media Cover Labor-Management Conflict in Sports* illustrate how media covered the NBA both on and off the court. Justin Ryan Garner's dissertation, *Downtrodden Yet Determined: Exploring the History of Black Males in Professional Basketball and How the Players Association Address Their Welfare*, describes the struggle of African Americans and their role inside the NBPA. This thesis is different from the above-mentioned theses in terms of its perspective, its solely based on the experiences of professional basketball players through media, litigation, and congressional hearings. All of these works lack what this thesis is going to provide to the history of professional basketball: a general overview of events concerning labor relations in professional basketball in the 1960s and 1970s. Each of them concentrates either one aspect of this particular history or touches slightly to the history of labor relations in the NBA while attaching importance to other issues. When professional basketball players were demanding their rights to have the pension plan before the 1964 All-Star Game, the odds were stacked against them. Yet gradually conditions changed. In three years the NBPA signed the first collective bargaining agreement among the major professional sports unions in 1967. Both in 1964 and 1967, players were about to strike if their demands were not met. The fact that their demands were met on both occasions is evidence to the strong leadership both Oscar Robertson and Larry Fleisher displayed.

---

[22] Kahn and Sherer, "Racial Differences in Professional Basketball Players' Compensation," 40-42, 59-60.
[23] Benjamin G. Rader, *In Its Image: How Television Has Transformed Sports* (New York: The Free Press, 1984), 148.

1.3. Resources and Methodology

This thesis will mainly focus on how professional basketball players in the NBA gained free agency rights against owners and league management. The primary sources in this thesis are derived from published documents of congressional committee hearings and documents of legal cases online. Moreover, autobiographies and oral histories are included in this study. Because this thesis is a chronological narrative, most of the events are based on newspapers, which derived from online sources. The main questions this thesis examines include the following: How did professional basketball players in the NBA gain their right to become free agents? How were they able to abolish the reserve clause without a strike?

The following part, Chapter 2, Before and After the 1964 All-Star Game, examines the early efforts of professional basketball players to establish a strong union, the NBPA under the leadership of Tom Heinsohn, and what happened before and after the 1964 All-Star Game. Chapter 3 Larry Fleisher, the First Collective Bargaining Agreement, and the American Basketball Association, portrays the general counsel of the NBPA, Larry Fleisher, examines the 1967 Collective Bargaining Agreement and the foundation of the ABA. Chapter 4, Bidding Wars and Merger Meetings Between Two Leagues, examines events after the foundation of the ABA and the Oscar Robertson lawsuit. This chapter also portrays biographies of two professional basketball players: Connie Hawkins and Spencer Haywood. Their careers demonstrate the excessive number of litigations in professional basketball that also involve the rivalry between two leagues. Chapter 5, Congressional Hearings, examines series of hearings on professional basketball in September 1971. This chapter also portrays Senator Sam Ervin Jr. (D-N. Carolina), who was the chairman of the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary U.S. Senate. Chapter 6, Congressional Hearings II, examines hearings between October 1971 and May 1972. This chapter also includes the final report of the Senate Subcommittee. Chapter 7, The NBA After The 1973 Collective Bargaining Agreement and the Oscar Robertson Lawsuit, analyses deepening war between the two leagues and how the players and the NBA signed the 1973 Collective Bargaining Agreement. Finally, Chapter 8, Conclusion, examines how strong leadership and perseverance of Oscar Robertson and Larry Fleisher made possible for professional basketball players to abolish the reserve clause and to gain the right of free agency.

CHAPTER II

BEFORE AND AFTER THE 1964 ALL-STAR GAME

2.1. Sports and American Society

David Halberstam was a young reporter in the South during the early days of the Civil Rights movement and happened to be a sports fan. He had covered sports for the Boston Globe, to help pay his college tuition. After eleven years of hard work on multiple books about the Vietnam War and American media, he decided to write about sports. *The Breaks of the Game* which focuses on the 1979-1980 season of the Portland Trailblazers, became champions in 1977. His sports writing touched upon so many issues off the court, and demonstrates that sports are never just about sports and reached something beyond:

> Sports has been an excellent window through which to monitor changes in the rest of the society as we become more and more of an entertainment society. I do not know of any other venue that showcases the changes in American life and its values and the coming of the norms of entertainment more dramatically than sports. We can learn as much about race from sports as almost any subject and we can learn what the coming of big money does to players and to lines of authority more from sports than anything else.[24]

Among American major sports leagues, the National Basketball Association has a special place. Its reach around the globe is unmatched, events regarding the league had transcended borders of the United States, it has become a global phenomenon by employing hundreds of players around the world. What distinguishes professional basketball in the US from other major sports is that there had not been any work stoppages initiated by players. Baseball and football, however, have a complicated

[24] David Halberstam and Glenn Stout. 2008. *Everything They Had: Sports Writing from David Halberstam* (New York: Hyperion, 2008), 27.

history of labor. Baseball was in another place due to its immunity from antitrust principles and football had multiple work stoppages. It is remarkable considering the rights that NBA players had gained through the mid-1960s to 1980s, without any strikes initiated, now they are the richest ‘unionized workers’ in the entire world. One can argue that since the NBA has the limited number of players in comparison to the Major League Baseball (MLB) and National Football League (NFL), the average salary of an NBA player is significantly higher than professional athletes of these major league sports. Yet one cannot simply overlook successes of the National Basketball Players Association (NBPA). In the 1960s, professional basketball players recognized the increasing exposure of their game, television networks were about to enter the scene, and this would not only increase the income of the league, but it also brought exposure.

Media was covering basketball earlier, but television brightened the spotlight. Changes that television brought to basketball was sudden and that made labor relations and the status of NBA players much more interesting. In comparison to baseball and football, basketball “was less rooted national myth,” and thus, “it was far more vulnerable to the new pressures created by television.”[25] Yet, pressure came both ways. Players recognized that with a collective effort, their bargaining power would increase, and so long as commercial interest surrounding basketball remains high, they could enhance their rights. Working conditions were dreadful for many players. They had no health benefits, there were no trainers to travel with teams on the road, players had to play consecutive exhibition games without getting paid. Above all, African Americans, despite being the best among their counterparts, were discriminated wherever they went, restaurants, hotels, arenas.

Before Bob Cousy wrote to star players of the NBA franchises, in the hope of getting their support for the formation of a possible union, players did not have health insurance, a pension plan, a minimum salary. Other than star players—if stars were injured, their career also ended up in a few years, since there was no trainer to provide first aid—they had no guarantee to play consecutive seasons, due to the instability of the finances of NBA teams. Thus, when the number of NBA teams dropped significantly in the late 1950s and early 1960s, most of the players had

[25] David Halberstam, *The Breaks of the Game* (New York: Ballantine Books, 1981), 11.

become unemployed.[26] The first thing players wanted to achieve was the pension plan, and the second one was full-time trainers which would be present at games. Tom Heinsohn, who replaced Bob Cousy as the president of the NBPA, was there firsthand at these negotiations, “we also wanted full-time trainers, the first five or ten seconds after an injury are often critical; having a qualified person there could shorten your recuperation by days, even weeks.” Owners’ response was not surprising, they simply ignored the demands of the players. “That attitude has always been there, and it led to the most traumatic night of my career, at the 1964 All-Star game in Boston Garden.”[27] This would be the turning point of the player-owner relations in professional basketball. The All-Star game was scheduled on January 14. Players had arrived in Boston, despite one of the worst weathers one could ever imagine. Not only the current All-Stars, but the best players in the history of the game were also invited. Among them were players from the original New York Celtics, who were considered one of the best teams in the 1920s, stars from the late forties and the fifties. ABC was planning to televise on a national scale, so it was a tremendous opportunity for the league to promote the game.[28]

The players were demanding pension plans and other improvements, but owners “always found ways to drag their feet.” Cousy had selected the best players from

---

[26] Paul D. Staudohar, *Playing for Dollars: Labor Relations and the Sports Business* (Ithaca: ILR Press, 1996), 100; NBPA, “About the NBPA,” http://nbpa.com/about-nbpa.

[27] Tom Heinsohn, and Joe Fitzgerald, *Give ‘Em the Hook* (New York: Prentice Hall Press, 1988), 222.

[28] There are lots of memoirs, newspaper, articles, and books which tell the story behind 1964 All-Star game. See Leonard Koppett, “N.B.A. Players Threaten Strike in Dispute Over Pension Plan,” *The New York Times*, January 15, 1964, 34; Tom Heinsohn, and Joe Fitzgerald, *Give ‘Em the Hook* (New York: Prentice Hall Press, 1988); Jerry West and Jonathan Coleman. *West by West: My Charmed, Tormented Life* (New York: Back Bay Books, 2012); Sam Smith, *Hard Labor: The Battle That Birthed the Billion-Dollar NBA* (Chicago: Triumph Books, 2017); Oscar Robertson, *The Big O: My Life, My Times, My Game* (Lincoln, Nebraska: University of Nebraska Press, 2010); David Halberstam. *The Breaks of the Game* (New York: Ballantine Books, 1981); John Taylor. *The Rivalry: Bill Russell, Wilt Chamberlain, and the Golden Age of Basketball* (New York: Ballantine Books, 2006); Michael Schiavone. *Sports and Labor in the United States* (Albany: State University of New York Press, 2015); Ron Thomas. *They Cleared the Lane: The NBA’s Black Pioneers* (Lincoln: University of Nebraska Press, 2002); Bill Russell and Taylor Branch. *Second Wind: The Memoirs of an Opinionated Man* (New York: Ballantine Books, 1980); Bill Russell and William McSweeny. *Go Up for the Glory* (New York: Noble and Noble Publishers, Inc., 1969); Ira Berkow. *Oscar Robertson: The Golden Year 1964* (New Jersey: Prentice-Hall, 1971); Genevieve F. Birren. “A Brief History of Sports Labor Stoppages: The Issues, The Labor Stoppages and Their Effectiveness (Or Lack Thereof),” *DePaul J. Sports L. & Contemp. Probs*. 10, no. 1 (2014): 1-30; Dan Hafner, “East Wins All-Star Classic Delayed By Player Revolt,” *Los Angeles Times*, January 15, 1964, B1; Jack Leone, “Labor Relations in a Locker Room,” *Newsday*, January 15, 1964; “Heinsohn, Boss in Pension Feud,” *Newsday*, January 18, 1964, 47; “Heinsohn No. 1 Heel, Says Boss,” *Los Angeles Times*, January 18, 1964, A1; “N.B.A. Approves Of Pension Plan,” *The Baltimore Sun*, February 26, 1964, S23; “NBA Okays Pension Plan,” *Boston Globe*, May 27, 1964, 58.

each team to represent their counterparts in dealing with the NBA and the owners. This would strengthen the Players Association Yet Heinsohn took his job much more seriously. He held regular meetings with player representatives when they had a game in Boston, and occasionally threatened players "who didn't hand over their annual dues." The last straw came in November 1963, when all the player representatives met in a hotel in New York to present their case to. Players had tried everything to get a meeting with owners to discuss provisions about a pension plan. Finally, they got their chance, yet they were ignored once again, while "… waiting the whole afternoon for the board of governors to invite us upstairs. The call never came. We were ignored."[29]

Things were changing around the league as much as in American society. Players brought Larry Fleisher as the general counsel of their union in 1962. He was doing tax returns for some of the Boston Celtics in the late fifties and early sixties. He loved the game and its stars, wanted to represent them because it was hard to believe for him that professional basketball players did not have the same rights as professionals in other businesses. These players could not test their market value, could not choose where to play—or simply, where to work—and did not have any significant pensions or insurance in case of a misfortune. "The players each year were becoming more sensitized and more politicized; the changes he (Fleisher) believed were quite dramatic, but the owners, isolated from the players, did not see them as changing, they saw them as the same dumb jocks."[30] The number of teams had dropped to eight in 1957 yet "the financial position of even the weakest professional basketball teams is not nearly as critical as is commonly believed."[31]

Teams were mostly in larger markets and yet, players could not benefit from those, they did not get the salary they were worth—especially star players, who were getting no more than half of their worth—considering their market value in terms of gate receipts. Fleisher had seen all of these and helped players to build the foundations of a strong union. Maybe Oscar Robertson and Bill Russell did not need a pension plan, but the average player needed it. Thus, Fleisher asked the best players on each team to represent their teammates. Bill Russell was the first one to come to

---

[29] Quotes from Heinsohn, *Give 'Em the Hook*, 223-4.
[30] David Halberstam, *The Breaks of the Game*, 268.
[31] Statement by Roger G. Noll and Benjamin A. Okner, on the financial conditions of the professional basketball leagues, printed in U.S. Congress, Senate, *PB1*, 339-421.

the mind, and Bob Pettit and Lenny Wilkens were the others, these were the player who had the deepest respect by their peers. The reason why Fleisher wanted the best players was that the moment these stars bargained for their peers, they would be immune from the owner's pressure. Their integrity had no match, and the decisive feature of this generation of players was their militant approach towards standing up for their rights.

2.2. NBPA Under Tom Heinsohn and the 1964 NBA All-Star Game

The NBPA was relatively weak compared to other unions of major sports, such as baseball and football in the early sixties. Heinsohn was determined not to appease owners as Cousy had done. For five years, he tried to put pressure on owners about a pension plan for his peers. The plan would be simple, owners are going to contribute $500 a year for each player, and players would match the amount themselves. The proposed pension plan would be available to any player with at least five years of service. As they had done during the 50s during the foundation of the players association, the owners and the league stalled the process. "The owners kept promising to meet with us to discuss provisions for a pension plan, then they always found ways to drag their feet," Heinsohn recalled. After pressing them on the issue throughout the summer of 1963, owners told the players that they could meet in November, at the Roosevelt Hotel in New York. Heinsohn and player representatives from each team—Jerry West, Oscar Robertson, and Bob Pettit were among them—yet, the owners simply ignored them, again. Players had come to New York at their own expense, "we all cooled our heels in the hotel, waiting the whole afternoon for the board of governors to invite us upstairs," Heinsohn said. The owners refused to see them.[32]

Once the players were ignored by the owners in late 1963, Heinsohn became as sharp as a knife. "We've got to take some kind of strong action," he suggested. "My proposal is, if we don't get a pension plan, we don't play the All-Star game". He made sure player representatives spread his message to their teammates and their response was exactly what Heinsohn expected: "Let's do it". His relationship with

[32] Tom Heinsohn, *Give 'Em the Hook*, 223.

Walter Brown—the owner of the Boston Celtics—was different than other stars' relationships with their team's owners. Brown's approach to players and the league was slightly different than other owners. He helped to establish the league and "was willing to risk losing money" concepts such as the All-Star game. Brown sponsored the first two All-Star games in 1951 and 1952 on his own, and the Boston Garden—which he owned—would host the 1964 All-Star game. Heinsohn had let him know that "something is going to happen at the All-Star game unless there's action on a pension plan." There would not be such problems, "if all the owners had been like Walter," he later recalled. Other than the pressure of being the head of players union, "there was a great reluctance on my part to do anything that would hurt or embarrass him."[33]

Before the players' meeting, the pension committee of the NBPA and the league's pension committee—its president Fred Zollner—met to talk about a possible pension plan. The owners wanted to discuss the pension plan in the next meeting, which was going to be in May. There were no lawyers for either side, other than Tom Heinsohn, the player pension committee consisted of John Kerr of the Philadelphia 76ers, Tom Gola of the New York Knicks, and Guy Rodgers of the San Francisco Warriors. Players wanted Larry Fleisher to be present in the meeting as their general counsel, yet the league and the owners were strictly opposing it, based on the fact that he was not a player. Both sides compromised and supposedly reached an agreement, yet implementation of the pension plan would have to wait until the next owners' meeting. That meant that players would have to wait at least until February, and it was more feasible for owners to implement a pension plan in May, thus players had felt that this might be another delaying tactic. Hence, players had appointed Fleisher as an unofficial member of their union in the locker room, with just minutes left before the game. All of the All-Stars were supposed to meet at 3.00 pm to discuss what to do on the eve of the game. Some players arrived late due to a snowstorm that hit the East Coast. As Heinsohn saw each of them before the game, he had other All-Stars sign a statement of support for the upcoming action. "I was protecting my own ass; I didn't want anyone getting cold feet the next day, saying it was all my idea," Heinsohn recalled.[34] When Larry Fleisher heard about the meeting between Fred

[33] Tom Heinsohn, *Give 'Em the Hook*, 224.
[34] Ibid, 224.

Zollner and the players' pension plan committee, he wanted to see if there was anything written on paper. Heinsohn told him that they did not sign anything on paper, they were only talking briefly. The same afternoon, Larry called Walter Kennedy three times to discuss a possible pension and wanted to talk over it. Kennedy did not answer, and each time Fleisher called he was told that Kennedy was in an owners' meetings and discussing with them about possible changes in NBA's constitution. Kennedy did not call back Larry Fleisher for the rest of the day.

Oscar Robertson was the star player of the Cincinnati Royals. Alongside Wayne Embry and Jerry Lucas, he was selected to play in the All-Star game. Despite, he wanted to be beside his wife Yvonne, who was expecting their second children. "There was no maternity leave in those days. I didn't like it, but there was nothing I could do," he recalled. The group went on to Boston the day before the game yet there was an enormous snowstorm in the East, they arrived at their hotel four hours before the game. It took 32 hours to reach Boston. Players had already discussed to strike the game, but they had gathered for the last time. At 6 pm., All-Stars Tom Heinsohn, Bob Pettit, Bill Russell, Lenny Wilkens were on the doorstep of Walter Kennedy's—NBA commissioner—hotel room. Players had said if Kennedy does not meet Larry Fleisher at 6.30 pm., they were not going to play. When Kennedy said he could not, but he can meet with them ten minutes later, Fleisher joined the company. They were all in Kennedy's hotel room, demanding to have a pension plan which they waited years for. Heinsohn said: "If we don't have a pension plan by game time, you don't have an All-Star game."[35] "Are you guys crazy? I can't get the owners together now. They're all out having dinner," Walter Kennedy said. "Walter, I'm sorry. But we warned you people something was going to happen," Heinsohn answered.

Minutes before game time, players had gathered in the Celtics locker room which the East team used. Walter Kennedy entered the room first. He said there will not be any meeting and documents would have to wait, nothing was going to be signed. The players thanked him and asked him to leave. They felt that Kennedy was genuine, but they would do what it takes to get the pension deal. Tom Heinsohn, Bob Pettit, and Oscar Robertson—who were the leaders of the union—stood up and said: "Look.

[35] Ibid, 224.

This is where we are. This is what we have to do. If you want to go out there and play, we will never get anything. If we go to the court on their promises, we will never get anything." The locker room lapsed into silence. Players slowly started to talk, and memories came back. Owners and the league stalled the pension plan for years, why would they believe them now? Hadn't Maurice Podoloff, the predecessor of Walter Kennedy, made the same promises. What was so different about Walter Kennedy? "The energy of discourse rose through the room, with one person's anger feeding off another. Frustration poured out," Robertson remembers. They specifically wanted Larry Fleisher to represent them, but the owners made sure to have meetings without him, the same goes for Walter Kennedy.[36]

Rumors spread faster than owners' reactions, journalists and television executives were asking if the game was going to happen or not. Tickets were sold out and Haskell Cohen, head of public relations for the NBA, was trying to get in the locker room. ABC was going to nationally televise the game, and if the ratings were fine, they would televise some regular-season games in the following years. At that moment, everyone—players, NBA, and owners—knew that if the players did not come out, "the league would never be on television again. This would be the end of the NBA."[37] Except Haskell Cohen, the first one who tried to enter the locker room was Red Auerbach, the head coach, and top executive of the Boston Celtics. He threatened to fire his players in case of an actual boycott. Tom Heinsohn and Larry Fleisher found Chris the Cop, an old guy who used to guard the locker room of the Boston Celtics and said, "Don't allow anyone unless you clear with us." Then came Bob Short, who was the absentee owner of the Los Angeles Lakers, sent word from outside the locker room that Elgin Baylor and Jerry West "better get dressed and get out on the floor immediately or they were gone." It was remarkable that the reaction of these two young players was completely different. Jerry West was terrified: "Being naïve the way I grew up in West Virginia, the owner coming in, oh my god, and I'm thinking I will never play again." Yet, the attitude of black athletes was different, in fact, "they had to be crusaders in this league and in many cases were vilified for it."[38] Comparing to West, Elgin Baylor stood strong and sent his words:

---

[36] Oscar Robertson, *The Big O: My Life, My Times, My Game*, 184.
[37] Oscar Robertson, *The Big O: My Life, My Times, My Game*, 185.
[38] Sam Smith, *Hard Labor: The Battle That Birthed the Billion-Dollar NBA* (Chicago: Triumph Books, 2017), 49.

"You go tell Bob Short to fuck himself ."[39] It was one of those moments when one could feel something would change and the mood in the locker room changed completely. Elgin Baylor and Jerry West were not only the current best players, they were generational talents and two of the best players in the history of the game. Yet here this owner who treated his best players like they were property. Larry Fleisher also was in the locker room, but Kennedy and the owners did not want to acknowledge him as a part of the players' union or as a representative. Thus, players made Fleisher "an honorary member" of their union. "If they don't want to talk with him. It means they don't want to talk with us," Tom Heinsohn said. Kennedy was the last outsider who came to the locker room. Players had to be on the court in five minutes. Heinsohn was the one who believed that Kennedy was genuine in his efforts. "I believed him. I just had a good feeling about him. I also thought we had made so much of an issue out of this, with the press watching it all unfold, that there was no way the owners would renege again."[40]

Walter Brown felt betrayed when he heard Celtic players were among the ones who organized the strike. He told Red Auerbach, legendary coach of the Celtics, that he might cancel the game, at the risk of forfeiting the $30,000 he had spent for the festivities during the event. He had got so angry that he might fire Celtics All-Stars Tom Heinsohn, Bill Russell, and Sam Jones. He even suggested expelling players who participated in the strike. These were the league's best players, and until that All-Star game, the Boston Celtics had won six championships in seven years—including five consecutive ones. The Celtics could not have won without Heinsohn, Russell, and Jones. Auerbach was searching for Tom Heinsohn in the hall-ways, he also felt that Heinsohn was betraying Brown. "You can't do this to your own boss," Auerbach said. "I'm sorry, Red," Heinsohn said. "I'm the players' representative and I have no choice." Auerbach's answer to Heinsohn demonstrates the mentality of league officials, owners, and coaches toward the players back then. All of them could not believe the players' audacity: "Don't show me how much guts you got, you idiot," Auerbach told him. "I know how much guts you've got. Think about what you're doing to Walter (Brown)."[41]

[39] Heinsohn, *Give 'Em the Hook*, 225.
[40] Heinsohn, *Give 'Em the Hook*, 226.
[41] Auerbach and Heinsohn quoted in John Taylor, *The Rivalry*, 201.

Despite the significance of the 1964 All-Star game in terms of the labor rights of professional basketball players, the public image of the league had been damaged seriously in the following weeks. There wasn't any disaster for the fans in the Boston Garden during the night, but the damage had been done. Leonard Koppett was one of the journalists who reported the happenings for the New York Times, later made remarks about the situation in his book, *24 Seconds to Shoot*: "The game seemed perfunctory, and all the stories for weeks afterward concerned labor troubles, not basketball. Once again, the NBA had shown a remarkable capacity for fouling its own nest, for spoiling its best moments, for wasting its best opportunities. Shortsightedness by the owners had permitted a bad situation to deteriorate to breaking point."[42]

Disaster has been averted, yet Walter Brown was still furious, mostly with Tom Heinsohn. Brown had always been loyal to his players—at least he had felt this way—and he expected the same in return. After the All-Star game, he said that Walter Kennedy didn't let him enter the locker room. "If they ever voted not to play that All-Star game, I'd have made that announcement to the fans, given them their money back and that would have been the end of not only any pension but the NBA and pro basketball. What else could I have done," Brown said.[43] His relationship with Heinsohn was unusual—considering owner-player relations in the early days of the NBA—Heinsohn helped Brown with his estate planning, and Heinsohn became familiar with the details about the Boston Celtics even Red Auerbach—the manager and the head coach of the team—had not heard of. This means that Walter Brown had trusted Tom Heinsohn more than Red Auerbach—at least in terms of business decisions. Above all, Brown had paid Heinsohn's travel expenses to attend meetings with other players' representatives and he had supported the players association which other owners simply had avoided. He had always praised Heinsohn when people asked about his impact on the team. "Whenever we win a big game and the situation is properly analyzed, it turns out that Tom Heinsohn's play was a big factor," he once said. *Boston Herald*'s Joe Looney had the opportunity to ask Brown about Heinsohn before the start of a Bruins game. "Tom Heinsohn is the number one heel in my long association in sports," Brown said. In this situation, the majority of

[42] Leonard Koppett, *24 Seconds to Shoot*, 164.
[43] "Heinsohn, Boss in Pension Feud," *Newsday*, January 18, 1964, 47.

reporters would search something to fill the headlines and Looney was no different, he asked if Brown wanted to trade Heinsohn. “No, I wouldn’t trade him but if I had a team in Honolulu, I’d ship him there.” [44]

Red Auerbach was not happy with this quasi-war between one of his All-Stars and his team’s owner, thus he had made sure that the two meet and solve their issues. After reading what Brown told about him in headlines, Heinsohn was deeply hurt. He had thought they had a strong fondness. Heinsohn knew that Walter Brown was probably the only team owner to get involved with grievances of players and declared that this unfortunate incident “happened in Boston and happened to one of the owners (Brown) who is behind the Player Association 100 percent.” What differed Walter Brown from other owners was that he respected his players, tried to take care of them as much as possible, and he even hired an expert to research about pension fund and how it should be implemented. If Fred Zollner were the Celtics owner, Heinsohn probably would never play under clover petal jersey, ever again. Yet, players were dedicated to getting their pension plan. Heinsohn declared that players if the NBA and owners “fail to enact a pension plan in May,” there would be consequences and players made their plans accordingly. There was nothing personal. “The whole thing was not directed at him [Brown] as an individual. It was directed at the league in general.” Players wanted what they deserve.[45]

Eventually, professional basketball players were able to obtain a pension plan. It was a significant accomplishment not only for professional basketball players but for the history of the game of basketball. “Television, he (Fleisher) decided, was an instrument for modernizing the structure of the game.” Players now had the opportunity to interact directly with their fans and they took the best out of it, by collectively bargaining their rights. It seems that television became the biggest ally of professional players, and since the owners couldn’t renounce television as a source of income, “on television, players always won and owners always lost.”[46] Happenings before the All-Star game that night marked an important point for the history of labor-management conflicts in basketball. There was always a divergence between the players and the owners, yet this was the first time an external factor directly

[44] John Taylor, *The Rivalry*, 204.
[45] “Heinsohn, Boss in Pension Feud,” *Newsday*, January 18, 1964, 47; “Heinsohn No. 1 Heel, Says Boss,” *Los Angeles Times*, January 18, 1964, A1.
[46] Quotes from David Halberstam, *The Breaks of the Game*, 270.

impacted the battlefield. It affected player-owner relations deeply and possibly triggered numerous conflicts in the following years. The next chapter will narrate of Larry Fleisher, Oscar Robertson, and the struggles of African American athletes, and the first collective bargaining agreement between the NBA and the NBPA. Moreover, the foundation of the rival league, the American Basketball Association.

CHAPTER III

LARRY FLEISHER, OSCAR ROBERTSON, THE FIRST COLLECTIVE BARGAINING AGREEMENT, AND THE AMERICAN BASKETBALL ASSOCIATION

3.1. Larry Fleisher, Oscar Robertson, and the Struggle of the African American Athlete

Larry Fleisher enrolled at Harvard Law School in 1950 and soon he became one of the familiar faces around it, he was always searching for something he could have fun with and basketball was the answer. Fleisher assembled a basketball team with his friends, their "law school all-stars" and even played before a Celtics game as the undercard. He also knew a few of the Celtics because he was doing tax returns for them. He loved the game and the ones who made the game beautiful. Tom Heinsohn asked him on a Saturday afternoon at Jim Downey's Bar on Eighth Avenue in New York in 1962, to become player's counsel. He had been excited to represent whom he admired. After graduating from law school, he was able to take a job wherever he wanted—all of his classmates from Harvard also did—as many league officials and journalists around professional basketball players—many on them also skeptical about player's freedom from restraints of the reserve clause—were also able to test their value in the market and switch cities and job opportunities whenever they wanted. He was fascinated by the fact that these athletes—many of whom were adored by most of the American public—did not enjoy this basic freedom.

In 1963, before the All-Star game in Los Angeles, players demanded to have Fleisher in negotiations with owners. "Our union had to fight with them tooth and nail just to get our own elected official to sit in on negotiations with them," Oscar Robertson remembers. NBA management promised that Larry Fleisher would be present in next year's negotiations. Walter Kennedy would not answer Fleisher's phone calls next year, and players would have to make him an honorary member of their union. This was the most important reason why players inclined to strike in 1964, owners and the league did not keep their promises. Since he became the general counsel, he wanted to achieve something historical, something no one else was able to achieve before. David Halberstam figured out this aspect of Fleisher in an interview: “Everyone, he thought, wants in his career to do something large, something special. A quick dance in the history books.”[47] Because professional athletes did not have the basic freedom to choose where they can work and they could not test their value in the market, the end goal would be to have free agency. Yet the union must be built on a strong foundation. These athletes needed to obtain very basic rights, including a pension plan and medical plans, and without them, players were vulnerable against the very nature of professional sports. Most of them had only the gift to play basketball and their glorious days could end by career-threatening injuries overnight. They might end up being unemployed because some of them did not figure out what other skills they had besides playing basketball.

