# The Judge Who Became Commissioner:
## *Kenesaw Mountain Landis, the Judiciary & Baseball*

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## I. INTRODUCTION

Kenesaw Mountain Landis is most famous for serving as baseball's first commissioner from 1920 until his death in 1944. But before embarking on that career path, he spent seventeen years as a federal judge in the Northern District of Illinois. Responding to complaints of congestion in that court, President Theodore Roosevelt had appointed Landis to serve under the newly created judgeship in 1905 – a position that Landis held until his 1922 resignation.[1]

Yet while his time on the bench has been overshadowed by his subsequent career, Landis nevertheless made a significant impact on the American judiciary. Indeed, Organized Baseball primarily selected Landis as its first commissioner (and the first commissioner of any sport, for that matter) because of the fame he had achieved as a District Judge.[2] Landis the Judge was a polarizing official, and his unconventional manner on the bench made him as beloved by some observers as he was criticized by others.[3] Landis the Commissioner enjoyed a greater consensus of support, which was not hurt by the fact that his agreement with baseball's owners effectively precluded the latter from criticizing his decisions.[4]

Examining Landis' actions as a judge is helpful towards understanding his decisions as commissioner of baseball. Indeed, he approached his ultimate profession in a manner similar to that of his governmental post.[5] Yet the nature of Landis' power differed significantly in each occupation: as a Federal Judge, his decisions could be overruled by both the Seventh Circuit

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[1] *See* Northern District of Illinois Court Historical Association, http://www.ilndhistory.uscourts.gov/Judgeships.html (last visited May 5, 2009).
[2] DAVID PIETRUSZA, JUDGE AND JURY: THE LIFE AND TIMES OF JUDGE KENESAW MOUNTAIN LANDIS 168 (1998) [hereinafter PIETRUSZA, JUDGE & JURY]; J.G. TAYLOR SPINK, JUDGE LANDIS & TWENTY-FIVE YEARS OF BASEBALL 72 (1947) [hereinafter SPINK, 25 YEARS OF BASEBALL].
[3] SPINK, 25 YEARS OF BASEBALL, *supra* note 2, at 16.
[4] *See id.* at 76.
[5] Shayna M. Sigman, *The Jurisprudence of Kenesaw Mountain Landis*, 15 MARQ. SPORTS L. REV. 277, 304 (2005) (recognizing that in both positions, Landis had the power "to summon witnesses, order the production of documents, and impose penalties in the face of a refusal to appear or produce.") [hereinafter Sigman, *Jurisprudence*].

Court of Appeals and the Supreme Court of the United States, whereas in baseball, Landis himself was the ultimate decisionmaker on any matter – the court of last, and only, resort.

Landis was not an incredibly prolific judge, publishing only sixteen opinions and one concurrence over his seventeen years on the bench.[6] During the final four years of his judgeship – two of which overlapped with his commissionership – Landis did not publish any opinions.[7] The District Judge's caseload slowed down noticeably after he decided to retain his federal position while also moonlighting as the commissioner of baseball.[8] That a federal judge would hold a secondary occupation offering substantially more compensation than the government made Landis the subject of Congressional impeachment hearings and criticism from the American Bar Association ("ABA").[9] The Congressional and ABA investigations of Landis' behavior inspired the ABA to adopt its first Canons of Judicial Ethics in 1924, which is probably the man's most lasting contribution to the judiciary.[10]

This paper aims at reconciling the procedures and decisions of Judge Landis with those of Commissioner Landis. The groundwork is laid by examining Landis' conduct on the bench and his reputation among legal scholars, the press, and the general public. His judicial opinions (and the reversals from appellate courts) are then examined, both to provide insight into the trial judge's jurisprudence and decision-making process and to establish a basis for his subsequent rulings as the commissioner of baseball. The focus then turns to Landis' handling of the *Federal League* case, which although not an incredibly prominent legal issue at the time, introduced Organized Baseball to the federal judge. This segment also serves as a segue into the discussion

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[6] The concurring, as well as two other, opinions were written on behalf of the Seventh Circuit, where Landis occasionally sat. *See, e.g.*, Winter v. Bostwick, 212 F. 884 (7th Cir. 1913).
[7] His final published opinion was Ex Parte Tinkoff, 254. F. 222 (N.D. Ill 1918).
[8] *Conduct of Judge Kenesaw Mountain Landis: Hearings Before the H. Comm. on the Judiciary*, 66th Cong. 17 (1921) (statement of Benjamin F. Welty) [hereinafter *Conduct of Landis Hearings*]. At the time of the impeachment hearings, Welty noted that 3,738 cases were pending before the judge's district. *Id.*
[9] PIETRUSZA, JUDGE & JURY, *supra* note 2, at 204-06; *see generally Conduct of Landis Hearings*, *supra* note 8.
[10] *See* JOHN P. MACKENZIE, THE APPEARANCE OF JUSTICE 180 (1974).

about the importance of the judiciary in Landis' path to becoming baseball's highest authority and how that set forth a chain of events that culminated in the first Canons of Judicial Ethics. This paper concludes by revealing the pervasive influence of the judiciary upon Commissioner Landis and determining his legacy both to baseball and the judiciary.

## II. JUDGE LANDIS ON THE BENCH

### A. The Judge's Approach and Reputation

Kenesaw Mountain Landis had a somewhat unorthodox approach to the judiciary, which was immediately apparent to anyone setting foot in his courtroom. The judge's disregard of various court formalities was well known: he never wore a robe, eschewed the courtroom from rising for his entrance, and would even provide spittoons for defendants who chewed tobacco.[11] Yet it was the judge's antics on the bench, as opposed to his relative informality, that earned him a reputation as a "character."[12]

Labeling Judge Landis a 'hot bench' would be an understatement, which helps to explain his popularity among reporters. A contemporary *Chicago Herald* article on one of Landis' cases noted that the judge "did the prosecuting, the defending, the questioning . . . he [even] bullied when necessary" to get information out of a witness.[13] Such a comprehensive approach to trials expanded when Landis became the commissioner of baseball, where absolute power allowed him to serve as "the prosecutor, defense attorney, judge, and jury" of all matters that came before his

[11] PIETRUSZA, JUDGE & JURY, *supra* note 2, at 122-23. While permitting spittoons earned the judge praise from one newspaper for his "human understanding," *id.*, the use of spittoons in courtrooms was not uncommon, as "the spittoon was a staple of the court system" from the mid-nineteenth century through the early twentieth century. Walter Carroll, Jr., *The Rise and Fall of the Spittoon in the Practice of Law*, 53 LA. B.J. 320 (2006).

[12] SPINK, 25 YEARS OF BASEBALL, *supra* note 2, at 16. For instance, he often "interrupt[ed] proceedings with bits of humor or pathos." *Id.*

[13] PIETRUSZA, JUDGE & JURY, *supra* note 2, at 104. One court reporter later said that "people always crowded into [Landis'] courtroom, knowing there would be something going on. There were few dull moments." SPINK, 25 YEARS OF BASEBALL, *supra* note 2, at 26.

office.[14] The District Judge considered it "the duty of the court to get at the substance of the thing" at issue in any trial, and the means used by Landis to ensure the revelation of all material facts reflected what he considered necessary and appropriate for the administration of justice.[15]

Nevertheless, other judges were often critical of his approach to the bench and "accused him of violating the dignity of the judiciary . . . and [being] a man who would do most anything to make the front page."[16] Landis' own statements indicated otherwise, however, as he expressed "a deep conviction of the duty of [his] office; it is the position and not its occupant that should mean the most to the public."[17] This was an accurate impression, as the importance of the judiciary to the public was quite influential in Landis' appointment to baseball's highest position at a time when the sport needed to convince people of its integrity.

