

A Well-Paid Slave: Curt Flood's Fight for Free Agency in Professional Sports

By Brad Snyder

Viking, New York, NY, 2006. 472 pages, \$25.95.

Opening Day: The Story of Jackie Robinson's First Season

By Jonathan Eig

Simon & Schuster, New York, NY, 2007. 321 pages, \$26.00.

REVIEWED BY JON M. SANDS

"It's been written, Curt, that you're a man who makes \$90,000 a year, which isn't exactly slave wages. What's your retort to that?" Howard Cosell asked this question of Curt Flood, a major league baseball (MLB) player who, at the time, was challenging baseball's reserve clause, a contractual term that bound a player to one team for his career, barring a trade. "A well-paid slave," Flood replied, "is nonetheless a slave."

That retort—challenging, defiant, and proud—heralded the modern age of sports, a time when owners bid for players' services and free-agent baseball players can earn millions of dollars. Flood made the retort during the publicity that followed his letter to Bowie Kuhn, who was baseball commissioner at the time. Flood had written, "After twelve years in the Major Leagues, I do not feel that I am a piece of property to be bought and sold irrespective of my wishes. I believe that any system which produces that result violates my basic rights as a citizen and is inconsistent with the laws of the United States and of the several States."

Flood played center field for the St. Louis Cardinals. He finished his career with impressive statistics: a .293 lifetime batting average, 1,861 hits, seven Gold Gloves, three appearances in the All-Star Game, and his achievement as a key player on the Cardinals' World Series teams of 1964, 1967, and 1968. Then came the telephone call on Oct. 8, 1969, when the Cardinals curtly told

him that he was part of a seven-player trade with the Philadelphia Phillies. The news flooded him with anger. At 31 years of age and nearing the end of his career, most of which he'd spent with the Cardinals, the prospect of leaving his teammates, his home, and his business was not appealing. Moreover, although St. Louis was the southernmost city in which a major team was located, the Cardinals were a tight team and racially enlightened, whereas the Phillies had a reputation for being less inclined toward brotherly love. Flood announced that he would challenge the reserve clause.

The reserve clause was collusive and anti-competitive, and it violated the Sherman Act. In 1922, however, in *Federal Baseball Club of Baltimore Inc. v. National League of Professional Baseball Clubs*, 259 U.S. 200, the Supreme Court, in an opinion by Justice Oliver Wendell Holmes, ruled that professional baseball games were not interstate commerce, but were intrastate exhibitions with merely an incidental relationship to interstate commerce. Snyder explains:

Holmes "loath[ed] and despise[d]" the Sherman Act, which he referred to as a "foolish law," [and] he knew almost nothing about baseball. A bookish, unathletic child who had grown up in Boston before the Civil War, he had probably never seen a baseball game. In Holmes's defense, radio broadcasts of baseball games in 1922 were in their infancy, the farm system concept was not popularized until the 1930s, and the first television broadcast of a major league game was not until 1939. In 1922, it was not obvious that baseball's effect on interstate commerce was more than "incidental."

Thirty-one years later, in *Toolson v. New York Yankees*, 346 U.S. 356 (1953), the Court again upheld the reserve clause, reasoning that Congress must have wanted to exempt baseball from the antitrust laws, or it would have overturned Holmes' decision. The per

curiam decision in *Toolson* was joined by such luminaries as Chief Justice Earl Warren and Justices Hugo Black, William Douglas, Felix Frankfurter, and Robert Jackson. According to Snyder,

One commentator described *Toolson* as the first step in "the greatest bait-and-switch scheme in the history of the Supreme Court." The key to the "scheme" consisted of the second half of the opinion's final sentence, a last-minute addition to the unsigned opinion. "Without re-examination of the underlying issues, the judgments below are affirmed on the authority of *Federal Baseball ...*," *Toolson* concluded, "so far as that decision determines that Congress had no intention of including the business of baseball within the scope of the federal antitrust laws." But Holmes never said anything in *Federal Baseball* about what Congress had intended in 1890, only that professional baseball as it operated in 1922 was not interstate commerce. The second half of this final sentence was recently discovered to be the handiwork of the Court's new chief justice, Earl Warren. Warren was extremely uncomfortable with the opinion, which had been written by Hugo Black, the former U.S. senator among the justices. Warren had asked Black to add the "so far as" clause "to make it clear that Congress has the right to regulate baseball if and when it desires to do so." Neither Black nor the other six justices in the majority objected to Warren's addition, which helped transform Holmes's opinion into an express "exemption" for baseball.

Dissenting, Justice Harold Burton, joined by Justice Stanley Reed, argued that Congress had not carved out a baseball exception, and that baseball is obviously an interstate business. Baseball, however, remained protected, even though the Court refused to extend the precedent to other professional sports.

To challenge the Supreme Court precedent, Flood turned to Marvin Miller, who had recently become the head of the players' union, the Major League Players Association. At the time Flood approached him, Miller had been trying to win small concessions from the owners: a raise in the minimum salary, increased pension benefits, and more money for meals on the road. Miller had not counted on shaking the foundations of the game so soon. When Flood met with him, Miller said that it was a "million-to-one shot," but, impressed with Flood's determination and stubbornness, the head of the union agreed to press forward.