Nevertheless, Fleisher had foreseen the potential in the business of basketball. These players were entertainers as much as they were professional athletes, despite having been treated completely differently. With the introduction of television, players would be able to bargain for their rights firmly than ever before because there would be too much at stake for the owners. The separation between owners and players was enormous, in fact, owners belittled players because there were millions out there who could play the game for nothing. They were always hostile toward agents and thought that they were misleading their players. Since they were successful at their other business, suddenly they became experts at team management. Their belittlement of players became much more apparent when they dealt with African American players. Yet players in the sixties were rare characters, such as Bill Russell, Oscar Robertson, Lenny Wilkens, Paul Silas, Al Attles—they were leading voices in the union—perhaps zeitgeist influenced these players to become politicized and sensitized. During collective bargaining agreement negotiations in 1983, Fleisher expressed that there would be a strike if the parties did not agree. Players were already gaining huge amounts of money and journalists and critics were always against them. Fleisher was sure that he could not make everyone happy: “People take the view that the players are overpaid. You’ve got a racist element there too: *Hey,*

[47] David Halberstam, *The Breaks of the Game*, 267.

they're overpaid and they're overpaid black players. Plus, nobody likes a striker under any circumstances. We're the third sport. People are tired of it. So we're never going to convince the fans."[48] Larry Fleisher was meticulous, knew every detail about each team's financial accounts in the NBA. Above all, he had the most important characteristics of a labor lawyer, never trusted anyone who sat on the opposite side of the table. "It's not stubbornness exactly. It's more like integrity and perseverance and doing what he believes is right," his wife Vicky recalled.[49] Bill Bradley was his first client, Fleisher helped him to sign the largest rookie contract in history—worth $750,000 over four years—and his teammates started to call him "Dollar Bill". Bill Bradley became a U.S. Senator from New Jersey after his basketball career ended, Fleisher's connection with Bradley enlarged his portfolio of clients, eventually, it led to connections with college stars who would turn professional. "It may appear that players have quite a lot of say in union affairs. But Larry Fleisher is the union.," Alexander Wolff wrote.[50] Indeed, without him, there would not be such a strong Players Association for professional basketball players.

Since the structure of player-owner around the NBA was not changing—other than the team, owners had possession of professional players on their teams—there would be numerous collisions ahead. Tom Heinsohn told Larry Fleisher that he was going to retire from basketball, and they should decide who is going to be the new president of the Players Association. The next president should be young, intelligent, dedicated to his peers' interests, and had to be exceptionally talented. Since the racial balance of the league was changing and more African American players were entering the league, he had to be black. Fleisher could feel that players in the decade of the sixties were more politicized, especially the stars of the game. They were paid more than the average player, yet they could not eat and drink at the same places with their teammates. Amid the civil rights movement, Bill Russell was known for his integrity and he was probably one of the most racially conscious athletes of his generation. On the court, his legacy was defined as the greatest winner in team sports, he was the centerpiece of the Boston Celtics, winning eleven championship in

---

48 "New Deal, Old Dealer: Larry Fleisher, the players' point guard, runs the break," *Boston Globe*, March 29, 1983, 53.
49 Vicky Fleisher on her husband, from Alexander Wolff, "NBA Players Counsel Larry Fleisher Wears a Second Hat as an Agent," *Sports Illustrated*, February 11, 1985.
50 Alexander Wolff, "NBA Players Counsel Larry Fleisher Wears a Second Hat as an Agent," *Sports Illustrated*, February 11, 1985.

thirteen years. He "never got as much recognition as he deserved," Bill Bradley wrote about him. "Race was undoubtedly a reason."[51] Despite the fact that players voted him Most Valuable Player during the 1957-58 season, sportswriters still left his name off the All-League first team. Off the court, he was probably the most politically conscious basketball player in the sixties. His sense of pride and integrity as an African American man was unmatched, he hated stereotypes and wanted to be judged by his character. When journalists asked about how they kept winning as a team after the beating the Los Angeles Lakers in the 1969 NBA Finals—the last of the eleven championships in his career—he said "We see each other as men. We judge a guy by his character."[52]

At the 1963 All-Star game in Los Angeles, Bob Cousy and Oscar Robertson were on the same team and happened to wear the same number—fourteen. The equipment manager told Robertson that they were going to give him a jersey with the number twenty-four since Bob Cousy wears the number fourteen. Robertson realized that twenty-four is Sam Jones' jersey number. He said, "Put fourteen-X on one, with tape. Put it on my jersey. When the game is over, I can take the taped X off and have the jersey." Nobody is going to confuse us, Robertson thought. Indeed, Bob Cousy was a six-foot-one white man, whereas Oscar Robertson was a six-foot-five black man. Throughout his career, Oscar Robertson was known for his stubbornness and perfectionism. He never backed down, ever. "One thing I learned about organized sports was that if you let someone take advantage of you once, they were going to walk over you whenever they could. Even on something small like this, I wasn't going to back down. If they thought I was, they had the wrong person.," he recalled. Nobody was going to confuse him as anyone else."[53]

Oscar Robertson was playing his best during the 1963-64 season. He was voted the most valuable player by his colleagues and had been the most valuable player in the All-Star Game, which was also the cornerstone for professional basketball, in terms of player rights. When it comes to the business of basketball, he trusted nobody. He was young and smart which were good qualities for a union leader. According to Halberstam, "whites could see his talent; but what whites did not know was the

[51] Bill Bradley, *Life on the Run*, 185.
[52] Aram Goudsouzian, "Bill Russell and the Basketball Revolution," *American Studies* 47, no. 3/4, (2006): 61.
[53] Oscar Robertson, *Big O: My Life, My Times, My Game*, 186-7.

special niche Oscar had in the hearts of black athletes everywhere."[54] He played for the Crispus Attucks which was an all-black high school team from Indianapolis that won the state championship in 1955 and 1956 against an all-white team. This was colossal for racial matters in the United States, the myth around black athletes was abolished with the Crispus Attucks.[55] The white establishment was built upon the myths around blacks, making up false narratives which suggested that they are lazy, and could not compete with whites. These myths would be dispelled in the fifties—even though racism around sports continued for decades—St. Louis Hawks would be the last all-white team to win the NBA championship.

There were still quasi-quotas in the NBA, and blacklisting was very common among upper echelons of league management and owners.[56] Oscar Robertson was one of the best players in the league around this time, another young black athlete who had enough of segregation and who had the integrity, ready to fight against player restraints in professional sports. Walter Paul, president of Queen Dity Barrel Co. in Cincinnati, was one of Robertson's college sponsors. "Oscar's recall is almost unbelievable. He can recite just about every principle of economics he has learned. I've never seen anyone read faster than he does and still digest the material," he said. Oscar could have been one of the best students at Cincinnati had he not been too talented in basketball. He had inherent dignity and integrity. "Oscar respects honesty in a person above everything else. He hates phonies. He had a lot of experience with phonies, as anyone in the public eye will," his wife Yvonne said. He was willing to fight against player restraints. Bob Pettit and Tom Heinsohn were approaching retirement during the 1963-64 season, and they were playing their final years in professional basketball. Oscar Robertson was twenty-six years old at the time, he was the only person in the locker room who stood beside Pettit and Heinsohn before the All-Star game in 1964, encouraging his peers to demand what they deserve. When Tom Heinsohn, Bill Russell, and Larry Fleisher asked Robertson to take over the presidency of the players association, he was honored to accept it.

---

[54] David Halberstam, *The Breaks of the Game*, 268.
[55] Randy Roberts, *"But They Can't Beat Us": Oscar Robertson and the Crispus Attucks Tigers* (Champaign, IL: Sports Publishing Inc., 1999).
[56] An example of what happened around the NBA, *see* Wayne Embry and Mary Schmitt Boyer, *The Inside Game: Race, Power, and Politics in the NBA* (Akron, OH: The University of Akron Press, 2004). Wayne Embry was the first African American general manager in professional sports and played for the Cincinnati Royals alongside Oscar Robertson for six years.

Oscar Robertson had realized the platform he could use—in this instance, using the press to get his message to people. Two years had passed since he inherited the presidency of the Players Association, yet players were not pleased with the conditions. They wanted a medical plan and a new exhibition schedule which would last ten games instead of fifteen. Moreover, they wanted to get paid during pre-season games. They wanted to end back-to-back games on Saturdays and Sundays, and an actual all-star break. Usually, players who played for the strongest teams were the all-stars, and they had to play a regular-season game right after the all-star game, they could not have a chance to rest. Beyond all, they wanted to end the infamous reserve clause, which was clearly illegal and restrained the freedom to choose where to work. Fleisher saw talents of Oscar Robertson as a labor negotiator: he always distrusted the other side. Both knew that owners would always be against players' interests. "The league could prove that this was not the case, but we proceeded from that basic distrust," he said. [57]

3.2. The 1967 Collective Bargaining Agreement

The pension plan was the first step of a long struggle, the players had to fight to establish the legitimacy of their union. Having a collective bargaining agreement would provide the means for them. Once Larry Fleisher delivered papers to Walter Kennedy to create a pension plan in 1964, he was in the game. Owners were pretending that there was no union and there was not going to be one in the future. However, Larry Fleisher went to an owners' meeting and asked for a collective bargaining plan, Fred Zollner got angry and left by saying "I don't have a union in my other businesses and I'm not going to have one here." Walter Kennedy brought him back. "I think it's different now, Fred," he said. Owners objected to many things while Fleisher was doing his presentation, but the players were more conscious about their bargaining power more than ever. Oscar Robertson sent a letter to Walter Kennedy following the All-Star game in 1967. It contained few player recommendations to improve conditions and players also asked to meet with the owners by February 15.[58] Meanwhile, players took a step which would significantly expand their bargaining power. Larry Fleisher explained their action plan in a news conference: "First, we are immediately filing with the National Labor Relations

[57] Oscar Robertson, *The Big O: My Life, My Times, My Game*, 214-215.
[58] Phil Elderkin, "Strike Bubbles in Pro Court Caldron: Pension Plan Outlined," *The Christian Science Monitor*, January 28, 1967, 13.

Board to be the first player union certified with the NLRB. Second, we will not participate in any playoff games this year." Oscar Robertson presented the case of his former teammate, Jack Twyman, as an example under the current pension plan. "Jack will get $50 a month starting in 30 years under the present plan. This is worse than any other professional sports."[59] Players said that association is still willing to negotiate. They filed for certification with the National Labor Relations Board as a labor union, in case if their demands were not met. Players wanted increases in the existing pension plan, they argued that their pension payments were significantly low in comparison to baseball and football.[60]

The pension plan, which was established in 1964, gave each player a $2,000 insurance for each year he had been in the league. Moreover, after the age of 55, players could use their savings. Players and owners were splitting the costs of this pension plan. Now players wanted improvements on the pension plan, wanted medical and insurance plans, Robertson wrote in his letter that "the association would take appropriate action if the owners refused to meet with them."[61] Matching pension funds with baseball and football was the top priority of the Players Association. That meant that players with ten years of service would get $7,200 for each year at age sixty-five. When Oscar Robertson, Walt Bellamy (player representative of the New York Knicks), and Larry Fleisher met with the board of governors, they went over a list of demands players had submitted through Robertson's letter after the All-Star break in January. The league and owners accepted health and medical plans, schedule changes, and a minimal All-Star break for the players. Walter Kennedy proposed a $6,000 pension fund for each year, which would apply only to players signing after September 1. Players, on the other hand, were thinking that rookies (newcomers to the league via draft) should not be considered on the same scale with 10-year players. They "wanted the clubs to contribute to the fund on a scale fitted to a player's time in the league." This proposal could cost each club $16,000 a year since it was going to bring each active player a pension fund. "We can't fund anything like that. We don't have the millions football

[59] "NBA Players Threaten Pension Plan Strike," *Chicago Daily Defender*, March 6, 1967, 27.
[60] "NBA Players Threaten to Strike in Playoffs," *Los Angeles Times*, March 1, 1967, C1; Deane McGowen, "N.B.A. Players Threaten to Strike Playoffs If Pension Demands Are Not Met: Unit Plans Move for Union Status," *The New York Times*, March 1, 1967, 34.
[61] Phil Elderkin, "Strike Bubbles in Pro Court Caldron: Pension Plan Outlined," *The Christian Science Monitor*, January 28, 1967, 13

has. We've been in business 21 years and we haven't reached that level of affluence," Kennedy protested through media.[62] Except for players' demand for a pension plan, two sides had agreed on TV revenue, hospital and medical plans for players and their families, as well as payment for exhibition games. "Fellows like (George) Mikan and (Bob) Cousy and (Bob) Pettit and (Tom) Heinsohn and (Paul) Arizin contributed greatly to the success of pro basketball in its early years. I don't think they should be left out now just because they are no longer active," Robertson said about their intention with a new pension plan.[63] 117 of the league's 120 players agreed to boycott the playoffs if their demands on pension plan were not met. The other three were Bill Russell of the Boston Celtics, Dave DeBusschere of the Detroit Pistons, and Richie Guerin of the St. Louis Hawks—since they were all player-coaches, the NBPA was not expecting their support on a potential strike.

Walter Kennedy had issued a deadline that if players did not confirm that they were going to play in the playoffs until March 14, the league would have to cancel playoffs and $280,000 worth of money in players' pool was going to disappear. "So what if we're bound by our contracts," said Oscar Robertson. "Workers at General Motors can take a vote to go on strike—I don't see why we can't."[64] Meanwhile, Larry Fleisher and Kennedy were negotiating for the last thirty-six hours, and parties reached an agreement two hours before the deadline. Owners accepted players' demands on the pension plan. Players who served ten years—once they had been retired for thirty years—would get health and each player would get a $20,000 life insurance. The days before and after the All-Star Game were going to be off. The players were certainly happy, but the architect who was behind all of this was Larry Fleisher. "Never since the turn of the century has a group of athletes joined together and remained united under such trying circumstances," he said. "That loyalty has now been amply rewarded."[65] Players were asking for improvements for the last three years, but owners basically delayed their demands. That was their biggest mistake, whenever they delayed, players' demands ended up to threaten to strike, and television networks' reactions were predictable. In order to get television money, the

---

[62] Bill Searby, "Money the Root of NBA Evil: Threat: Playoff Strike," *Newsday*, March 1, 1967, 40A.
[63] Phil Elderkin, "NBA Pension: Pro Basketball's Races Are Over But the Playoffs May Not Start," *The Christian Science Monitor*, March 8, 1967, 11.
[64] "Noon Today Is Deadline in NBA Row," *The Washington Post Times Herald*, March 14, 1967, D1.
[65] "NBA Promises Pension, Players End Strike Threat," *Boston Globe*, March 15, 1967, 55; "Players, Owners Settle Dispute: NBA Playoff Strike Off," *Los Angeles Times*, March 15, 1967, C1.

show must go on. Thus, owners crumbled again, ended up complying with what players were demanding. There was a rival league now, and the NBPA had the legal recognition which Larry Fleisher and players were waiting years for. Finally, he could be free to achieve what he aimed in the first place, the reserve clause.[66]

3.3. The ABA

In 1965, there was a war between the American Football League and the National Football League. Dennis Murphy was the mayor of Buena Park, California, and happened to be a serious basketball fan. Initially, he was thinking to organize a group to own a football franchise in Anaheim, California, due to his expectations of a merger between the two football leagues. The merger happened before, but he was thinking "there's only one basketball league and one hockey league, so why not have another?"[67] He was planning to build a league, and hopefully, they could have a merger with the NBA. It was reasonable to pursue the idea because there were only twelve teams in the NBA. The second league founded previously in football and it worked. The AFL and NFL merged—they became two conferences, winners play with each other which was called the Super Bowl, the single biggest event among American major sports. Even though the American Basketball Association (ABA) upcoming news about the process strengthened the NBA players' bargaining power during their contract negotiations. The commissioner of the new league should be a prestigious figure who had been around the basketball business. Murphy had read about a story about big men of the Minneapolis Lakers George Mikan, in *Sport* magazine, and thought he could be a great commissioner. Mikan was a legendary player and had a law degree. He also had a travel agency in Minneapolis, where he lived. When they announced the league in the press conference, Murphy realized that Mikan was the right person for the job: "When a guy who was the greatest basketball players of his era, a guy who is a successful businessman and a guy who was 6-foot-10 with the charisma of Mikan stood up and spoke, people listened."[68]

George Mikan wanted every team in the ABA to offer an NBA star. The idea was to file a class-action suit on behalf of all the players that ABA teams had offered—after

---

[66] David Halberstam, *The Breaks of the Game*, 270.
[67] Terry Pluto, *Loose Balls: The Short, Wild Life of the American Basketball Association* (New York: Simon and Schuster, 1990), 39.
[68] Terry Pluto, *Loose Balls*, 43.

persuading them to switch leagues of course. Oakland Oaks was the only team to follow Mikan's advice and they offered Rick Barry $75,000 for three years and fifteen percent of the team's share. Bruce Hale would become the coach of the Oakland Oaks and happened to be Barry's father-in-law. Barry also played for Hale in college, and certainly would like to play for him again, "He was like a second father to me, and the idea of playing for him again had so much appeal," Barry remarked later.[69] He was at the top of his game, leading the NBA in scoring with averaging 35.6 points per game in the 1966-67 season. When Barry told Franklin Mieuli—the owner of the San Francisco Warriors—that he was leaving, Mieuli matched the Oakland's offer. Yet it was too late, Barry said earlier to both clubs that he was going to take the best between both offers, and Oaks made a much better offer. Oakland Oaks' offer had caused a lot of annoyance for the owners in the NBA.

The American Basketball Association would introduce many novelties to the game of basketball. Mikan was behind the idea of the first one: a red, white, and blue ball.[70] The second one was the 3-point play which was also part of the ABL (American Basketball League), an unsuccessful attempt of Abe Saperstein against the NBA. The 3-point shot was supposed to bring something extraordinary to the game, it was 25-feet away from top of the key area and 22 feet away from the corners. It was such a new concept that everyone—including players and broadcasters—could not figure out that a three-point shot could win the game in close-game situations. The ABA had introduced another festivity that would have an impact and change the image of professional basketball players. In 1976 the Slam Dunk Contest was organized to sell more tickets, since the league did not have a television deal. Yet, its impact went beyond expectations, *Sports Illustrated* labeled it as "the best halftime invention since the restroom."[71] Many members of the ABA had believed that their league was advanced compared to the NBA, Hubie Brown was one of them. He was the coach of the Kentucky Colonels and one of the prominent analysts of the game: "We had the 3-point play. The NBA said it was a gimmick; now it's one of the most exciting parts of the pro game. We used pressing

[69] Terry Pluto, *Loose Balls*, 50.
[70] The ABA was determined to get a trademark for red, white, blue ball. Yet, they were unsuccessful, despite their efforts in court. *American Basketball Association v. AMF Voit, Inc.*, 358 F. Supp. 981 (S.D.N.Y. 1973), https://law.justia.com/cases/federal/district-courts/FSupp/358/981/1412216/
[71] Terry Pluto, *Loose Balls*, 25.

and trapping defenses, something you never saw in the NBA. About everything we did in the ABA they do now in the NBA, except they didn't take our red, white and blue ball."[72]

Remarkably, the ones who played in or worked for the ABA had a sense of belonging to the league which the members of the NBA did not have. Just as Bob Costas had said, "it was almost as if the ABA players were a bunch of unappreciated artists saying: "We may die impoverished, but one day our work will hang in the Louvre."[73] The sense of pride and self-esteem in ABA players that they were as good as NBA players, these sentiments were felt by them perhaps because of the small number of teams and lack of promotional opportunities—being without a national television contract—yet in the first All-Star game after the merger in 1977, seeing there were 10 players out of 24 from the ABA. As Julius Erving said: "Just looking at the people here, I guess that should answer any questions you have about parity between the NBA and the ABA."[74]

Many NBA players have argued that without Larry Fleisher and Oscar Robertson, there would not be the right of free agency. Although this argument might be an exaggeration, players were able to get the pension plan with the perseverance of Larry Fleisher, Tom Heinsohn, and Oscar Robertson. With the foundation of the ABA, new ways of bargaining opened for professional basketball players. The next chapter will analyze what happened after the foundation of the ABA. The chapter will also examine the bidding wars for young talents between two leagues and the following merger meetings between them, how the NBPA attempted to block the merger between two leagues, the 1970 collective bargaining agreement. In the course of this analysis, the chapter includes the story of two significant young African American basketball players, Connie Hawkins and Spencer Haywood, who were among many plaintiffs against the NBA.

[72] Terry Pluto, *Loose Balls*, 30.
[73] Terry Pluto, *Loose Balls*, 29-30.
[74] Terry Pluto, *Loose Balls*, 35.

CHAPTER IV

BIDDING WARS AND MERGER MEETINGS BETWEEN TWO LEAGUES

4.1. What Happened Between 1967 and 1970 Around the NBA and the ABA

Before the start of the 1968-69 season, the NBPA and the league agreed to implement minimum salaries for rookies which were set at $10,000. According to the agreement, the minimum salary for the rookies was going to increase in the subsequent years; $12,500 in 1969-70 and $13,500 in 1970-71 season. The biggest reason behind players' plea for a minimum salary was other major sports had similar applications of minimum salary. Major League baseball rookies were also getting a minimum salary of $10,000, while a rookie in the National Football League was getting $12,000. The agreement included $12,500 minimum wage for the veteran players with at least one-year of experience. This amount would increase to $13,500 the following year.[75] In addition to salaries, meal allowances and playoff pool money was increased effective with the 1971-72 season.[76]

At the end of the 1968-69 season, it became obvious that the ABA suffered against the NBA in terms of exposure and star power. The summer of 1969 was full of action. On June 5, Walter Kennedy announced that the NBA was going to expand to fourteen teams for the start of 1970-71 season. This meant that the league would add five teams over a five-years period, the Chicago Bulls in 1966, the Seattle Supersonics and the San Diego Rockets in 1967, the Milwaukee Bucks and the

---

[75] "NBA to Increase Rookies Salaries," *The New York Times*, August 21, 1968, 55; "NBA Boosts Pay," *Chicago Daily Defender*, August 22, 1968, 38.
[76] Paul D. Staudohar, *Playing for Dollars*, 106.

Phoenix Suns in 1968.[77] A few days later, Connie Hawkins' suit against the NBA had concluded. The $6 million lawsuits dated back in 1961, when Hawkins was a college player in Iowa. This lawsuit was inherited by Walter Kennedy from Maurice Podoloff era in the league. *The Connie Hawkins Story*[78] was another one that revealed blacklisting in the league. Lew Alcindor (later Kareem Abdul-Jabbar), arguably one of the best college players in history, chose the NBA. The second pick after Alcindor was Neal Walk, who also turned down the ABA in order to "play against the best." He watched Bill Russell, Wilt Chamberlain, and Oscar Robertson in national television. In the last two years, top college athletes such as Elvin Hayes, Wes Unseld, and Earl Monroe had chosen the NBA over the ABA. Russell and Chamberlain were Neal Walk's idols, it was his dream to compete against them. "The A.B.A. cannot match that dream. It has no Russell and it has no TV contract," Bob Sales of the Boston Globe wrote.[79] A few months ago, the ABA All-Star game was on national television. "The A.B.A. needs Alcindor because it has only two superstars comparable to the top 10 or 15 stars in the N.B.A. Rick Barry of Oakland and Connie Hawkins of Minnesota."[80] That Connie Hawkins and Rick Barry were about to jump leagues. Connie Hawkins' lawsuit against the NBA was continuing during the 1968-1969 season, he could return to the NBA, depending on the result of his case. Rick Barry—who was certainly a unique basketball player who could change his mind whenever he pleased—would sign with the Warriors for four years, and would be in court halls, again. Meanwhile, Connie Hawkins would have won his case against the NBA and signed with the Phoenix Suns of the NBA.

The NBA announced in advance that Lew Alcindor would have to play whichever team chooses him in the draft. He was going to be picked either by Milwaukee, Seattle or Phoenix. However, the ABA would let him choose any franchise he wanted, once he was eligible for their draft. It was known that Alcindor's heart was with playing in New York, he "wants to remain involved with the black youth of Harlem."[81] Both leagues needed him—he would be the next superstar rookie after

---

[77] "N.B.A. Plans to Expand to 14 Teams in '70," *Chicago Tribune*, June 6, 1969, C10; "N.B.A. Votes to Add Two Teams in 1970-71," *The New York Times*, June 6, 1969, 52.
[78] David Wolf, Foul! The Connie Hawkins Story. (New York: Holt, Rinehart and Winston, 1972).
[79] Bob Sales, "NBA Image Beats ABA Dollar Lure," *The Boston Globe*, April 27, 1969, 83.
[80] George Vecsey, "A.B.A. Suffers from Underexposure," *The New York Times*, January 31, 1969, 43.
[81] George Vecsey, "Sports of the Times: The Choice," *The New York Times*, January 25, 1969, 33; George Vecsey, "Alcindor Is Given Free Rein to Pick Club, If He Joins A.B.A.," *The New York Times*, January 28, 1969, 36.

Oscar Robertson for the NBA, and ABA could have possibly received a TV contract and could have forced a merger much faster if they landed the upcoming superstar—yet, Lew Alcindor, without announcing publicly his intent, secretly wanted to play in the ABA. Alcindor informed both leagues that he is going to be in New York and will take only one offer from each club. When George Mikan met with Alcindor, he held a million-dollar check in his pocket. "That would be one way to cut through all the bull and get his attention. It would show that we weren't going to waste his time in needles negotiation," Mike Storen recalled.[82] For some reason, Mikan never gave the million-dollar check to Alcindor, and the young superstar went to the NBA, signed with Milwaukee for $1.4 million for five years. Mikan would have to resign from the ABA, and Jack Dolph became the new commissioner, a TV executive who had connections with CBS, hoping to get a TV deal.[83]

Meanwhile, the ABA filed an antitrust lawsuit against the NBA on March 28, 1969, claiming that the NBA was "blacklisting players and coaches who jumped to the ABA." The accusation was primarily focused on the NBA's "monopolization of the sport by using its economic power to eliminate competition." The ABA specifically asked the court to nullify the option clause used by the NBA, to prevent its players to switch leagues. Frederick T. Furth, who was the attorney for the ABA, did not claim any specific damage but "the suit would seek to recover millions and millions of dollars."[84] Furth was an extraordinary student at Michigan Law School, one of his former classmates introduced him to the representatives of the ABA. He defended the league and players such as Rick Barry in many antitrust cases. He believed that there would be many antitrust cases in the future. "I find that people don't want to compete on the basis of price, quality of the product or anything like that anymore… All over America, I'm finding people against competition," he said to Larry Kramer, a reporter for The San Francisco Examiner, who labeled him as "master trust-buster."[85] Furth became quite powerful in the antitrust litigation business and was known of his affection with money. Mike Goldberg, who was one of the legal

[82] Mike Storen was general manager of the Indiana Pacers of the ABA, during their negotiation with Lew Alcindor. He was going to be shareholder of the Kentucky Colonels few weeks after, also became president and general manager of the team. Storen quoted in Terry Pluto, *Loose Balls*, 193.
[83] Terry Pluto, *Loose Balls*, 194.
[84] "A.B.A. in Antitrust Suit, Asks Millions in Damages," *The New York Times*, March 29, 1969, 43.
[85] Larry Kramer, "A Master Trust-Buster," *The New York Times*, July 24, 1977.

counsels of the ABA, visited Furth in his hotel suite.[86] Since the ABA, owed Furth money, he said, “Mike, there is something I want to talk about.” Goldberg was trying to assure him, “If it’s your fee, we’ll take care of that.” Furth said, “I know you will, because if you don’t have $25,000 on my desk by Friday, Julius Erving will be working on my garden,” self-assuredly.[87]

4.2. Connie Hawkins

People who regularly went to basketball courts in New York eventually saw a couple of talents they would never forget. Tall kids with certain athletic abilities would end up the ones who rose above everyone else. Connie Hawkins was one of those high school kids who even played solid against the professional basketball players. Jerry Harkness was one of the high school stars in New York around the same time and had seen Connie’s greatness: “I can recall seeing Connie while still in high school playing against a team of pros that included Wilt Chamberlain, and Connie held his own. In high school, he was already the greatest talent I had ever seen.” He was ready to become professional when he was still in high school.[88] Back then the NBA had a rule which made it compulsory for players to graduate from university or wait until twenty-two years of age. The name of Connie Hawkins was already in newspapers, in one article in the New York Times, it was said that “the scouts and college coaches said Hawkins would be a superstar in the National Basketball Association, yet the one thing he could not do was to sign autographs.”[89] School was tough for young Connie due to his inability to learn and his extreme poverty. “I acted like it was all a joke because I didn’t want people to know how bad I felt. I wouldn’t even admit to myself how depressing everything was,” he remembers.[90]

Hawkins did not feel the same while playing basketball. After his sophomore year, he became more confident about his basketball skills, his body matured, he did not feel ashamed while playing basketball. “I could see from how I was screwing up in class that I’d never be no brain, so I knew I’d have to play ball—NBA ball—if I was

86 Mike Goldberg was former ABA legal counsel.
87 Terry Pluto, *Loose Balls*, 431.
88 Terry Pluto, *Loose Balls*, 80.
89 Robert Lipsyte, “Sports of the Times: Items for Export,” *The New York Times*, May 17, 1969, 23; David Wolf, *Foul! The Connie Hawkins Story*, 26.
90 David Wolf, *Foul! The Connie Hawkins Story*, 28.

ever going to have money," Connie remarks. Poverty was always with him and during his sophomore year in college, he did not have any money on his return to Iowa, thus, he asked his brother to help him. When his brother said he could not, Connie had to ask for money from Jack Molinas, the only person he knew that could give him money. Connie asked for a loan, and Molinas gave him an envelope, and said: "take your time, there is no rush."[91]

During the summer of 1960, one of Connie's friends introduced him to Jack Molinas—who was banned from the NBA in 1951 for a lifetime due to his gambling activities. Molinas was an honor student in high school and one of the best prospects in New York in the late 1940s and early 1950s. When he was drafted by the Fort Wayne Pistons, he was already established as a solid basketball player. "He was one of the best rookies in the NBA and few doubted he would be a superstar. But Molinas was thinking stardom—to money."[92] Yet he was amoral when it came to gambling. Word spread around the league that Jack was calling bets in the Bronx. Fred Zollner, the owner of the Fort Wayne Pistons questioned him, Molinas denied the accusations by saying: "My mother should die if I'm associated with any gamblers." Yet, Maurice Podoloff, the commissioner of the NBA, hired a private detective to investigate Molinas' activities. Jack admitted that he had been betting, Podoloff banned him. from the NBA for life. Molinas would later file a lawsuit against the NBA claiming that Podoloff had no authority to suspend him indefinitely. The New York Supreme Court, however, ruled that the suspension was "eminently reasonable."[93] He became a lawyer after his professional basketball career ended but did not retire from gambling. "He was the key figure in a nationwide gambling operation that was in the process of bribing scores of college players to fix basketball games." This was famously known as the 1961 Point-Shaving Scandal and there were forty-seven student-athletes were involved in it. College basketball was corrupt from the recruitment of the student-athletes to actual games. "If it were up to me, I'd demolish the whole system of college athletes. And I'm a guy who has been around

[91] David Wolf, *Foul! The Connie Hawkins Story*, 63.
[92] David Wolf, *Foul! The Connie Hawkins Story*, 67.
[93] Molinas v. Nat'l Basketball Ass'n, 190 F. Supp. 241 (S.D.N.Y. 1961); https://law.justia.com/cases/federal/district-courts/FSupp/190/241/1622824/

it all my life," Honey Russell, who retired from coaching in 1959, said after learning of the scandal.[94]

After Molinas got arrested in 1961, one of his associates gave the investigators lots of names in order to clear his name. Connie's name was among them. A detective from the New York police department came to Iowa and brought him to New York, where he was held by them for the next two weeks. Detectives did not offer the young student-athletes any counsel nor did they inform them about their rights. Connie could not even call his mother. "We were not going to let anybody make phone calls until we were all finished questioning them," one of the investigators said. Initially, Connie had insisted that Molinas or anyone never mentioned gambling or match-fixing, but his testimony changed during the last few days. Detectives were asking the same questions over and over, "They kept saying I would go to jail if I lied, then they'd say they thought I was lying." Detectives were asking questions deliberately for Hawkins to confess something he did not do. "I decided I'd never get out if I kept telling the truth.," he remembered. Connie thought that once he told the detectives what they wanted, they would release him, and he could play basketball again. Yet the story was made public, and even though detectives explained Connie about immunity from prosecution over and over, he did not ask for it because he was too excited. Connie somehow forgot what to say once he was confronted with the grand jury, a semiliterate eighteen-year-old had no chance against the DA and shrewd detectives.