But the tactics used by the judge to get desired information from witnesses frequently involved humiliation and other means of pressure – means which inevitably put the jurist in the public spotlight.[18] Critics of Landis and appellate courts often regarded his decision-making and behavior during court as "arbitrary," and one opponent complained that Landis "regarded his courtroom as his personal private preserve and even extended his autocracy to the corridors beyond."[19]

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[14] Jason M. Pollack, Note, *Take My Arbitrator, Please: Commissioner "Best Interests" Disciplinary Authority in Professional Sports*, 67 FORDHAM L. REV. 1645, 1653 (1999) [hereinafter Pollack, *Take My Arbitrator*].
[15] *See* Holmes v. Dowie, 148 F. 634, 638 (N.D. Ill. 1906) (referring to the importance of clarifying all the relevant facts for determination by the factfinder).
[16] SPINK, 25 YEARS OF BASEBALL, *supra* note 2, at 16; *Baseball: A Film by Ken Burns: Inning 3 – The Faith of Fifty Million People* (PBS television broadcast Sept. 20, 1994) (videotape on file with author) (referring to Landis as a "Federal judge with a reputation for willful independence equaled only by his flair for self-promotion . . .") [hereinafter Burns, *Baseball*].
[17] PIETRUSZA, JUDGE & JURY, *supra* note 2, at 72.
[18] SPINK, 25 YEARS OF BASEBALL, *supra* note 2, at 27. *See also* Jones v. United States, 209 F. 585 (7th Cir. 1913) (reversing and criticizing a decision by Landis to hold a defendant in contempt of court for alleged, but unproven perjury).
[19] SPINK, 25 YEARS OF BASEBALL, *supra* note 2, at 26.

One lawyer accused the judge of being "a prosecutor from the bench" who had poisoned the minds of the jury against his client.[20] The lawyer's accusation appears to have been meritless, however, as the Seventh Circuit upheld the trial court's conviction and did not mention any questionable conduct on the trial judge's behalf whatsoever.[21] The *Grey* case helps demonstrate that Landis' reputation and departures from convention often preceded him. Thus, much of the criticism of Landis may have been focused more on his personality and aggressive style rather than misconduct or departure from justice.[22] Indeed, Landis was never the subject of investigation until he began quintupling his judicial salary by moonlighting as the commissioner of baseball.

Nevertheless, the judge took all criticism in stride, professing his belief that "no official act of any functionary is, or ought to be, above investigation, and . . . no wrong on this earth is too sacred to be condemned."[23] Of course, this view directly contrasts with Landis' subsequent mandate that all his decisions as commissioner of baseball be beyond reproach.

B. *Standard Oil* and National Prominence

As with all judges, the written opinions of Kenesaw Mountain Landis provide insight into his decision-making process. The District Judge used these opinions both to explain how he arrived at a certain ruling and to legitimize his decisions to the public.[24] Landis' judicial writing also provides a starting point for understanding his rulings as the commissioner of baseball.

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[20] PIETRUSZA, JUDGE & JURY, *supra* note 2, at 90.
[21] Grey v. United States, 172 F. 101 (7th Cir. 1909).
[22] Although some criticized Landis for proceeding in an apparently prejudicial fashion, he earned praise from others for his ability to conduct a fair trial under even the most strenuous circumstances. SPINK, 25 YEARS OF BASEBALL, *supra* note 2, at 124.
[23] PIETRUSZA, JUDGE & JURY, *supra* note 2, at 91.
[24] Sigman, *Jurisprudence*, *supra* note 5, at 287.

Landis brought a pragmatic approach both to the bench and baseball,[25] which he blended with a sense of moral intuition. A prominent Chicago lawyer once said of Landis: "Don't make book on him following the law, no matter how clearly it seems written. He calls them as his conscience sees them."[26] While this generalization may have been quite applicable to Landis' approach to sentencing – "it was often said of Landis that while he could be almost sentimentally lenient . . . he could be one of the toughest judges in all the United States courts"[27] – reading his published opinions reveals close analysis of the statutes at issue in his cases, although the judge typically focused on the purpose of a particular law over the language itself.[28]

In 1907, Judge Landis earned national attention while presiding over a case where Standard Oil was charged with illegally accepting rebates for railway transportation. Landis actually wrote two opinions with regard to this case – first rejecting the defendant's motion for a demurrer[29] and later levying a $29,240,000 fine upon John D. Rockefeller's company.[30] These opinions exemplify how Landis generally created a sense that his ruling was not only inevitable, but also the only possible outcome given the facts of the case and the purpose of the law at issue.[31]

Landis' handling of the demurrer indicated how he would preside over the trial. The language he used to dismiss the defense's suggestion that the purpose of the law at issue (the "Elkins' law") was merely to prohibit indirect methods of preferential treatment (as opposed to the blatant preferential treatment that Standard Oil was accused of receiving) presents Landis' understanding as the *only* rationale construction of the statute: "[U]ntil this argument was

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[25] *Id.* at 277.
[26] PIETRUSZA, JUDGE & JURY, *supra* note 2, at 43.
[27] SPINK, 25 YEARS OF BASEBALL, *supra* note 2, at 97.
[28] *See* Sigman, *Jurisprudence*, *supra* note 5, at 290-92.
[29] United States v. Standard Oil Co., 148 F. 719 (N.D. Ill. 1907) [hereinafter Standard Oil I].
[30] United States v. Standard Oil Co. of Ind., 155 F. 305 (N.D. Ill. 1907) [hereinafter Standard Oil II].
[31] Sigman, *Jurisprudence*, *supra* note 5, at 291.

advanced here, the court had supposed that *everybody agreed* that . . . Congress was trying . . . to secure uniform freight rates, and that the various prohibitions and penalties were imposed to accomplish that result."[32] The judge made his opinion painstakingly clear that "[i]t is written in every section and line of the law that the thing sought by Congress was a fixed rate, absolutely, unvaryingly uniform . . . The thing prohibited was departure from that rate by any means whatsoever."[33] Landis adhered quite strongly to this view, having written in a prior rebate case that "No rate can possibly be reasonable that is higher than anybody else has to pay."[34] Punctuating the denial of the demurrer, Landis not only characterized the defendants' interpretation of the law as "inconceivable," but also considered a dismissal of the case on grounds that a newer and stricter law had superseded that under which Standard Oil was charged to be "absurd and unjust."[35]

The sentencing opinion treated Standard Oil even more harshly, as Landis derided the defendant's arguments as "impossible in practice [and] illogical in theory."[36] He considered the preferential treatment that Standard Oil had received from railway carriers an "abhorrent heresy" and wrote that the defendant's actions "wound society more deeply than does he who counterfeits the coin or steals letters from the mail."[37] Indicating the inevitability of the ruling and rationalizing his rejection of the defendant's arguments, Landis pointedly wrote that "candor obliges the court to say that he knows of nothing to support the proposition [that Standard Oil had a natural right to contract for a secret railway tariff] but the *eminence* of counsel who advance it."[38] The judge's sarcastic dealing with the defense's arguments left no doubt as to the

[32] Standard Oil I, 148 F. at 720-21 (emphasis added).
[33] *Id.* at 721.
[34] United States v. Chi. & A. Ry. Co., 148 F. 646, 648 (N.D. Ill. 1906).
[35] Standard Oil I, 148 F. at 726.
[36] Standard Oil II, 155 F. at 310-11.
[37] *Id.* at 310, 319.
[38] *Id.* at 309 (emphasis added).

disdain that he held for Standard Oil's rebate practices. Of course, while such transparency into Landis' mindset was characteristic of his time on the bench and helped endear him to the press, it also occasionally opened up the judge to criticism for bias.[39]

Landis devoted the bulk of the *Standard Oil* opinion to rationalizing the substantial fine that he had levied upon the defendant – the largest fine ever handed out in an American court at that time.[40] While the practices of the Standard Oil Co. of Indiana were on trial, Landis set his sights on its parent company, Standard Oil of New Jersey, and exhausted significant effort in subpoenaing and bringing John D. Rockefeller into his Chicago courtroom for testimony.[41] Although the New Jersey company's practices were not on trial, Landis used its refusal to provide evidence that it had never before received rebates to explain his own inability "to indulge the presumption that in this case the defendant was convicted of its virgin offense."[42] That Standard Oil was probably a repeat offender helped justify the substantial fine.