To represent Flood, Miller turned to the former counsel to the Steelworkers' Union, Arthur Goldberg, an iconic labor lawyer. Goldberg had successfully argued cases before the Supreme Court, brokered the merger of the AFL and the CIO, negotiated contracts with steel company executives, and drafted labor legislation for Congress. Subsequently, Goldberg served as secretary of labor and was appointed to the Supreme Court by President John F. Kennedy. Goldberg sat during the heyday of the Warren Court, writing *Escobedo v. Illinois*, a predecessor of *Miranda v. Arizona*. Goldberg's former clerk (none other than Justice Stephen Breyer) observed, "He was happy on the Court; indeed, he was in his element." Goldberg then "made the biggest mistake of his life" in allowing President Lyndon B. Johnson to cajole him to become ambassador to the United Nations during the Vietnam War. According to Snyder, Johnson appealed to Goldberg's patriotism, his ego, and his ambition, suggesting the possibility that he'd choose Goldberg to be his next vice president. Goldberg, Snyder writes, gave up his dream job for a pipe dream.

At the time Miller approached him, Goldberg was with the prestigious New York firm of Paul, Weiss, Rifkind, Wharton & Garrison. Goldberg loved social causes, however poorly they paid, and he saw Flood's case as a moral crusade. Miller believed that having Goldberg represent Flood would convey to the team owners that Flood was serious. The selection generated publicity (although it also caused rumblings in Goldberg's firm, because Goldberg's work

for Flood was largely pro bono). As it turned out, having Goldberg represent Flood was one of Miller's rare mistakes in judgment.

In *A Well-Paid Slave*, author Brad Snyder, a graduate of Yale Law School, focuses on Flood's court case and on Goldberg, who was surprisingly ineffective at every stage of the litigation. Goldberg filed suit in the U.S. District Court in the Southern District of New York, where the court grandstanded throughout the trial before finally ruling against Flood because of the two Supreme Court cases that it viewed as binding precedent. During the trial, Flood's witnesses included Jackie Robinson (already dying from diabetes) and slugger Hank Greenberg, both of whom, like Flood, had felt betrayed by their teams after having been traded late in their careers. Flood himself testified, but apparently without much preparation, because he was clearly ill-at-ease and ineffective. Counsel for the baseball owners attacked Flood personally and called numerous players and executives to testify that the reserve clause was responsible for the success of major league baseball. Sadly, MLB's superstars, such as Willie Mays and Hank Aaron, refused to support Flood (who was particularly disappointed that his fellow black players did not stand by him), and no active player was willing to testify on Flood's behalf. Indeed, at that time, Flood believed that most players were working against him; Carl Yastrzemski was especially vitriolic, to the shame of Boston Red Sox fans. The Second Circuit affirmed the decision, again claiming to be bound by precedent, but essentially asking the Supreme Court to reconsider the earlier cases. Flood then sought certiorari, which was no sure thing in this case. Snyder does a good job of detailing the changing nature of the Supreme Court at the time, with the Warren Court giving way to the Burger Court, and Justices Blackmun and Powell taking their seats. The certiorari petition, according to Snyder's analysis, initially garnered only three of the four votes it needed. Then, surprisingly, after Justice Douglas, who regretted having joined the majority in *Toolson*, had drafted his dissent from the denial of certiorari, the case was accepted for argument.

The case was argued in March 1972.

Goldberg directly challenged the precedents, arguing that major league baseball was interstate commerce and that the prior cases had been wrongly decided and needed to be overturned. MLB was represented by Lou Hoynes, a 36-year-old Harvard graduate, whom Bowie Kuhn had recruited to the firm of Wilkie, Farr & Gallagher, and who had worked closely with Kuhn before Kuhn became baseball commissioner. Hoynes' defense did not rest solely on stare decisis. He also argued that *Toolson* had specifically called upon Congress to act if it disapproved of the decision. But "[t]he owners' key argument," according to Snyder, "grounded baseball's immunity on federal labor law. The Players Association, the owners argued, had agreed to the reserve clause in labor negotiations and therefore could not turn around and sue on antitrust grounds." This was a clever if disingenuous strategy, because the owners had never negotiated in good faith about the reserve clause.

At the time of the argument, Goldberg had left Paul, Weiss because of a falling out, and, after an unsuccessful run for New York governor, had opened his own practice in Washington, D.C. Flood's brief had been written primarily by Dan Levitt, a former classmate of Justice Breyer and clerk for Justice Goldberg, and by Peter Westen, a former clerk for Justice Douglas. What happened next could not have been anticipated. Goldberg had long enjoyed a reputation as a skilled and savvy appellate advocate. Although his performance at trial had been questionable, displaying lack of preparedness and a lack of court sense and missing opportunities to make as strong a record as possible, people expected that Goldberg would make up for his poor performance at oral argument before the Supreme Court. Indeed, Goldberg told his associates the day before the argument that it was going to be the best argument he ever made. Instead, it turned out to be among the worst argument anyone ever made.

Standing before the Court where he had once sat, Goldberg looked at his former fellow justices and fell apart completely. For more than half of his

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allowed time, he meandered through the facts, stating some incorrectly. After nearly 20 minutes of this, the justices began to question Goldberg, who returned again and again to his position that the prior precedents had been wrong. He did not answer the justices' questions about whether the reserve clause had been part of the collective bargaining agreement, and he completely skipped the issue of whether or not there was a state antitrust basis for the decision. Snyder writes:

The Supreme Court law clerks, watching from the far right side of the courtroom, were so embarrassed by Goldberg's performance that they refrained from their usual snide comments. This was not the same man who had argued the Steel Seizure cases from federal trial court to the Supreme Court in three weeks. He was like an aging Willie Mays stumbling around in the New York Mets outfield in 1973. ... His performance soon moved Brennan and the other justices from pity to disgust.