When Connie was ignored in the 1964 NBA draft, his lawyers were sure that he was blacklisted. "We suspected it for some time," Connie's lawyer David Litman said. For the next two years, Litman and his associates wrote letters to Walter Kennedy about the potential blacklisting of Connie Hawkins. Yet Kennedy did not even bother to write back. The last straw came when David Litman wrote to Kennedy on April 26, 1966, he wrote, "Unless Mr. Hawlins is permitted the opportunity to play… legal proceedings will be instituted…" Then Kennedy invited Litman and Hawkins to his office. Litman went there himself—hoping that the NBA would explain the situation to him—because Hawkins was in Europe with the Harlem Globetrotters. However, Litman confronted the attorneys who were taking notes and asking questions,

---

[94] David Wolf, *Foul! The Connie Hawkins Story*, 66.

without even trying to judge Connie and they were not interested in his story. They asked questions as though they were about to convict Hawkins, “who did Hawkins associated with? Did he ever accept money? What does he know about bribes?” David Litman felt that they were about to prepare a case against Hawkins. This happened when the NBA was the only major league in professional basketball, and therefore had a monopoly over jobs in basketball. Connie’s lawyers claimed that the league—through the authority of the commissioner—blacklisted Hawkins and there was a commitment among NBA clubs not to draft him. “This had damaged Hawk’s reputation and deprived him of the salary, endorsements, job opportunities, and future employment that his status as a star player would have otherwise brought.”[95] Indeed, he was a star. His teammate from ABA’s Pittsburgh Pipers, Mel Daniels thought highly of him: “Connie Hawkins was our first true star, in the sense that he was a great player whose style attracted a lot of attention, yet he also played an all-around game… I am convinced that the Connie Hawkins that led Pittsburgh to that first title could play in the NBA and be on the same level as Magic Johnson, Larry Bird, and Michael Jordan are today.”[96]

When Connie returned to the US, his lawyers listened to what happened six years ago during the scandal of 1961. They believed Connie’s story, of course, but with each interview David Wolf made, it became obvious that Connie was innocent. His brother Fred confirmed his story of the money he got from Molinas. Later, Molinas would say to Wolf that the money he gave to Hawkins was “an investment to soften up Hawkins for a future approach.” It appears that the NBA “barred Hawkins simply because of what had been written about him in the newspapers—and, possibly, because of some damaging but completely unsubstantiated statements from Assistant DA Peter Andreoli.”[97] David Wolf was investigating and writing about Connie Hawkins’ story when the case between the league and Connie occured. With each interview he made coupled with investigations that Connie’s lawyers were carrying out, they were sure of his innocence.

Maurice Podoloff’s carelessness and Walter Kennedy’s ignorance was not only embarrassing but also deeply troubling. Especially when bookmakers and gamblers

---

95 David Wolf, *Foul! The Connie Hawkins Story*, 231-34.
96 Terry Pluto, *Loose Balls*, 83.
97 David Wolf, “The Unjust Exile of a Superstar,” *Life Magazine*, May 16, 1969, 52B

were mentioned in the same sentences with Bob Cousy, retired NBA player and the founder of Players' Association. In 1967, *Life* magazine published its investigation about "the Mob" and its economic resources. Bookmakers and gambling were the backbones of economic strength for the mafia, and legendary Bob Cousy of the Boston Celtics had been warned by the police for his relationship with bookmakers and gamblers. Life magazine claimed that the police had found Cousy's name next to Francesco Skibelli—who was also known as "Skiball". Cousy admitted that he had met with Scibelli through his friend Andrew Pradella. These two men were known as partners in bookmaking and their operation was tied to the Genovese family of Cosa Nostra, which ran gambling in Springfield, Massachusetts. It was ironic that all these reports about Bob Cousy should have resulted in an investigation. Bob Cousy was appointed as the head coach of the Cincinnati Royals in 1969, yet Kennedy did not even question Cousy about his association with gamblers and bookmakers, he approved Cousy's contract without any doubt. "Of course, Cousy was an all-time NBA All-Star—not a black schoolyard player from Bed-Stuy," David Wolf remarked.[98] It was obvious that Kennedy, and Maurice Podoloff before him, should have carefully investigated the 1961 Point-Shaving Scandal in college basketball. However, they blacklisted a black college student without any suspicion or solid investigation. This was proof of their double standard toward players, never mind the racism. *Hawkins v. NBA*[99] was an antitrust suit which contains many details, yet Connie Hawkins did nothing that could cause him to be banned by the NBA, and in a short time, the NBA had reached a settlement that would make Hawkins a millionaire overnight.[100]

4.3. Merger Talks Between Two Leagues and Bidding Wars for College Talents

Hawkins' jump to the NBA was another blow to the ABA. Lew Alcindor chose the rival league and Hawkins was one of the best talents the ABA ever had. Even young

---

[98] David Wolf, *Foul! The Connie Hawkins Story*, 247.
[99] Hawkins v. National Basketball Association, 288 F. Supp. 614 (W.D. Pa. 1968), https://law.justia.com/cases/federal/district-courts/FSupp/288/614/1642194/
[100] David Wolf, *Foul! The Connie Hawkins Story*, 242-47; David Wolf, "The Unjust Exile of a Superstar," *Life Magazine*, May 16, 1969, 52B; "Hawkins' Ban Criticized," *Chicago Tribune*, May 13, 1969; Robert Lipsyte, "Sports of the Times: Items for Export," *The New York Times*, May 17, 1969, 23.

Alcindor acknowledged that by saying, "I've seen the best in the N.B.A., but I've never seen anyone better than Hawkins."[101] Yet Hawkins was not at his best, his knees were bothering him, which shortened his career in the NBA. Even though there was another league, franchise values were increased in the sixties, the Boston Celtics were sold on August 12, 1969, with a record fee—for $6 million dollars. "The average annual rate of increase in franchise prices for NBA teams from 1950 to the present runs around sixteen percent, roughly twice that of baseball over its history," economists James Quirk and Rodney D. Fort indicates in their study about the business of professional team sports.[102] Meanwhile, two rival leagues met in order to find ways toward a possible merger. The NBA was represented by Ned Irish of the New York Knicks, Sam Schulman of the Seattle Supersonics and Richard Bloch of the Phoenix Suns, while there was Ray Boe of the New York Nets, Joe Geary of the Dallas Chaparrals, and Gardner, who was the interim commissioner of the ABA. They agreed to the "possibility of exploring cooperative arrangements." The NBPA immediately announced that they were going to oppose any merger of the leagues. Larry Fleisher spoke on their behalf: "The N.B.A. players will fight. They will take concerted action in the courts, with the Government and with elected officials and representatives to prevent this from coming to pass."[103] The media outlets and people around the basketball business considered that the ABA lost the battle because of Lew Alcindor's choice. Yet the war continued.

At first, the ABA raided the referees from the NBA, once Walter Kennedy said that the merger was "at least two years, probably more, away," during an interview on ABC's Wide World Sports program, few days after the meeting between two leagues.[104] On top of that, they breached the four-year rule which prohibited college players to play in the NBA, until their class had graduated from college. There was a boycott movement during the 1968 Olympics when the civil rights movement peaked. Many talented college players—among them were Lew Alcindor—did not

---

[101] "Hawkins Quits A.B.A. to Join Suns," *The New York Times*, June 21, 1969, 20.
[102] James Quirk, and Rodney D. Fort, *Pay Dirt: The Business of Professional Sports* (Princeton: Princeton University Press, 1997), 57; "Celtics Sold Again: Price is 6 Million," *Chicago Tribune*, August 13, 1969, C3; "Celtics Sold for a Record Price of $6-Million: N.B.A. Franchise to Stay in Boston," *The New York Times*, August 13, 1969, 54.
[103] "Basketball Loops Hold Peace Talks: N.B.A., A.B.A. Officials Map Ways of Working Together," *The New York Times*, August 9, 1969, 18.
[104] "Cage Merger '2 Years Off': Only in Embryonic Stage, Claims NBA Chief," *The Baltimore Sun*, August 10, 1969, A2.

play for the US team. Yet there was one college player who shined during the Olympic games, Spencer Haywood, who became known instantly and accepted an offer from the Denver Rockets of the ABA worth more than $250,000. It was a surprise for anyone who knew the constitution of the NBA. “Our constitution does not allow an N.B.A. team to sign a player who has entered college until his class has graduated,” Walter Kennedy said.[105] Haywood was going to be part of two lawsuits in the seventies and initiated a new era in professional basketball. After the relocation of its Oakland franchise to Washington—it triggered a direct competition between them and the Baltimore Bullets—the signing of Spencer Haywood was another move by the ABA, amid conversations of a merger with the NBA.

While merger talks between the two leagues were warming up, Larry Fleisher and the NBPA with player representatives of the fourteen NBA teams, announced their three courses of action in order to prevent it. “Stop the league’s attempt go get Congressional approval of the merger and if that fails, a lawsuit and then a players’ strike.” This was the NBPA’s plan. One of the reasons why two leagues had held meetings in a hurry was the need for a common draft next season if there would be a merger. Basketball players saw the merger between the National and American Football Leagues in the early sixties, which was approved through Congress. “The merger of the leagues would be a clear violation of the antitrust laws,” Fleisher said in a press conference with player representatives. “The owners have told us time and again the sole purpose of the merger was to limit salaries. That is a restraint of the players’ individual rights to bargain.” Everyone knew that two leagues were having bidding wars in order to acquire star players, this was the only way to increase television revenues and gate receipts. Player salaries had increased since the foundation of the ABA and Fleisher asserted that one owner told him “it had done more to increase player salaries than had been accomplished in the seven years before that.”[106] It was a significant move by the players, they had threatened to strike before an All-Star game in 1964 and before 1967 Playoffs, both times they were able to gain what they demanded.

[105] “Haywood Quits College, Signs $250,000 Pact with Denver: Haywood Turns Pro for $250,000,” *The New York Times*, August 24, 1969, S1.
[106] Sam Goldaper, “Players’ Group Plans to Fight Proposed Merger of Pro Basketball Leagues,” *The New York Times*, August 20, 1969, 55.

Billy Cunningham switched leagues a few days after Spencer Haywood. NBA officials were not surprised by Cunningham's move, they knew that James Gardner, interim president of the ABA and owner of the Cougar franchise, relocated his team from Houston to North Carolina, hoping to acquire players from the Tar Heel state. Cunningham was one of them, and Walter Kennedy said, "If the Cougars announce they have signed anyone but Cunningham, I will be very much surprised."[107] The ABA continued to try to pull off whatever they could from the NBA but retaliation came swiftly. The NBA dropped merger talks with the ABA, due to the rival league's consecutive actions. Relocating the Oakland franchise to Washington, drafting a college junior, and signing one of its star players, made the NBA drop its merger talks with the ABA. "If we are going to have a merger, it may come within the next couple of weeks… We each have some problems, but they can be worked out," James Gardner said. Kennedy laughed when he heard Gardner's statement, "It will take more than two weeks. Maybe more like five or ten years the way I see it right now," he said.[108] NBA officials were also disturbed by the fact that ABA went after active college players, perhaps they were afraid of losing talented players in the future.

Members of the NBA's merger committee had different opinions on the actions of the ABA. Ned Irish did believe that two leagues were going to diminish gate receipts more in the future. "You can't give away 110 percent of the gate receipts to the players and still live. The football people couldn't either before they merged," owner of the New York Knicks said. During a meeting held between the two leagues on August 6, owners discussed the relocation of ABA franchises to cities where no NBA team existed and the return of Rick Barry to San Francisco Warriors, back to the NBA. The NBA officials knew that ABA teams lost millions last season. Sam Schulman, the owner of the Seattle Supersonics, indicated the war between two leagues. "A.B.A. has not bargained in good faith and talks of the merger with us have ended. You can say we are at war with the A.B.A. and retaliations are developing," he said. "They are desperate but we're going to take them on if that's the way they

[107] Sam Goldaper, "Cunningham of 76ers Plans to Jump Leagues and Join Cougars of A.B.A.: Signing of Star is Slated Today," *The New York Times*, August 25, 1969, 43.
[108] Sam Goldaper, "N.B.A. Drops Merger Talks with A.B.A. in Retaliation for Rival's Actions: Shifting of Oaks Cited as a Factor," *The New York Times*, August 26, 1969, 50.

want it."[109] Meanwhile Rick Barry rejoined the San Francisco Warriors and signed a five-year contract. He was not happy about the relocation of his franchise since he owned fifteen percent of it. His family was in Oakland, and he did not want to leave the Bay Area, where his family lived. He considered switching leagues, as soon as his franchise had sold to Earl Foremen.[110]

The ABA's next move was unprecedented in professional sports. In one of their meetings on how they could hurt the NBA, Ralph Dolgoff, one of the major investors of the league, asked "Did you guys ever talk to their officials?" It turned out that officials in the NBA were not earning much money. Thus, the ABA went after Norm Drucker and made him supervisor of the ABA officials, in addition to Earl Strom, John Vanak, and Joe Gushue. All of them had second jobs, Norm Drucker was a school guidance counselor, Gushue was a carpenter, Earl Strom worked for General Electric. They were the best officials the NBA had, all of them worked in the 1969 NBA finals.[111] When the four officials got their final offer by the ABA, they went to Walter Kennedy's office, but he did not even meet with them. There was no choice other than to switch leagues. When Kennedy asked about it, he said, "If the price we have to pay for signing Lew Alcindor is the loss of four officials, I guess that's the price we have to pay." Yet James Gardner was still hopeful about the merger and a common draft. "It will take a little bending on the part of both leagues to make it work. We're willing to sit down and discuss a merger. The move now is up to the N.B.A.," he said.[112] However, the NBA did not want to bend after what the ABA had done.

1970-71 season was going to be the twenty-fifth NBA season, and Leonard Koppett wrote that "its members looked forward with stubborn optimism". Certainly, for those who can remember its origin, the league was a great success. "Pro basketball is going to take off just the way pro football did in the nineteen-sixties," as Koppett

---

[109] Sam Goldaper, "Irish Keeps Door Open for Merger: Knicks' Head Says 2 Rival Leagues Will Hurt Gate," *The New York Times*, August 27, 1969, 34.
[110] Sam Goldaper, "Cunningham of 76ers Plans to Jump Leagues and Join Cougars of A.B.A.: Signing of Star is Slated Today," *The New York Times*, August 25, 1969, 43; "Barry to Rejoin Warriors' Five: N.B.A. Club Gives Oakland Star 5-Year Contract," *The New York Times*, August 30, 1969, 15.
[111] Terry Pluto, *Loose Balls*, 128.
[112] Sam Goldaper, "Jackson, 4 Referees Join Rival League: 76er Star Signs with Cougar Five," *The New York Times*, September 12, 1969, 54; "4 Referees, Luke Jackson Shift to ABA," *Chicago Tribune*, September 12, 1969, C3.

quoted his sources on September 1, 1970.[113] Baseball had its heyday in the fifties. It was the most popular sport until the mid-sixties and football was on the rise around the same time. Everyone around the basketball business was hoping that the sport would become more popular in the seventies. This belief was largely due to the new three-year national television contract between the American Broadcasting Company (ABC) and the NBA. According to the contract, ABC was going to nationally televise a minimum of twenty-eight games instead of eighteen effective with the 1970-71 season and the company was going to pay the league $17 million for three years.[114] There were other major changes around the league as well, after the 1969-70 season finished, Oscar Robertson was traded to the Milwaukee Bucks and joined Lew Alcindor[115] who was the rookie-of-the-year in the previous season. There were two new rookies which caused a serious tension between the NBA and the ABA, eventually, the NBA won the battle, acquiring Pete Maravich—one of the greatest college basketball players in history. Another one was Bob Lanier, who was drafted by the Detroit Pistons. Even though Pete Maravich was a tremendous basketball player and a great scorer, he was probably one of the greatest white hopes in NBA history.[116] There were also four new teams; Buffalo Braves, Cleveland Cavaliers, and Portland Trailblazers, all paid $3.7 million each and were going to join the NBA for the following season. The San Diego Rockets was going to relocate to Houston, and the state of Texas was going to have its first NBA franchise.[117]

Despite the war between two leagues, both sides knew that a merger was necessary. Walter Kennedy and Jack Dolph—who resigned from his job at CBS and became commissioner of the ABA—met on February 9, 1970. "I've always said a merger between our leagues is the only sane and sensible thing," Dolph said. The NBA merger committee consisted of Sam Schulman, Ned Irish, and Abe Pollin, owner of the Baltimore Bullets. Pollin's existence in the committee meant that in case of a merger, there could not be any franchise in Washington or anyplace near Baltimore.

---

[113] Leonard Koppett, "Sports of the Times," *The New York Times*, September 1, 1970, 42.
[114] "N.B.A. Gets TV Contract for 3 Years," *Chicago Tribune*, February 18, 1970.
[115] Lew Alcindor later converted to Islam and changed his name to Kareem-Abdul Jabbar.
[116] David Klein, *Rookie: The World of the NBA* (Chicago: Cowles Book Co., Inc., 1971); Wayne Federman and Marshall Terrill, with Jackie Maravich, *Maravich: The Authorized Biography of Pistol Pete*, (Carol Strema, IL: Tyndale House Publishers, Inc., 2006).
[117] "N.B.A. Reaffirms Expansion Move: Negotiations On to Add 4 Teams Next Season," *The New York Times*, January 21, 1970; Sam Goldaper, "N.B.A. Offers Three New Clubs and Two Rookie Stars as It Enters 25th Season," *The New York Times*, October 11, 1970, 192; "N.B.A. Grants Franchises to 4 Cities: New Teams Pay $3.7 Million," *Chicago Tribune*, February 7, 1970.

While Walter Kennedy did not plan to be part of the NBA's committee, Jack Dolph led the ABA's committee. "The expansion satisfied the financial greed of the various owners. Their outcries against the merger have now disappeared," Larry Fleisher said after he heard about merger meetings. "Once again the interest of the players has been totally ignored and the Players Association can have no sympathy for lament about high salaries if the proposed $14.8 million they received in expansion is to be divided up."[118] Committees discussed Rick Barry's return to the San Francisco Warriors and other players' futures. "Both the N.B.A. and A.B.A. have seen all the pitfalls of trying to operate separately for the last two years, and we all realize the wisdom of consummating some type of transaction. It will be good for all parties," Sam Schulman said. Meetings were tough and lasted nearly ninety days. The ABA agreed to pay $11 million in indemnities—over ten years—and agreement was subject to the approval of both leagues and the Congress.[119] According to the merger agreement, two leagues could only merge after three years, and all eleven of the ABA teams will be included in the merger—they were also going to pay the indemnity.[120]

4.4. The Oscar Robertson Lawsuit and the 1970 Collective Bargaining Agreement

The day after the two rival leagues agreed on the merger, the NBPA and its president, Oscar Robertson, filed an antitrust suit in New York District Court. Besides their attempt to block the proposed merger, players challenged the reserve-clause that forbids players to bargain once their contract ended. Robertson's name headed the fourteen-player list.[121] The only NBA player who did not join the suit was Connie Hawkins, due to an article in his NBA contract, which forbode him to sue NBA again. The antitrust exemption only applied in baseball, thus, the Oscar Robertson suit differed from Curt Flood's antitrust suit against the Major League

---

[118] Sam Goldaper, "Pro Basketball to Resume Talks: Kennedy and Dolph to Set Up the Ground Rules for Plans on Merger," *The New York Times*, February 8, 1970, 175.
[119] Sam Goldaper, "A.B.A. and N.B.A. Nearing Merger: Newer League Would Pay Indemnity of $11-Million," *The New York Times*, April 12, 1970, S1.
[120] "ABA Agrees on Indemnity of 11 Million," *Chicago Tribune*, April 15, 1970, C6.
[121] Because his name headed the list, this case usually known as "the Oscar Robertson Suit." Robertson v. National Basketball Association, 389 F. Supp. 867 (S.D.N.Y. 1975). https://law.justia.com/cases/federal/district-courts/FSupp/389/867/1591788/ ; also published in U.S. Congress, Senate, *PB2*, 1220-1227.

Baseball. Baseball had gained an antitrust exemption in 1922, when the Supreme Court ruled, under Chief Justice Oliver Wendell Holmes, that baseball was not commerce. This meant that the Supreme Court viewed baseball was somehow transcendent and above legislation as the Sherman Act. This was more of a cultural decision rather than a commercial or an economic one.[122] Basketball, on the other hand, was bound by the Sherman Act, and the suit claimed that any proposed merger violated the Sherman Act.[123] This meant that players let the owners know that there can be no merger until player restraints in basketball were abolished. They were successful in their efforts to halt merger talks after Federal Judge Lloyd F. MacMahon ruled that "a merger of the N.B.A. and the 3-year-old A.B.A. raised 'serious questions' of legality under the Sherman Antitrust Act." Furthermore, the merger would eliminate competition for player talent due to some athletes who were among plaintiffs. Thus, Judge Charles H. Tenney of the United States District Court signed a preliminary injunction order, which barred a merger between the two leagues.[124]

Although the court prevented two leagues from merging, it allowed the leagues to seek Congressional approval. Owners of the NBA franchises voted 13-4 in favor of the merger, while owners in the ABA unanimously favored it. [125] Congress approved the merger of the football leagues earlier, however times had changed in the last decade. Players were lobbying in Congress as much as the owners, even though their financial sources were limited. Bill Bradley, the Rhodes Scholar, and Larry Fleisher carried the NBPA in lobbying against the merger. Bradley never forgot the moment when Senator John Tunney expressed his support to players. Tunney's father Gene would have lost millions of dollars if he had not been able to end agreements that

---

[122] Mitchell J. Nathanson, "The Sovereign Nation of Baseball: Why Federal Law Does Not Apply to 'America's Game' and How It Got That Way," *Villanova Sports and Entertainment Law Journal* 16, no. 1 (2009): 75. Quoted in David George Surdam, *The Big Leagues Go To Washington: Congress and Sports Antitrust, 1951-1989* (Champaign: University of Illinois Press, 2015), 13; also see, Mitchell J. Nathanson, "Gatekeepers of Americana: Ownership's Neverending Quest for Control of the Baseball Creed," *Nine: A Journal of Baseball History and Culture* 15, no. 1 (2006): 77-78.
[123] Leonard Koppett, "N.B.A. Players Sue to Block Merger: Trust Action Also Directed Against Reserve Clause," *The New York Times*, April 17, 1970, 63.
[124] Robertson v. National Basketball Association, Temporary Restraining Order, published in U.S. Congress, Senate, *PB1*, 25; "Merger of N.B.A. and A.B.A. Stayed by U.S. Injunction," *The New York Times*, May 5, 1970, 75; "N.B.A. Players Get a Writ Blocking Talks on Merger," *The New York Times*, April 18, 1970, 35.
[125] Sam Goldaper, "N.B.A. and A.B.A. to Merge, Subject to Approval of Congress: Players to Fight Move Vigorously," *The New York Times*, June 19, 1970, 63.

restricted his gain from fights with Jack Dempsey. "An athlete, like any other American, should be free, as free as my father was," Tunney said to Bradley.[126] According to the agreement between two leagues, a single league structure could only be built a few seasons later, "but no later than the 1973-1974 season. Until then there would be a world championship playoff between the two league winners," similar to what football was doing.

Oscar Robertson was determined as always, "We're going to fight a merger in every way we know how. We think it's a violation of the antitrust laws and it clearly eliminates competition," he said.[127] Robertson had the same mentality as Fleisher. He became remarkably adept at his job in the Players Association, saying things exactly like a legal counsel, while remaining calm when an uncomfortable situation occurred. Once Larry Fleisher was abroad, Oscar Robertson had to share his opinion with journalists after an announcement by the league. The next day when Fleisher saw the sports section, he was astonished, "Oscar said word for word what I would have said."[128] They were in harmony when it came to deal with the owners. The merger hearing would have to wait, and the show went on. As players filed the lawsuit, NBA playoffs started. Despite the tension between players and owners, two sides agreed on a three-year collective bargaining agreement. The minimum salary was going to raise to $15,500 for the 1970-1971 season, $17,500 for the following season. Meal allowances also increased from $16 to $19. Playoff pool money was going to be increased on a regular basis, starting with $700,000 in 1971 playoffs, $725,000 in 1972, and finally $750,000 in 1973.[129]

4.5. Spencer Haywood

On November 20, 1970, the NBA released a statement that it stopped seeking Congressional approval of the merger. The main reason was the ABA's antitrust suit against the NBA. There were also factions among the NBA owners, in terms of

---

126 Bill Bradley, *Life on the Run*, 146-147.
127 Sam Goldaper, "N.B.A. and A.B.A. to Merge, Subject to Approval of Congress: Players to Fight Move Vigorously," *The New York Times*, June 19, 1970, 63.
128 Oscar Robertson, *Big O: My Life, My Times, My Game*, 213.
129 Staudohar, *Playing for Dollars*, 106-107; "N.B.A. Minimums to Reach $17,500: Playoff Pool Also Increased in New 3-Year Agreement," *The New York Times*, October 9, 1970; "N.B.A. Increases Playoff Money: Raises Total to $700,000—Alters Postseason System," *The New York Times*, November 19, 1970.

favoring or disfavoring the merger. ABA's raiding referees and two other players—Ray Scott and Joe Caldwell—were also secondary issues that frustrated the NBA. Irv Kosloff, owner of the Philadelphia 76ers, and Sam Schulman were among the ones who demanded negotiations in good faith—which means they wanted the ABA to drop its lawsuit. Then, the NBA gave the ABA a forty-eight-hour ultimatum.[130] ABA owners were still optimistic, however, there were misunderstandings between the two leagues, according to them. The ABA released a statement that stated they offered to negotiate "common problems of the two leagues," and "we expect that sensible men on both sides can and will ultimately agree." Apparently, the ABA changed the course of action as they argued that they "no longer view merger as a matter of survival but one of sanity in sports."[131]

On January 12, 1971, Sam Schulman was able to overshadow the All-Star game by defying the four-year-rule which prevented college players from playing in the NBA before their class graduates. Spencer Haywood was not happy in Denver and was looking forward to playing in the NBA. Sam Schulman thought Haywood would be a perfect fit for his team and he signed a deal with Haywood. What NBA teams feared the most was that the draft system might be abolished by this move. "Everybody's against me," said Schulman. He was threatened and pressured to not sign Spencer Haywood. Every owner in the league was against Schulman, yet he believed that there were "six or eight cases or improprieties by other teams," earlier. One of them was Connie Hawkins' case. "Why wasn't Hawkins put in the draft so we all would have a chance at him," Schulman asked. The Players Association closely examined the Haywood case. "Personally, I think Haywood became a pro when he signed with Denver. I don't see how the N.B.A. can stop him from making a living,"[132] Oscar Robertson said. The four-year-rule did not constitute a collective bargaining agreement by the NBPA and the NBA, thus, it violated the Sherman Act, at least on paper. When owners refused to grant Haywood eligibility to play in the league, Schulman did the inconceivable, sued "his own partners on a matter of common policy."[133]

---

[130] Gerald Eskenazi, "Move is Baffling to Rival League: A.B.A. Meeting Is Called for Monday—Fate of Merger Plan Clouded Further," *The New York Times*, November 21, 1970, 51.
[131] Sam Goldaper, "A.B.A. Is Seeking to Resume Talks: Remains Optimistic About Merger with N.B.A.," *The New York Times*, November 24, 1970, 50.
[132] Bob Logan, "Haywood Steals N.B.A. Spotlight," *Chicago Tribune*, January 12, 1971, B4.
[133] Leonard Koppett, *The Essence of the Game is Deception*, 239.

The ABA was counting on the football merger—considering how quickly the American Football League forced a merger—parity with the NBA teams was near, they believed. Yet lawsuits between the two leagues curbed their efforts toward a merger. The number of lawsuits in the basketball world was going to hamper their change before Congress—they needed special legislation from Congress and approval of the subcommittee in the Senate. The court's preliminary injunction was another indication for the owners of both leagues that the merger was necessary. Spencer Haywood's deal with Seattle stirred up litigations around the basketball world. At first, Denver sued Haywood for breach of contract, then Haywood—with the help of Schulman—sued the NBA on the grounds that it violated antitrust laws by rejecting his eligibility to play. Not only was the draft system a violation of the antitrust laws, but the four-year-rule also restricted the right of college juniors to earn a living playing professional basketball. It was a textbook violation of individual rights, in a capitalistic, free society.