The judge's zealous pursuit of Rockefeller and his willingness to pierce the corporate veil earned him national publicity and helped solidify his reputation as a "trust-buster."[43] His triumph was short-lived, however, as Standard Oil appealed its hefty fine, and the Seventh Circuit unanimously reversed the trial court's ruling, heaping much criticism upon the trial judge in the process.[44] The primary basis for error was Landis' jury instruction that the defendant's knowledge of the published tariff rates was irrelevant.[45] Yet the Seventh Circuit reserved its most pointed attacks for the fine that the trial judge had imposed upon Standard Oil. Landis' decision to treat each individual railway car receiving a rebate as a separate violation, rather than

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[39] *See, e.g.*, Berger v. United States, 255 U.S. 22 (1921).
[40] PIETRUSZA, JUDGE & JURY, *supra* note 2, at 63.
[41] *Id.* at 53-59; Standard Oil II, 155 F. at 319 ("The nominal defendant is the Standard Oil Company of Indiana . . . [t]he Standard Oil Company of New Jersey . . . is the real defendant.").
[42] Standard Oil II, 155 F. at 318-19.
[43] Sigman, *Jurisprudence*, *supra* note 5, at 295.
[44] Standard Oil Co. of Ind. v. United States, 164 F. 376 (7th Cir. 1908) [hereinafter Standard Oil III].
[45] *Id.* at 383.

focusing on the transactions, was derided by the Court of Appeals as "wholly arbitrary – [it] had no basis in any intention or fixed rule discoverable in the statute."[46] The trial court's actual sentencing of the defendant was deemed "wholly because of other facts, wholly outside the record."[47] The final criticism of Judge Landis focused upon his approach to sentencing in general, likening his punishment of the Standard Oil Company of New Jersey with "no other basis than the judge's *personal belief* that the party marked by him for punishment deserves punishment" to the actions of a judge considering himself to be "above the law."[48]

C. Landis and Sentencing

Moral outrage had permeated Landis' handling of the Standard Oil case – morality which seemed to be a constant guidepost for the judge both during his tenure on the federal bench and as commissioner of baseball.[49] Yet the Seventh Circuit seemed as outraged with Landis' disposal of the case as the trial judge had been with Standard Oil's rebate practices. Convinced of his correctness in the matter, Landis shrugged off the unanimous reversal, saying that even though the fine did not hold up, "The imposition of that fine called attention to and ended abuses which could not otherwise have been corrected."[50] *Standard Oil* reflected Landis' tendency to significantly penalize powerful and wealthy individuals, while treating those of more modest means with relative lenity. Such treatment indicated, as one biographer noted, that the judge's "sympathies invariably were with the little fellow and the underdog."[51] Thus, despite his reputation for unpredictability, Landis frequently meted out punishment according to those sentiments.

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[46] *Id.* at 386.
[47] *Id.* at 387.
[48] *Id.* at 389 (emphasis added).
[49] *See* Sigman, *Jurisprudence*, *supra* note 5, at 293.
[50] SPINK, 25 YEARS OF BASEBALL, *supra* note 2, at 20.
[51] *Id.* at 74.

Landis held veterans in particularly high regard, often treating former servicemen or their widows "with great clemency."[52] On the other hand, the judge had a reputation as "the scourge of the disloyal" and, during the first World War, dealt quite harshly with defendants accused of either evading the draft or hampering the American war effort.[53] But Judge Landis' sense of patriotism was evident long before the Great War. One of his earliest cases had involved a property and leadership dispute concerning Zion City, which was effectively a Christian cult. While the bulk of his written opinion colorfully detailed the inevitability and rationality of his ruling,[54] Landis also could not resist resolving any lingering doubts as to his personal opinion of the parties involved, focusing on an unpatriotic oath taken by the cult's members: "It is not my duty to express my contempt for the man that could enact or take this oath, but I am not obliged to repose confidence in a man so constituted that, living in this republic, he could serenely vow his readiness at all times to abandon his family and *betray his country*."[55] As part of the court decree in the *Holmes* case, Landis – not without a sense of irony – denied the plaintiff's bid to be declared the leader of Zion City and ordered democratic elections by all members of the relevant community, which had been so eager to disclaim American values.[56]

During the war, Judge Landis tried to ensure that parties coming before his court were doing their best to aid the American troops. One journalist even observed that the judge's "charges to juries were dangerously similar to patriotic addresses,"[57] which could be prejudicial to a defendant whose loyalty to the United States was in question. In *Ex parte Tinkoff*, the judge

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[52] *Id.* at 25.
[53] PIETRUSZA, JUDGE & JURY, *supra* note 2, at 124.
[54] Holmes v. Dowie, 148 F. 634, 638 (N.D. Ill 1906) (arguing that the church leader could not claim donations as his personal property because "It is just as if a contributor sitting in a church pew had placed the funds on the collection plate passed to him by a deacon. Surely in such case the court would not decree that the parson might put the money in his pocket . . . merely because the contributor had failed to . . . exact a pledge of trusteeship from the pulpit."), 640 ("[F]or this court to enter a decree of private ownership would be to perpetrate a fraud.").
[55] *Id.* at 640-41 (emphasis added).
[56] *Id.* at 641.
[57] PIETRUSZA, JUDGE & JURY, *supra* note 2, at 112.

denied the petitioner's motion for habeas corpus to get an exemption from military service by finding that "voluntary subsequent action [to registration] on [the petitioner's] part cannot operate to defeat the government's right to his services."[58] In another case, the judge ordered the deportation of 37 draft evaders for "moral turpitude."[59] Landis also presided over the trial of 113 members of the Industrial Workers of the World in a politically-charged case that saw the judge receive a bomb in the mail from supporters of the defendants.[60] Despite being commended for giving the defendants a fair trial,[61] Landis nonetheless levied a harsh combination of fines and imprisonment upon the convicted parties, justifying the penalty with his acknowledgement that the substantial evidence had left the jury with "no avenue of escape from its verdict."[62] This time, the Seventh Circuit upheld the conviction, although the court did soften the sentence imposed by Judge Landis because part of the conviction amounted to double punishment for the defendants.[63]

But in another prominent case, the Supreme Court ruled that the trial judge's unabashed patriotism rendered him sufficiently biased against the defendants to overturn their conviction.[64] At trial, Landis had denied the defendants' motion to assign the case to another judge on account of bias and sentenced them each to twenty years in prison for violating the Espionage Act.[65] The defendants, only one of whom was actually born in Germany, believed that Landis would be biased against them and incapable of fairly and impartially presiding over the case; the defense accused the judge of previously stating that "One must have a very judicial mind, indeed, not to