Snyder explains what a good oral advocate would have done; ventures to describe what a great oral advocate could have achieved; and concludes that, in this argument, Goldberg was "unfamiliar with the facts and was neither a great nor even a good oral advocate at this point in his legal career." As Goldberg told Levitt afterward, "That was the worst argument I've ever made in my life." Levitt later agreed, saying "It was one of the worst arguments I'd ever heard—by one of the smartest men I've ever known, in the setting where he should have been a super advocate. It was like he choked." Snyder believes, rightly, that oral argument rarely decides a case, but that it can shape an opinion. In this instance, he concludes, and the reader has to agree, that, "If ever a case had been lost at oral argument, Flood's was it."

In June 1972, in *Flood v. Kuhn*, 407 U.S. 258, the Court, in an opinion by Justice Blackmun, again upheld the reserve clause and again suggested that

it was up to Congress to fix the problem. The vote was 5 to 3, with Justice Powell recusing himself. The opinion was originally meant to be a short per curiam, but, as was Justice Blackmun's wont, it grew in length. The ruling even included an embarrassing ode to baseball, which commentators ridiculed mercilessly. This ode, which contains a lineup of baseball greats, was pointedly not joined by Chief Justice Burger or Justice White.

Although the baseball team owners had won the case, the attendant publicity raised the public's consciousness about the reserve clause. The times they were a-changin'. Team owners, who had agreed to arbitration for contract disputes, soon found that the Supreme Court's decision, which rested on the fact that the reserve clause had been part of the collective bargaining agreement, led to adverse rulings by arbitrators, who held that the reserve clause's "option year" (the year following a contract's end, when a player could play for the same team at his prior year's salary reduced by 10 percent) was not ongoing, but was good for only one year. As a result, after the year expired, the players would be free agents. This set off a revolution in baseball, as players could negotiate as free agents, and that is exactly what they did.

The team owners had achieved only a momentary victory when they won the Flood case. They were outsmarted by Miller and, by 1975, the players had free agency. The owners made mistake after mistake in the negotiations and litigation. The way that the reserve clause came to an end, in a lawsuit filed in Kansas City, Mo., exemplifies their errors. A lawyer whom I know clerked for the federal judge who upheld the arbitrator's rulings. He recalls that the Western District of Missouri was known during the 1970s for its pro-labor bench. All four of its judges had a reputation for being favorably inclined to labor, especially Judge John Oliver. While baseball owners debated where to file their challenge to the arbitrator's decision, the owner of the Kansas City Royals (Ewing Kaufman) became so incensed that he refused to wait for counsel to "forum shop" and

rushed to his local federal court in Kansas City. The judge drawn was Judge Oliver. Marvin Miller and the players' union were worried nevertheless, but a lawyer at a small local labor law firm assured them that things would work out. This local counsel had clerked for one of the judges and had a sense of the judicial temperament of the bench. He was right. The arbitrator's decision was upheld by Judge Oliver and then by the 8th Circuit. The players' union was so impressed with the local counsel's advice that they brought him in-house. The counsel was Donald Fehr, and he succeeded Marvin Miller and is now head of the players' union.

Flood sat out the 1970 season and played in only 13 games in 1971 for the Washington Senators, who had received rights to his services from the Phillies in return for three minor prospects, who were never heard from again. Feeling old and distracted, Flood never regained his hunger for the game. Bitter and broke, he left the United States and tried to make a living in Europe with his other passion—painting portraits. This was not a good move for him: he suffered continued financial setbacks as well as actual and perceived betrayals by family and friends, and he began to drink heavily. Destitute, he returned to the United States, where he was ignored by the players' union and fellow players, and even by Marvin Miller. Slowly, however, with help from a few old-time players, Flood started to make his way back. He stopped drinking and began to work with youth leagues in Oakland, Calif., his home town. In 1997, at the age of 59, Flood died of throat cancer.

Today, because of what Flood started, the St. Louis Cardinals' current star, Albert Pujols, earns nearly \$14 million per year to play for Flood's old team. Surely, the Baseball Hall of Fame should honor Flood for his impact on the game. Yet Flood has not been inducted into the Hall. His statistics are just shy of what it usually takes to be voted in, and the voters have not seen fit to reward his fight against the reserve clause with a cherished plaque inside the Hall.

Snyder's book is timely. The leaders

of major league baseball who engaged in these battles are passing from the scene. Bowie Kuhn died on March 16, 2007, and his obituary in the *New York Times* linked his tenure as MLB commissioner to Curt Flood. The *Times* stated that, although Kuhn won the case, “the drive for free agency had begun,” and it was Kuhn who presided over bitter labor strikes during his tenure. Marvin Miller, who presided over the baseball players’ union from 1966 to 1984 and, like Flood, did so much to change the game, has also not been voted into the Hall of Fame; he too stands outside looking in.