Haywood had been able to get an injunction from the trial court, but the NBA appealed and the Court of Appeals for the Ninth Circuit, placed the injunction on hold. Then, Spencer Haywood appealed again, this time to the Supreme Court—in order to play during ongoing NBA season and playoffs. On March 1, 1971, Justice Douglas ruled reinstation of the injunction, which meant Haywood could play. Douglas noted that if Haywood was unable to play for Seattle, his skills would "deteriorate from lack of high-level competition, his public acceptance will diminish, his self-esteem and his pride will have been injured."[134] A few weeks later, Judge Warren J. Ferguson ruled that the NBA violated the antitrust laws. Ferguson noted that a four-year college rule victimized and excluded college juniors to enter the market, and therefore, a college junior could not sell his services due to diminished competition in the market. Ultimately, "by pooling their economic power, the individual members of the NBA have, in effect, established their own private government," according to Judge Ferguson.[135] This stimulated what has been going

[134] Haywood v. National Basketball Assn., 401 U.S. 1204-7 (1971), reprinted at https://supreme.justia.com/cases/federal/us/401/1204/;
[135] Denver Rockets v. All-Pro Management, Inc., 325 F. Supp. 1049 (C.D. Cal. 1971); reprinted at https://law.justia.com/cases/federal/district-courts/FSupp/325/1049/2594140/; Sarah K. Fields, "Odd Bedfellows: Spencer Haywood and Justice William O. Douglas," *Journal of Sport History* 34, no. 2 (2007): 200. Haywood filed an injunction earlier to play in the NBA while waiting for a verdict. Thus, this was an injunction, which enabled Haywood to play for the Seattle Supersonics until a verdict was rendered.

on around the basketball world, “all-out war” for players. Larry Fleisher was monitoring the situation up close, saying that “about a dozen N.B.A. players have been approached by A.B.A. teams.” Players Association was suspicious about possible merger efforts by the two leagues. They argued that if ABA’s offers suddenly stopped, this would mean that “a merger agreement was actually being acted upon.”[136]

The NBA reached a settlement with Haywood and Seattle a few days later, ending the antitrust suit. This was another obstacle before the merger. According to the settlement, Haywood could not file another lawsuit in the same manner against the NBA. Seattle was going to pay a $200,000 fine for violating the league’s constitution, yet the teams would have the rights of Haywood, which meant that his name will be excluded from the 1971 draft. “Careful restudy of the N.B.A. draft rules is needed,” Walter Kennedy said after Judge Ferguson ruled that “Sections 2.05 and 6.03 of the by-laws of the NBA are declared to be illegal under Section 1 of the Sherman Act.”[137] *Haywood v. NBA* has considerably impacted the change of the draft system. The NBA redefined its draft system by implementing a hardship rule, which meant that a college junior who did not have financial backing could enter the draft without waiting until his class graduated. Although the older players—who were lobbying in Congress to get rid of the reserve clause—did not care about rookies and what happened in the draft, Spencer Haywood was able to fight on his own. Many players after the “hardship rule” got into the NBA, Earvin Magic Johnson and Michael Jordan were among them. Hypothetically, Haywood’s actions paved the way even for players who got into the NBA straight out of high school, recent examples of this were the late Kobe Bryant and Lebron James, both broadened the NBA’s popularity globally.

4.6. Merger Meetings Between Two Leagues

[136] Leonard Koppett, “Legal Factors Hamper N.B.A.-A.B.A. Talks,” *The New York Times*, March 25, 1971, 50.
[137] Leonard Koppett, “Sonics Retain Haywood In Out-of-Court Compact: Seattle Submits to N.B.A. Fine of $200,000,” *The New York Times*, March 27, 1971, 21. Leonard Koppett, “Legal Factors Hamper N.B.A.-A.B.A. Talks,” *The New York Times*, March 25, 1971, 50; Judge Ferguson’s verdict, Denver Rockets v. All-Pro Management, Inc., 325 F. Supp. 1049 (C.D. Cal. 1971), 1066. Reprinted at https://law.justia.com/cases/federal/district-courts/FSupp/325/1049/2594140/

On the verge of merger meetings, both leagues agreed to join forces, again. What made the NBA negotiate with the ABA was that the newer league finally agreed to drop its antisuit against the NBA "with prejudice," which meant that it could not be reinstituted again. Six players changed leagues, among them were Rick Barry, Zelmo Beaty (who was the president of ABA's Player Association), Joe Caldwell, Dave Bing, Billy Cunningham, and Otto Moore. "No total resolution was obtained for NBA players who have signed ABA contracts and they remain at a status quo where litigation prevails," Kennedy said. Although the agreement of the two leagues was not surprising, it was significantly important because it was "a violation and contempt of a court order," as Larry Fleisher said. The NBA and the ABA had violated Judge Charles H. Tenney's decision on April 1970, the preliminary injunction order, which barred a merger between the two leagues. [138]

According to the agreement between two leagues, there would be exhibition games before the start of the 1971-1972 season. There were rumors about a possible strike by the NBPA, "We think playing A.B.A. teams would be illegal without a formal merger," Chet Walker said. But there was not any decision on to strike. "For some reason I don't understand, the owners are spreading rumors about this. There is always that possibility when you're engaged in collective bargaining." Larry Fleisher said. Owners were trying to gain public support before hearings. Meanwhile, Riche Guerin, coach of the Atlanta Hawks, made public that if his players refuse to play in an exhibition game, they will face "strong disciplinary action, including stiff fines and suspensions." Commissioner Walter Kennedy stepped in and denied Guerin's announcement. It seems that the NBA and owners needed to clean their backyard on the verge of the Senate's professional basketball merger hearings. Players' solid opposition towards the merger and exhibition games "would not have a helpful effect on the bill's chances for passage," according to Bob Logan.[139]

As a matter of fact, the ABA sought to merge with the NBA. A mayor's dream to form another basketball league could become a nightmare for owners of another league. Perhaps, changing the perception of American society toward sports was

[138] Dave Overpeck, "ABA, NBA Reach Merger Agreement: Congressional Okay Next Step for Pros," *The Indianapolis Star*, May 8, 1971, 26; Leonard Koppett, "N.B.A. and A.B.A. Will Seek Merger," *The New York Times*, May 8, 1971, 19.
[139] Quotations in Bob Logan, "Player Strike Hint in N.B.A.: N.B.A. Attempts to Head Off Threatened Strike by Players," *Chicago Tribune*, August 26, 1971, D1.

what stimulated antitrust discussions around it. Decade after decade, Americans saw evolving athletes and sports become simply too good to be canceled. As legal scholar Steven R. Rivkin labeled professional sports as “activities that sometimes approach national mania: to the extent organized athletics maintains the respect of the public, there is little to force professional sports to conform to arbitrary and irrelevant norms of behavior drawn from other realms of economic activity.”[140] There were two legislative exemptions in the sixties before the two leagues and owners were asking the antitrust exemption from Congress. The Sports Broadcasting Act of 1961 and the football merger in 1966. Owners were dreadfully unlucky, not only for the fact that the Congress and the Senate saw how owners got away with so much, but their treatment of the players was revealed.

Moreover, there was another blow. Senator Philip Hart (D-Mich.) withdrew from the chairman position of the Subcommittee on Antitrust and Monopoly Committee. It was strictly an ethical decision; he withdrew from the position because his wife’s family were owners of the Detroit Tigers. Hart’s designation of Senator Sam Ervin Jr. to chair the committee was a serious blow for owners. None of the factors were as crucial as Sam Ervin’s presence as chairman of the subcommittee, argued Shirley Povich of the Washington Post. “For the owners, their luck in that draw was all bad. For their purposes, a more forbidding figure than chairman Ervin could not be found,” Povich wrote. He argued owners should have understood until now that Senator Ervin clearly hated any businessman who wanted government intervention favoring his business. Whenever Sam Ervin thought about the attitude of the owners of sports franchises, he remembered something hideous—according to him—in history. He cited historical accounts about the history of the Stock Exchange in the 1920s or treatment toward the Christians in Rome in the middle of his conversations with the basketball owners.[141] Sam Ervin was taking the basketball bill seriously in such a manner, that if he could not cease it, “he has threatened to drape it with amendments which include repealing the law that allowed football merger in 1966 and overturning baseball’s exemption from the antitrust laws.”[142]

[140] U.S. Congress, Senate, 1972, PB2, 1215.
[141] Shirley Povich, “Basketball Owners Run into Ervin Press,” *The Washington Post*, January 27, 1972; U.S. Congress, Senate, 1972, *PB2*, 529.
[142] Arlen J. Large, “Blowing the Whistle on Pro Sports,” *The Wall Street Journal*, October 20, 1971; Reprinted in U.S. Congress, Senate, 1972, *PB2*, 1276.

Larry Fleisher and NBA players knew that the reserve clause was illegal under the antitrust laws and litigation became an invaluable means toward their goal. Cases of Connie Hawkins and Spencer Haywood demonstrate the indifference of NBA management. Walter Kennedy and team officials in the NBA held African Americans in low regard unless there was litigation. The next chapter will examine why the designation of Senator Sam Ervin Jr. as chair to the Antitrust and Monopoly Committee was a serious blow for owners. The next chapter will examine what happened in the following months, during professional basketball hearings. Finally, the chapter will examine what the merger between two leagues meant in terms of sports law and economics.

CHAPTER V

CONGRESSIONAL HEARINGS

5.1. Beginning of the Congressional Hearings

Just before the hearings, in order to appease the Players Association, owners announced that they agreed to drop the reserve clause and proposed a five-point plan. Rookie contracts were to be for one year and would have an option clause unless rookie and his team reach a long-term deal which would have an option clause. The second and third articles were quite contradictory. Veteran contracts were subject to neither the reserve nor option clauses, yet the option clause was going to be active in existing contracts. This meant that all fourteen players in the Oscar Robertson suit would still be bound by some sort of a reserve clause. This is not to say that players were specifically after their own deeds, but what were they fighting for then? The fourth article provides a right to a former employer of any free agent player to match the highest offer. This means that even veteran players would not be able to choose where to work—since owners would not get into a bidding war with each other. The last article in the five-point offer was a compensation of any free agency movement, if a team signs a free agent player, compensation—money, draft choices or players—to the formal team would be determined by a three-member commission—one chosen by the Players Association, one chosen by the Commissioner and the third member chosen by the first two members. The fifth article was similar to the Pete Rozelle rule in football. NFL commissioner Pete Rozelle had the jurisdiction to compensate teams that lost their players in free agency. However, Pete Rozelle compensated in such a manner that the free movement of football players became an exception after its implementation. Although players turned down the offer, it was significant because this was "the first time the owners had gone to the players themselves," since the foundation of Players Association, according to Larry Fleisher.[143]

The first day of the hearings was about to listen to testimonies of players and their counsels. Senator Ervin opened the hearings by saying that the bill (S. 2373) "proposes to rob every man in America who possesses skill in basketball of the right to sell his skill to the highest bidder on a free market and negotiate a contract with anybody who desires to purchase his athletic skill."[144] What bothered him the most was the common draft proposed in S.2373. If two leagues would merge, there must be a common draft and the reserve clause, in principle at least, could not be detached from it. The reserve clause prevented players from choosing where to play and to bargain their market value. "The same applies to a college star when he is drafted. Only one team in each league can negotiate with him—but he can make that one bid against the team that drafted him in the other league,"[145] as Leonard Koppett argued. Owners asserted that ending bidding wars for players was their top priority because they were losing money. The merger of the two leagues—and having exemption from antitrust laws—meant the establishment of common draft and reserve clause under one league. In other words, this was having a monopoly in professional basketball.

Yet the Sherman Act had outlawed the merger of two "firms" in the same business sector—professional basketball in this case. The Players Association was against the merger based on the Federal antitrust laws and Sam Ervin—who was extremely bothered by Congress' approval of the football merger—was about to do whatever it took to prevent the bill's approval. Ervin underlined that in 1956, the Federal district court ruled: "The business of professional basketball conducted on a multistate basis, coupled with the sale of rights to televise and broadcast games for interstate transmission is trade or commerce among several states within the meaning of the

---

[143] Slymour Smith, "NBA Owners to Drop Reserve Clause," *The Baltimore Sun*, September 22, 1971, C4; Larry Fleisher quoted in Sam Goldaper, "N.B.A. Players Spurn Offer by Owners as Senate Hearings on Merger Near: Bargaining Gains Reported in Plan But Players Discount Them and Hit Owner Tactics—Hearings Open Tuesday," *The New York Times*, September 19, 1971, S2.
[144] U.S. Congress, Senate, 1972, *PB1*, 15.
[145] Leonard Koppett, "Reserve Clause is Merger's Real Issue," *The New York Times*, January 30, 1972, S5.

Sherman Act."[146] Ervin's opening statement was an entertaining display. Because he "was interpreting the Constitution literally," as Oscar Robertson remembered,[147] he began by reminding everyone freedom is the highest value of civilization and freedom of contract was the most important aspect among all freedoms. The fifth amendment rules "the right to engage in freedom of contract and the fourteenth amendment states that "no person shall be deprived of life, liberty, or property without due process of law"—which protects freedom of contract.[148] Ervin was highly resentful about the football merger because the Senate committee which had jurisdiction over the bill did not hold hearings and the bill passed by the Senate without any debate. Moreover, the House Judiciary Committee did not hold hearings too, and the bill "was railroaded through the Congress… The bill subsequently passed the House as a rider on a revenue measure," according to Ervin.[149] Thus, S.2373 would provide the same thing for professional basketball, in which basketball players could only negotiate with one team as opposed to many choices they had in the two-league structure.

In his statement in favor of the merger, Thomas H. Kuchel—former U.S. Senator from California who represented the leagues—summarized the owners' offer before the hearings began. Compensation aspect of the offer appeared suspicious for Ervin, "an element of the perpetual ownership of a player by his original signer is still with us," he said. The reason behind Ervin's determination was his utmost belief to protect the right of any individual in America—the right to negotiate of an individual for the highest bidder. If the merger bill passes through Congress, "the basketball players will find themselves in the same position as the football players."[150] It became a question of government intervention. If Congress passes S.2372, "I shall propose an amendment… to create a Federal commissioner of athletics to regulate all major professional sports," Ervin said. "It should have the right to determine such things as rates of return, ticket prices, territories and it should supervise the draft of new players." It became a question of monopoly and government regulation.

[146] Washington Pro. Basketball Corp. v. NATIONAL B. ASS'N, 147 F. Supp. 154 (S.D.N.Y. 1956); reprinted at https://law.justia.com/cases/federal/district-courts/FSupp/147/154/2595780/; Quoted in U.S. Congress, Senate, 1972, *PB1*, 13.
[147] Oscar Robertson, *The Big O: My Life, My Times, My Game*, 277.
[148] U.S. Congress, Senate, 1972, *PB1*, 15.
[149] U.S. Congress, Senate, 1972, *PB1*, 14.
[150] U.S. Congress, Senate, 1972, *PB1*, 16.

Allowing the merger would mean to give rich men “the right to drop chains around the neck of every professional basketball player.” Hence, if owners wanted to have a monopoly, “they should expect government regulation—as many other public utilities.” If owners wanted an exemption from antitrust laws due to their financial losses, the burden of proof would remain upon them. If there were any significant financial losses for the owners, “Congress is entitled to know whether they are suffering, *really* suffering economically.”[151]

What were the experts suggesting about the merger? Two lawyers from Yale Law School noted that the two leagues should be considered similar to law partnerships, which constituted a firm. If “a horizontal merger of all the “firms” in an industry or an agreement between them to deal with others only on specified terms would raise serious antitrust questions,” they noted. The proposed NBA/ABA merger was another reminiscent of the professional football merger in the previous decade. “The terms and conditions of employment of professional athletes in baseball, basketball, and football are no longer governed solely by individual contracts but have been supplanted in part by collective bargaining between the leagues and player unions,” Jacobs and Winter Jr., argued. In short, instead of antitrust law, national labor policy “is the principal and pre-eminent legal force shaping employment relationships in professional sports.”[152] This argument was highly important because the immunity of professional sports from antitrust laws would be illegal under conditions of collective bargaining between sports unions—which had bargaining representatives recognized by the National Labor Relations Act—and the owners. The ultimate question is “whether unions of professional athletes are entitled to special help from the courts and Congress in bargaining with their employers,” Jacobs and Winter Jr. wrote.[153]

Above all, a merger would not provide “efficiency,” therefore, “Fan interest may be stimulated whether or not individual leagues are joined in financial wedlock. If that is the case, the impact of a merger would be anti-competitive and antitrust principles

[151] U.S. Congress, Senate, 1972, *PB1*, 21-22.
[152] Michael S. Jacobs, and Ralph K. Winter, Jr., “Antitrust Principles and Collective Bargaining by Athletes: Of Superstars in Peonage,” *The Yale Law Journal* 81, no. 1 (1971): 6; Reprinted in U.S. Congress, House, 1972, *PMABA/NBA*, 202
[153] Jacobs and Winter Jr., “Antitrust Principles and Collective Bargaining by Athletes, Of Superstars in Peonage,” 6-7.

would seem to bar it."[154] Larry Fleisher agreed with the lawyers' argument on the merger, "We can never collectively bargain as to our rights when there is only one league. We cannot bargain where the employer has total control over the players' movements," he said. For the last ten years, he tried to bargain and collectively negotiate, "It is amazing and interest today these same owners offer now to say this is a collective-bargaining issue when they appear before Congress," and the only reason why this legislation (H.R. 10185, The Basketball Merger Bill) was "to lower the salaries of the players—rookies and veterans—so as to legalize the efforts of 26 men to make more money."[155]

Nevertheless, the conclusion by Jacobs and Winter Jr. presented an interesting counter argument toward the existence of the reserve clause in professional sports. They mentioned that Senator Ervin had used analogies with college journalism graduates and basketball players while endorsing libertarian sentiments. But "such restrictions are uncommon in the economy," they argued. Electricians, for instance, could not have similar choices as journalists, and it would be "so naïve as to think he can go anywhere he pleases in the United States to practice his trade. In brief, if Congress is going to intervene about restrictions or player restraints in professional sports, "it should also consider electricians as well as athletes."[156]

5.2. Senator Sam Ervin Jr.

Sam Ervin was an interesting figure in the history of the United States Senate. Mostly known for his debate with Robert Kennedy in 1963, concerning civil rights and his later dominance in the Watergate hearings. Both his appointment to the Senate and his succession of the chair of Subcommittee on Constitutional Rights happened after the death of a United States Senator. Clyde Hoey's in 1954 and Thomas Hennings's death in 1960 presented enormous opportunities for Sam Ervin's political career.[157] For some, he was just another southern politician who vigorously defended racial segregation and headstrong conservatism. Others were describing him as "a complex man," "more complicated than his enemies, and most of his friend

---

[154] Jacobs and Winter Jr., "Superstars in Peonage," 5-6.
[155] From Larry Fleisher's testimony in U.S. Congress, House, 1972, *PMABA/NBA*, 149-151.
[156] Jacobs and Winter Jr., "Antitrust Principles and Collective Bargaining by Athletes, Of Superstars in Peonage," 29.
[157] Karl E. Campbell, "Preserving the Constitution, Guarding the Status Quo: Senator Sam Ervin and Civil Liberties," *The North Carolina Historical Review* 78, no. 4 (2001): 468.

realize," "easily misunderstood," and "ideologically unclassifiable."[158] It seems as if he was trying to keep spotlights on himself all the time. "The best minds of the South—Ervin of North Carolina, Russell of Georgia, Stennis of Mississippi and Hill of Alabama—all caught in the hold of history and the politics of local passions. The hearings are a great show. But the tragedy is at the heart of them—and not only the tragedy of the Negro," E.W. Kenworthy wrote in his report about Ervin's moral arguments in hearings.[159]

Nevertheless, from the beginning of his appointment to the chair of Subcommittee on Constitutional Rights until Watergate in 1973, Sam Ervin was known for being a champion of individual freedom and his disdain towards government intervention on free will was unmatched, upon antitrust hearings on professional sports. Ervin opposed any individual or political group that would try to use the power of the federal government.[160] His stance on player restraints, also reveals his libertarian approach to economics and labor relations. Even the fact that his political beliefs were built upon subordination and segregationist policies, Ervin supported NBA players' cause which was to destroy player restraints. S.2373 was a bill that Senators John Tunney (D-Calif.) and Roman Hruska's (R-Neb.) introduced to authorize the merger of two or more professional basketball leagues. Again, Ervin's approach to the bill was textbook libertarian, "S.2373 proposed to rob every man in America who possesses skill in basketball of the right to sell his skill to the highest bidder on a free market and negotiate a contract with anybody who desires to purchase his athletic skill," he said in front of Senators Tunney, and Hruska.[161]

His adamant opposition to exercise government power manifested during professional basketball hearings in September 1971. Congress' approval of the merger of the American and National Football Leagues was a mistake according to Ervin. Since the Senate committee did not hold hearings in 1966 considering this merger, Ervin was committed to fight against the basketball merger because the

---

[158] *Winston-Salem Journal*, February 15, September 26, 1965, January 2, 1966; *Charlotte Observer*, February 11, 1968; *Washington* (N.C.) *Daily News*, November 24, 1969; Quoted in Karl E. Campbell, "Preserving the Constitution, Guarding the Status Quo: Senator Sam Ervin and Civil Liberties," *The North Carolina Historical Review* 78, no. 4 (2001): 458.
[159] E.W. Kenworthy, "Rights Bill: The Arguments in Congress," *The New York Times*, August 4, 1963, 138.
[160] Karl E. Campbell, "Preserving the Constitution," 479.
[161] U.S. Congress, Senate, 1972, *PB1*, 15.

common and the option clause—which are going to be the result of S.2373—would result in “the economic enslavement of professional basketball players.” Players were arguing that the bill would “bring an end to the current healthy market situation” for themselves. Thus, “This committee plans to conduct an extensive and comprehensive inquiry before final action is taken one way or the other on the proposed basketball merger bill,” he said.[162]

5.3. Oscar Robertson’s Testimony

Oscar Robertson also testified on September 22, 1971, and Larry Fleisher accompanied him. He has seen the difficulties that many basketball players in the early sixties have faced, “the men who played for five-thousand or six thousand dollars a year, the men who were not able to bargain effectively for increases, the men who retired and were finished with their careers at age thirty without any benefits.”[163] The ABA’s existence provided opportunities for players, Oscar argued, there was no competition before 1967. His argument was accurate, considering many stories of players who did negotiate their contracts in the late sixties. John Havlicek, who also testified during the hearings on the merger bill in 1972, was making almost $20,000 in his fourth season in the league. He was the leading scorer in this team, made the All-Star team, never missed a game, above all, won the title that season. During the off-season, Red Auerbach asked how much he wanted for a year. Havlicek wanted $25,000 a year. “You got rocks in your head. I’m gonna give you $21,000,” Red said to him. Thus, Havlicek got a five percent raise. After winning the 1969 title, he had leverage to bargain, since there was another league. Apparently, North Carolina of the ABA offered $1 million to him—contracts in the ABA usually had many articles that enabled teams to either defer or had restrictions that meant a decrease in base salaries. However, Havlicek signed with the Celtics for $400,000 over three years.[164]

When Oscar Robertson testified in 1971, he was thirty-one years old, at the end of his career. By leading the suit, he would not get the benefits. By the time he testified, he should have been in training camp and getting ready for the next season, instead,

[162] U.S. Congress, Senate, 1972, *PB1*, 14.
[163] Oscar Robertson, *Big O: My Life, My Times, My Game*, 278. Also printed in U.S. Congress, Senate, 1972, *PB1*, 303.
[164] Sam Smith, *Hard Labor*, 103-104.

he studies various scenarios that could have happened during his testimony with Larry Fleisher. "I do stand to benefit by seeing that the four-hundred-some-odd ballplayers in professional basketball have an opportunity to be treated like other people in American life," Robertson said at the end of his testimony. All of the NBA players stood behind Oscar Robertson, in search of having the opportunity to negotiate for their services and commensurate with their skills and commensurate with the risks involved in the shortness of their careers, as many working people in the United States.[165]

Senator Ervin asked Robertson about the idea of the player draft and the idea of basketball players receiving the same rights as others in a free market. Other senators asked about how Robertson felt about being traded and players' right to choose their workplace. Senator Hruska became involved in the conversation and asked Robertson about the player draft—and argued its necessity for organized sports, indispensability for the financial health of teams in the long run—and his conclusions about the subject. Soon, things would make everyone laugh in the room. When Senator Hruska asked about Robertson's thoughts on the necessity of the draft system, Hruska argued that "a draft of some kind is necessary for an organized league," otherwise it would not be possible to survive in the long run.

Oscar Robertson: "I think it is terribly wrong for anyone to limit anyone's ability to earn money no matter where it may be, whether it is in business or in sports. I think any time you limit a person as to where he can go, such as the case was prior to the two leagues, I think it is terribly wrong.

Senator Hurska: It is wrong to limit the amount of money a man can earn?

Oscar Robertson: I think in America it is.

Senator Hruska: Does the draft system do that?

Oscar Robertson: I think if you only had one league, that is true. As long as you have two leagues, there is no telling what a person can earn.

---

[165] U.S. Congress, Senate, 1972, *PB1*, 303; Oscar Robertson, *Big O: My Life, My Times, My Game*, 276-278.

Senator Hruska: You seem to have done pretty well. Do you think you are worth more than the one hundred thousand dollars you are getting?

At that moment, Larry Fleisher leaned over Robertson and whispered: "There may be hose who wonder if you are worth the money you are getting from the taxpayers," to his ear. Oscar stopped for a moment, took a drink of water and with an amusing facial expression, and said: To be honest and frank, I think so."[166]

Some people in the room and the committee laughed after what Oscar said. Senator Hruska tried to push him to the wall by implying how much money he made, and if he made a certain amount of money, he should not be complaining about labor issues in professional basketball. As the hearings advanced, an independent report written by Roger G. Noll and Benjamin Okner, economists working for the Brookings Institute, found that clubs were healthy in terms of the financial structure since the owners received lots of tax refunds. Clubs suffered not because of what players earned, but rather because of playing too small arenas to support their payroll. Sharing of home-game receipts with visiting clubs and ending compulsory option clauses could save both the National and American Basketball Associations. When the findings were brought in front of the committee, NBA commissioner Walter Kennedy responded with the opinion that these provisions "wrecked the chance of merger." Witnesses continued to be heard. The committee went into deliberations.[167]

5.4. Economic Aspects of Professional Basketball

On the economic side of things, hearings provided extensive and comprehensive inquiry, as Ervin promised. Exhibits of hearings contained reports from economists, tax returns of the professional basketball owners, cases related to antitrust issues in sports, merger agreement between NBA and ABA. Fiscal statement of Milwaukee Bucks and profit-loss of both ABA and NBA teams were also examined during the hearings. Noll and Okner's conclusion must have influenced Sam Ervin's committee because their statements on the merger were quite similar. Noll and Okner concluded that players, owners, and most importantly fans have a common interest in a merger,

[166] U.S. Congress, Senate, 1972, *PB1*, 306; Oscar Robertson, *Big O: My Life, My Times, My Game*, 279-280.
[167] Oscar Robertson, *Big O: My Life, My Times, My Game*, 279-280.

"but only if certain restrictions are placed upon the operating rules of the merged entity to guarantee that the public interest is served." Their final sentence of recommendation was the same with the Senate committee's reflection: "Merger should do more than simply create lucrative monopoly rights beyond the reach of antitrust laws or public regulation."[168]

Two players were in favor of the merger, Larry Jones of the Floridians[169], and Rick Barry of the New York Nets. Both from the ABA, Jones argued that if the merger does not happen, job opportunities for players might be jeopardized. "The merger will not benefit all ballplayers, such as entering rookies, but it will benefit the vast majority of ballplayers," Jones said. It seems that he did not study his statement carefully, because Ervin started questioning Jones as soon as possible. There was no unanimous support toward merger among ABA teams and the more Senator Ervin questioned Jones and the Players Association of the ABA, the more he found divergence among them. Jones and Arlan Preblud—an attorney for the ABA—argued that there was consensus among ABA players in favor of the merger. Yet there was another ABA player who was going to testify, Zelmo Beaty, who asserted that he is the president of the Players Association and opposed to the merger. Jones argued that Beaty had resigned, but he had not seen his resignation. Only six teams—and six player representatives—in the ABA had returned to ABPA's invitation to vote for or against the merger between the two leagues. Among sixty-three players, forty-eight favored the merger while fifteen were against.[170]

In their book called *Labor Relations in Professional Sports*, lawyers Robert C. Berry, William B. Gould and business professor Paul D. Staudohar, introduced their All-NBA Litigators, a team they hypothetically created among professional players who had legal problems in their careers.[171] Without a doubt, Rick Barry was the captain of

---

[168] Statement by Roger G. Noll and Benjamin A. Okner, Before the Subcommittee on Antitrust and Monopoly Legislation of the Senate Judiciary Committee on S. 2373, the Basketball Merger Bill, September 23, 1971, printed in U.S. Congress, Senate, 1972, *PB1*, 342.
[169] The Floridians was 'Miami Floridians' between 1968-1970. They became a regional franchise in 1970, were playing their games in multiple cities, mostly in Miami and Tampa Bay.
[170] U.S. Congress, Senate, 1972, *PB1*, 138-146.
[171] First team: Rick Barry (captain), Rudy Tomjanovich, Spencer Haywood, Dick Barnett, and Oscar Robertson. Second team: Connie Hawkins, Julius Erving, Wilt Chamberlain, Lou Hudson, and Art Heyman. Honorable Mention: Billy Cunningham, Bill Walton, George McGinnis, Jack Molinas, Marvin Webster, Paul Silas. From Robert C. Berry, William B. Gould IV, and Paul D. Staudohar, *Labor Relations in Professional Sports* (Dover, Massachusetts: Auburn House Publishing Company, 1986), 166.

this team. He was an extraordinary figure in professional basketball and was known for his tendency toward litigation, almost all of his transactions between professional basketball teams involved legal issues. As he labored with many owners and many teams, his testimony was invaluable. He began by saying he benefited from bidding wars as much as possible "I will be compensated with much more money than I ever anticipated making while playing professional basketball," Barry said and indicated that the NBA's offer to the NBPA is equitable. Senator Ervin was aware of how talented Rick Barry was as a basketball player, and when he indicated that Barry had been able to prosper financially because there were two leagues, Barry said, "I think I am making a lot more money than I should be paid for playing basketball." He thought basketball players were not lawyers or doctors, people do not need basketball players all the time. As if he was trying to limit opportunities for others while he enjoyed, more than once.[172] Basketball players who opposed the merger were "definitely looking after their own interest rather than to think what was best for the game." He believed that a youngster coming out of college should be fortunate to play professional basketball.[173]

Another ABA player who testified was Zelmo Beaty, who was the second player to switch leagues after Rick Barry. Beaty played for the St. Louis Hawks in the NBA earlier. Hawks moved to Atlanta in 1968. During his last year in Atlanta, he was making $35,000 a year. After he decided to switch leagues and signed with L.A Stars—worth $600,000 for three years—the Hawks filed a lawsuit due to loss of his services which was worth $4 million. Beaty had to sit out one year. Senator Ervin was at work, asking questions about how Atlanta Hawks treated Zelmo Beaty unfairly, and occasionally was making jokes. "Atlanta was paying you $35,000 and when you left them, they said that you were worth $4 million to them," Ervin said. "If you take $4 million and loan it out at 5 percent interest for a year, it makes $200,000, exactly the amount that your present team is paying you." People around

---

[172] Rick Barry was the top scorer in his team that reached NBA finals in 1966-67, and he chose to jump to the ABA's Oakland Oaks, just because he wanted to play for his father-in-law Bruce Hale. Because the court ruled that he either had to play for San Francisco Warriors for a year (because of the reserve clause, a player has to play another season for his team when his contract ended) or sit out one year. Thus, Barry chose to sit for one year and worked as a commentator for his new team. In that year, he nearly chose retired from basketball to try an acting career. But he jumped back-in-forth between two leagues and capitalized competition for his services. It seems he did not want rookies to get paid as much as he did.
[173] U.S. Congress, Senate, 1972, *PB1*, 146-151.

started to laugh yet the truth remained, Beaty was paid $165,000 less for a year in comparison to his actual worth.[174]

Dave DeBusschere, another play who was underpaid at the onset of his career. DeBusschere was a unique athlete who played both basketball and baseball professionally before deciding on basketball for good. When he graduated from university, every team in the major leagues were competing to sign him. In 1962, there was no draft in baseball, it was adopted in 1965. DeBusschere signed with the Chicago White Sox for more than $100,000 in 1962. In basketball, there was a territorial draft, which would force him to sign with the Detroit Pistons, possibly worth $20,000 per year, considering what rookie made during the early sixties. DeBusschere also said that allegations about economic bankruptcy by the owners is the only anticipation. “I have never heard of a club going bankrupt. This anticipation. We do not know this. But they are coming in and claiming this is going to happen,” he said. He also underlined what Larry Fleisher said earlier, eighteen of the present twenty-eight owners in both leagues have recently bought their teams and have been in the league less than two years. What does this mean? It meant that professional basketball had seen as a profitable investment. Rich people were seriously demanding to own professional basketball teams.[175]

[174] U.S. Congress, Senate, 1972, *PB1*, 311-316.
[175] U.S. Congress, Senate, 1972, *PB1*, 317-322; Leonard Koppett, “Opposing Merger, Basketball Stars Disclose Incomes,” *The New York Times*, September 23, 1971, 75; Leonard Koppett, “Sen. Ervin Attacks Basketball Merger,” *The New York Times*, September 22, 1971, 57.