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[58] 254 F. 222 (N.D. Ill. 1918) (denying a writ of habeas corpus for a party that had gotten married after registering for military service).
[59] PIETRUSZA, JUDGE & JURY, *supra* note 2, at 113.
[60] *Id.* at 148.
[61] *Id.* at 124 (citing a Socialist news reporter who wrote that Landis gave the defendants "the fairest trial it was possible to get under the capitalist system.").
[62] Sigman, *Jurisprudence*, *supra* note 5, at 301.
[63] Haywood v. United States, 268 F. 795, 799 (7th Cir. 1920).
[64] *See* Berger v. United States, 255 U.S. 22 (1921).
[65] *Id.* at 27.

be prejudiced against the German-Americans in this country. Their hearts are reeking with disloyalty."[66] The Supreme Court found these concerns to be "substantial and formidable [because of their] relation to the attitude of Judge Landis' mind towards the defendants," and reversed the conviction.[67] The case was remanded to the District Court for handling by another judge because "Judge Landis had no lawful right or power to preside as judge on the trial."[68] It did not matter that Landis believed he could set his biases aside when handling the case – the defendants' affidavit evidencing their grounds for suspecting judicial bias had created a "duty" (ignored by Landis) to not continue with the case.[69]

D. Criticism from the Legal Arena

Notwithstanding the frequent criticism that legal experts and appellate courts heaped upon him for exceeding his authority, Landis' harsh treatment of and willingness to stand up to powerful defendants gave him a trustworthy reputation among the public.[70] His unique approach to the bench was thus both his greatest asset and liability. One critic noted that "By his fantastic conduct and drastic decisions . . . [Landis] saw most of his major judgments overruled on appeal."[71] Some considered Landis a "showboat judge" and derided him as the "kind of guy who gets a lot of headlines and then all his decisions are overturned."[72]

Judge Landis was not one to waver on his decisions or publicly recognize the complexity of an issue. Whereas he would bluntly explain his decisions by presenting the facts and law in a manner which conveyed the impression that no rational person could have possibly ruled

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[66] *Id.* at 28.
[67] *Id.* at 34.
[68] *Id.* at 36.
[69] *Id.* at 35. In dissent, Justice Day argued that Landis' actual statement differed from that alleged in the affidavit and was taken out of context. Thus, the trial judge's decision that the facts did not sufficiently establish a disqualifying bias should have been sufficient. *Id.* at 39-41 (Day, J., dissenting).
[70] PIETRUSZA, JUDGE & JURY, *supra* note 2, at 106.
[71] SPINK, 25 YEARS OF BASEBALL, *supra* note 2, at 28.
[72] Burns, *Baseball*, *supra* note 16.

otherwise, appellate courts frequently used similar language and directness in reversing the trial judge. The Seventh Circuit once overturned a conviction because Landis had permitted a search warrant on a bare affidavit, without "facts or circumstances to which the judge could apply the legal standard and decide[] that there was probable cause for the affidavit's belief."[73] In a bankruptcy case, the trial judge's decision to allow a creditor to file an exception to the debtor's report after the deadline for filing had passed was quickly overruled: "the District Court had no discretion to extend the time for presenting exceptions to the trustee's report."[74]

These cases reflect that Landis' conduct in *Standard Oil* was not an aberration, but rather in line with a pattern of presiding in a manner that the Seventh Circuit often found "arbitrary" or based solely on his subjective whims.[75] The common tone of the reversals indicated that Judge Landis was ruling so as to create the best result, rather than according to the law. Often accused of abusing his discretion, the trial judge was twice overturned by the Seventh Circuit for improperly holding parties in contempt. In one case, Landis concluded that a witness had perjured himself on the stand, but the appellate court ruled that the trial court's "mere inferences . . . [are] without force to overcome the presumption of innocence."[76] In *Freed v. Central Trust Co. of Illinois*, the Seventh Circuit simply found that Landis had "no legal power" to hold the defendant in contempt without proof that the defendant was actually capable of complying with his legal obligations.[77] Familiar with Landis' unconventional style, appellate courts attempted to reign him in when possible, writing in one reversing opinion that while trial courts are given much discretion, "discretion (which must be *legal discretion, not merely the individual view or*

[73] Veeder v. United States, 252 F. 414, 419 (7th Cir. 1918).
[74] In re Krecun, 229 F. 711, 714 (7th Cir. 1916). A significant portion of appellate reversals of Landis' trial rulings came in bankruptcy and patent cases. *See, e.g.*, Nat'l Dump Car Co. v. Pullman Co., 228 F. 122 (7th Cir. 1915); In re Hamilton Auto. Co., 209 F. 596 (7th Cir. 1913).
[75] *See infra*, note 46.
[76] Jones v. United States, 209 F. 585, 589 (7th Cir. 1913).
[77] 215 F. 873, 876 (7th Cir. 1914).

*will of the particular chancellor*) does not extend to a refusal to apply well-settled principles of law to a conceded or indisputable state of facts."[78]

Throughout his judgeship, Landis never ceased conducting his court in his own fashion, although he did seem to resent the fact that his decisions were not the ultimate authority in matters, particularly when it came to meting out punishment. Upon learning that President Woodrow Wilson had commuted a maximum sentence of a millionaire cattle rancher convicted of selling diseased cattle, Landis responded by placing no penalty whatsoever upon a man convicted of stealing sugar, rationalizing that if the former was not subject to punishment, then neither should the latter, who was guilty of a much lesser crime.[79] These two cases also exemplify Judge Landis' tendency to be as harsh on privileged defendants as he was lenient on those of lesser means.

Landis used a simplistic portrayal of the law and facts to show the appellate courts that even if he was not following the established law in making his decisions, he was nevertheless ruling appropriately and serving justice. The District Judge's conscience-based approach to the bench, while often criticized by the legal community, gave him a reputation among the public as a judge who ruled fairly and found the morally appropriate outcome. This reputation largely resulted from heavy-handed rulings against powerful parties and leniency toward those of lesser means. Relying on this common knowledge, the Federal League, an upstart independent baseball league in competition with the large industry that was then known as Organized Baseball, filed an antitrust suit in Landis' court in 1915.[80]

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[78] Winchester Repeating Arms Co. v. Olmsted, 203 F. 493, 494 (7th Cir. 1913) (reversing Landis' denial of a preliminary injunction in a patent infringement case).
[79] SPINK, 25 YEARS OF BASEBALL, *supra* note 2, at 25.
[80] *See* PIETRUSZA, JUDGE & JURY, *supra* note 2, at 154.

## III. THE FEDERAL LEAGUE CASE

The substance of the Federal League's claim was that Organized Baseball was a monopoly in violation of the Sherman Antitrust Act.[81] Trying to compete with Organized Baseball, the Federal League had attempted to lure players out of their existing contracts, to which Organized Baseball responded by threatening to sue and blackball any player who opted out of his old contract to play in the Federal League.[82] Attacking Organized Baseball as a trust in violation of the Sherman Act was not a completely novel idea: in 1912, an Illinois Congressman had put a resolution before the House of Representatives to investigate what he called "the most audacious and autocratic trust in the country."[83]

Notwithstanding the fact that both baseball leagues were headquartered in Chicago, the Federal League knew of Landis' prior harsh dealings with large trusts and anticipated a favorable disposition from the judge.[84] But the Federal League did not realize that Judge Landis was also an ardent baseball fan who did not want to see any harm come to the game.[85] Indeed, considering his own substantial interest in the outcome of the case and the manner in which he conducted the trial, the most appropriate measure for the judge may have been a recusal.[86] Judge Landis, however, was not one to willingly recuse himself from a case, even where there was a