Flood’s struggle was primarily an economic one. The reserve clause limited the opportunities and incomes of all players, of all colors. But it had a racial component, and it was Flood—black and defiant—who was the face of change. At his funeral, Flood was compared to Rosa Parks and Jackie Robinson, who, as noted above, had testified at Flood’s trial. Despite the comparisons that have been made between the two men, Robinson’s achievement dwarfed Flood’s. Jonathan Eig’s book, *Opening Day*, examines the truth behind the Jackie Robinson myth. Robinson debuted with the Brooklyn Dodgers on April 15, 1947, and on the 60th anniversary of baseball’s integration this year, all players were allowed for the day to wear his number 42, which had been retired in 1997. Jackie Robinson should not have been the player to break the color barrier. He had a weak arm and an aching, injured ankle; he was a relatively inexperienced player; and, at the age of 28, he was old for a rookie. But he possessed the passion and the intelligence that Branch Rickey, general manager of the Brooklyn Dodgers, was looking for when he selected Robinson to integrate MLB.

In 1947, the Dodgers were the worst team in the National League and had the smallest stadium and the poorest balance sheet. When Rickey, who had earned a J.D. at the University of Michigan Law School in 1911, was general manager of the St. Louis Cardinals from 1925 to 1942, he had brought innovations to baseball, such as spring training and standard training in the minor leagues. Now, with the Dodgers, Rickey sought to make his team the best by

recruiting the best players from outside MLB, which meant African-Americans. As Rickey explained, he signed up Robinson because he wanted to win and it was the right thing to do.

Robinson proved to be the right player after all. He had grown up in Pasadena, Calif., and had been a star athlete at the University of California at Los Angeles. College-educated, he neither smoked nor drank, and he had an exemplary character. Without losing his cool, he could stand up to racist taunts, jeers, and abuse—and that was just from his teammates. Robinson was also intensely competitive. He had burned with anger in the Negro Leagues because, to his mind, his teammates did not take the game seriously enough. In whatever league he played, Robinson wanted to win.

Robinson initially played first base for the Dodgers, even though second base was his regular position. Opening day in Brooklyn should have seen a full stadium at Ebbets but 6,000 seats remained empty. Three-fifths of the stadium, however, was filled with African-Americans, who, according to Eig, cheered and stomped and greeted Robinson’s every act as an occasion. There was no trouble that day, but the abuse started in earnest over the next several weeks. Robinson took the abuse throughout the season, but, despite the pressure he faced and a slow start, he batted .295, led the league in stolen bases, and was voted Rookie of the Year.

Among the myths that Eig seeks to dispel is the one that, in May 1947, during a game against the Cincinnati Reds, when the harassment of Robinson was reaching a fever pitch, his Dodger teammate Pee Wee Reese, a Southerner who played shortstop, walked over to Robinson and, in a show of unity, put his arm around him. However, after examining the memoirs and newspaper accounts that describe this expression of brotherhood and its effect of unifying the team behind Robinson, Eig concludes that the incident did not occur. But baseball loves its myths.

Roger Kahn, author of the acclaimed history of the Brooklyn Dodgers, *The Boys of Summer*, takes issue with Eig’s account. In a letter to the *New York Times* on April 21, 2007, Kahn argued

that Reese’s embrace did take place in Cincinnati in May 1947 and cites his conversations with both Robinson and Reese. Kahn quotes Robinson as saying, “After Pee Wee came over like that, I never felt alone on a baseball field again.” Perhaps we will never know the truth.

Years later, Reese made it a point to mention in interviews that his role in the Robinson drama had been exaggerated. He had never sought to be an activist and had never intended to make grand gestures. All he had ever tried to do, Reese explained, was to treat Robinson the same way that he, Reese, treated everyone else. “You know, I didn’t particularly go out of my way just to be nice to you,” Reese once told Robinson, who replied, “Maybe that’s what I appreciated most.”

Opening Day covers only Robinson’s first season and does not take into account the social and historical context in which Robinson made his debut. For that perspective one should turn to Jules Tygiel’s *Baseball’s Great Experiment: Jackie Robinson and His Legacy*. Eig’s book is nothing more—yet nothing less—than an account of an extraordinary season that changed baseball forever, and it is a valuable addition to Jackie Robinson’s legacy. Even now, 60 years after that season, Jackie Robinson’s courage and his achievement are still remarkable. **TFL**

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2007 Handbook of Section 1983 Litigation

By David W. Lee

Aspen Publishers, New York, NY, 2007. 1049 pages, \$260.00.

REVIEWED BY STEPHEN E. REEL

Lawyers charged with the defense of law enforcement officers, school boards, state or local government officials, or any other category of public employees should have David W. Lee’s *2007 Handbook of Section 1983 Litigation* at the ready. This book has been updated every year since 2001, and I

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have cracked open its covers countless times since then. Time is money, and this book will save valuable research time for those seeking information on recent U.S. Supreme Court and federal courts of appeals decisions regarding civil rights cases brought under 42 U.S.C. § 1983.

Section 1983 litigation is not intuitive. The practitioner whose experience has been primarily in common law torts is at a serious disadvantage when stepping into the battleground of § 1983 litigation. For the inexperienced practitioner, whether serving the plaintiff or defense bar, the *Handbook* is essential to circumnavigating the minefields that can lay hidden beneath the placid surface of § 1983.

Lee, a seasoned litigator in state and federal courts in Oklahoma, has argued four cases before the U.S. Supreme Court. He taught at the University of Oklahoma Law School and has been a guest speaker at the prestigious seminar titled "Section 1983: Civil Rights Litigation" presented at the Georgetown University Law Center. He is also a frequent lecturer at the National College of District Attorneys.