CHAPTER VI

CONGRESSIONAL HEARINGS II

6.1. Sam Ervin Strikes Again

On October 1, 1971, Sam Ervin brought his fight against owners to another level. He and Representative Emmanuel Celler, Democrat of New York, introduced a bill that removed the antitrust exemption from baseball and football. Ervin said earlier in the hearings that he will propose "an amendment to create a Federal commissioner of athletics to regulate all major professional sports."[176] Celler was the chairman of both the Antitrust and Monopoly Subcommittees of the Senate and House Judiciary Committees. He knew baseball's antitrust issues and conducted the first major Congressional hearing about baseball in 1951. He asked the owner of the Chicago Cubs, "You mean baseball is a business, an industry?" "It is a very peculiar business, but it is a business," P.K. Wrigley responded, during one of the hearings.[177] Three-hearing meetings on September 1971, proved to be crucial for major sports in the United States and demonstrated a new phenomenon, the rise of basketball to become one of them. Basketball merger triggered antitrust issues in baseball and football, with Ervin and Celler proposing to remove the antitrust exemption from both sports, owners in professional sports might have rough days. Consumer advocates, the National Association for the Advancement of Colored People were both behind Senator Ervin's efforts toward preventing the merger. Especially, tax reductions—when a person or a company enjoyed after acquiring a professional team—could

[176] U.S. Congress, Senate, 1972, *PB1*, 17; "Antitrust Bills for Sports Filed," *The New York Times*, October 1, 1971, 50.
[177] Quoted in Godfrew Hodgson, *More Equal Than Others: America from Nixon to the New Century* (Princeton: Princeton University Press, 2004), 227; See *Study of Monopoly Power*, Part 6, *Organized Baseball*, House Committee on the Judiciary, 82d Congress, 1st session, July, August, October 1951, H1365-3, 735.

make the general public displeased, which would mean that legislators could not vote for the merger as easily as owners hoped for.[178]

During the next hearing, on November 15, 1971, Senator Ervin read ‘section 1253 of title 26 of the Internal Revenue Code’ which was passed in 1969. The rule states that any profit from the sale of the franchise "is taxed as ordinary income." However, there was an exception to this law: *Sec. 1253 (e) Exception. This section shall not apply to the transfer of a franchise to engage in professional football, basketball, baseball, or other professional sport.* It meant that any businessmen's profit or income was subject to tax laws, yet people who own franchises in major sports could not subject to these laws. The main reason why Sam Ervin asked to see owners' tax returns and other financial records was owners' claims that their teams were losing money. Under Sec. 1253 of the Internal Revenue Code, the probability of losing money for owners was slim, according to Ervin. Throughout the fifties and sixties, team owners in professional sports knocked the Federal Government's door, to help with the nation's pastime, yet they were the ones who profited from it. "In seeking the support of S. 2373, the basketball owners are asking Congress to allow them to engage in practices for which the ordinary businessman could be fined $50,000 and sentenced to one year in jail under the Sherman Antitrust Act," Ervin argued. The burden of proof was on the owners.[179]

Ervin opened the hearing by reading passages from John Brooks' *Once in Golconda* which was about the attitude of the members of the New York Stock Exchange during its regulation by the Securities and Exchange Commission in the 1930s. He drew a parallel between members of the Stock Exchange with team owners in professional basketball, because of their demands of privilege while pleading for relief. Senator Hruska stated that the personal income tax records did not have any relevance to basketball merger hearings, yet Ervin asked individual records to decide if team owners were having loss or profit in professional basketball. Wendell Cherry testified before the committee for them to understand the business of basketball from the owners' perspective. He acquired the Kentucky Colonels in October 1969, along with his four associates. Despite the fact that attendance more than doubled in two years, they still lost nearly $500,000 per year, for the next three years, Cherry argued.

---

[178] Leonard Koppett, "New Sports Arena," *The New York Times*, October 3, 1971, S32.
[179] U.S. Congress, Senate, 1972, *PB2*, 525-526.

Salary costs of the players, coaches, and trainers constituted at least seventy percent of total income. “We will have a financial debacle,” Cherry said, in case the merger deal collapsed. “There is no chance for it to turn around without merger,” he said. Although Cherry argued that his team faced financial debacle, they signed Dan Issel for ten years at $1.4 million in 1970 and Artis Gilmore for ten years at $1.5 million in 1971. Another owner who testified was James Kirst, once owned the Los Angeles Stars, and sold the team to Bill Daniels who relocated it to Salt Lake City, Utah. He argued that he lost more than $1.7 million in three years. Thus, he decided to sell the team, and the only way he could was to increase its marketability. He signed Zelmo Beaty and coach Bill Sharman in order to boost the market value of his team. There was a difference between signing a proven superstar and an untested rookie a six-figure salary. “Without the merger, owners will continue to destroy each other and the sport of professional basketball in the annual bidding war,” Kirst argued.[180]

Sam Ervin pushed Kirst against the wall—as he did to others—and asked if there was any competition between the leagues besides bidding war for players. Kirst mentioned that there is competition for publicity, yet the main purpose was to acquire talented players. Ervin claimed that in Kirst’s case, “disaster came from the lack of restraining himself to get players that you could get for equal bonuses or economic prices,” with the NBA. This was a common problem among ABA teams. Because owners could not hold themselves, “They come before Congress now and ask Congress to give them the power to restrain the players,” Ervin said. “For restraint of trade on the players, to take away from the players the right to freedom of contract in order to keep them prosperous.” Kirst answered, “You sound like a union leader,” which made people laugh. “I sound to myself like an honest man,” Ervin replied, with a smile on his face. The conditions of rookies in professional basketball seemed preposterous to him because there was not anyone to protect their interests. Under the proposed merger, a man “either has to accept one bid from one individual or one club or stay out of the game. I cannot see any competition there,” Ervin said. During their conversation, both Kirst and Ervin agreed that present owners of the Stars franchise did much better than Kirst, in terms of handling the business. Ervin concluded that there should be an income distribution in professional basketball teams—the share of the gate receipts similar to that in football—“if you are ever

---

[180] U.S. Congress, Senate, 1972, *PB2*, 594-595.

going to have any fair competition with any teams of equal playing strength in the merged league."[181]

Senate Antitrust Subcommittee had only asked for individual tax records once in 1960 on professional boxing promoters and managers. Basketball owners were asking a favor of the government. Roger G. Noll and Benjamin Okner stated that it was not possible to determine whether basketball teams were losing money or not without looking at full financial records of professional the teams and their owners' income tax records, during previous hearings. Owners were reluctant to provide their financial and tax records because they argued there was no precedent for team owners to provide such information to the Senate committee. Yet Ervin was determined to inspect how some owners were willing to spend $6 million each for going into the hockey business and buying a hockey franchise. Roy Boe, who owned the New York Nets of ABA, and Tom Cousins, who owned Atlanta Hawks of the NBA, granted by the NHL franchises in New York and Atlanta during basketball merger was under discussion in the Senate committee.[182] Leonard Koppett asked in his column three days later, which also Ervin happily read in his committee, "If two-league competition is so ruinous, why are both owners of basketball willing to pay $6 million each for the privilege of going into the hockey business on the eve of a two-league war there?"[183] Dennis Murphy founded the World Hockey Association with Gary Davidson, both were also the founders of the ABA. The National Hockey League was in competition with the WHA, yet this did not prevent Roy Boe and Tom Cousins—who had allegedly lost money because of competition in basketball—from having expansion franchises in the NHL.

Walter Kennedy, as the NBA Commissioner, testified for the first time. He claimed that at the end of every season, "from one-quarter to one-half of all the players in the league would be free agents. It was not certain that players would sign long-term deals—because some cities were less popular among them, and players, probably, could not be persuaded to play in these "less-popular cities." Ultimately, the equality of competition could be destroyed. He labeled this system as "chaos," and underlined

[181] U.S. Congress, Senate, 1972, *PB2*, 593-603.
[182] Gerald Eskenazi, "Hockey Expands to Long Island, Atlanta," *The New York Times*¸ November 10, 1971, 59.
[183] Leonard Koppett, "Sports of the Times," *The New York Times*, November 13, 1971; Also reprinted in U.S. Congress, Senate, 1972, *PB2*, 530-531.

the necessity of "compensation." Ervin immediately asked what was different between the compensation of a lawyer or a physician with compensation of an athlete. Kennedy put forward the balance of competition. Ervin then brought the competition between two leagues, "And it is generally considered in American, is it not, that competition is sort of good for everybody's soul?" Kennedy asserted that "sports is an entirely different entity in American society, different from other businesses and different from other activities," as expected. Ervin indicated that he "can't see the distinction. The motives are the same."[184] What owners and NBA were trying to do was to reference Justice Oliver Wendell Holmes Jr.'s decision on baseball that "it was different, transcendent, above acts of legislation such as the Sherman Act."[185] They tried to convince the committee, that basketball was not interstate trade or commerce under the Sherman Antitrust Act, it was something beyond, just as baseball had been.

What Walter Kennedy ultimately argued was that two leagues were "destroying each other"—through their bidding wars. Jack Dolph, the commissioner of the ABA, also testified. As the head of the new league, his concern was mostly about the well-being of the ABA. Some teams in the ABA had lost more than $1 million in one year—because of the "bidding war," again. "ABA clubs have been driven with total abandon to pay 'whatever it takes' to get certain players," according to Dolph, and certain teams were "on the brink of collapse." The only reason why they were on the brink of collapse was that in five years—between 1967 and 1972—there were eighteen new basketball franchises. Since the business of basketball has not expanded threefold during this period, some teams, naturally, lost money.[186] Larry Fleisher would have characterized this phenomenon a year later. "Now what these gentlemen are saying to you is: 'We should be guaranteed a right to make a profit because we just opened up a new business," he said. "There is no guarantee in the world of any business, that when you start a new business it is going to make any money."[187]

---

[184] U.S. Congress, Senate, 1972, *PB2*, 725-730.
[185] Mitchell J. Nathanson, "The Sovereign Nation of Baseball: Why Federal Law Does Not Apply to 'America's Game' and How It Got That Way," *Villanova Sports and Entertainment Law Journal* 16, no. 1 (2009): 75. Quoted in David George Surdam, *The Big Leagues Go To Washington: Congress and Sports Antitrust, 1951-1989* (Champaign: University of Illinois Press, 2015), 13.
[186] U.S. Congress, Senate, 1972, *PB2*, 746-747.
[187] U.S. Congress, House, 1972, *PMABA/NBA*, 153.

Although Dolph indicated that they "recognize and encourage the individual and collective bargaining rights of the players," he also argued, "without the merger, there will be less to bargain over and fewer players to bargain." His assertion was solely dependent on the fact that teams in ABA were operating losses. There was significant difference of opinion between the commissioners Jack Dolph-Walter Kennedy and Sam Ervin in terms of the definition of player restraints. "Should the merger be authorized, the bidding war for untested rookies will end," according to Dolph. "Astronomical beginning salaries will be brought down to more reasonable levels," he argued. Yet who decides or determines what was reasonable? And how much salary for an 'untested rookie' would be insignificant? Indeed, these were risks of a business enterprise. No one—especially college graduates—could not force professional basketball teams to sign themselves to such colossal contracts.[188]

6.2. Bill Bradley and Marvin Kratter's Testimonies

Bill Bradley testified on March 6, 1972; his aspirations were beyond playing professional basketball. One day, Harry Gallatin—who played for the Knicks in the 1950s and wanted to recruit Bradley for Southern Illinois University—asked young Bradley "What do you want to do with your life?" He said, "I want to be president of the United States."[189] The athletes were considered among the 1 percent during 1971, and wages were frozen to prevent inflation during the Nixon administration. When players needed to lobby in Washington, Bradley went to see the person who was running the wage and price controls. Donald Rumsfeld was named head of the poverty program; and since he was also a Princeton graduate, Bradley knew him and had worked in his congressional office during the off-season in 1969. Bradley worked at the poverty program for five weeks under Rumsfeld and had been able to convince him to exempt basketball players from it.[190]

Bradley wrote a brilliant testament,[191] especially underlying how S.2373 would serve interests of a minority—only twenty-eight basketball team owners. "The only faction

---

[188] U.S. Congress, Senate, 1972, *PB2*, 746-747.
[189] Sam Smith, *Hard Labor*, 90. Harry Gallatin told this story to Phil Jackson, who was an occasional roommate of Bill Bradley during their run for the New York Knicks. Bradley was a candidate in the 2000 presidential primaries against Al Gore, eventually lost the Democratic nomination.
[190] Sam Smith, *Hard Labor*, 110-111.
[191] In fact, Sam Ervin said to Bradley, "I was going to say if you aren't a Rhodes scholar, I do not think there would be one who could make such a statement as you did. I commend you on the excellence of it." U.S. Congress, Senate, 1972, *PB2*, 874.

that would unquestionably benefit is that small, relatively new pressure group of professional sports owners," he said. "It is not in the interests of the majority of people for Congress to grant them an exemption to the law." Bradley spoke Ervin's mind by saying "the merger is against the constitutional fundamentals of the Nation" and "it denies those individuals whom the marketplace would reward." Moreover, he refuted owners' arguments about freedom of player movement. "Tax laws provide owners with loopholes big enough to drive a Sherman tank through. They allow for depreciation of people (players) on the theory that we are property belonging to the owner," he wrote in his book, *Life on the Run*.[192] Bradley was a superstar in his own right during his college career, the best basketball player Princeton had ever seen, he was arguably the best basketball player who graduated from an Ivy League school.[193] According to him, many white players had hesitated to resist with their black colleagues, yet they realized that major gains were possible if all players stood strong. Chet Walker, was one of the All-stars in 1964 and as a black athlete, he realized that oppression was not a simple matter, at least in the business of basketball:

> I learned another lesson about power that night in 1964 that I had never known before. These negotiations had me standing shoulder-to-shoulder with white people as part of the same advocacy group. That was a first! It was an amazing new experience, the owners versus the players, both black and white. I watched almost openmouthed as owners tried to bully their superstars into playing a basketball game. I had never felt before an affiliation outside the black community, not in Benton Harbor, not at Bradley. That night I could see how power constitutes itself not only in racial but also in economic terms that have nothing to do with race. Oppression and ownership are not a simple matter of white over black as I had believed.[194]

---

[192] Bill Bradley, *Life on the Run*, 144; For an intensive analysis of sports franchises as tax shelters and how team owners used depreciation, see U.S. Congress, Joint Committee on Internal Revenue Taxation, and U.S. Congress, House, Committee on Ways and Means, *Tax Shelters, Professional Sports Franchises: Prepared for the Use of Committee on Ways and Means*. (Washington: U.S. Government Publication Office, 1975).

[193] Yet he was a role player in his beloved New York Knicks. John McPhee wrote about Bradley's basketball career in Princeton. *See* John McPhee, *A Sense of Where You Are: Bill Bradley at Princeton* (New York: Farrar, Straus and Giroux, 1999); Paul A. Hutter, *Golden Age of Ivy League Basketball: From Bill Bradley to Penn's Final Four, 1964-1979* (Denver: Outskirts Press, 2014).

[194] Chet Walker with Chris Messenger, *Long Time Coming: A Black Athlete's Coming-of-Age in America*, (New York: Grove Press, 1995), 154.

Leonard Koppett attended almost all the basketball hearings that directly influenced the business of basketball. Occasionally, he wrote his reflections through his column at the *New York Times*. The merger was significant not only for professional basketball but the business of all major sports in the country. According to him, "To appreciate the significance of Marvin Kratter's testimony against the merger of the National and American Basketball Associations, you have to understand the peculiar position."[195] Kratter was the chairman of the board in a company that owned the Boston Celtics between 1965 and 1968. He became a minority stockholder of the Golden State Warriors and represented them at league meetings. The Warriors were among the five NBA teams that voted against the merger, and they argued that the decision on the merger must be agreed on unanimously. Eliminating bidding wars and retaining the existence of reserve or option clause constituted the business purpose of the merger, Kratter argued. Bidding war was caused by owners, not necessarily due to competition between two leagues. "Some of the owners have been given more to a type of competitive hysteria that seems to be characteristic of sports club owners, which causes them to forget that sometimes you just can't afford to pay these exorbitant salaries," he said. "Because you can superstar yourself right into the poorhouse." Kratter had tried to buy three NBA teams. One of them was among the founding franchises of the NBA and was in serious financial trouble. "I can't find anybody who will talk to me about selling that franchise under $5 to $6 million," he said. "So, this business about everybody failing, I just don't see it. If they are failing, they sure have been failing for several years and the money keeps coming from some place," Kratter continued.

Almost everyone knew that people who found the ABA aimed to merge with the NBA, eventually to have free NBA franchises. "They (people around ABA) have been hanging on to the hope that their salvation would come from an act of Congress," Kratter said. "I'm not sure it is appropriate for Congress, conspiratorially, to bringing them into a free franchise." Ervin also argued that people around the ABA were "so anxious to force a merger that they got to bidding unrealistic, uneconomic sums for new players." In other words, bidding wars for rookies and star players was caused by owners' impatience and plea for instant profit-making. Owners wanted an escape from their inability of self-restraint and meanwhile, asked

195 Leonard Koppett, "Second Thoughts Rise on Merger," *The New York Times*, March 8, 1972, 51.

Congress to maintain player restraints. By doing so, they asked Congress to prevent a fundamental right of a significant portion of the society—people who have talent in basketball—to sell their skills to the highest bidder. Players were merely disposable heroes in the battlefield, yet they were the ones who broadened the game of basketball.[196]

6.3. Larry Fleisher's Testimony in the House Subcommittee on Labor

On March 22, 1972, Larry Fleisher testified before a special House subcommittee on labor. His purpose in testifying was "to describe the difference between negotiating with professional basketball owners during the last few years as compared to negotiating 10 years ago."[197] Fleisher argued that after the foundation of the second league, the ABA, "negotiations have taken a whole new turn." There were still problems in terms of collective bargaining, "while negotiations are still less than favorable, there is the beginning of equality of bargaining position," he said. "However, that exists solely and only because of the fact of the two competing leagues."[198] After the ABA and the NBA had agreed on merging, players had objected to the merger and filed a lawsuit in order to halt the process. "There is a bill in Congress to provide for a merger of the two competing basketball leagues. The passage of that bill would result in a return to basketball monopoly."[199] Because owners in the American Basketball Association had refused to recognize their players' association, players in both leagues had certainly benefited from the presence of a two-league structure. Later on, Fleisher asserted that three years ago, the chairman of the owners' negotiating committee admitted that "the only reason we are obtaining the overwhelming number of benefits that we are was because of the existence of the second league," in front of the entire players' committee and counsels. There was a correlation between the presence of the two leagues and collective bargaining according to Fleisher. "The purpose of this testimony is to

[196] U.S. Congress, Senate, 1972, *PB2*, 855-862; Leonard Koppett, "Pro Basketball Scored On Merger: Football Players, Ex-Owner of Celtics and Bill Bradley Testify Before Senate," *The New York Times*, March 7, 1972, 47.
[197] U.S. Congress, House, 1972, *NLRA*, 66.
[198] U.S. Congress, House, 1972, *NLRA*, 67.
[199] U.S. Congress, House, 1972, *NLRA*, 67.

indicate that clearly where there was a monopolistic situation of one league, there is not and can be no collective bargaining," he said to the subcommittee.[200]

Frank Thompson, Jr., who was the chairman of the subcommittee, asked Kevin Loughery what happens after a career-threatening injury that required surgery and then extensive physiotherapy. Loughery could not answer the question as sufficiently as Fleisher, thus he intervened. Before the 1967 Collective Bargaining Agreement, there were no payments in case of an injury. The hearing was going to be concluded with testimonies from representatives of the NFL Management Council, and Larry Fleisher knew that professional players from other major leagues were following what happened in basketball. He was the master of his domain and his following words indicated the environment of labor relations in sports in the sixties:

> I think it is important to note—and our counterparts in other sports may argue a little about this—but I believe many of the benefits that occurred in all sports, the increases that occurred, directly a result of what happened in basketball because of the competitive situation. We have been able to negotiate new substantial benefits for ourselves which have been looked up to by the other sports, and they have been able to build themselves up. I truly believe that if there were not two leagues in basketball, all the benefits in all sports would be far lower than they are today. I think it comes through to all of the different activities.[201]

Hearings between September 1971 and March 1972 demonstrated that owners put themselves in a tentative situation. They argued that the merger was a necessity for the survival of their professional basketball teams. While they were trying to prove their financial difficulties—money losses, excessive player and personal salaries, and bidding war for 'untested rookies'—they encountered Senator Ervin, who was determined to elicit the financial state of these rich team owners. Yet as much as owner profile has changed in the late sixties and early seventies, players' self-perception has changed too. "Clearly too much had happened to the game, too quickly. Most dangerous of all, the impulse behind the change and expansion, as in so many aspects of modern American life, had not been a natural one," David

[200] U.S. Congress, House, 1972, *NLRA*, 67.
[201] U.S. Congress, House, 1972, *NLRA*, 71.

Halberstam explained. The major factor that triggered this unnatural change and expansion was television.[202]

6.4. The ABA's Lawsuit Against the NBA and Final Report of the Senate Subcommittee

On the same day Larry Fleisher spoke before the House subcommittee on labor, March 22, 1972, ABA filed another antitrust lawsuit against its rival NBA, asking for $300 million in damages. Frederick P. Furth indicated that "NBA teams have conspired, since 1969, to monopolize and eliminate competition in major league professional basketball." The ABA filed the suit mainly because Spencer Haywood, Jim McDaniels, and Charlie Scott jumped to the NBA.[203] A few months later, Sam Ervin expressed his amazement by the incident, it was amazing that the ABA asked Congress to legalize these monopolistic practices while they asked for $300 million in damages from the NBA for the same alleged monopolistic practices. "If the ABA thinks they are victims of a monopolistic conspiracy now, just what do they think the players will feel like if this merger goes through and a player can only bargain with one team? But I do not guess they have thought about that," he remarked in the opening session of the hearing of the Senate Antitrust and Monopoly Subcommittee on May 3.[204] During the same hearing, Walter Byers, the executive director of the National Collegiate Athletic Association (NCAA), argued against the merger and unless a specific bill prevented professional basketball teams from tempering undergraduate athletes, gets rid of the reserve clause and abolishes territorial draft rules, there should not be any merger. When Senator John Tunney asked if the draft provides much more fair competition, Byers answered by saying, "I do not think that the draft is primarily, or even secondarily, an instrument for balancing team power in league competition now. The draft is a very tight, simple, economical player procurement program, and it is just that and no more."[205] While a professional football player, John Mackey argued how unimportant the draft is, in terms of impacting the relative strength of teams. However, it is particularly important in

---

[202] David Halberstam, *The Breaks of the Game*, 9.
[203] "A.B.A. Sues for $300-Million Charging N.B.A. Is Monopoly," *The New York Times*, March 23, 1972, 57.
[204] U.S. Congress, Senate, 1972, *PB2*, 971.
[205] U.S. Congress, Senate, 1972, *PB2*, 1066.

holding down salaries. Mackey's testimony made such an impact that Leonard Koppett, as a sports journalist wrote, "The point he made is so simple, and so obvious, that I feel embarrassed that I've never before written about it." Indeed, the selection order of teams in the draft made Mackey's argument much more solid. Because the NBA draft back then consisted of many rounds. The 1971 draft consisted of nineteen rounds and teams selected 237 players while only fifty-four of them played in the league. Draft rules have been limited to two round 1989 onwards, and it continues to be consist of two rounds. Again, team management made all the difference rather than simply getting a better position in the draft each year. In short, the draft was an economic device to prevent teams from having bidding wars against one another for "untested rookie," due to the existence of the reserve clause.[206]

While the merger bill was still before the Senate Antitrust and Monopoly subcommittee, the chances of merger were slim—after nearly nine months had passed since the first hearing. Players and owners had different opinions on the possibility of the merger, one can easily sense the differences of opinion and hopes through statements of their representatives. Senator Thomas Kuchel, who represented the owners during hearings, said, "I continue to hope, with considerable reason, that the bill will be passed this year." While Larry Fleisher, as the general counsel for the Players Association said, "It is my belief there is virtually zero chance for the bill to pass as it was introduced." Yet chances were slim because the merger could happen only if the bill has passed through the subcommittee, the judiciary committee, the Senate, and the subcommittee in the House of Representatives, respectively. Above all, there was still a lawsuit in the courts, even if the bill passed through the Senate and Congress, players would file another lawsuit or potentially carry over the issue to the Supreme Court which was dealing with the Curt Flood at the time.[207]

Meanwhile, the tension between the players and owners continued. Each side was determined not to back down, this time the issue was the game between NBA and ABA players. All-Stars of both leagues played an exhibition game at the end of the professional basketball season, on May 25, 1972. The owners referred to Section 17 of the NBA standard player contract which forbids players from participating in

[206] Leonard Koppett, "Draft is Vital***In Holding Down Salaries," *Sporting News*, March 25, 1972; reprinted in U.S. Congress, Senate, 1972, *PB2*, 1066-1068.
[207] Charles Maher, "Pro Basketball Merger: 'Hope for Passage in 1972'---Owners, 'Zero Chance This Year'---Players," *Los Angeles Times*, May 23, 1972, D1.

exhibition games without the approval of their teams.[208] Thus, owners fined nine players for playing against ABA All-Stars without the permission of their teams. Owners had notified the players earlier that they would be fined or suspended which made players irritated. "The NBPA has decided that if anyone is suspended or fined, all the players will quit," Bob Lanier said.[209] Larry Fleisher, on the other hand, tried to soften Lanier's words. "There's just no way the players are going to be fined," he said. "We will use all the necessary tools, including a lawsuit, to prevent it. The ultimate weapon is collective action, and we'll use that if we have to."[210] This was a typical proxy war, which seemed to indicate a possible strike by the players before the upcoming season.

Between June 16 and June 28, the Senate Committee on Commerce gathered four times to discuss a bill called S. 3445, which aimed to "protect the public interest in the field of professional team spectator sports; to provide for financial stability among professional sports franchises, and; to protect the interests of professional athletes."[211] The bill would bring all aspects of professional sports under the direct supervision of a Federal Sports Commission—which would consist of three members. The commission would be part of the Department of Commerce and would decide rules and regulations which relate to the television broadcast, movement of franchises, drafts and other rules concerning player movement, and the form of player contracts.[212] Meanwhile, NBA Commissioner Walter Kennedy testified on June 28, and praised the proposed basketball merger bill, S.2373. "The enactment of the merger bill," Walter Kennedy said, "with its resultant common draft and contractual stability, will serve the right of the sports fan to a stable professional basketball system and remove at least one of the problems with which your committee is now concerned."[213] He used his testimony to convince Congress to allow the merger between ABA and NBA and took no position on the bill.[214]

---

[208] Sam Goldaper, "Nine N.B.A. Stars Fined for Playing A.B.A. Five," *The New York Times*, June 17, 1972, 21.
[209] "Lanier Believes NBA's Players Might All Quit," *The Austin Statesman*, May 26, 1972, C1.
[210] Leonard Koppett, "N.B.A. All-Stars Ready to Resist Fines," *The New York Times*, May 27, 1972, 23.
[211] Federal Sports Act of 1972: Hearings, Before the Committee on Commerce, United States Senate, Ninety-second Congress, Second Session on S. 3445; Hereafter U.S. Congress, Senate, *FSA*, 3.
[212] Leonard Koppett, "Senate Taking 'Up Sports Control," *The New York Times*, June 11, 1972, S2; S. 3445 printed in U.S. Congress, Senate, *FSA*, 3-19.
[213] U.S. Congress, Senate, *FSA*, 213.
[214] Leonard Koppett, "Sports Bill Stirs More Opposition," *The New York Times*, June 29, 1972, 48.

The commissioners of hockey, football, and baseball, on the other hand, expressed their opposition to the bill, they argued that it would only add another layer of regulation to professional sports and would likely increase litigation—it would conflict with existing institutions, such as the courts, the National Labor Relations Board and the Federal Communications Commission." Sam Ervin also opposed the bill—despite the fact that the bill excluded the legality of the reserve clause—"In no way should my warning to the owners[215] be construed as promoting a Federal sports commission bill as being beneficial to sports," he said. It could "stagnate professional sports and institutionalize many of the barbarian player-management practices which now exist throughout the sports system," he argued. Free enterprise should prevail and regulation of the business of professional sports would not be beneficial. Indeed, theoretically, the government could not guarantee financial stability in professional sports for the public good. "More than the reality of chaos, I believe that an illusion of chaos now exists in sports, particularly basketball," Sam Ervin said. Furthermore, he questioned the most crucial phenomenon regarding labor relations in professional sports. "If a professional athlete can bargain with only one team under reserve and option clause conditions, why should an owner be allowed to move or sell his team with complete impunity?"[216] This was the ultimate paradox of professional sports before the reserve and the option clauses; the two created—inherently—a monopolistic environment in the business of professional sports because both restrained professional athletes to play for one team or be erased from professional sports for keeps.