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[81] *Id.* at 155.
[82] SPINK, 25 YEARS OF BASEBALL, *supra* note 2, at 32.
[83] *Would Investigate 'Baseball Trust': Representative Gallagher of Illinois Urges Action in Resolution to Congress*, N.Y. TIMES, Mar. 12, 1912, at 10, *available at* http://query.nytimes.com/gst/abstract.html?res=9805E7DB143CE633A25751C1A9659C946396D6CF.
[84] *See* SPINK, 25 YEARS OF BASEBALL, *supra* note 2, at 29; PIETRUSZA, JUDGE & JURY, *supra* note 2, at 154; Sigman, *Jurisprudence*, *supra* note 5, at 296.
[85] Burns, *Baseball*, *supra* note 16 ("The presiding judge was said to be death on trusts, but he was also a baseball man.").
[86] HAROLD SEYMOUR, BASEBALL: THE GOLDEN AGE 212-13 (1960) ("Never one to permit judicial impartiality to interfere with his personal biases and leanings, Landis then proceeded to take the case under advisement and stall it a full year . . . [F]rom a purely legal point of view, the judge's conduct fell short of that disinterestedness in interpreting the law that is to be expected from the bench.") [hereinafter SEYMOUR, BASEBALL].

possibility of bias.[87] Disqualification, however, was never a serious issue, since Landis had no personal or financial interest in the outcome of the case in 1915. At that point, he was just a fan of the game.

Landis expedited the Federal League case, hearing arguments just two weeks after the action was filed, which was significantly quicker than his usual timeframe.[88] He wanted the issue resolved amicably, informing the parties that "Both sides must understand that any blows at the thing called baseball would be regarded by this court as a blow to a national institution."[89] The judge continuously hammered this sentiment into both parties throughout arguments and provided a clear window into his interpretation of the law by asking at one point, "Do you realize that a decision in this case may tear down the very foundations of this game, so loved by thousands, and do you also realize that the decision might also seriously affect both parties?"[90]

Judge Landis' conduct throughout the trial revealed his personal reluctance to rule against Organized Baseball, but he essentially conveyed to both parties his impression that Organized Baseball was indeed an illegal trust.[91] For Landis, there was only one solution that could reconcile his legal principles with his love for baseball: he made no ruling whatsoever, choosing instead to wait for the parties to settle the case.[92]

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[87] *See* Berger v. United States, 255 U.S. 22, 36 (1921). Additionally, in one of his first major cases, Landis presided over a trial in which his brother-in-law was a member of the board of one of the parties. PIETRUSZA, JUDGE & JURY, *supra* note 2, at 41.

[88] SPINK, 25 YEARS OF BASEBALL, *supra* note 2, at 33. Landis hoped to resolve the matter before the start of the upcoming baseball season. *Id.*

[89] *Id.* at 35.

[90] *Judge Landis May End Baseball War*, N.Y. TIMES, Apr. 27, 1915, at 10, *available at* http://query.nytimes.com/gst/abstract.html?res=990DEFDE1338E633A25754C2A9629C946496D6CF.

[91] *See* Sigman, *Jurisprudence*, *supra* note 5, at 297 ("The Federal League case created tension between the outcome Landis desired – Organized Baseball must win – and the process Landis employed – rejecting formal distinctions in an activist way, critically examining the economic reality of the situation, and relying on Progressive principles of moral justice.").

[92] SPINK, 25 YEARS OF BASEBALL, *supra* note 2, at 54 ("Instead of giving a decision according to the law involved, which might have been disastrous, he urged the warring parties to get together . . .").

Baseball fans feared the courts would find Organized Baseball's contracts inequitable and accordingly rule that baseball was an illegal trust, which would have caused the game irreparable harm.[93] But it only took a few months without a decision for the Federal League to realize that Landis had no intention of making a ruling adverse to Organized Baseball, which also meant that there would be no ruling whatsoever since the judge appeared to believe that there was a Sherman Act violation.[94] Even Organized Baseball's lawyers realized that Landis was a judge who would let his conscience, rather than the law, dictate a case's resolution.[95] By August 1915 – less than six months after the hearing of arguments – the Federal League had decided to "proceed without any regard for the possibility [of] a decision being handed down by Judge Landis . . . [and] as though the baseball situation was not in the courts at all."[96] The case finally settled a few months later, with Organized Baseball effectively buying out the Federal League.[97]

Landis' handling of the Federal League case, although not what either party expected, brought the judge to the attention of baseball officials and fans alike, many of whom believed that his decision to make no decision and let the leagues settle the matter themselves actually saved the game from what would have undoubtedly been a ruling against the trust that was Organized Baseball.[98] While the settlement turned out to be the death knell for the Federal League, it did not fully dispose of the case. Whereas most Federal League teams either accepted buyouts from or merged with Organized Baseball in the Peace Agreement, the Baltimore club refused to participate in the agreement and pursued a new antitrust suit in the District of

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[93] *Id.* at 39.
[94] *Won't Wait For Landis*, N.Y. TIMES, Aug. 5, 1915, at 9, *available at* http://query.nytimes.com/gst/abstract.html?res=9E07E7DE103CE333A25756C0A96E9C946496D6CF.
[95] SEYMOUR, BASEBALL, *supra* note 86, at 231 (quoting a lawyer who claimed "This particular court is very jealous of its prerogatives and has decided notions on what ought to be done.").
[96] *Id.*
[97] SPINK, 25 YEARS OF BASEBALL, *supra* note 2, at 38-39. Known as the "Peace Agreement," the merger resulted in the dissolution of the Federal League in December 1915. Nat'l League of Prof'l Baseball Clubs v. Fed. Baseball Club of Balt., 269 F. 681, 682 (D.C. Cir. 1921).
[98] SPINK, 25 YEARS OF BASEBALL, *supra* note 2, at 39.

Columbia Circuit that reached the Supreme Court.[99] In a ruling that likely both surprised and vindicated Landis, Justice Holmes wrote for the Court that baseball was not a monopoly in violation of the Sherman Act because it did not involve interstate commerce.[100] Baseball was not considered interstate commerce because "The business is giving exhibitions of base ball, which are purely state affairs . . . the transport [of teams across state borders for games] is a mere incident, not the essential thing."[101] That decision marked the foundation for baseball's antitrust exemption, which continues to this day.[102]

## IV. THE JUDGE BECOMES THE COMMISSIONER

### A. The Prestige of the Judiciary

While the manner in which Judge Landis handled the Federal League case may have temporarily saved Organized Baseball from destruction at the hands of the Sherman Act, the sport encountered a substantially more serious problem – at least in the public eye – a few years later with the revelation that the Chicago White Sox had conspired with gamblers to throw the 1919 World Series, in what came to be known as the "Black Sox" scandal. The timing of the scandal was particularly troublesome for baseball because it broke in the wake of the Baltimore Federal League team's antitrust claim, after the D.C. trial court had ruled that Organized Baseball was indeed an illegal trust, and the case was pending appeal.[103] The combination of the seemingly uphill legal battle in the antitrust suit with the public loss in confidence of the integrity of baseball games had the potential to destroy the national pastime.

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[99] Nat'l League of Prof'l Baseball Clubs, 269 F. at 682, *aff'd*, 259 U.S. 200 (1922).
[100] Fed. Baseball Club of Balt. v. Nat'l League of Prof'l Baseball Clubs, 259 U.S. 200 (1922).
[101] *Id.* at 208-09.
[102] Sigman, *Jurisprudence*, *supra* note 5, at 296; *see also* Toolson v. New York Yankees, Inc., 346 U.S. 356, 357 (1953) (reaffirming *Fed. Baseball Club of Balt.* to the extent that it determined "Congress had no intention of including the business of baseball within the scope of the federal antitrust laws.").
[103] ELIOT ASINOF, EIGHT MEN OUT: THE BLACK SOX AND THE 1919 WORLD SERIES 199 (1963) [hereinafter ASINOF, EIGHT MEN OUT]. The Court of Appeals reversed the trial court. Nat'l League of Prof'l Baseball Clubs, 269 F. at 681.