The *Handbook* is organized by topics, which include scope of liability; federal rights protected; liability of local governments and their officials; due process; immunity; pleadings, motions, and affirmative defenses; injunctions and declaratory relief; damages and interest; discovery and subpoenas; trial issues; and attorneys' fees and costs. In some areas Lee provides a brief discussion of the historical development of case law; in other areas he skips any discussion and simply lists the pertinent decisions pertaining to the topic and provides a brief description of the courts' holdings.

Perhaps Lee reveals his defense bias by reserving his longest chapter for a discussion of immunity from liability. Of this chapter's more than 200 pages, he devotes nearly 160 of them to a thorough examination of the issue of qualified immunity. His treatment of this issue reflects the vital importance that this legal defense provides for public officials sued in their individual capacities. A qualified immunity

defense, when artfully presented, can be a dagger that goes straight to the heart of a plaintiff's case and prevents the case from reaching the jury.

The *Handbook* does not bog down the reader with excerpts from court opinions or from secondary sources. Nor does the book follow the development of § 1983 from 1871 to present or provide the sort of scholarly analysis that one might find in law reviews of, for example, disagreements among the circuits. Instead, the *Handbook* simply provides brief summaries and, in some instances, one-line statements of federal appellate cases. Lee assumes that his readers are practitioners who possess a rudimentary knowledge of § 1983 and know how to phrase the legal question to start their inquiry. Armed with those basic skills, readers can turn to the *Handbook* and find answers to their questions.

The *Handbook* has some limitations, however. In addition to lacking in-depth discussions of cases and comparisons with other cases that address the same issues, the book does not provide model forms for motions or pleadings (which a practitioner might expect to see, given the price of the book). In addition, decisions are listed in no discernible order; it might have helped readers who were interested, for example, only in cases in a particular circuit if the decisions had been listed in numerical order by circuit. In addition, it is not clear why some appellate circuit cases receive extensive discussions whereas others of seemingly equal importance receive only cursory descriptions of their holding.

Despite these marginal shortcomings, however, the *Handbook* is a jewel for civil litigators who need a quick reference to begin their research. Once you use the *Handbook*, I suspect that you will sign up to receive the 2008 version. **TFL**

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Thieves of Baghdad: One Marine's Passion for

Ancient Civilizations and the Journey to Recover the World's Greatest Stolen Treasures

By Matthew Bogdanos with William Patrick

*Bloomsbury Publishing, New York, NY, 2005.
302 pages, \$25.95 (cloth), \$15.95 (paper).*

REVIEWED BY ELIZABETH KELLEY

I wrote this review over Memorial Day weekend 2007, when we as a nation were not only honoring those who fought, suffered, and died for our country but were also grappling with our country's role in Iraq. We continue to debate issues, such as the validity of the war, whether there should be a timetable for troop withdrawal, and the consequences of any steps we take. Presidential candidates jockey for positions, and families of redeployed soldiers speak out. How fractured we have become since Sept. 11, 2001, when we were all united in anger and grief over the slaughter of innocent lives on our own soil!

Books like *Thieves of Baghdad* are vital because they remind us of that day. The post-Sept. 11 canon is plentiful, with books like *The Good Life* by Jay McInerney and films like "Reign Over Me." But *Thieves of Baghdad* prompts us to focus on an aspect of the war in Iraq that usually goes unnoticed: the fact that Iraq was the cradle of civilization—rich in history and splendor.

Marine Col. Matthew Bogdanos led a multiagency task force to recover priceless works of antiquity that had been stolen from the Iraq Museum during the Battle of Baghdad, and *Thieves of Baghdad* tells of that adventure. ("Adventure" is not too flip a word; the author freely admits that he was inspired by "Indiana Jones.") Bogdanos also describes where he was on Sept. 11 (in his family's apartment, which was 100 yards from the World Trade Center), the story of his youth in New York City as the son of Greek immigrants, his decisions to enter law school and to enlist in the Marines, and his experience in the Manhattan district attorney's office, where he was on the team that unsus-

cessfully prosecuted Sean “Puff Daddy” Combs for weapons violations.

Like mysteries and legal thrillers, *Thieves of Baghdad* is fueled largely by plot, and it is a good story. Bogdanos fleshes out his characters well and does not write like a lawyer, although the book occasionally reads like *Bartlett’s Book of Familiar Quotations*, because it teems with references to people ranging from Euripides to Robert Browning to Yogi Berra.

The story of the recapturing of the stolen antiquities is the centerpiece of the book. Bogdanos begins with the discovery of more than a thousand pieces of gold and jewels—“Iraq’s crown jewels,” as they are often called. He describes the cultural obstacles to working with the remaining staff of the Iraq Museum, especially the women. And he tells of the creative ways that he and his team retrieved missing artifacts one by one, with no questions asked.

What raises *Thieves of Baghdad* above an ordinary mystery or legal thriller is the author’s sensitivity and introspection. Bogdanos paints a vivid picture of the hardship and struggles that the troops in Iraq undergo, of the sacrifices that soldiers’ families make, and of the difficulties that arise when the troops return home.