Roger G. Noll and Benjamin Okner cited how larger firms in the late nineteen-century forced small firms out of business by their substantial financial resources. That was the historical background how the Sherman Act appeared in the first place. Professional basketball teams do not compete in a similar manner as industrial firms—companies that operated in petroleum or transportation industries—"the only remaining arena of competition is in the acquisition of players," for basketball teams, according to Noll and Okner. They figured out that the motivation behind the foundation of the ABA "has always been to force a merger" with the NBA.

[215] Ervin suggested during the Senate hearings on antitrust subcommittee that "If the owners asked to be treated as a monopoly—asked Congress to allow (S.2373) merger—they should expect Government regulation," U.S. Congress, Senate, *PB1*, 17.
[216] U.S. Congress, Senate, *FSA*, 138-141.

Accordingly, they showed financial figures about how ABA teams paid players at the expense of fall apart. "ABA had to prove that it had the financial resources necessary to make killing it more expansive than merging with the NBA," they said. In this manner, ABA was willing to pay excessive salaries to players "to the extent that by doing so they could bring merger with the NBA closer." In response, NBA teams reciprocated by joining bidding wars—especially for rookies—which endangered financial security of professional basketball teams in such a manner, that "even if player costs fall to zero, the weakest ABA franchises will continue to be unprofitable, while player salaries would have to be cut in half to bring the middling ABA and weakest NBA teams to the break-even point." Robert Nathan, on the other hand, underlined that increase in rookie salaries demonstrated "desperate bidding for talent which might turn losses into profits" rather than what Noll and Okner labeled as "a do-or-die type of economic-suicide-or-merger policy."[217]

6.5. Final Report of Sam Ervin's Senate Subcommittee

Walter Kennedy acknowledged the fact that the "merger was dead," at least for the 1972-1973 season, and he blamed Senator Sam Ervin, "as the man responsible for preventing the merger."[218] Despite Kennedy's despair, Ervin's Senate subcommittee permitted both leagues to the merger—it was still subjected on September 7 as long as they accepted to drop the reserve clause.[219] The Committee submitted a report to accompany the proposed merger bill S. 2373, they also attached amendments and recommendations. The proposed merger agreement between the two leagues required that each ABA team would have to pay an entry fee of $1,250,000 to the NBA for joining them. This was "inconsistent with the purpose for which the exemption from the antitrust laws is requested," according to the Committee because it disregarded financially weaker teams in the ABA. The Sherman Antitrust law prohibited any merger that would damage financially weaker firms or entities in any industry. Thus, the Committee ruled that "all indemnity payments from the ABA teams shall be made solely from television revenues," in case of a merger. "The purpose of amendment number 6," according to the Committee, was "to prevent the player from

[217] U.S. Congress, House, 1972, *PMABA/NBA*, 55, 96; Noll, Okner and Nathan also quoted in David George Surdam, *The Big Leagues Go to Washington: Congress and Sports Antitrust, 1951-1989*. (Urbana: University of Illinois Press, 2015), 227.
[218] "Kennedy Sees Merger but Not for 1972-73," *The New York Times*, June 15, 1972, 58.
[219] "N.B.A.-A.B.A. Bill Receives Backing," *The New York Times*, September 8, 1972, 24.

being subjected to any option clause, reserve clause, or any method which in any way restrains his freedom to bargain once his original contract has expired."[220] The only downside for players was that the Committee did not prohibit "the option clause" altogether, "an option clause can be negotiated by a veteran player," the report declared—and rookies also have a one-year option clause. Nonetheless, the Committee prohibited any option clause that would expend over one year.[221]

Accordingly, the Committee ruled that "every player should have the right and opportunity to sell his skills to the highest bidder for the highest price obtainable." In order to provide a working environment to professional athletes to have "actual freedom of contract with the highest bidder for their skills," the Committee has ruled that "there may not be any requirement whatsoever that any kind of compensation be paid to the professional basketball team of which that player was formerly a member." This meant that the Committee not only excluded the reserve clause but also the option clause, in order to have a merger, the NBA and the ABA had to get rid of any clause that had resemblance with the Rozelle rule, "in order for such a player (player with an expired contract) to actually be free, there may not be any requirement that compensation be received by his former team," the Committee ruled. "The sole effect of this legislation," according to the Committee, "is to permit the combination of the two leagues to go forward without fear of antitrust challenge."[222]

The Committee report clearly disfavored high school or undergraduates signing with professional sports teams. It was "a serious interference with the education of student-athletes and a threat to school and college athletic programs," according to the Committee, and once the leagues merged, "the clubs of the merged league will discontinue this practice." Yet Senator Ervin added an annotation at the end of the report:

> I dissent from the portion of this Committee Report which speaks with disfavor of college and high school students signing with professional

[220] U.S. Congress, Senate. *Authorizing the Merger of Two or More Professional Basketball Leagues, and for Other Purposes. Report to the Committee on the Judiciary.* 92nd Cong., 2nd Sess. Washington, D.C.: Government Printing Office, 1972, 1-4; Hereafter U.S. Congress, Senate, 1972, *Authorizing the Merger*.
[221] U.S. Congress, Senate, 1972, *Authorizing the Merger*, 9.
[222] U.S. Congress, Senate, 1972, *Authorizing the Merger*, 4-10.

> teams. Our free enterprise system requires that every human being be allowed to do with his own life and athletic skills what he desires to do as long as he does not unlawfully injure any other person.
>
> Accordingly, I do not favor any denial of a right of a student to sell his athletic skills to the highest bidder if he sees fit to exercise his right to become a professional rather than an amateur.
>
> The playing life of an athlete is much too short to penalize him by not allowing teams to bid for his services until his college class graduates.[223]

At first glance, the Committee Report may seem a defeat for the Players Association. Yet the announcement of the reserve clause as illegal was what players have fought for almost nine years since the All-Star game in 1964. "It was a landmark victory," as Oscar Robertson put it. The leagues could not merge without abandoning the reserve clause—at least the Senate would not allow it. "Not everyone in the union was pleased with the result of the option clause, but we'd definitely won, giving even more momentum to our lawsuit against the league. After years of being mistreated and taken for granted, our struggle had been validated," Robertson remarked about the report.[224]

S.2373 and the amendments antitrust subcommittee decided on, came to nothing with the end of the ninety-second Congress. If owners were going to pursue the merger again, they would need new legislation through new Congress, and approval from a committee of which Sam Ervin was still a member. Thus, their only hope for a merger would depend on gate-sharing and abolishing the reserve clause. Considering not all the owners were in favor of the merger in the first place, it would be extremely tough for the two leagues to merge under the amendments of Ervin's subcommittee.[225] The owners of professional basketball teams "were not adroit as their football peers," David George Surdam argues. Yet they were unfortunate more than their incapability. Emanuel Celler, who chaired many hearings on sports in 1951, in 1957, in 1961 and in 1966, and Sam Ervin were determined to protect free enterprise more than financial stability of professional sports. Celler said "rigid draft

---

[223] U.S. Congress, Senate, 1972, *Authorizing the Merger*, 13.
[224] Oscar Robertson, *The Big O: My Life, My Times, My Game*, 284.
[225] Leonard Koppett, "Ifs, Ands and Buts of Basketball Merger Here Again," *The New York Times*, November 16, 1972.

and reserve systems, with attendant boycotts and blacklists, throttle legitimate player negotiations and effectively deny athletes the full fruits of the free enterprise system," as he opened the merger hearings in July 1972. Both Celler and Ervin knew that football merger ended freedom of contract for rookies—not to mention its deficiencies for veteran players, Edward R. Garvey, executive director of the NFL Players Association, demonstrated how veteran players had not benefited from the football merger.[226] Larry Fleisher and the NBPA used the two league structure as a leverage to bargain to demolish the reserve clause. Not only professional basketball players but professional baseball and football players were about to benefit from what was happening in basketball.

[226] Garvey demonstrated how the Rozelle rule (or the "option clause" through compulsory compensation) decreased the average player salaries in football. U.S. Congress, Senate, 1972, *PB2*, 770-776.

CHAPTER VII

THE NBA AFTER THE 1973 COLLECTIVE BARGAINING AGREEMENT AND THE OSCAR ROBERTSON LAWSUIT

7.1. The NBA After 1973

In 1973, the National Basketball Association was leading in player salaries among major sports in the United States. Basketball players were earning $90,000 of average salary which meant that their average salary was higher than the total amount of baseball and football players. The main reason behind this difference was that in basketball, two rival leagues are bidding against each other for the services of players. While in baseball and football, the leagues were monopolies and players had limited options. Even in hockey, which was not popular as much as football and baseball, the average player salary surpassed either of those two sports because of the two-league structure. Baseball, in particular, was known for being "America's national game" and pastime activity, it was more than a century old, yet its players were not earning even higher than basketball players in the American Basketball Association, which was playing its fifth season in 1970. The number of players per team differed however, there were twelve players on a basketball team, nineteen men on a hockey team, twenty-five men on a baseball team, and almost forty players on a football team. Moreover, basketball and hockey teams had much smaller seating capacities comparing to baseball and football, which made business harder for its owners. Nevertheless, the National Basketball Players Association was leading the player-owner struggle and won major gains thanks to the efforts of Larry Fleisher and the fellowship of its star players.[227]

[227] Leonard Koppett, "In Pro Salaries, N.B.A. Is No. 1," *The New York Times*, March 11, 1973, 224.

With the upcoming nationally televised games, sports fans became more knowledgeable, yet this brought the necessity of instant analysis of what was happening on the court. Television networks were hiring retired professional athletes to describe the strategy behind sports. James Tuite was the one who predicted the rise of television and how sports announcing was going to change. “Some of them lack a mellifluous voice and a smooth delivery, but their know-how, their enthusiasm and their love for sport have brought a new dimension to broadcasting,” Tuite wrote.[228] While basketball provides a golden opportunity for television networks, providing analysis during a constant flowing game could be complicated. Nevertheless, basketball was still tempting for television networks. Roone Arledge, who was the mastermind behind ABC’s rise among sports broadcasting, was optimistic. “Physically, professional basketball is an excellent sport for television; it’s played in a confined area and the cameras can be placed to show the agility, finesse, and contact,” he wrote in 1966.[229] Indeed, basketball was wonderful for television to capture the emotions of the players, whether they were angry, happy, or ambitious, the audience was able to see what was happening on the basketball court.

When television realized the value of basketball for prime time, basketball as a sport became more than a game. Basketball competed not only with other sports but also with other entertainment on national television. Its schedule was significant, people could watch after football season ended and before baseball season started. Players compared their salaries with other entertainers because they were not just basketball players anymore. Halberstam realized this phenomenon in the late seventies, as television started to enter arenas and locker rooms, its commercial norms also changed players as much as owners. “In the evolution of modern sport a league’s success was no longer defined by the quality of its play (in this case often phlegmatic during the regular season and brilliant during the playoffs), but by how the networks— or more accurately the great national advertisers—saw it,” he wrote. “For in American sports in 1980 there was no God but Madison Avenue and A.C. Nielsen was His prophet.”[230]

[228] James Tuite, “From Playing Filed to Announcing: Then and Now; Speaking with Authority Close to the Team Non-Partisan Viewpoint,” *The New York Times*, August 11, 1963, 101.
[229] Roone Arledge, “It’s Sport, It’s Money, It’s TV,” *Sports Illustrated*, April 25, 1966, 103.
[230] David Halberstam, *The Breaks of the Game*, 11.

What became apparent after the hearings was that teams in larger markets were not on the brink of collapse, as claimed by the owners. On the contrary, teams that operated in small markets—almost all of them were in the ABA—were going into bankruptcy even if the merger happened over night. It was nearly impossible for twenty-eight teams—seventeen of the NBA and eleven of the ABA—to survive. Congress was against reducing the number of teams while owners and the two leagues wanted to retain all teams through the proposed merger—which meant to bail themselves out. Yet there was no justification for a merger which would save the strong while the weak would suffer under circumstances. "If your financial plight is so bad, can you really be saved by being allowed to merge," Leonard Koppett asked. He was asking the same questions as Sam Ervin did in hearings, "And if the weak can't be saved, but only the strong made stronger, what justification is there for having the United States Government grant an antitrust exemption to one group at the expense of another?"[231] What had occurred in baseball, football, hockey, and basketball in the 1960s was enough for Sam Ervin to become suspicious of rich owners. It was not Ervin's libertarian impulse only that made him paranoid about owners, he had legitimate reasons to be suspicious. In order to become a team owner, one must have financial resources—which meant that one must have successful businesses other than sports. Professional sports teams became "tax shelters" for rich businessmen in the 1960s. Value of a player can be set arbitrarily and depreciated at the same time. Depreciation of the value of a player allowed owners to pay fewer taxes to the government. Moreover, since these basketball teams lost money due to "bidding wars" in order to acquire players, profits from other businesses neutralized their tax bill. Which meant that "the "loss" from one business may be written off against the "profit" from another business to reduce the tax bill for the profitable one."[232]

7.2. Sam Ervin's Opinion About "What Congress Must Do About Professional Sports"

In his article for *the Sport* magazine titled "What Congress Must Do About Professional Sports," Ervin wrote what should have been acknowledged before. "The

[231] Leonard Koppett, "Congress vs. Sports," *The New York Times*, November 21, 1971, S7.
[232] Leonard Koppett, *The Essence of the Game is Deception*, 233-234.

Supreme Court could make mistakes even then but obviously with teams traveling 3000 miles to play one another and with TV spanning the nation, the notion that baseball is not interstate commerce is nonsense." Indeed, the business of professional sports grew in such a manner with the involvement of television, it became nearly impossible to not revise or overhaul what had happened in the early twenties—the decision Judge Oliver Wendell Holmes made. From that point on, "owners of pro teams have used their freedom from antitrust statues to exploit players in a condition that amounts to the modern form of peonage, servitude for a lifetime at the pleasure of an owner," Ervin wrote. What matters for Ervin the most was what was written in the U.S. Constitution. His perspective always hinged on to protect players' freedom of contract because they were the only ones who engaged in the business of professional basketball as individuals. There was no one or no individual—other than their union and their agents—to protect their interests. They were trying to sell their talents to the highest bidder, in this regard, they were no different than average Americans. "So far as I am concerned, it doesn't make any difference whether the individual receives ten cents a day or $100,000 a year, he can still be a peon," Ervin argued.[233]

The reserve clause contradicted with the Fifth and Fourteenth Amendments in the U.S. Constitution, according to Ervin. Owners argued that without the reserve clause, there would be chaos. What they meant by chaos was that players would jump from one team to another and one league to another—in reality, their control over player movement would finish. There was an "option clause" in football—known as "the Rozelle Rule" after the NFL Commissioner Pete Rozelle—that any player whose contract with a team has expired can sign with another team, his old and new team were to negotiate compensation for the player's services in exchange for money, draft picks, or player trade. If two sides could not reach an agreement, the commissioner may decide the matters of compensation. Commissioner of the NFL has the final authority in compensation for any free agent signings.[234] Each

---

[233] Sam Ervin, Jr., "What Congress Must Do About Professional Sports," *Sport*, March 1972; reprinted in U.S. Congress, House, 1972, *PMABA/NBA*, 243.

[234] In *Mackey v. NFL*, Judge Larson ruled that the Rozelle Rule is in violation of the antitrust laws in 1975. *See* Donald Novick, "The Legality of the Rozelle Rule and Related Practices in the National Football League," *Fordham Urban Law Journal* 44, no. 3 (1976): 581; *Mackey v. NFL*, MacKey v. National Football League, 407 F. Supp. 1000 (D. Minn. 1975), https://law.justia.com/cases/federal/district-courts/FSupp/407/1000/2281018/

commissioner in baseball, football, and basketball was selected by their Board of Governors, which meant that commissioners worked for the owners. As a result, the impact of the option rule was relatively the same as the reserve clause and none was happy or at least one side of the deal occasionally complained, considering the commissioner's opinion was compulsory. Above all, players were still tied to their original team. Although basketball owners tried to do the same thing and offered players a five-point agreement, the Players Association knew that the net effect would be the same it was in football.

"When the two football leagues were granted permission in 1966 to join in what I consider an unholy union, initial or bonus payments to new players dropped sharply. Team payrolls declined and the costs of operating teams stopped rising," Ervin wrote. Major sports in the United States are inherently close leagues. That means that they are partners as much as they compete. Basketball and hockey were only two sports that had no share of the gate receipts in the early seventies. This created unfair competition between larger market teams like the New York Knicks and relatively small market teams like Seattle SuperSonics. Larger market teams—or namely "rich" teams—favored the reserve clause because poor teams could cut their salary totals through it. When they could cut their expenses—and maybe make a profit—they would not complain. Since the New York Knicks could draw in much more fans per night, their margin of profit would be higher compared to their opponents. Ervin knew that "the depreciation arrangement permits a professional team to display large figures in red ink while making an operating profit."[235]

7.3. The ABA's Secret Draft and the 1973 Collective Bargaining Agreement

The ABA still held secret drafts and teams selected undergraduate college players in 1973. One of them was George Gervin, who was one of the top basketball talents in the 1970s and early 1980s. Meanwhile, Senator Birch Bayh was working on a bill that would permit the merger between two leagues. ABA certainly was in favor of the bill. Their founding purpose was built on the merger. The owners of the NBA, on

[235] Sam Ervin, Jr., "What Congress Must Do About Professional Sports," *Sport*, March 1972; reprinted in U.S. Congress, House, 1972, *PMABA/NBA*, 244-246.

the other hand, never anticipated that they would have given up the reserve clause for the sake of a merger. They were committed to paying heavy damages, yet they were not ready for free agency. This would mean that even if two leagues merge, the teams still will have to compete among themselves to acquire players. If the merger happens under conditions that Senator Ervin and Bayh established, "it may suffer legal penalties and will certainly suffer public relations damage," according to Leonard Koppett. Although both ABA and NBA Players Associations were supporting the legislation, it would not be easy to convince NBA owners have a merger without any entry fee by ABA teams. Senator Birch Bayh was working on a bill because Indiana had one of the best ABA franchises, they were considered as "the Boston Celtics of the ABA," because of their success in playoffs—"they played for the title in five of the ABA's nine years,"—just as the Boston Celtics did in the NBA.[236] "Senator Bayh's first objective is to see that players are protected against a monopoly situation. With that taken care of, the second goal is to make it possible for as many basketball franchises as possible to flourish, in the public interest," Bayh's legislative aide, Jay Berman said.[237]

Meanwhile, the NBA and Players Association reached a collective bargaining agreement on March 5, 1973.[238] Although it was not the first collective bargaining agreement, it was the first comprehensive one, which "many items that were the subject of individual agreement in the past were folded into one contract, and new items, such as arbitration, made their initial appearance in a contact."[239] According to the agreement, the minimum salary would be $20,000—it was the highest among major sports—pension benefits for retired players were also extended. A ten-year veteran who reached age fifty would get $720 a year for each year of service. Reduction in the age requirement for pension benefits was agreed in November 1972 but also included in this agreement. Teams must have at least eleven players on the

---

[236] Boston Celtics with Bill Russell played as their center, won eleven championships in thirteen years, between 1957 and 1969. In 1957, they lost to St. Louis Hawks—which was the last all-white team to win NBA championship—because Bill Russell got hurt. In 1967, they lost to Wilt Chamberlain's Philadelphia 76ers—which was the better team that season. For the story of the Indiana Pacers in the ABA, Terry Pluto, *Loose Balls*, 134-171.
[237] Leonard Koppett, "N.B.A. in Merger Bill Dilemma," *The New York Times*, February 8, 1973, 54.
[238] While newspapers reported the 1973 Collective Bargaining Agreement as being the first in the history of NBA, Paul D. Staudohar argued that the 1967 Collective Bargaining Agreement was, in fact, the first in professional sports. The reason for newspapers to report 1973 as the first collective bargaining agreement, was perhaps agreement in 1973 was the first comprehensive one. Paul D. Staudohar, *Playing for Dollars*, 106-107.
[239] Paul D. Staudohar, *Playing for Dollars*, 106-107.

active list. Arbitration procedures had also changed. Players could handle their grievances with “an independent arbitrator rather than the NBA commissioner.” The most important aspect of the deal was how fast NBA players had gained rights and became equal-footed with other sports. “We have an advantage because we’re a smaller group,” Larry Fleisher said. “Our pension hasn’t been established that long, so we don’t have as big backlog of players.”[240]

Although the owners did not give an inch about eliminating the reserve clause, players achieved serious gains in arbitration and pension. “One big breakthrough was that we were able to emulate baseball’s grievance procedure—to get grievances handled through arbitration instead of by the commissioner.” Fleisher did not forget to praise Walter Kennedy, and underlined he had “excellent legal advice.”[241] Kennedy acted as an arbitrator during the negotiations, “His office acts as a clearinghouse to resolve problems, and he acts as a mediator, but he stays away from final determinations. Our relationship has been fairly good,” Fleisher said. Yet there was nothing to negotiate about the reserve clause. “Our position is that any kind of a reserve or option system is illegal. It violates basic rights. We’ve always taken the position it’s illegal,” he said. [242] Meanwhile, the NBA agreed with the Columbia Broadcasting System (CBS), $27 million for three years to nationally broadcast its games. Although the ABA filed suit against the NBA, alleging the league had negotiated “not in good faith.”[243] ABC criticized for its broadcasting over the three years prior to this deal, “It is unlikely that sport has ever been presented so dismally in prime time as it was this year’s coverage of the NBA championships on ABC,” Frank Deford wrote in 1971. ABC covered NBA games as if they covered a football game, it seems the speed and constant motion of basketball made it difficult for commentators and cameras to capture important events during games.[244]

---

[240] Fleisher quoted in Seymour S. Smith, “Fleisher Big Figure in NBA Labor Moves,” *The Baltimore Sun*, March 7, 1973, C5; “N.B.A. and Players Sign a Basic Pad,” *The New York Times*, March 6, 1973, 51; Michael Schiavone, *Sports and Labor in the United States*. (Albany: State University of New York Press, 2015), 98; “Accord Reached in NBA,” *The Washington Post and Times Herald*, March 6, 1973, D5.
[241] David Stern was one of legal advisers, who became the commissioner of the league in 1984. Many acknowledged that his administration was one the main reasons in the rise of the NBA as a global phenomenon.
[242] Seymour S. Smith, “Fleisher Big Figure in NBA Labor Moves,” *The Baltimore Sun*, March 7, 1973, C5.
[243] “C.B.S., N.B.A. Agree; A.B.C. Doesn’t,” *The New York Times*, March 9, 1973, 32.
[244] Frank Deford, “TV Talk,” *Sports Illustrated*, May 24, 1971, 16; Mario R. Sarmento, *The NBA on Network Television: A Historical Analysis*, (M.A. Thesis, University of Florida, 1998), 46-47.

7.4. Robert L. Carter and Oscar Robertson Suit

Robert L. Carter was the authority over the merger of the two leagues, and also presided over the Robertson suit. After almost three years of Congressional debates and hearings over merger bills, he authorized NBA and ABA to seek a new merger agreement without Congressional approval if players were represented in discussions. While lifting the previous injunction order that prevented the merger before, Carter stated that "a merger agreement can be reached as long as Congress has failed to act." [245] However, Walter Kennedy put an end to speculations on merger a few days later. Apparently, the option clause was the biggest issue preventing the possibility of it. "Our owners feel the option clause is a must for the future of the N.B.A. They felt that way two years ago when we joined the A.B.A. in asking Congress for permission to merge. Nothing that has reached the commissioner's office indicates their position has changed," Walter Kennedy said. While NBPA was against both the option and reserve clause, "the ABA willing to give up the option clause." This meant that if owners would not give up the option clause, there will not be any merger within the near future.[246]

The original merger agreement between ABA and NBA—which was signed on April 15, 1970—was due January 4, 1974. Because the agreement depended on antitrust exemption which Congress was supposed to pass before the due date, it was going to be considered invalid. According to the agreement, both leagues had to commit themselves to make "all reasonable efforts to get legislation passed. If one of them didn't pursue that goal wholeheartedly, it would be subject to an indemnity (about $3 million) to the other."[247] Leonard Koppett reported that ABA will likely review its antitrust suit against NBA, in order to compel the bigger league back in merger negotiations. NBA owners abstained from giving up the option clause while ABA owners lost their credibility in terms of accusing NBA with "pooling of their economic power to bid on new players, including superstars, against individual

245 "Sports News Briefs," *The New York Times*, August 11, 1973.
246 "Merger Seen No Closer," *The New York Times*, August 15, 1973, 30.
247 Leonard Koppett, "N.B.A. Merger Off, A.B.A. May Try Law-Court Press," *The New York Times*, January 3, 1974.

member plaintiffs."[248] On the other hand, ABA could not ask antitrust exemption from Congress. Moreover, it was not possible to claim that antitrust laws were making the business of basketball unbearable for ABA teams, it might encounter with further examination of the $1.7 million deal given Wilt Chamberlain to be player-coach of the expansion franchise, the San Diego Conquistadors. Nevertheless, the Los Angeles Lakers were expected to file a lawsuit that prevent Chamberlain to play for ABA's new franchise.

Since they were able to agree on merger with the NBA and were able to compete for national talents, the next move had to broaden the competition to another level, either through expansion or direct relocation of ABA franchises into the cities where the NBA had already located. This would further stimulate a merger with the NBA, due to potential growth in competition. However, five out of their ten franchises were for sale, and the people who bought ABA franchises mattered more than anything. This was another strategy to force a merger, ABA management was hoping that teams in smaller markets would relocate into larger ones, otherwise, the merger might be in danger, at least for the franchises in smaller markets. The New York Nets, the Kentucky Colonels, and the Indiana Pacers were considered as the ones which could join the NBA if competition diminished in the immediate future.[249] Thus, the ABA had filed another lawsuit against the NBA and asked $300 million in indemnity. Mike Storen, who became the Commissioner of the ABA in late 1973, declared that they filed the lawsuit not to force a merger, however, they would listen if the NBA offered any.[250]

The main argument which the ABA put forward was that the NBA had never seriously intended to merge, in other words, the ABA was contending that it was tricked by the NBA. This was the only way to file another lawsuit against the older league because the ABA had dropped its first antitrust suit against the NBA in 1970 "with prejudice," in order to negotiate a merger agreement. Once one drops an antitrust lawsuit "with prejudice," it becomes impractical to overturn and to file the

[248] American Basketball Association v. National Basketball Association, et al v. National Basketball Association, et al., (S.D. Calif.) 1970.; "New A.B.A. Crisis: Big-City Market," *The New York Times*, January 9, 1974, 9.
[249] "New A.B.A. Crisis: Big-City Market," *The New York Times*, January 9, 1974, 27.
[250] Parton Keese, "A.B.A. Renews War," *The New York Times*, January 31, 1974, 39.

same antitrust suit.[251] Meanwhile, New Orleans joined the NBA as the eighteenth franchise starting with the 1974-1975 season. It was another blow to the ABA, who seriously considered New Orleans as an expansion city. Another serious blow could be rumors about the application of its stronger teams for NBA membership, Roy Boe, the owner of New York Nets said, “it had been discussed earlier at the ABA owners’ meeting.” Walter Kennedy was also implying that they were ready to discuss such issues with the ABA through their counsels. Yet Mike Storen, the ABA commissioner was cautious in his approach towards any merger rumors, “They (ABA owners) are wasting their time talking to NBA owners. They should talk to the NBA Players’ Association. That’s the group that has blocked the merger,” he said.[252] Indeed, NBPA was able to get an injunction from Judge Charles Tenney which forbade both leagues from “reaching an agreement, effectuating or consummating any merger, consolidation, acquisition or combination by any means between the NBA, ABA, or any of their member teams.”[253] The fate of the merger was in the hands of Judge Robert L. Carter unless the NBA owners gave up the reserve clause.

7.5. Larry Fleisher’s Opinion Piece in the New York Times

On April 12, 1974, the ABA announced that it would organize a five-round draft that solely focuses on active NBA players. Neither NBA nor ABA dared to officially draft players under contract ever before and apparently, they had followed the path of the World Football League, which organized similar drafts of active National Football League players earlier. ABA wanted to acquire some NBA talent, but most of them already signed long-term contracts—NBA owners felt under pressure by their rivals. Although it was a bold move, “their way of doing it offends us,” Larry Fleisher said. Veteran players already had the self-esteem to jump leagues and to negotiate what was best for them. “The ability of a player to go where he wants should not be limited to the draft.”[254] The Memphis Tains selected Dave

---

[251] Leonard Koppett, “Sports Under Full-Court Press as Lawsuits Keep Increasing,” *The New York Times*, February 6, 1974, 29.
[252] Sam Goldaper, “New Orleans Will Join N.B.A. Next Season for $6.15-Million: N.B.A. Adds New Orleans for Next Season,” *The New York Times*, March 8, 1974, 25.
[253] “Merger of N.B.A. and A.B.A. Stayed by U.S. Injunction,” *The New York Times*, May 5, 1970, 75; “N.B.A. Players Get a Writ Blocking Talks on Merger,” *The New York Times*, April 18, 1970, 35; Robertson v. National Basketball Association, 389 F. Supp. 867 (S.D.N.Y. 1975). https://law.justia.com/cases/federal/district-courts/FSupp/389/867/1591788/
[254] “A.B.A. Set For ‘Raid’ On N.B.A.,” *The New York Times*, April 13, 1974, 31.

DeBusschere of the New York Knicks, who already agreed to become the next general manager of the ABA's New York Nets, and Lenny Wilkens, who was thirty-six years old and had two years remaining—and an option year—on his contract with the Cleveland Cavaliers. Memphis's draft picks must have surprised everyone in the NBA, especially Larry Fleisher since he represented Dave DeBusschere. “I can't understand them drafting DeBusschere and Lenny Wilkens, who will be 112 years old by the time he's ready to play for the A.B.A,” he said. “Either they were not serious about drafting N.B.A. players, or they are stupid.” Mike Storen did not think highly of Breda Kolff—the coach of the Memphis team who made the selections—either. “Maybe that's why Memphis finished in the last place. This was meant to be a serious draft,” Storen said.[255] Utah Stars' draft selection might be eye-opening, considering their draft choice, Moses Malone, was a high-school senior, who might have decided to become professional. No high school graduate had ever become professional without a single college basketball game in the history of basketball.