As rumors of the World Series fix began spreading, Judge Landis' name arose as a possible arbitrator for the sport, largely because of his handling of the Federal League antitrust suit a few years earlier.[104] Baseball's owners recognized that the game would be doomed if the public was unconvinced that the games were honest affairs.[105] The sport needed an authoritative figure to rid the game of all impropriety and ensure its integrity. Thus, baseball turned to the judiciary, not only considering Landis, but also Charles McDonald – the judge who had presided over the grand jury indictment of the eight White Sox players accused of throwing the World Series – and former President William H. Taft, amongst others, as proper candidates to preside over and fix the game.[106] The parties eventually settled upon Judge Landis, the man of whom *The Sporting News* had written in 1915, when many feared that the antitrust claim could ruin baseball: "He is a dyed-in-the-wool fan . . . and the game is safe in his hands."[107]

The owners selected Landis as baseball's first commissioner largely due to the reputation he had earned on the bench for applying what he believed to be the just result.[108] His eagerness to go after a magnate as powerful as John D. Rockefeller impressed upon the owners that the judge would not be star-struck or shrink in the face of imposing serious penalties upon the game's most famous players. Baseball was interested in Landis as the new commissioner precisely because of his status as a federal judge, with one proponent claiming: "A man like

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[104] ASINOF, EIGHT MEN OUT, *supra* note 103, at 134.
[105] *Conduct of Landis Hearings*, *supra* note 8, at 5 (statement of Benjamin F. Welty) (charging that baseball should not be permitted to infiltrate the judiciary simply to "again gain the confidence of the public.").
[106] SPINK, 25 YEARS OF BASEBALL, *supra* note 2, at 64. Taft had not yet been appointed to the Supreme Court, but while serving as Governer General of the Philippines before becoming President, he had introduced baseball to the islands. *Ask Taft to Act as Baseball Head*, N.Y. TIMES, Nov. 24, 1918, *available at* http://query.nytimes.com/gst/abstract.html?res=9C06E1DA1239E13ABC4C51DFB7678383609EDE. Taft became the first President to attend baseball's opening day in 1910. Burns, *Baseball*, *supra* note 16.
[107] SPINK, 25 YEARS OF BASEBALL, *supra* note 2, at 36.
[108] *Conduct of Landis Hearings*, *supra* note 8, at 29; SEYMOUR, BASEBALL, *supra* note 86, at 320 (arguing that baseball fans reacted favorably to Landis' appointment as commissioner because the judge "combined a trained judicial mind with a keen interest in baseball.")

Judge Landis who is a Federal Judge and accustomed to handling large business interests can certainly be trusted to administer any business Organized Baseball may give him."[109]

Even if Landis could not fully mend the game, the appointment of a prominent federal judge as commissioner was at least viewed as a step toward helping baseball regain some of the dignity that the Black Sox scandal had taken away.[110] For baseball's owners, giving a judge complete control over the game's affairs served as a "symbol that reassured the public of baseball's honesty and integrity."[111] Indeed, although underestimating just how much time this new position would demand of Landis, the owners wanted him to retain the judgeship because "much of Landis' prestige came from the fact that he was judge of an important Federal Court."[112] One owner summed it up perfectly: "K. M. Landis, lawyer, means nothing to organized baseball, but K. M. Landis, judge of the Federal court of the United States, was worth any price he might wish to ask."[113]

B. The New Commissioner and Judicial Impropriety

That baseball's owners were willing to permit – and even insist – Landis to remain on the bench was influential in his decision to accept the commissionership, as he was reluctant to relinquish his lifetime federal position.[114] Landis had frequently professed his love for the judiciary, proclaiming after the *Standard Oil* case in 1907: "I have the best position in the world. I would not give up judicial work for three times Mr. John D. Rockefeller's money."[115] Accordingly, the baseball owners made a very convincing pitch to the judge, not only offering

[109] PIETRUSZA, JUDGE & JURY, *supra* note 2, at 168.
[110] ASINOF, EIGHT MEN OUT, *supra* note 103, at 224 ("To the frightened owners, Landis's appointment would lend great dignity, if nothing else, to baseball.").
[111] SEYMOUR, BASEBALL, *supra* note 86, at 422.
[112] SPINK, 25 YEARS OF BASEBALL, *supra* note 2, at 72.
[113] *Conduct of Landis Hearings*, *supra* note 8, at 19 (statement of Benjamin F. Welty).
[114] PIETRUSZA, JUDGE & JURY, *supra* note 2, at 170.
[115] *Id.* at 76.

him a $50,000 per year salary – one that dwarfed his $7,500 judicial salary[116] – but also absolute power to control the game's affairs.[117] Indeed, the grant of supreme power over baseball, with the proviso that Commissioner Landis' decisions would not be challenged in court, was necessary, as Landis claimed he "wouldn't take this job for all the gold in the world unless I knew my hands were free."[118] Years of being subject to the scrutiny of two appellate courts no doubt instilled in the judge a desire for assurance that his decisions would be final and not subject to reversal. Thus, Kenesaw Mountain Landis had achieved "every showboat judge's dream, which is to be able to be a showboat and then have nobody say 'But you violated the law.' He was the law."[119]

While the baseball world welcomed Judge Landis' decision to double as Commissioner Landis, the federal legislature and judiciary viewed the development with serious concern. Not only would a significant portion of Landis' time and attention be diverted from his judicial duties, but his new position would also pay him substantially more money. Just a few months after Landis accepted the commissionership, Ohio Representative Benjamin F. Welty sought to impeach the judge, although the Attorney General had already informed the Congressman that Landis was not violating any laws.[120] This was a rare and extreme measure, as only six federal judges had been impeached at that point in American history, four of whom were convicted and removed from the bench.[121] Welty essentially accused Organized Baseball of attempting to bribe

[116] MACKENZIE, THE APPEARANCE OF JUSTICE, *supra* note 10, at 181. Landis' actual salary was $42,500, as he deducted his judicial salary from that which the baseball owners were willing to pay. SPINK, 25 YEARS OF BASEBALL, *supra* note 2, at 72.
[117] PIETRUSZA, JUDGE & JURY, *supra* note 2, at 173.
[118] *Id.* at 173-74.
[119] Burns, *Baseball*, *supra* note 16.
[120] *Conduct of Landis Hearings*, *supra* note 8, at 15 (statement of Benjamin F. Welty).
[121] *Id.* at 19.

the judiciary at a time when two significant cases (the antitrust suit and the criminal trial of the Black Sox players) were pending before American courts.[122]

Judge Landis was charged with "neglecting his official duties for another gainful occupation not connected therewith."[123] Using logical reasoning, the Congressman argued that since there was enough judicial work to occupy all of Landis' time, he must have been neglecting some of his duties by concurrently serving as the commissioner of baseball.[124] Even worse in the Congressman's eyes was the fact that Landis had become "the chief arbiter of a trust which was declared illegal and at [the baseball owners'] request remained on the Federal bench."[125] Although the Court of Appeals and Supreme Court would later rule against the notion that Organized Baseball was a trust,[126] permitting a judge with such a financial bias to remain on the bench seemed inappropriate. Indeed, a few weeks after the hearing, the House Judiciary Committee, although not continuing with the impeachment investigation, left the subject open for the next Congress and recognized that Welty's accusations, if proven, were indeed "inconsistent with the full and adequate performance of the duty of . . . Landis as a United States District Judge, and that said act would constitute a serious impropriety on the part of said judge."[127]