A theme that runs through *Thieves of Baghdad* is the author’s recognition of the seemingly conflicting sides of himself—the youthful athlete and the artist versus the adult soldier and the scholar. As a young man, he began to find answers in the writings of Nietzsche, and he describes the revelation in this way:

Growing up as I did, where I did, just about all you were allowed to talk about among the guys were sports and girls. So I always felt a little out of it that I was also interested in things like dance and theater and good books. The split or contrast perplexed me, until I read *The Birth of Tragedy*, Nietzsche’s exploration of the interplay between the Dionysian and the Apollonian. He showed me that two seemingly irreconcilable forces can actually form a more coherent whole. It was confirmation that I wasn’t crazy. You can ac-

tually do all these different things and they merge and form a synthesis. They might even leverage one another. As Nietzsche sees it, balance is not striving to achieve the Aristotelian Golden Mean. In fact, like Alexander before him, he despised the middle road as mediocrity, and in many ways I share his dislike of moderation.

As an adult, reflecting upon his time in Iraq, Bogdanos comes to realize that one side of himself enriches the other, but that passion and intensity make one truly alive and are vital to success in any kind of battle:

There are indeed many kinds of courage—the courage of Thermopylae, the courage to tell it straight to your kids, and the courage to tell colleagues in your department that you are going to start cooperating with the police. Intellectual courage, moral, and artistic courage, as well as the courage valued in the three areas in which I spend most of my time—the courtroom, the boxing ring, and the battlefield—I see as all one thing, and, both physical and moral, coming from the same place.

In my view of the world, being efficient and ruthless on the battlefield is entirely consistent with being a loving, fully sensate human being. It is not so much a question of bouncing back and forth but of integrating. ...

Hemingway, who integrated both the aesthetic and the active side of life, put it this way: “If people bring so much courage to this world, the world has to kill them to break them, so of course it kills them. ... It kills the very good and the very gentle and the very brave impartially. If you are none of these, you can be sure it will kill you too. But there will be no special hurry.”

My idea of hell is being one of those for whom life is in no special hurry.

Thieves of Baghdad is a story of heroism. But it is heroism not so much of strength and bravery but of intellect and sensitivity. **TFL**

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Creditors’ Rights

By Alexander L. Paskay

Vandeplas Publishing, Lake Mary, FL, 2006.
955 pages, \$129.95.

REVIEWED BY LESLIE R. HOROWITZ

Every practitioner of bankruptcy law can use a one-volume treatise on creditors’ rights to sit on his or her desk so it can be referred to at a glance. Judge Alexander L. Paskay’s *Creditors’ Rights* is such a book. Paskay, who is chief bankruptcy judge emeritus of the U.S. Bankruptcy Court for the Middle District of Florida, brings years of experience to this treatise, which is an excellent guide for both the experienced and inexperienced bankruptcy lawyer. The author lays out the law in a cogent and readable fashion, and his book is exceptionally well organized.

Creditors’ Rights covers every area of interest to creditors of a bankruptcy estate, whether they are consumers or businesses. The book addresses jurisdiction, automatic stays, dischargeability, contempt, sanctions, trustees’ duties, plan confirmation, liquidation, administration of assets, and more. Paskay explains the revisions made to the bankruptcy code by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

Paskay begins with the basics and explains the importance of terminology in the world of bankruptcy. He writes:

The terminology used in the administration of bankruptcy cases

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is radically different from the terminology used in state or Federal civil litigations. It is important to emphasize and discuss the unique terminology used in bankruptcy. While some terminology will be familiar to practitioners because of its use in civil litigations, the terms have a different meaning in bankruptcy. Improper use of terminology in a bankruptcy case may cause serious problems for the uninitiated. Not only may additional work be required to correct an error, but also substantive right of a client may be jeopardized.

Creditors' Rights discusses the important bankruptcy cases but does not spend a lot of time with string citations. It provides an overview of the Federal Rules of Bankruptcy Procedure as well as the statute, and it will be useful to debtors' and well as creditors' counsel. As all practitioners know, consulting a treatise is only the beginning of the research that is necessary to handle a case, but this treatise gives the practitioner a running start. **TFL**

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***China Shakes the World:
A Titan's Rise and Troubled
Future — and the Challenge for
America***

By James Kynge

Houghton Mifflin Co., Boston, MA, 2006. 270 pages, \$25.00 (cloth), \$14.95 (paper).

REVIEWED BY JOHN C. HOLMES

The title of this book comes from Napoleon's advice, "Let China sleep, for when she wakes, she will shake the world." James Kynge, a financial journalist who worked in China for many years, pinpoints 2004 as the year that history will acknowledge that the shaking occurred. That was the year that Chinese entrepreneurs, with government assistance, finished transport-

ing an entire steel mill from the Ruhr Valley in Germany, where it had been dismantled, to the Yangtze River Basin in China, where it was reassembled. This mind-numbing accomplishment illustrates China's huge and low-cost labor supply, the government's efforts to fulfill the country's exploding material needs, and the growing capitalistic drive in China. The effort exemplifies the change in China's role in world affairs from a long-term bystander to a competitive actor.

To understand China today, Kynge advises, one must start with the migration of the country's huge population. Despite the death of an estimated 30 million people during the Mao-inspired programs of the 1970s, the government policy of restricting urban families to two, and the practice of aborting female fetuses and even female infanticide, China's population has surged to approximately 1.6 billion—one-sixth of the world's population. The town of Chongqing reflects this growth. A sleepy town perched on a cliff during World War II, it has grown at a rate of 300,000 people per year since 1998 and now has more than four million residents; when combined with the areas surrounding the town, this area forms a "municipality" of more than 32 million people!

In the last 20 years, approximately 300 million Chinese people—a number that is comparable to the entire U.S. population—has moved from the countryside to the cities, resulting in a huge surge in construction in the larger cities, with new skyscrapers soaring upward as the streets below become congested with people using all methods of transportation. This urbanization has created a huge demand for steel, aluminum, copper, nickel, iron ore, oil, gas, coal, and many other basic metals and materials and has catapulted China into the global economy.