Larry Fleisher had seen how professional athletes realized their collective bargaining power with the rise of players' associations. The upcoming of television and competition among newer leagues and the established ones were certainly two critical factors in terms of rising salaries in professional sports. He commanded every financial detail in the business of basketball because of his meticulous approach towards his clients and his utmost belief about the illegality of player restraints. In order to prove this illegality, Fleisher wrote an opinion piece for *the New York Times* which was about controversies around labor relations in professional sports that reached a higher climax more than ever; another football league established (the World Football League) to challenge the NFL's monopoly over the business of football, the World Hockey Association was another enterprise which aggressively confronted the National Hockey League. Recently a new baseball league—the World Baseball League—was announced by a group of businessmen. Finally, the American Basketball Association, which officially held a draft in order to steal its rivals' finest players. “Will this desire on the part of several businessmen, to own franchises

[255] Sam Goldaper, “A.B.A. Goes for Broke in Draft,” *The New York Times*, April 18, 1974, 55.

finally and effectively remove the reserve clause or option clause or both from professional team sports," Fleisher explained players' perspective.[256]

It was obvious that rising competition between the two leagues in basketball had an impact on the rise of player salaries, he argued. "The ability of the players to forestall a merger by obtaining a court injunction and then by presenting their case forcefully in Congress to prevent antitrust exemption legislation," ensured that player salaries would not decrease any time soon. Then, Fleisher explained that there were three alternatives, which would resolve issues in professional sports in 1974. The first one was to merge leagues, which the players in all sports would immediately challenge and can intercept. The second one was to continue the current situation—namely, to continue bidding wars, court actions, drafting which would cause further "instability" in the business of sports. The last one was "to operate as other businesses do," which clear from reserve and option clauses, "would remove the cloud of illegality from everyday activity." This would allow teams to develop long-term planning and furthermore, "a free competitive marketplace, as all other industries do," he wrote. The first option cannot take place due to player's objections and the second option was "abnormal over a long period, I think that the third possibility will soon happen," Larry Fleisher wrote at the end of his opinion piece.[257]

The reserve clause was the only obstacle before the merger since players had stopped both leagues with a court injunction order. It was obvious that the ABA needed it more than the NBA, yet "the price of merging would be the abandonment of the traditional reserve-option system which prevents a player from changing teams even after his contract expires.". One way to have a merger was that five ABA teams—New York Nets, Kentucky Colonels, Indiana Pacers, Utah Stars, and San Antonio Spurs would buy out the other five ABA franchises—Carolina Cougars, Virginia Squires, Memphis, San Diego, and Denver—and join the NBA. These five teams were already under sale, and other details including television revenues sharing, compensation, and draft issues already had been worked according to Leonard Koppett, who reported that two leagues agreed in principle.[258] Yet "as long as there

[256] Larry Fleisher, "Opinion: The Reserve Clause Is on the Way Out," *The New York Times*, April 21, 1974, 234.
[257] Larry Fleisher, "Opinion: The Reserve Clause Is on the Way Out," *The New York Times*, April 21, 1974, 234.
[258] Leonard Koppett, "Basketball Merger by Next Season?" *The New York Times*, May 10, 1974, 27.

is anyone who wants to operate a team independently,"—either in Virginia, Memphis, Denver, San Diego, or Carolina—antitrust laws forbid such business transactions. Furthermore, without multiple lawsuits determined between players, the ABA and NBA, it would be difficult to have a merger between two leagues. The reserve clause was clearly an issue among all major sports in the United States by now, still "it would take 13 votes in the NBA to adopt the kind of agreement the players want. There has never been anything approaching that sort of support for the idea, and there is no sign whatever than a shift in view is taking place," Walter Kennedy said.[259] As long as players demanded the end of the reserve clause and owners stuck to it, courtrooms would be their playground.

The problem with ABA was that its franchises were in cities which one would consider mediocre in terms of market share comparing to NBA franchises. The New York Nets was the only team that was located in a large market, even San Diego Conquistadors, the second-largest market in the ABA, was ranked twenty-first among markets. The upcoming of television has changed the economic landscape of professional sports, a league without a national television deal could not be considered as a "major league." When the ones who founded the ABA sold their franchises to eager businessmen from relatively small markets, the possibility of getting a television deal naturally diminished. The San Francisco franchise relocated at first to Washington, then Virginia. The Dallas franchise relocated to San Antonio, Houston and to North Carolina. Leonard Koppett argued that in order "to follow the sports picture sensibly these days, therefore, one can't get by with a scoreboard. You need an atlas."[260] This was in 1974 after constant relocation of its franchises crippled ABA's chances toward reaching national attention which it craved in the first place. Meanwhile, Judge Robert L. Carter was urging both leagues and players toward an agreement that would solve the antitrust issues. A collective bargaining agreement between the players and the owners would eliminate antitrust laws from preventing the merger. Yet there were multiple obstacles before reaching an agreement; at least fourteen owners out of eighteen in the NBA had to approve to merge with its rival league; the ABA would have bought out its few members in order to protect parity among teams in the merged league and both leagues would have to agree on entry

[259] Leonard Koppett, "Kennedy Scotches Reports of Merger," *The New York Times*, May 12, 1974, 8.
[260] Leonard Koppett, "A.B.A. Flunks Its Demography Test," *The New York Times*, May 26, 1974, 1.

fees; and finally, Judge Carter would have to make sure that all parties were voluntarily agreement with the proposed merger.[261]

Judge Robert L. Carter presided over any future agreement among all parties. Larry Fleisher, as the general counsel of the Players Association, Oscar Robertson, and Paul Silas as player representatives, Walter Kennedy as the commissioner of the NBA, Herman Sarkowsky, owner of the Portland Trailblazers represented the NBA owners who were all gathered to reach an agreement. The only thing that mattered and had to be discussed was the issue of player movement, and "the right of first refusal" was mentioned by owners, players, and the NBA for first time in the history of basketball. It would eliminate both reserve and option clauses for veteran players, when a player's contract expires, his original club could match any offer that was made from other teams and would be able to keep the player. All parties were agreed to implement changes step by step. Yet the majority of owners did not favor the idea of the first refusal and rejected the proposal, they also blamed Walter Kennedy for his leniency and lack of effort, he "didn't make as tough a deal as could be made," owners believed.[262] ABA returned into a war stance against the NBA and decided to go on with their antitrust lawsuit. Yet the merger was always in mind. "The idea of merger had been uppermost in our minds. I hope the idea of merger is not a dead issue. Pro basketball needs a merger," Mike Storen said. ABA would push its antitrust suit and would present its case to Judge Robert L. Carter, in order to compel the NBA that there is no other way than the merger of the two leagues in this setting of the complex business of basketball.[263]

[261] Leonard Koppett, "Merger Prospect Revived," *The New York Times*, June 13, 1974, 57.
[262] Leonard Koppett, "Basketball Merger Crumbles at N.B.A. Meeting," *The New York Times*, June 21, 1974, 43.
[263] Thomas Rogers, "A.B.A. Will Retain Setup and Renew N.B.A. Suit," *The New York Times*, June 23, 1974, 9; "A.B.A. May Expand, Resume N.B.A. Suit," *The New York Times*, June 22, 1974, 24.

CHAPTER VIII

1976 COLLECTIVE BARGAINING AGREEMENT AND THE OSCAR ROBERTSON LAWSUIT

8.1. Councils of the NBA and the ABA

The market for basketball players tightened in 1974 off-season, uncertainty within the ABA, and financial troubles in some of its teams, made contract negotiations difficult for many agents. Four out of ten ABA teams were for sale and having financial difficulties, which further shrunk the job market for basketball players. Even Bill Walton, a college star for UCLA, had been able to get his high-paid contract due to the competition between two teams, “with some of the A.B.A. in trouble, I think it will be much tougher to negotiate. I don't think Bill Walton would have received so much from the Portland Trail Blazers if a Los Angeles group was not bidding against him,” Larry Fleisher said.[264] With Carolina Cougars having financial troubles, Philadelphia 76ers of the NBA was after two significant ABA players, Billy Cunningham and George McGinnis.[265] Meanwhile, Walter Kennedy had resigned and NBA owners were looking for a replacement. Kennedy would have to stay in power until owners can select a new commissioner.[266] The ABA supported its teams’ legal action against NBA’s New York Knicks and Philadelphia 76ers, in order to prevent George McGinnis and Billy Cunningham from joining them, respectively. Judge Robert L. Carter ruled that players could not be “prevented from negotiating with other teams for future seasons after their commitments were over.” Yet both McGinnis and Cunningham were under contract.[267]

---

[264] Sam Goldaper, “Pro Fives Slow Gold Flow for Rookies,” *The New York Times*, May 30, 1974, 43.
[265] Sam Goldaper, “76ers Are Negotiating with McGinnis, Cunningham and Barnes,” *The New York Times*, June 19, 1974, 53.
[266] “People in Sports,” *The New York Times*, July 20, 1974, 26.
[267] Sam Goldaper, “Monroe Seen as Knicks’ McGinnis Bait,” *The New York Times*, August 22, 1974, 41.

Leonard Koppett was still writing about antitrust issues around professional basketball, what players wanted, and how players had been able to prevent the merger agreement between the ABA and the NBA. Chances of a settlement among all parties vanished in the summer of 1974. Perhaps both leagues could convince players if NBA owners gave up the reserve clause, yet the more antitrust suits remain before courts, the possibility of a Judge's rule "on the draft of college players, territorial rights of franchises and television arrangements," could increase as well. On the other hand, litigation was expensive and players association barely paid its firm's expenses. "Basically, the firm was underwriting the case; the players couldn't afford it and the league knew it. So they started to do every conceivable thing to make us spend money, endless motions, moving for summary judgments, going back to saying this was all collectively bargained when they wouldn't even talk to us," said attorney Jim Quinn, who helped Larry Fleisher and players for the Players Association. The moment when Robert L. Carter was appointed as the new judge, the NBA had changed its strategy to stall off the players as long as possible. "So in a new stalling/money-draining tack, the league requested depositions from all the players because they knew they were bleeding out of us. The judge says that's ridiculous, but he did allow 90 depositions and it was chaos running around the country," Jim Quinn said.[268]

Counsels were cornerstones of the possible merger between the ABA and the NBA. Frederick Furth continued as counsel to the ABA, he was the one who filed another lawsuit against the NBA in 1974. David Stern represented the NBA during its settlement with ABA.[269] These people were not only counsels or antitrust litigators, but they could also have killed the merger if they wanted. Another counsel who could have killed the merger was Larry Fleisher. "If he and the Players Association had wanted to start some new legal action, it could have thrown the whole thing into jeopardy. In a sense, he was like O'Brien (Commissioner of the NBA after Walter Kennedy). Fleisher had the power to kill it," Mike Storen recalled.[270] Sam Smith asserts that David Stern became "the shadow commissioner," as soon as Larry

---

268 Sam Smith, *Hard Labor*, 118-119.

269 "Some say the NBA feared a court fight with Furth," according to Brian Baxter. See "The Sports Litigation Archives: ABA v. NBA," October 30, 2009. https://amlawdaily.typepad.com/amlawdaily/2009/10/aba-v-nba.html

270 Pluto, *Loose Balls*, 431.

O’Brien became commissioner of the NBA. O’Brien was the former chairman of the Democratic Party, also an advisor to President John F. Kennedy. The owners needed a figure who had strong ties with the Congress, and since O’Brien did not know barely anything about basketball and its business. David Stern had battled against Larry Fleisher and his associates in courts since 1966, he knew labor relations in basketball more than any other. Before he became the NBA’s general counsel in 1978, he was already a general among soldiers: “My job was to delay,” Stern said.

> And Bill (Bradley) is perfect (for a deposition) because he doesn’t know how to be dishonest. So I’m asking him, “What were you doing when you were at Oxford shooting around?” And he says, “I would bounce the ball…” And this goes on for about five days. Remember lawyers are like soldiers. You have empathy for the soldiers on the other side. The parliaments make the war. The lawyers go in and fight it out. The funny thing is we’re still here. Had some battles with Jim Quinn, but he’s over there in Trump Tower and my building is nicer. But the credit really goes to those guys, led by Larry in ’64, who weren’t going to play that All-Star game. That brave group of guys who said, “Fuck you.”[271]

8.2. Robert L. Carter’s Opinion on the Reserve Clause

Leonard Koppett was reporting from his column in *the New York Times*, that the underlying issue around professional sports was the same in 1975, “What limits should be put on the arbitrary control teams have over a player’s right to seek employment after his contract has expired?” There were two antitrust lawsuits in football and one in basketball, while two cases in football were in Supreme Court—one was alleging the illegality of the Rozelle Rule, the other was alleging the illegality of the reserve clause. There was a strong possibility that the loser in the Robertson case could appeal all the way through the Supreme Court, which would lengthen the process a few more years. Besides, there would be collective bargaining negotiations in football—players went back to work without a collective bargaining agreement during the 1974-1975 season—and baseball players would have

[271] Sam Smith, *Hard Labor*, 119.

demanded a pension deal. Congress was likely to investigate and pass a law to reduce "the chaos caused by endless lawsuits."[272] Team owners in professional basketball were also affected by an economic crisis in the early 1970s yet "just to keep pace with the increase in the cost of living since the last contract three years ago would require increases of more than 25 percent on various money issues, so it won't be easy to resolve things," Larry Fleisher said about upcoming collective bargaining negotiations. Furthermore, Robert L. Carter's ruling would determine in which terms all parties negotiate a new agreement, articles which forbid player restraints might be part of the new deal.[273]

On February 14, 1975, Robert L. Carter ruled against team owners and made specific points that were highly favorable to the professional basketball players. First of all, plaintiffs in *Robertson v. NBA* case are going to be able to claim damages if they win; second, "he firmly rejected the NBA contention that the issues were a matter of labor negotiation rather than antitrust questions."[274] NBA's contention that the issues were a matter of labor negotiation was particularly interesting because if players ever offer for the removal of the reserve clause in collective bargaining negotiations, owners will not discuss even for one second. "They're saying rules relating to free agency were all mandatory subject of collective bargaining and the rules were in place from the collective bargaining and the rules were in place from the collective bargaining, which was complete bullshit," Jim Quinn said, who helped Larry Fleisher in NBPA. "They just imposed them. If we ever weighed in (at collective bargaining) and said we want to get rid of the reserve clause they'd say, 'Go fuck yourself.' No discussion."[275] Judge Carter's third point was that the existing reserve system clearly violated the antitrust laws—which meant that player restrictions owners alleged were necessary, and were not defensible in terms of the financial health of the business of professional basketball.

In order to drain the money out of the NBPA, the NBA argued that the reserve and option clauses were vital and necessary for a competitively balanced league, both

---

[272] Leonard Koppett, "Backing of Hunter Arbitration Decision Called Prelude to Changing Pro Sports Setup," *The New York Times*, January 4, 1975, 296.
[273] "19th Club Put Off By N.B.A.," *The New York Times*, January 15, 1975, 22.
[274] Leonard Koppett, "Basketball Leagues Seek Ways to Cope With Judge's Strong Antitrust Position," *The New York Times*, February 26, 1975, 47; "Basketball Suit Gains in Court," *The New York Times*, February 15, 1975, 18.
[275] Jim Quinn quoted in Sam Smith, *Hard Labor*, 119.

make sure that any team from dominating and destroying the leagues. Yet the mighty Boston Celtics, under the same reserve and option clauses, dominated the league by winning eleven championships in thirteen years, despite having one of the average markets in the league. "A handful of teams were dominant, and the rest were crap, but not because of those rules. It was because Red (Auerbach) was better than everyone and then somebody got Wilt."[276] Another stalling tactic was to argue that the players "have voluntarily accepted reserve provisions in bargaining for other advantages." By all means, this was a stalling tactic, owners and players both knew that this was not the case, and indeed, the player denied and claimed that both reserve and option clauses imposed upon them—which was exactly what happened from the beginning. "I must confess that it is difficult for me to conceive of any theory or set of circumstances pursuant to which the college draft, blacklisting, boycotts and refusals to deal could be saves from Sherman Act condemnation, even if defendants were able to prove at trial their highly dubious contention that these restraints were adopted at the behest of the players' association," Robert L. Carter said. Although some forms of economic cooperation among teams in professional sports is "inherently anticompetitive," that might be essential for the survival of a league. Yet this did not mean that professional sports would be immune from antitrust laws. "Less drastic protective measures may be the solution," Carter said.[277]

Since Walter Kennedy announced that he would retire when his contract ends, NBA owners were looking for a commissioner. The owner wanted someone with legal experience, also a figure with serious political connections who might be useful and Walter Kennedy had a similar experience—he was the mayor of Stamford, Connecticut.[278] Players wanted Simon P. Gourdine, deputy commissioner of the NBA, who became the highest-ranking black person in the history of professional sports in 1972.[279] However, Larry O'Brien became the third commissioner in NBA history, after a twenty-one-month search. "The players are upset that Gourdine didn't get it. We felt he was extremely qualified. Unfortunately, the owners never discussed with the players the choice of the commissioner. It's an integral part of the game to

[276] Sam Smith, *Hard Labor*, 119.
[277] Leonard Koppett, "Basketball Leagues Seek Ways to Cope with Judge's Strong Antitrust Position," *The New York Times*, February 26, 1975, 47.
[278] Sam Goldaper, "N.B.A. Still Seeks New Head Man," *The New York Times*, March 4, 1975, 23.
[279] "N.B.A. Names Gourdine to An Executive Post," *The New York Times*, May 28, 1970, 48; Sam Goldaper, "N.B.A. to Vote on Black Aide," *The New York Times*, November 5, 1974, 44.

have a good player relationship," Larry Fleisher said. While state Senator Carl McCall maintained that bypassing Gourdine was an "insult to the black community," NBA owners' decision on O'Brien might resonate with something that Gourdine could not provide, persuasion of Congress to pass new legislation. "I would hope Mr. O'Brien has not been chosen because some of the owners thought he could help persuade Congress to pass new legislation against the interest of the players, but rather that he was chosen to fulfill all functions of the commissioner, Fleisher said."[280] Although the selection of Larry O'Brien as the commissioner was a surprise, what Sam Schulman, the owner of the Seattle Supersonics, had said a week earlier might enlighten the purpose of owners: "Sports has reached the stage where Congress has to step in."[281] Considering what Judge Carter had said while he explained his rule on February 14, owners reached the end of the road. "The life of these restrictions, therefore, appears to be all but over, although their formal interment must await further developments in this case."[282]

8.3. Merger Meetings Between Two Leagues

The 1973 Collective Bargaining Agreement between players and the league expired on June 1. Although both parties sat down, they could not reach an agreement. Thus, the owners filed "unfair labor practice charges against the players with the National Labor Relations Board."[283] During the only occasion, which both parties negotiated on July 9, owners played a tricky game. There would not be any bargaining agreement if players did not bargain on the issues such as the reserve-option clauses and the draft. Naturally, players would not bargain when there is a lawsuit in which its judge seemed highly sympathetic toward their cause. Despite the fact that the parties could not reach a deal, players announced that they will play in the next season, with the *Robertson* case and an ongoing football strike, they abstained from

280 Sam Goldaper, "N.B.A. Owners Look for Political Ladder," *The New York Times*, May 1, 1975, 64.
281 Sam Goldaper, "N.B.A. Picks O'Brien As New Commissioner: O'Brien to Head N.B.A.," *The New York Times*, April 29, 1975, 69.
282 Leonard Koppett, "Basketball Leagues Seek Ways to Cope with Judge's Strong Antitrust Position," *The New York Times*, February 26, 1975, 47.
283 Sam Goldaper, "N.B.A. Told Players Will Go to Camps," *The New York Times*, September 12, 1975, 27.

taking the same action. “Because of the football strike, I think the public sentiment is against the athlete. The football thing was not handled well at all. The players were not united. We are trying to avoid all that,” said John Wetzel, player representative of the Atlanta Hawks. Players thought that the reserve clause, the college draft, and the compensation were simply not negotiable. Even though parties did not sign any collective bargaining agreement, the 1975-1976 season was about to start without a strike.

Professional basketball players had an advantage over athletes of other major sports, they were a small group from the beginning. This enabled them to have an edge which baseball and football players could never imagine, their pension plans “hasn’t been established that long,” and they did not have many players to consider in their severance pays or pension plans.[284] Yet the biggest advantage of professional basketball players was Larry Fleisher, who was “neither a Marvin Miller (general counsel of Baseball Players Association) nor an Ed Garvey (general counsel of Football Players Association), both of whom will talk at the drop of a pencil. Fleisher plays the nation’s new media like a flute, speaking for publication only when it is to the advantage of the Players Association,” George Cunningham of the Atlanta Constitution wrote. “Fleisher has never lost a fight with the NBA owners,” and “the NBPA may be the most powerful group in sports,” according to Cunningham. Professional basketball players certainly benefited by their collective bargaining more than others. Larry Fleisher was “indisputably the game’s most powerful figure,” more than Larry O’Brien, Cunningham argued. Still, there was a possibility of a threat to boycott either before the All-Star game or the playoffs—these events were the two important revenue opportunities for the league—Cunningham wrote that it was rumored the NBPA was waiting for “critical moment before it gets through with the owners.”[285]

The owner of the Seattle Supersonics, Sam Schulman presided over the merger meetings for the NBA, he was responsible for transmitting what owners wanted to Walter Kennedy, and then to Larry O’Brien. Yet there was a hierarchy among owners themselves. During one of the merger meetings over the reserve clause in

---

[284] Charles Maher and Bill Searby, “The Professional Ballplayers Who’s Running Their Unions,” *Newsday*, February 22, 1973, 114.
[285] George Cunningham, “NBA Players Wary of Strike,” *The Atlanta Constitution*, October 3, 1975, 3D.

1971, most of the owners agreed to drop it, because they knew that the court would drop it anyway. Ned Irish, the owner of the New York Knicks got furious and said, "We'll never give up the reserve clause," and stormed out of the room. When Dick Tinkham told Sam Schulman to bring back Irish, Schulman said, "He won't change his mind. Besides, whatever the Knicks want, the NBA will do."[286] Still, it was not the only reason that prevented the merger, the Oscar Robertson suit was. The bidding war was the greatest thing that could ever happen to the players; they were not going to give up the two-league system unless they got what they deserve: freedom of contract. Over the three years between 1970 and 1973, fourteen of the seventeen in the league did not have more than two or three players on their roster. This fact singlehandedly distorts the owners' argument that there would be chaos if the reserve clause disappears.

The New York Nets and Denver Nuggets were the first ones who broke the chain and applied formally for admission to the NBA. These two teams were the steam engine of the ABA, carrying other teams' losses through their gate receipts. It was a shocking event for everyone around the ABA, including the players. "The last season started on a terrible note. Nearly all of the ABA players were shocked and bitterly disappointed when Denver and New York tried to abandon the ABA," Julius Erving, the biggest star ABA had ever had. "It was like saying 'Screw everybody else, we're out to get what we can for ourselves.' The thing that kept the ABA alive for nine years was the togetherness of the league, the sense that we were all pulling together so that we could survive. The players never viewed the ABA as a stepping-stone to the NBA or a league designed for a merger."[287] Both teams would be subject to a $2-million penalty, but what's done is done, "the league was finished and everyone knew it."[288]

Dave DeBusschere—ex NBA player, now commissioner of the ABA—and Larry O'Brien were the ones who negotiated a possible merger in the restaurants on the East Side of New York. The bidding wars were affecting mid-level market teams in the NBA as well, one of them was the Atlanta Hawks which lost David Thompson

[286] Terry Pluto, *Loose Balls*, 423-424.
[287] Terry Pluto, *Loose Balls*, 425.
[288] Bob Costas quoted in Terry Pluto, *Loose Balls*, 427; Sam Goldaper, "N.B.A. Vows a Serious Look at Net, Nugget Applications," *The New York Times*, September 26, 1975, 43; Sam Goldaper, "7 A.B.A. Clubs Apply to N.B.A.," *The New York Times*, October 21, 1975, 31.

and Marvin Webster to Denver Nuggets of the ABA. This was one of the main forces behind the merger, according to Jim Bukata, who was the head of ABA's public relations. Originally, the ABA proposed a plan that would make all but six of their teams join the NBA—Virginia Squires were already in a financial disaster and dropped out the ABA before the merger settlement.[289] But the NBA did not want Kentucky and St. Louis, besides, they barely drew a few thousand audience anyway. Furthermore, Bill Wirtz, the owner of the Chicago Bulls, wanted to acquire Artis Gilmore in such a manner, that he would have done whatever he could prevent Kentucky from entering the league. NBA's final offer was to have only four teams, either ABA teams would accept or complete and go out of business.[290]

8.4. Settlement Between the NBPA and the NBA

Dominos were falling throughout professional sports and the courts were ruling to the benefit of the professional athletes, one-by-one. The Rozelle Rule was found illegal on December 30, 1975, after twelve years of its initiation. It was one of those "rules" that bring judges' opinions and the courts into the realm of professional sports. Also caused a significant increase in the number of lawsuits not only football but other sports too. The rule deepened the questions around the application of the antitrust laws into professional sports, major leagues and the Players Associations would have to pay an incredible amount of legal fees. ABA, for instance, was paying over $1 million in legal fees a year alone.[291] The Rozelle Rule was a compensation rule in which the commissioner of the NFL decided what the previous team of a free agent would get in exchange in case of the free-agent signs with another team. John Mackey was the main plaintiff that contended the rule, and players asserted that teams became reluctant to sign free agents because teams did not know what they would lose in return, no one became content once a third party (the commissioner, in

[289] Sam Goldaper, "A.B.A. Drops Squires For a Lack of Funds," *The New York Times*, May 11, 1976, 53.
[290] Terry Pluto, *Loose Balls*, 428-429.
[291] Mike Storen realized how high legal fees were when he became the commissioner of the ABA in 1973. Terry Pluto, *Loose Balls*, 422.

this case) decides compensation. It was established in order to prevent wealthier teams to sign the best athletes—in order to protect "competitive balance".[292]

The Oscar Robertson suit was scheduled to go to trial on June 1, 1976. Yet both players and owners were inclined toward a settlement, both parties did not want to risk another year of enormous legal fees. The owners were represented by Mike Burke, president of the Knicks, William Wirtz, the son of the Chicago Bulls owner Bill Wirtz, Dick Bloch of the Phoenix Suns, Abe Pollin of the Washington Bullets and William Alverson of the Milwaukee Bucks. While players were represented by the president of NBPA, Paul Silas of the Boston Celtics, his assistant and teammate John Havlicek, Jeff Mullins of the Golden State Warriors, Jim McMillan of the Buffalo Braves, and finally, Oscar Robertson as representing the retired players. Robertson, Havlicek, and Mullins were among the fourteen players who listed as plaintiffs in the *Robertson* suit. "It was foolish to spend $1 million in legal fees to settle our difference when we can do it sensible," Mike Burke said. "Both parties are starting to read the message in the tea leaves very clearly. It's absurdly clear that everyone in pro sports—owners, players, and player representatives — recognize something constructive must happen."[293]

The owners and players reached a tentative agreement after almost a month of negotiations, right before the All-Star game. The compensation issue substituted with "the right of first refusal, starting in 1980. This meant that if a player received an offer from another team when his contract expired, his team could match the offer and retain the player. This rule called "the right of first refusal" was first mentioned in the summer of 1974 during the negotiations between the players and Herman Sarkowsky—then an owner of the Portland Trailblazers, who represented the owners—although they reached an agreement which would have erased the reserve and option clause from professional basketball, the owners rejected this proposal.[294]

---

[292] William N. Wallace, "Rozelle Rule Found In Antitrust Violation," *The New York Times*, December 31, 1975, 27; Leonard Koppett, "Development of Rozelle Rule Is Traced From Owens Case," *The New York Times*, December 31, 1975, 28; *Mackey v. NFL*, MacKey v. National Football League, 407 F. Supp. 1000 (D. Minn. 1975), https://law.justia.com/cases/federal/district-courts/FSupp/407/1000/2281018/
[293] Sam Goldaper, "Owners, Players Seek to Settle N.B.A. Suit," *The New York Times*, January 6, 1976, 42.
[294] Leonard Koppett, "Basketball Merger Crumbles at N.B.A. Meeting," *The New York Times*, June 21, 1974; Leonard Koppett, "Machinery in Motion for Major Antitrust Trial in Pro Basketball," *The New York Times*, July 2, 1974, 40; also mentioned in Sam Goldaper, "N.B.A., Players Reach Tentative Pact on Suit," *The New York Times*, February 3, 1976, 25.

Regarding the college draft, both sides decided that when a player got drafted, his rights would belong to the team for only one year—if he had not signed before the next draft, he would be eligible to be drafted again. Moreover, owners agreed to pay $4.5 million in damages to players, and an additional $1 million for players' legal fees.[295] "We have reached enough of an agreement for me to go to the players tomorrow for approval," Larry Fleisher said. "No issues involving the Robertson suit remain outstanding. They have all been settled." Both sides abstained from lawsuit all over again, and the same committee was about to negotiate the new collective bargaining agreement which could not be reached for almost a year.[296] However, both settlement agreement on the *Robertson* suit and the merger agreement between the ABA and the NBA would have to go through Judge Robert L. Carter. In addition to this, players and the league would have to reach a new collective bargaining agreement once all other issues settled.