Landis may have avoided a complete impeachment investigation, but he was by no means in the clear, as the ABA set its sights on him next. But the ABA's hands were effectively tied, for a federal judge can only be removed from the bench by impeachment, and the Attorney General had already recognized that no law prevented the judge from supplementing his judicial

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[122] *Id.* at 4-5; *see also* PIETRUSZA, JUDGE & JURY, *supra* note 2, at 203.
[123] *Conduct of Landis Hearings*, *supra* note 8, at 5 (statement of Benjamin F. Welty).
[124] *Id.* at 18.
[125] *Id.*
[126] Nat'l League of Prof'l Baseball Clubs v. Fed. Baseball Club of Balt., 269 F. 681 (D.C. Cir. 1921), *aff'd*, 259 U.S. 200 (1922).
[127] *Condemns Landis Holding Two Posts*, N.Y. TIMES, Mar. 3, 1921, at 9, *available at* http://query.nytimes.com/gst/abstract.html?res=940CE6DD133CE533A25750C0A9659C946095D6CF.

salary with the commissionership of Organized Baseball. Thus, in 1921, the ABA only had power to censure Landis, which it did quite pointedly.[128] The resolution adopted by the ABA proclaimed that Landis' decision to accept the lucrative position of commissioner while retaining his judgeship "meets with our unqualified condemnation, as conduct unworthy of the office of Judge, derogatory to the dignity of the bench, and undermining public confidence in the independence of the judiciary."[129] The ABA did not stop there: recognizing the need for judicial guidelines, Landis' actions had provided ample motivation to create an official canon of judicial ethics.[130] For his part, Landis remained confident that he was guilty of no impropriety, arguing that "The public supports baseball, and the public is entitled in return to the best efforts of the players. If . . . I . . . leave the game as clean as it is today, I shall feel proud of my record and will feel that it offers ample refutation of the charge that it is undignified for a member of the judiciary actively to be associated with professional baseball."[131]

C. The 1924 Canons of Judicial Ethics

Christian ethics served as the guiding post for many early judges, and a formal canon of judicial ethics was first proposed in 1909.[132] Yet no particular event spurred the ABA into official action concerning the conduct of judges until Landis began working for Organized Baseball.[133] The Commission of Judicial Ethics, chaired by Chief Justice Taft, was given the

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[128] Andrew J. Lievense & Avern Cohn, *The Federal Judiciary and the ABA Model Code: The Parting of the Ways*, 28 JUST. SYS. J. 271, 273 (2007) [hereinafter Lievense & Cohn, *The Parting of the Ways*].
[129] *Bar Meeting Votes Censure of Landis*, N.Y. TIMES, Sept. 2, 1921, at 1, *available at* http://query.nytimes.com/gst/abstract.html?res=9504E5DA1439E133A25751C0A96F9C946095D6CF.
[130] *See* MACKENZIE, THE APPEARANCE OF JUSTICE, *supra* note 10, at 180 ("[B]aseball's 'Black Sox' scandal . . . fathered the first Canons of Judicial Ethics.").
[131] *Game Clean Today, Judge Landis Says*, N.Y. TIMES, June 22, 1921, at 20, *available at* http://query.nytimes.com/mem/archive-free/pdf?res=9E0CEFDB163BE533A25751C2A9609C946095D6CF.
[132] Lievense & Cohn, *The Parting of the Ways*, *supra* note 128, at 272.
[133] *Id.*

task of creating an ethical code for judges and ratified the first Canons of Judicial Ethics in 1924.[134]

While the 34 canons approved by the ABA were merely hortatory, with no enforcement mechanism or legal effect upon judges, it was nevertheless a start.[135] The Preamble explained that the Canons were merely "principles which *should* govern the personal practice of members of the judiciary in the administration of their office."[136] Although Landis had already resigned from the bench by the time the Canons were ratified, his conduct during the years in which he held two positions would have violated the new guidelines. Canon 4 – Avoidance of Impropriety – was particularly relevant to Landis' conduct: "A judge's official conduct should be free from impropriety and the appearance of impropriety . . . his personal behavior, not only upon the Bench and in performance of judicial duties, but also in his every day life, should be beyond reproach."[137]

That a judge must avoid even the *appearance* of impropriety implicated Landis. While there was no evidence that the judge conducted himself any less impartially during his time as baseball commissioner, Welty's accusations and the subsequent condemnation of both the House Judiciary Committee and the ABA made it clear that Landis' conduct at least *appeared* to be improper.[138] Subsequent Supreme Court decisions have reaffirmed the importance of Canon 4 by indicating that "eliminating the appearance of impropriety . . . engender[s] public confidence

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[134] *Id.* at 273.
[135] *Id.*; Benjamin B. Strawn, Note, *Do Judicial Ethics Canons Affect Perceptions of Judicial Impartiality?*, 88 B.U. L. REV. 781 (2008). The ABA Model Code of Judicial Conduct replaced the 1924 Canons of Judicial Ethics in 1972 and replaced the hortatory tone with mandatory language. Lievense & Cohn, *The Parting of the Ways*, *supra* note 128, at 276. This was later superseded and consolidated into five canons in 1990. Strawn, *Do Judicial Ethics Canons Affect Perceptions of Judicial Impartiality?*, 88 B.U. L. REV. at 787.
[136] CANONS OF JUDICIAL ETHICS Preamble (1924) (emphasis added).
[137] CANONS OF JUDICIAL ETHICS Canon 4 (1924).
[138] *See Conduct of Landis Hearings*, *supra* note 8, at 5; MACKENZIE, THE APPEARANCE OF JUSTICE, *supra* note 10, at 181.

in the judiciary."[139] One federal judge considers the "guiding principles of the Canons – integrity, impartiality, and avoidance of impropriety – [to be] daily reminders of the public trust placed in judges."[140] It is ironic that Landis' apparent impropriety was considered to threaten the public's faith in the judiciary, when that faith was the precise reason that Organized Baseball chose a federal judge as its first commissioner.

Canon 24, condemning a judge with "Inconsistent Obligations," also had some relevance to Landis.[141] With pending litigation upon which the future of Organized Baseball hinged, Congressman Welty accused the owners of hiring a federal judge primarily to protect and insulate the game from those suits.[142] That Organized Baseball was paying Landis substantially more than was the government gave rise to the inference that Landis would consider the commissionership his primary obligation, rather than the judiciary.[143] Canon 24 determined such conduct was unacceptable, holding that a judge "should not accept inconsistent duties; not incur obligations, pecuniary or otherwise, which will in any way interfere or appear to interfere with his devotion to the expeditious and proper administration of his official functions."[144] Once again, the mere appearance of obligations that may be inconsistent with or take priority over a judge's duties on the bench – such as accepting a high salary to serve as the chief arbiter of a giant trust – was frowned upon. The guidelines set forth in the Canons of Judicial Ethics likely reflected awareness by the ABA that "[c]onfidence in the judiciary's integrity also is the

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[139] M. Margaret McKeown, *Don't Shoot the Canons: Maintaining the Appearance of Propriety Standard*, 7. J. APP. PRAC. & PROCESS 45, 49 (2005) (citing Tumey v. Ohio, 273 U.S. 510 (1927); In re Murchison, 349 U.S. 133 (1955)) [hereinafter McKeown, *Don't Shoot the Canons*].
[140] *Id.* at 52.
[141] CANONS OF JUDICIAL ETHICS Canon 24 (1924).
[142] *See Conduct of Landis Hearings*, *supra* note 8, at 27 (hinting that Landis was protecting baseball's 'illegal' system of contracts).
[143] *See* Lievense & Cohn, *The Parting of the Ways*, *supra* note 128, at 272; PIETRUSZA, JUDGE & JURY, *supra* note 2, at 204.
[144] CANONS OF JUDICIAL ETHICS Canon 24 (1924).

foundation of judicial independence."[145] This independence could be threatened if judges held more lucrative positions for private organizations while remaining on the bench.