In turn, this rapid industrial growth, with little regard for environmental safeguards, has resulted in cities that have severe pollution that blocks out sunlight and causes bronchial infections, massive erosion of the countryside, unsafe drinking water, and even the partial col-

lapse of entire towns because of underground mining. The industrial growth has also resulted in a great disparity in income between those still living in the economically primitive countryside and those living in the rapidly growing cities. Although poised to overtake the United Kingdom as the world's fourth largest economy, China still ranks barely above the world's poorest nations, with a per capita income of \$1,000 per year.

China has the longest continuous history of any nation and a unique cultural heritage. Until modern times, China considered itself self-sufficient and morally and culturally superior to other nations. Its contacts with Western nations, such as occurred during the Opium Wars, were mainly negative. China eventually recognized its economic shortcomings, but its initial attempts in the early 1900s to catch up economically were unsuccessful. Hard-line Communist rule after World War II, particularly Mao's "peasant revolution," resulted in a disastrous step backward for the country. The current autocratic, politically repressive, and nominally Communist government stands in contrast with an increasingly capitalist economy and the people's broad-minded attitudes and policies.

This contrast may be starkly illustrated by describing the lives of several Chinese citizens. Zong Qinghou sold ice pops for less than a penny each in the 1980s, but, by 2005, as a result of hard work, government connections, and business acumen, he controlled a syndicate that rivaled Coca Cola. Yin Mingshan was imprisoned for 20 years during Mao's rule merely because his family had "capitalistic tendencies." Finally granted his freedom, through his remarkable diligence and savvy but without employment skills, he turned a backyard garage into a hugely profitable bicycle company. "Every rags to riches story," Kynge writes, "is different, but risk and hardship are common denominators."

Qi Yuling's story is less inspiring. She studied diligently at school in order to pass an examination and escape the poverty of her country surroundings by getting a factory or office job in the city and marrying well. At first she was told

that she had passed the exam, but she was later informed that it was a mistake, and she was heartbroken. After 10 years of drudgery working as a peasant, with no suitable marital prospects, she inadvertently discovered that a local Communist official had stolen her exam results and attributed them to his daughter, who was successfully living the life of which Qi had dreamed.

In *China Shakes the World*, Kynge exhibits an inquisitive mind and an entertaining writing style. With respect to China's economic future and world status, he concludes:

China has much going for it ... an ancient culture, sparkling traditions in literature and the arts, the accumulated wisdom of thinkers over thousands of years, the size of its potential power, the taste of its cuisine, kung fu and other martial arts, the diligence and intelligence of its people, the gleaming skyscrapers in cool new cities such as Shanghai, and of course the cuddly giant panda. But against these positive associations are a raft of less alluring images: shabby products, counterfeit goods, ripoffs of intellectual property, exploited labor, human rights abuses, the 1989 Tiananmen massacre, official nepotism and corruption, the persecution of religion and other forms of spirituality, a sick environment, outbursts of angry nationalism, and opposition to the exiled Dalai Lama. ... The resulting image ... is often far from positive, and Chinese companies pay handsomely every year for the poor perceptions held in the West. **TFL**

John C. Holmes recently retired as chief administrative law judge at the Department of the Interior, after having served as an administrative law judge at the Department of Labor for almost 25 years. He currently works as a mediator and arbitrator and may be reached at TRVLNTERRY@aol.com.

Monopoly: The World's Most Famous Game and How It Got That Way

By Philip E. Orbanes

Da Capo Press: Cambridge, MA, 2007. 262 pages. \$26.00 (cloth), \$14.95 (paper).

REVIEWED BY JON M. SANDS

The first episode of the final season of the HBO hit, "The Sopranos," finds Tony, his wife, his sister Janice, and her husband Bobby doing their best imitation of a suburban family on vacation by playing the board game, Monopoly. Things start to get tense when a dispute breaks out over the rules, with Tony wanting to use the standard variation in which money from fines or tolls gets put into the middle of the board to be collected by the next person who lands on the "free parking" space, but Bobby preferring the official policy of returning such money to the bank. Bobby complains, "The Parker Brothers put a lot of thought into these rules," and then things get ugly. The game becomes a symbol of all the tensions and dynamics of the Sopranos.

Monopoly, by Philip Orbanes, thoroughly describes the evolution of the game, its rise to worldwide popularity, and its cultural symbolism. As with many books about games—including Scrabble, chess, and even crossword puzzles—the author of this book has a passion for, if not an obsession with, the game whose tale he tells. Orbanes is a former senior vice president in the Research and Development Department of Parker Brothers; thus, he has access to the files and historical documents related to Monopoly. Moreover, as he tells us, he is an international referee for Monopoly championships, and, of course, he will tell us about the greatest game ever played.

Monopoly began as an effort at tax reform. In the early 20th century, a progressive movement led by Henry George sought to reform capitalism by calling for the imposition of a "single tax" on the unearned increase in land value that landlords received. This was the only worthy tax, adherents of this movement believed, because landlords profit from the increasing value of their holdings by charging higher and higher rents. In 1903, Elizabeth "Lizzie" Magie had an idea for a game that would promote the cause. She hired an attorney

and filed a patent for "The Landlord's Game," intending it not just as a game but as an educational tool as well. Because a patent required specificity, she supplied rules and described pieces. The patent office granted her request in 1904; it was the first time that a patent had been granted to a board game, and The Landlord's Game was apparently the first board game with an adult theme.