The settlement between players and the league was an astonishing success on the behalf of professional basketball—to give up the mighty 'reserve system' which almost all of the team owners in major sports have insisted its necessity for the endurance of business of sports. What differentiates basketball from baseball and football was that the NBA "has proved that it is possible to reconcile" details such as the reserve and option system through bargaining.[297] Moreover, team owners in baseball—a sport which was more than ninety years old, called the national pastime for many years—and football were about encounter identical demands from their employees. Owners always hope that Congress would exempt them from the antitrust laws because the business of professional sports was different from others, it would keep many voters entertained. Yet times had changed, and the hopes for granting exemption from antitrust laws were abolished by the bargaining process in basketball. The agreement that was reached in 1974 did not include damages paid to players because back then it was not imminent for the *Robertson* suit to obligate owners to pay. Thus, owners in baseball and football would have to think twice and negotiate with their employees before having issues in the court. David Halberstam's

[295] Paul D. Staudohar, *Playing for Dollars*, 114-115.
[296] Sam Goldaper, "N.B.A., Players Reach Tentative Pact on Suit," *The New York Times*, February 3, 1976, 25.
[297] Leonard Koppett, "N.B.A. Paves an Out-of-Court Road," *The New York Times*, February 8, 1976.

remark about the changes in the landscape of professional sports are worth mentioning:

> In the past the political path had always been easy for owners, they were always well connected, they had given generously to congressmen and senators, and made good seats available for them as well. The athletes themselves had by contrast been either invisible or mute. But now this was a new generation of athletes, they were articulate, well informed and attractive (and they were still in good repute, they had not yet gained the huge salaries which tainted them somewhat in the public mind). Havlicek, Robertson, Russell, Bradley, Wilkins, Silas were all lobbying for the players. Many congressmen were fans. The old power of the owner no longer worked.[298]

With the Federal District Court investigating financial records of the NBA and the ABA, it turned out that for at least five seasons, beginning with 1968, owners of the NBA established a money-pool in order to acquire star rookies to outbid the ABA. The NBA teams were able to acquire Kareem-Abdul Jabbar (Lew Alcindor), Wes Unseld, Rick Barry, and Elvin Hayes through the pool arrangement.[299] The numbers showed how players benefited from the two-league structure, the average salary for an NBA player was almost $20,000 during the 1967-1968 season; it became $90,000 in 1972-73 season and the average salary in 1976 hit six-figures for the first time in the history of professional sports.[300]

8.5. The 1976 Collective Bargaining Agreement and the Merger

On April 29, 1976, the NBA and NBPA signed their new collective bargaining agreement. The minimum salary was raised from $20,000 to $30,000 just as players had wanted a year earlier. Meal allowances were increased from $19 to $24, medical and dental coverage also increased from $35,000 to $50,000. Players had gained increases in pension benefits, too, from $60 to $75 per month. “We are happy and delighted with the agreement. It is good to see that things can be accomplished

---

[298] David Halberstam, *The Breaks of the Game*, 271.
[299] Paul L. Montgomery, “Top N.B.A. Stars Were Subsidized,” *The New York Times*, March 21, 1976, 153.
[300] Ray Kennedy and Nancy Williamson, “Money: The Monster Threatening Sports,” *Sports Illustrated*, July 17, 1978, 46; Average salary was shown in a table also in Paul D. Staudohar, *Playing for Dollars*, 108.

through tough, hard negotiating," Larry Fleisher said. Paul Silas of the Boston Celtics, who became the president of Players Association after Oscar Robertson, was also happy that as players, they did not have to worry about the possibility of a strike anymore. "This will make for happier times for all of us. The atmosphere and the climate of the sport is going to be different. This puts us ahead of most other sports in this country, such as baseball and football, which are having their problems at the moment in this area."[301] Both the Oscar Robertson settlement and the 1976 Collective bargaining Agreement meant that Larry Fleisher's dreams come true, the so-called invincible reserve clause abolished.

During one of the meetings in June 1976, Jeff Mullins had asked Larry Fleisher, "How long does it take a case to reach the Supreme Court?" "Three or four years," Fleisher answered. "Well, then, why don't we let them have compensation for three or four years?" Mullins said. "How simple, Fleisher thought, how smart these players are. He made the suggestion and it became the basic settlement that permitted the merger and in the long run, brought ultimate freedom and market value to the players. Compensation ended in 1980."[302] With the *Robertson* suit had settled, on June 17, 1976, the NBA and the ABA merged into a 22-team league—four teams admitted to the NBA: Indiana Pacers, New York Nets, San Antonio Spurs, and Denver Nuggets. Each team would have paid $3.2 million to the NBA, the New York Nets also paid an indemnify price worth $4.8 million, in exchange for their territorial rights—they had to sale the rights of Julius Erving to Philadelphia 76ers in order to pay the amount, which forced them to become a much worse team in the following season. Ironically, Sam Schulman was the only NBA owner who voted against the merger, he was one of the advocates of the merger all along. "It was a protest vote," he said, apparently was upset about the dispersal draft—NBA teams drafted player from ABA teams who were not part of the merger.[303]

---

[301] Sam Goldaper, "N.B.A. Obtains Labor Peace and Plans Talks With A.B.A.," *The New York Times*, April 13, 1976, 41; 1976 Collective Bargaining Agreement printed in U.S. Congress, House, *Inquiry into Pro Sports*, 324-394; Also Stipulation and Settlement Agreement on the *Robertson* case, and Robert L. Carter's opinion approving the settlement of *Robertson v. National Basketball Association*, U.S. District Court, S.D. New York, 70 Civ. 1526, July 30, 1976, printed in U.S. Congress, House, *Inquiry into Pro Sports*, 287-323.
[302] David Halberstam, *The Breaks of the Game*, 271.
[303] Sam Goldaper, "Pro Basketball Leagues Merge; New York to Retain Two Teams," *The New York Times*, June 18, 1976, 1.

“We figured that within three years, we would be part of the NBA. Certainly, by five years we would have either merged with the NBA or been out of business,” one of the founders of the ABA, Dennis Murphy recalled.[304] Yet the ABA did not go out of business—at least as a whole—for nine years. The Oscar Robertson suit was sufficient enough to prevent the merger, even though owners on both sides agreed on it. There were times that players felt like they could lose their leverage if the ABA went out of business. “Larry Fleisher was a superstar in this for us. I think he put me in that room because he knew I was middle of the road. I tried to see both sides. Teams in the ABA were falling by the wayside. But they could not merge because of our lawsuit, and the court said the NBA had to negotiate with us before they did anything,” Jeff Mullins said. David Stern would later admit that it was Mullins who urged both sides toward starting true settlement talks. “Oscar (Robertson) was respectful; we never really argued. But he was to continue the fight,” Mullins remarked.[305]

David Stern, certainly, was the most influential figure on the side of the NBA. “While Larry O’Brien was important to the merger, so was a young lawyer named David Stern,” former ABA counsel, Mike Goldberg said. “O’Brien was given a lot of latitude by the NBA owners to get the deal done, and O’Brien relied a lot on Stern for legal advice and all that. On the ABA end, DeBusschere laid the groundwork before Hyannis, then (Carl) Scheer—general manager of the Denver Nuggets, (Roy) Boe—the owner of the New York Nets and (Angelo) Drossos—the owner of the San Antonio Spurs—finished the deal.”[306] Thus, the Oscar Robertson lawsuit ended on August 2, 1976, with Judge Carter’s approval of the settlement between the NBA and Players Association. What had left from the ABA? Many stories to be told, the togetherness, a sense of belonging in an environment so-called “pro ball,” red-white-blue ball, the three-point shot which now dominates the game of basketball, and certainly Julius Erving. He was the first basketball star who had a bizarre finesse that basketball fans had never seen before. Erving believed that ABA basketball had changed NBA basketball forever. “The ABA gave the NBA a wakeup call. We were the first league that really knew how to promote its teams and its stars…In my mind, the NBA just become a bigger version of the ABA. They play the style of game that

[304] Terry Pluto, *Loose Balls*, 421.
[305] Sam Smith, *Hard Labor*, 300.
[306] Terry Pluto, *Loose Balls*, 430-431.

we did. They sell their stars as we did. The only difference is that they have more resources and can do it on a much grander scale than we in the ABA ever could."[307] Considering the game of basketball nowadays—with a high tempo, reckon with outside shooting, which many calls pace-and-space basketball—Erving was right, the NBA just soaked all of the better aspects of the ABA in, and promoted the game of basketball on the global scale.

Oscar Robertson announced his retirement on September 3, 1974 and ended his 14-year professional career. He would start another career as a TV commentator for the CBS' NBA coverage once a week. [308] Paul Snyder was not happy with CBS's selection of Oscar Robertson as their leading commentator on national television. He sent a telegram to the Commissioner Walter Kennedy:

"In view of the Oscar Robertson lawsuit against the NBA, I feel that all NBA owners should have been advised before the NBA mutually agreed with CBS that Oscar Robertson will be doing the NBA games during the coming season. It is my opinion that Robertson is presently an adversary of the NBA and should be treated accordingly.

I would like to know if our NBA Television Committee agreed with the selection of Robertson, and in fact, if they have been involved at all in Robertson's selection."[309]

Robertson had never got the opportunities that many superstars in the history of the NBA had got. "His biggest legacy had nothing to do with talent: Oscar's ballsy performance as president of the Players Association led to skyrocketing contracts, the ABA/NBA merger, an overhaul of free agency and every eight-figure deal we see today, only he never gets credit because the struggles of NBA players haven't been romanticized by writers or documentarians," Bill Simmons wrote in his giant *The Book of Basketball*.[310] Despite he was a legendary player on the court, ironically, the greatest achievement of his was his courageous stance against the owners and the reserve clause, not to mention preventing the ABA/NBA merger and establishing the free agency as a fundamental right for many professional basketball players after

[307] Julius Erving quoted in Terry Pluto, *Loose Balls*, 31.
[308] Sam Goldaper, "Robertson Ends Career; N.B.A. Great Accepts CBS-TV Pact," *The New York Times*, September 4, 1974, 33.
[309] Oscar Robertson, *Big O: My Life, My Times, My Game*, 307.
[310] Bill Simmons, *The Book of Basketball: The NBA According to The Sports Guy* (New York: Ballantine Books, 2010), 562-563.

him. Without him, perhaps, the NBA players would not be the world's highest-paid union workers today.[311] Yet his heart was broken: "Once I heard someone say that in order to write love songs, you have to have been through some bad times. To write a love song, you had to have your heart broken. If that's the case, I can state right here and now that I could write the greatest songs in the world."[312]

"In fifteen years, the union had not just arrived but revolutionized the sport. Power had passed to the players and to Larry Fleisher, who had set out in life to do one thing which he considered important and had done it," David Halbersatm wrote.[313] As for Oscar Robertson, during his reign as the president of the Players Association, the average salary for a player was increased more than five times, from $18,000 to $110,000. Furthermore, the union was able to obtain a yearly salary for all players from the moment they reached the age of fifty, a disability program, and severance pay besides the pension. Free agency—despite it gradually granted to players—was the finest achievement of Oscar Robertson. "Larry Fleisher was an instrumental part of this. He was there every step of the way. During the quarter-century that Larry served as our general counsel and was instrumental in establishing an anti-drug program whose model other leagues came to emulate," Robertson said. Above all, "he managed to do all these things without calling for a players' strike. Without him, I don't know how our struggles would have turned out."[314]

[311] https://nbpa.com/about
[312] Oscar Robertson, *The Big O: My Life, My Times, My Game*, 328.
[313] David Halberstam, *The Breaks of the Game*, 271.
[314] Oscar Robertson, *The Big O: My Life, My Times, My Game,* 314-315.

CHAPTER IX

CONCLUSION

The basic conclusion that can be drawn is that in order to comprehend how professional basketball players gained their right in the period between the mid-1960s and throughout 1970s, one must observe the efforts of Larry Fleisher, Oscar Robertson and the leaders of the NBPA. Historically, the reserve clause restrained player movement not only in basketball, but in baseball and football as well. As previously mentioned, "before the free-agency era, it was legitimate to talk about the reserve clause as owners' exploitation of players as a group." Yet professional basketball players were able to dispose of it in a shorter period of time compared to other major sports, despite having lesser bargaining power during the collective bargaining negotiations. Oscar Robertson and other star players did not need pension plans or healthcare for themselves but still, with utmost belief, they fought for something which their predecessors could not have imagined and won the ball game against the owners with perseverance.

Although structural influences—such as the impact of television and the civil rights movement—could not be pass over, in order to answer how professional basketball players abolished the reserve clause, one must underline the impact of agency. First of all, Larry Fleisher was aware of the fact that, even in the early 1960s, the reserve clause was illegal. From that understanding, he helped professional basketball players with dedication, sometimes even without expecting something in return. Secondly, professional basketball players in the 1960s were aware that all player restraints should be abolished, and they were politically sensitized much more than their predecessors. In this manner, rising number of African Americans in basketball changed the landscape of labor relations entirely. Players understood that power dynamics in the business of basketball, ownership, and its oppression over them were multi-layered. This brought players much closer than ever and they united for a single cause: to abolish the reserve clause. Collective bargaining made the NBPA a part of the National Labor Relations Board and any threat to strike became much more impactful against the owners who could not dare to abandon television revenues. The introduction of television was the

The basic conclusion that can be drawn is that in order to comprehend how professional basketball players gained their right in the period between the mid-1960s and throughout 1970s, one must observe the efforts of Larry Fleisher, Oscar Robertson and the leaders of the NBPA. Historically, the reserve clause restrained player movement not only in basketball, but in baseball and football as well. As previously mentioned, "before the free-agency era, it was legitimate to talk about the reserve clause as owners' exploitation of players as a group." Yet professional basketball players were able to dispose of it in a shorter period of time compared to other major sports, despite having lesser bargaining power during the collective bargaining negotiations. Oscar Robertson and other star players did not need pension plans or healthcare for themselves but still, with utmost belief, they fought for something which their predecessors could not have imagined and won the ball game against the owners with perseverance.

Although structural influences—such as the impact of television and the civil rights movement—could not be pass over, in order to answer how professional basketball players abolished the reserve clause, one must underline the impact of agency. First of all, Larry Fleisher was aware of the fact that, even in the early 1960s, the reserve clause was illegal. From that understanding, he helped professional basketball players with dedication, sometimes even without expecting something in return. Secondly, professional basketball players in the 1960s were aware that all player restraints should be abolished, and they were politically sensitized much more than their predecessors. In this manner, rising number of African Americans in basketball changed the landscape of labor relations entirely. Players understood that power dynamics in the business of basketball, ownership, and its oppression over them were multi-layered. This brought players much closer than ever and they united for a single cause: to abolish the reserve clause. Collective bargaining made the NBPA a part of the National Labor Relations Board and any threat to strike became much more impactful against the owners who could not dare to abandon television revenues. The introduction of television was an important point in the history of labor relations in sports that altered the power dynamics in player-owner relations.

Professional basketball players became entertainers and, in few years, wanted to be treated like one.

The reserve clause introduced primarily in baseball in the late nineteenth century. There were some efforts by baseball players to abolish few years later, but professional athletes failed to get freedom of movement. Although baseball was considered as a national pastime and football was highly popular even after the Second World War, it was professional basketball players who formed a Players Association for the first time in 1954 which would enhance their rights.

This thesis demonstrates the period between the mid-1960s and early 1970s which significantly important for the history of labor relations in professional sports. Player could not test their market value, could not choose where to play, and did not have any significant pensions. It was accurate to label "the reserve clause as owners' exploitation of players as a group."[315] However, Oscar Robertson and the NBPA were able to prevent the merger and forced owners of both leagues to get rid of the reserve clause once and for all. Thus, this thesis shows how players changed the power dynamics around the business of professional basketball and became the world's highest-paid union workers. In short, the power had passed from the owners to the professional basketball players and the NBPA. This thesis tries to demonstrate the importance of agency in the history of labor relations in professional basketball through strong leadership and perseverance of Oscar Robertson, the NBPA, and Larry Fleisher. "The basic conclusion to be drawn is that when the owners and players enter into formalized collective bargaining, they literally start a new ball game," John C. Weistart and Cym H. Lowell once wrote.[316] Approximately once in every three years, professional basketball players went out for a match with team owners and in each one, they got better results. Their efforts were the evidence that professional basketball players in this period won the ball game, eradication of the reserve clause, which they thought as crucial.

[315] James Quirk, and Rodney D. Fort, *Pay Dirt: The Business of Professional Sports* (Princeton: Princeton University Press, 1997), 8.
[316] John C. Weistart and Cym H. Lowell, *The Law of Sports* (Charlottesville, Va.: Michie Company, 1985), 786.

BIBLIOGRAPHY

A. NEWSPAPERS AND PERIODICALS

Boston Globe

Charlotte Observer

Chicago Daily Defender

Inside Sports

Los Angeles Times

Newsday

Sport Magazine

Sports Illustrated

The Atlanta Constitution

The Austin Statesman

The Baltimore Sun

The Chicago Tribune

The Christian Science Monitor

The Indianapolis Star

The Life Magazine

The New York Times

The Sporting News

The Wall Street Journal

The Washington Post

The Washington Post and Times-Herald

B. PRINTED DOCUMENTS, AUTOBIOGRAPHIES, MEMOIRS, AND SECONDARY SOURCES

Abdul-Jabbar, Kareem, and Peter Knobler. *Giant Steps*. New York: Bantam Books, 1983.

Abrams, Jonathan. *Boys Among Men: How the Prep-to-Pro Generation Redefined the NBA and Sparked a Basketball Revolution*. New York: Three Rivers Press, 2017.

Auerbach, Arnold Red and Paul Sann. *Winning the Hard Way*. Boston: Little, Brown and Company, 1966.

Axthelm, Pete. *The City Game: From the Garden to the Playgrounds*. Lincoln: Bison Books, 1999.

Baxter, Brian. "The Sports Litigation Archives: ABA v. NBA," October 30, 2009. https://amlawdaily.typepad.com/amlawdaily/2009/10/aba-v-nba.html.

Berkow, Ira. *Oscar Robertson: The Golden Year 1964*. New Jersey: Prentice-Hall, 1971.

Berry, Robert C., William B. Gould IV, and Paul D. Staudohar. *Labor Relations in Professional Sports*. Massachusetts: Auburn House Publishing Company, 1986.

Birren, Genevieve F., "A Brief History of Sports Labor Stoppages: The Issues, The Labor Stoppages and Their Effectiveness (Or Lack Thereof)," DePaul J. Sports L. & Contemp. Probs. 10, no.1 (2014): 1-30.

Bock, Hal, and Ben Olan. *Basketball Stars of 1974*. New York: Pyramid Books, 1973.

Bradley, Bill. *Life on the Run*. New York: Vintage Books, 1995.

Bradley, Robert. “Labor Pains Nothing New to the NBA.” http://www.apbr.org/labor.html.

Campbell, Karl E. “Preserving the Constitution, Guarding the Status Quo: Senator Sam Ervin and Civil Liberties,” *The North Carolina Historical Review* 78, no. 4 (2001): 457-482.

Corcoran, Kieran M. "When Does the Buzzer Sound?: The Nonstatutory Labor Exemption in Professional Sports." *Columbia Law Review* 94, no. 3 (1994): 1045-1075.

Cozzillio, Michael J., Mark S. Levinstein, and Michael R. Dimino, and Gabe Feldman. *Sports Law: Cases and Materials*. 2nd Edition. Durham, North Carolina: Carolina Academic Press, 2007.

Davis, Lenwood G., and Belinda Daniels, eds. *Black Athletes in the United States: A Bibliography of Books, Articles, Autobiographies, and Biographies on Professional Black Athletes, 1880-1981*. Westport, Connecticut: Greenwood Press, 1983.

Edwards, Harry. *The Revolt of the Black Athlete: 50th Anniversary Edition*. University of Illinois Press, 2018.

Federman, Wayne, Marshall Terrill, and Jackie Maravich. *Maravich: The Authorized Biography of Pistol Pete*. Carol Strema, Illinois: Tyndale House Publishers, Inc., 2006.

Feldman, Gabriel, “Brady v. NFL and Anthony v. NBA: The Shifting Dynamics in Labor- Management Relations in Professional Sports,” 86 *Tulane Law Review* 831 (2012): 831-858.

Fields, Sarah K. “Odd Bedfellows: Spencer Haywood and Justice William O. Douglas,” *Journal of Sport History* 34, no. 2 (2007):

Garner, Justin Ryan. “Downtrodden Yet Determined: Exploring the History of Black Males in Professional Basketball and How the Players Association Addresses Their Welfare,” PhD diss., Texas A&M University, 2019.

Halberstam, David, and Glenn Stout. *Everything They Had: Sports Writing From David Halberstam*. New York: Hyperion, 2008.

Halberstam, David. *The Breaks of the Game*. New York: Ballantine Books, 1981.

Heinsohn, Tom, and Joe Fitzgerald. *Give'em The Hook*. New York: Prentice Hall Press, 1988.

Hirshberg, Al. *Basketball's Greatest Stars*. New York: G. P. Putnam's Sons, 1963.

Hirshberg, Al. *Bill Russell of the Boston Celtics*. New York: Julian Messner, Inc., 1963.

Hodgson, Godfrew. *More Equal Than Others: America from Nixon to the New Century*. Princeton: Princeton University Press, 2004.

Hollander Zander., ed. The Modern Encyclopedia of Basketball, 2nd ed. Garden City, N.Y.: Dolphin Books, 1979.

Hutter, Paul A. *Golden Age of Ivy League Basketball: From Bill Bradley to Penn's Final Four, 1964-1979*. Denver: Outskirts Press, 2014.

Jacobs, Michael S. and Ralph K. Winter, Jr. "Antitrust Principles and Collective Bargaining by Athletes: Of Superstars in Peonage," *The Yale Law Journal* 81, no. 1 (1971): 1-29.

Goudsouzian, Aram. "Bill Russell and the Basketball Revolution," *American Studies* 47, no. 3/4, (2006): 61-85.

Jozsa Jr., Frank P. *American Sports Empire: How the Leagues Breed Success*. Westport, Connecticut: Praeger, 2003.

Kahn, Lawrence M., and Peter D. Sherer. "Racial Differences in Professional Basketball Players," *Journal of Labor Economics* 6 (1988): 40-59.

Keteyian, Armen, Harvey Araton and Martin F. Dardis. *Money Players: Days and Nights Inside the New NBA*. New York: Pocket Books, 1997.

Klein, David. *Rookie: The World of the NBA*. Chicago: Cowles Book Co., Inc., 1971.

Koppett, Leonard. *24 Seconds to Shoot: The Birth and Improbable Rise of the NBA*. New York: Courier Companies Inc., 1999.

Koppett, Leonard. *The Essence of the Game is Deception: Thinking About Basketball*. Boston: Little, Brown & Company, 1973.

Krasnow, Erwin G., and Herman M. Levy, "Unionisation and Professional Sports," 51 *Georgia. Law. Journal*. 749 (1963).

Lapchick, Richard Edward. *Broken Promises: Racism in American Sports*. New York: St. Martin's/Marek, 1984.

Lewis, Jonothan. "Running Up the Score: How the Cover Labor-Management Conflict in Sports," Master's thesis, The Florida State University, 2012.

Libby, Bill, and Jerry West. *Mr. Clutch: The Jerry West Story*. New Jersey: Prentice Hall, 1969.

Libby, Bill, and Spencer Haywood. *Stand Up for Something: The Spencer Haywood Story*. New York: Grosset & Dunlap Publishers, 1972.

Lichtenstein, Nelson. *State of the Union: A Century of American Labor*. Princeton: Princeton University Press, 2013.

Looms, Erik. *A History of America in Ten Strikes*. New York: The New Press, 2018.

McCann, Michael A., and Gabe Feldman. *The Oxford Handbook of American Sports Law*. New York: Oxford University Press, 2018.

McPhee, John. *A Sense of Where You Are: Bill Bradley at Princeton*. New York: Farrar, Straus and Giroux, 1999.

Nathanson, Mitchell J. "Gatekeepers of Americana: Ownership's Neverending Quest for Control of the Baseball Creed," *Nine: A Journal of Baseball History and Culture* 15, no. 1 (2006): 77-78.

Nathanson, Mitchell J. "The Sovereign Nation of Baseball: Why Federal Law Does Not Apply to 'America's Game' and How It Got That Way," *Villanova Sports and Entertainment Law Journal* 16, no. 1 (2009): 75.

Nathanson, Mitchell. "The Sovereign Nation of Baseball: Why Federal Law Does Not Apply to 'America's Game' and How It Got That Way." *Villanova Sports & Entertainment Law Journal* 16 (2009): 49–98.

Noll, Roger G., (ed). *Government and Sports Business*. Washington, D.C.: Brookings Institution, 1974.

Note. “The Balance of Power in Professional Sports” Maine Law Review 22(2) (1970): 459–80.

Novick, Donald. “The Legality of the Rozelle Rule and Related Practices in the National Football League,” *Fordham Urban Law Journal* 44, no. 3 (1976): 581-596.

Parente, Donald Edwin. “A History of Television and Sports,” Master’s thesis, University of Illinois, 1969.

Pluto, Terry. *Loose Balls: The Short, Wild Life of the American Basketball Association*. New York: Simon and Schuster, 1990.

Pluto, Terry. *Tall Tales: The Glory Years of the NBA, in the Words of the Men Who Played, Coached, and Built Pro Basketball*. New York: Simon & Schuster, 1992.

Quirk, James P., and Rodney D. Fort. *Pay Dirt: The Business of Professional Team Sports*. Princeton: Princeton University Press, 1992.

Rader, Benjamin G. *In Its Own Image: How Television Has Transformed Sports*. New York: Free Press, 1984.

Roberts, Randy, and James Olson. *Winning Is the Only Thing: Sports in America since 1945*. Baltimore: John Hopkins University Press, 1989.

Robertson, Oscar. *The Big O: My Life, My Times, My Game*. Lincoln, Nebraska: University of Nebraska Press, 2010.

Russell, Bill and Taylor Branch. *Second Wind: The Memoirs of an Opinionated Man*. New York: Ballantine Books, 1980.

Russell, Bill, and Alan Steinberg. *Red and Me: My Coach, My Lifelong Friend*. New York: HarperCollins Publishers, 2009.

Russell, Bill, and William McSweeny. *Go Up for the Glory*. New York: Noble and Noble Publishers, Inc., 1969.

Salzberg, Charles. *From Set Shot to Slam Dunk: The Glory Days of Basketball in the Words of Those Who Played It*. New York: E. P. Dutton, 1987.

Sarmento, Mario R. "The NBA on Network Television: A Historical Analysis," Master's thesiss, University of Florida, 1998.

Schiavone, Michael. *Sports and Labor in the United States*. Albany: State University of New York Press, 2015.

Schneiderman, Michael. "Professional Sports: Involuntary Servitude and the Popular Will."

Simmons, Bill. *The Book of Basketball: The NBA According to The Sports Guy*. New York: Ballantine Books, 2010.

Smith, Sam. *Hard Labor: The Battle That Birthed the Billion-Dollar NBA*. Chicago: Triumph Books, 2017.

Staudohar, Paul D. *Playing for Dollars: Labor Relations and the Sports Business*. Ithaca: ILR Press, 1996.

Staudohar, Paul D. *The Sports Industry and Collective Bargaining*. New York: ILR Press, 1986.

Staudohar, Paul D., and James A. Mangan (eds). *The Business of Professional Sports*. Chicago: University of Illinois Press, 1991.

Surdam, David George. *The Big Leagues Go to Washington: Congress and Sports Antitrust, 1951-1989*. Champaign: University of Illinois Press, 2015.

Surdam, David George. *The Rise of the National Basketball Association*. Champaign and Urbana: University of Illinois Press, 2012.

Taylor, John. *The Rivalry: Bill Russell, Wilt Chamberlain, and the Golden Age of Basketball*. New York: Ballantine Books, 2006.

Thomas, Ron. *They Cleared the Lane: The NBA's Black Pioneers*. Lincoln: University of Nebraska Press, 2002.

U.S. Congress, House of Representatives. *Inquiry into Professional Sports. Final Report of the Select Committee on Professional Sports*. House Report No. 94-

1786. 94th Congress, 2nd Session. Washington, D.C.: Government Printing Office, 1977.

U.S. Congress, House of Representatives. Joint Committee on Internal Revenue Taxation. *Tax Shelters, Professional Sports Franchises: Prepared for the Use of the Committee on Way and Means*. Prepared by the Staff of the Joint Committee on Internal Revenue Taxation. Washington: U.S. Government Publication Office, 1975.

U.S. Congress, House of Representatives. *Labor Relations in Professional Sports: Hearings before the Subcommittee on Labor of the Committee on Education and Labor. A Bill to Amend the National Labor Relations Act, to Expedite Its Processes and Strengthen Its Remedies, and for Other Purposes*. 92nd Cong. 2nd Sess. On H.R. 7152. Washington, D.C.: Government Printing Office, 1972.

U.S. Congress, House of Representatives. *Organized Baseball: Hearings before the Subcommittee on the Study of Monopoly Power of the Committee of the Judiciary*. House Report No. 2002, 82nd Cong., 1st Sess. Washington, D.C.: Government Printing Office, 1952.

U.S. Congress, House of Representatives. *Organized Professional Team Sports. Hearings before the Antitrust Subcommittee of the Committee on the Judiciary*. Serial no. 8. 85th Cong., 1st Sess. Washington, D.C.: Government Printing Office, 1957.

U.S. Congress, House of Representatives. *The Antitrust Laws and Organized Professional Team Sports Including Consideration of the Proposed Merger of the American and National Basketball Associations*. 92nd Cong., 2nd Sess. Washington, D.C.: Government Printing Office, 1972.

U.S. Congress, Senate. *Authorizing the Merger of Two or More Professional Basketball Leagues, and for Other Purposes*. Report to the Committee on the Judiciary. 92nd Cong., 2nd Sess. Washington, D.C.: Government Printing Office, 1972.

U.S. Congress, Senate. *Federal Sports Act of 1972: Hearings before the Committee on Commerce United States Senate*. 92nd Cong. 2nd Sess. Washington, D.C.: Government Printing Office, 1973.

U.S. Congress, Senate. *Professional Basketball: A Bill to Allow the Merger of Two or More Professional Basketball Leagues. Part 2. Hearing before the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary*. 92nd Cong., 1st Sess. Washington, D.C.: Government Printing Office, 1972.

U.S. Congress, Senate. *Professional Basketball: A Bill to Allow the Merger of Two or More Professional Basketball Leagues. Hearing before the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary*. 92nd Cong., 1st Sess. Washington, D.C.: Government Printing Office, 1972.

Walker, Chet, and Chris Messenger. *Long Time Coming: A Black Athlete's Coming-of-Age in America*. New York: Grove Press, 1995.

Weistart John C., and Cym H. Lowell. *The Law of Sports*. Charlottesville, Va.: Michie Company, 1985.

Weistart, John C. "Judicial Review of Labor Agreements: Lessons from the Sports Industry." *Law and Contemporary Problems* 44, no. 4 (1981): 109-46. doi:10.2307/1191226.

West, Jerry, and Bill Libby. *Mr. Clutch: The Jerry West Story*. New Jersey: Prentice-Hall, 1969.

West, Jerry., and Coleman, Jonathan. *West by West: My Charmed, Tormented Life*. New York: Back Bay Books, 2012.

Wiggins, D. K., "The Year of Awakening": Black athletes, Racial Unrest and the Civil Rights Movement of 1968," *The International Journal of the History of Sport* 9, no. 2 (1992): 188-208.

Wolf, David. "The Unjust Exile of a Superstar," *Life Magazine*, May 16, 1969, 52B

Wolf, David. *Foul! The Connie Hawkins Story*. New York: Holt, Rinehart and Winston, 1972.

Wolohan, John. “The Curt Flood Act of 1998 and Major League Baseball’s Federal Antitrust Exemption.” *Marquette Sports Law Journal* 9(2) (Spring 1999): 347–77.

Wong, Glenn M. *Essentials of Sports Law, 4th Edition*. Santa Barbara, California: Praeger, 2010.

Zirin, Dave. *A People’s History of Sports in the United States*. New York: The New Press, 2008.

Zirin, Dave. Bad Sports: *How Owners Are Ruining The Games We Love*. New York: Simon & Schuster, 2010.