Magie's game was strikingly different from today's Monopoly. Properties were rented rather than purchased, and the object of the game was not to acquire a monopoly, but to illustrate the unfair advantage that landlords had. In the corners were squares labeled "Mother Earth," "Absolute Necessity/Jail," "Public Park," and "No Trespassing/Go to Jail." In between were lots, railroads, utilities, and spaces that required payment to the bank for penalties incurred. A circuit of the board earned the player wages at Mother Earth. There is no record of the game's having been commercially produced, but it was privately produced and soon began to circulate in progressive circles.

The Landlord's Game was soon the rage with professors at Columbia University and other elite schools. One young economist (with supposed socialist tendencies) introduced the game to his students at Wharton School. The game proved popular, and, as it spread from community to community, its name was changed to "Auction Monopoly" and then just "Monopoly." Copies of the game were made by hand, and each new owner seemed to delight in naming the spaces after his or her favorite city streets and in changing the rules. When the Depression hit in the early 1930s, the game, with its bankruptcies and failures, seemed prescient.

In late 1932, with the country mired in the Depression, an Atlantic City couple—the Todds—learned of the game from a fellow teacher and were enthralled. While out walking one evening, they chanced upon another couple—the Darrows—and it turned out that the women had been classmates 21 years earlier. The Todds invited the Darrows to dinner and introduced them

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to the game. Charles Darrow, an unemployed plumber and business failure, was taken with the game. He asked the Todds if he could make his own version, and the Todds encouraged him to do so. Darrow laid the game out on his kitchen table in Atlantic City and started to refine its rules and name its lots after Atlantic City streets. He made copies of the game for his friends—for a price. He played it at a bank and won over the manager, who extended him credit to market the game for the Christmas season.

At the time, the United States did not have a huge market for board games. The few popular ones were for children; adults played card or dice games. The leading game company, Parker Brothers, headquartered in Salem, Mass., was reeling from the Depression. It had been taken over recently by a Harvard Law School graduate, Robert Barton, who had been persuaded to give up his slow law practice to help his wife's family business, Parker Brothers, for a while, and he never left the company. He took over as chairman and proceeded to fire the entire staff to save money. He then hired a few back at half wages. Monopoly was a natural for him.

Barton heard about Monopoly and persuaded Darrow to sell him the rights to the game. Barton agreed to pay Darrow royalties on all sets that Parker Brothers sold. Monopoly kept increasing in popularity, and Darrow became a millionaire. Barton applied for a patent and was shocked to discover that The Landlord's Game had beaten him to the punch. Not wanting to take chances, he tracked down Lizzie Magie (now) Phillips and persuaded her to sell him the patent rights for \$500 as well as a promise to manufacture a version of The Landlord's Game. True to Barton's word, Parker Brothers did so, but it was not a success.

Monopoly's popularity exploded in the 1930s and grew steadily after that. The game was not cheap, and those who played it were not the people standing in bread lines. The popularity of the game continued to grow during World War II and soon went everywhere the troops went. General Eisen-

hower played Monopoly in London as a way to relax from planning the D-Day invasion. In postwar America, it was one of those games, such as Scrabble, that every household had to have, and Monopoly was hauled out of closets on slow weekends or on vacations—frequently with pieces missing. Players invented their own “unique” variations (as Tony Soprano tried to do). The game became part of the baby boomer generation's mentality, although its popularity, along with that of all board games, waned with the advent of television. Still, Monopoly continues to sell, and today, of course, we have a computer version.

Monopoly is a case of clever invention, fortuitous discovery, and careful cultivation by Parker Brothers. The company aggressively protected its copyrights and its trademark figure of the monopolist, known as Little Eskey. This mascot, which debuted in 1936, was taken from a figure on the calling cards of one of Parker Brothers' sales representatives and modeled on J. Pierpont Morgan. The game has been adapted to various locales, where seemingly every city or college has its version (all licensed, of course—beware, the copyright lawyers are vigilant).

Orbanes tells the tale briskly, although he is not a great stylist. *Monopoly* is authoritative, and one need look no further for arcane information on the subject. The book has 10 appendixes, which contain all versions of the game and similar games (such as “Life”) and their rules. One learns that the B&O Railroad is the space most frequently landed upon, and that the best properties to own are the orange ones. The original pieces were produced by the Dow Manufacturing Company, and the game is in the midst of being “modernized” (one version has Nike shoes and Starbucks coffee). A game takes an average of 90 minutes to play. The Monopoly World Championship is held every four years (the next one will be held in 2008). In describing the 2004 World Championship, Orbanes gets carried away with excitement; serious Monopoly players are as frenzied, though not quite as eccentric, as players of Scrabble and crossword puzzles.

The popularity of Monopoly may now be waning, but in the second half of the 20th century, seemingly everyone had a game in the closet, perhaps with a wayward Scrabble tile in the box. Monopoly introduced many to real estate investing and to the possibility that bankruptcy was looming around the corner; perhaps some lawyers engaged in their first “statutory” interpretation when they played the game as children. Future prosecutors vigilantly prevented their opponents from defrauding the bank, and future criminal defense counsel looked for the “Get Out of Jail Free” card. If this review has stirred memories for you, then you'll enjoy the book. **TFL**

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