The overall objective of the 1924 Canons was that all aspects of a judge's conduct "be above reproach,"[146] an objective that Landis failed to achieve during his final years on the bench, even though he did not hear any federal cases involving baseball. Though only hortatory, the 1924 Canons clarified any doubts that holding a position as prominent as the commissioner of baseball would not be tolerated from future judges

## V. COMMISSIONER LANDIS

### A. The Omnipresent Influence of the Judiciary

While Kenesaw Mountain Landis enjoyed mixed reviews for his record as a judge (and increasing criticism in his final years on the bench), his reputation as baseball's first commissioner is virtually unblemished, and he set the standard by which all commissioners are judged. In the wake of the Black Sox scandal, Organized Baseball desperately needed an authority to clean up the game, and Judge Landis was able to parlay the owners' weak bargaining position, along with the boost in public confidence that the sport would receive from the appointment of a federal judge as commissioner, into a position of absolute power, where the owners "waived all recourse to the courts" and the decisions of Commissioner Landis were final.[147] Whereas Landis the District Judge frequently saw his decisions overturned and criticized by the appellate courts, Landis the Commissioner was subject to no such oversight and accordingly able to shape the game of baseball in the manner that he saw fit.[148]

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[145] McKeown, *Don't Shoot the Canons*, *supra* note 139, at 53.
[146] CANONS OF JUDICIAL ETHICS Canon 34 (1924).
[147] SPINK, 25 YEARS OF BASEBALL, *supra* note 2, at 76.
[148] Burns, *Baseball*, *supra* note 16 ("[Commissioner Landis was] beyond reach and beyond reproach and [did] what he thought was right for the game.").

Commissioner Landis nevertheless conducted his business in a fashion very similar to Judge Landis. He had a great sense of the dignity of each position and the importance of the matters before him, refusing to discuss pending cases, both as a judge and commissioner.[149] As on the federal bench, Commissioner Landis granted hearings, allowed parties to present relevant evidence and witnesses, and even permitted counsel for players who were accused of some violation of baseball's rules.[150] Anyone who refused to show up at the appointed time for a hearing with the commissioner was often treated harshly in a default judgment.[151] One former player remarked that the commissioner's office even resembled a courtroom, complete with a transcriber for every single meeting.[152] Yet like his bench opinions, Commissioner Landis' hearings were often orchestrated and conducted so as to make his desired result seem to be the only obvious and rationale answer.[153]

B. The Commissioner, Juries, and the Black Sox

But Landis' powers as commissioner were greater than those that he had as a judge, for he served as the ultimate judge *and* jury, determining not only baseball's rules, but also the facts of all matters before him.[154] While Landis' actions as a trial judge never created any doubts as to his confidence in the jury system, his rulings as baseball commissioner indicated a man relieved that he no longer had to rely on common citizens to mete out justice. When issuing baseball penalties for players accused of violating American laws, Landis frequently disparaged the star-struck juries that granted acquittals.

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[149] PIETRUSZA, JUDGE & JURY, *supra* note 2, at 213-14.
[150] SPINK, 25 YEARS OF BASEBALL, *supra* note 2, at 283.
[151] *Id.* at 284.
[152] PIETRUSZA, JUDGE & JURY, *supra* note 2, at 316.
[153] *See* Mitchell Nathanson, *The Sovereign Nation of Baseball: Why Federal Law Does Not Apply to "America's Game" and How it Got That Way*, 16 VILL SPORTS & ENT. L.J. 49, 73-74 (2009).
[154] *See* SPINK, 25 YEARS OF BASEBALL, *supra* note 2, at 171.

More than any other decision rendered as a judge or commissioner, Landis will always be remembered for his handling of the Black Sox scandal. The fallout surrounding the gambling revelations of the 1919 World Series was the entire reason Organized Baseball had hired a respected and independent third party to oversee and clean up the game.[155] Thus, Landis had to handle the situation carefully, but forcefully. Upon becoming commissioner, Landis temporarily placed the eight accused players on baseball's ineligible list – effectively suspending them, pending the outcome of the criminal trial for conspiracy to defraud the public by throwing the World Series.[156] Since the commissioner's office was located in Chicago, the same city where the Black Sox players were being tried, Landis was unwilling to take any action that could improperly influence the jury, saying "Don't you think it would be an injustice to players who are facing trial on criminal charges for the baseball commission to take any action in the matter in the place where the jurors who are to try the case will be chosen?"[157] At that time, Landis was still a federal judge and did not want to make any ruling that might interfere with the court's administration of justice, but he was ready to act immediately upon the trial's conclusion.

The jury would eventually acquit all eight of the players, although the circumstances of the acquittal were quite suspect.[158] Three of the players had actually confessed to their involvement in the scandal and waived immunity during the 1920 Grand Jury indictment, yet between the indictment and the trial, those confessions disappeared (or were stolen), along with virtually all of the District Attorney's papers relating to the case.[159] This tremendously weakened the prosecution's case, which was already no simple feat, considering the popularity

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[155] *See* MACKENZIE, THE APPEARANCE OF JUSTICE, *supra* note 10, at 180.
[156] PIETRUSZA, JUDGE & JURY, *supra* note 2, at 177; *see also* Sigman, *Jurisprudence*, *supra* note 5, at 305.
[157] PIETRUSZA, JUDGE & JURY, *supra* note 2, at 177.
[158] *See* SPINK, 25 YEARS OF BASEBALL, *supra* note 2, at 81-82.
[159] *Id.*; *see also* ASINOF, EIGHT MEN OUT, *supra* note 103, at 226 (indicating that the outgoing District Attorney had been paid to ensure that the relevant papers disappeared before the new District Attorney who would try the case took office).

of the White Sox and that the charge required proving *specific intent* by the players to defraud the public.[160] The confessing players, in turn, recanted those confessions at trial.[161] In case there had been any doubt as to whether the jurors may have been influenced by their awe of such famous baseball players, the jurors celebrated the decision together with the exonerated defendants at dinner on the night of the decision.[162]

But the joy of the players was short-lived. One day after the acquittal, Commissioner Landis, who had been silently observing the case in the background, issued his own decision on the matter: "Regardless of the verdict of juries, no player that throws a ball game, no player that sits in a conference with a bunch of crooked players and gamblers where the ways and means of throwing games are discussed, and does not promptly tell his club about it, will ever play professional baseball . . . *regardless of the verdict of juries, baseball is entirely competent to protect itself against the crooks both inside and outside the game*."[163] With this decision, Landis sent a message to all interested parties that he – and not the courts – was the ultimate authority for all decisions pertaining to Organized Baseball. Indeed, baseball's regulatory system was to be completely independent of the court system.

Although infrequent, there were occasions during Landis' tenure as a federal judge when he expressed concern for the likelihood that a jury may render an inappropriate verdict. During the *Haywood* case, for example, jury selection had taken nearly a month, as the defendants were

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[160] *See* Sigman, *Jurisprudence*, *supra* note 5, at 305.
[161] SPINK, 25 YEARS OF BASEBALL, *supra* note 2, at 81-82. Although the District Attorney's copies of the confessions had been lost, the trial judge nevertheless determined that they were admissible. ASINOF, EIGHT MEN OUT, *supra* note 103, at 260; *Baseball Leaders Won't Let White Sox Return to the Game*, N.Y. TIMES, Aug. 4, 1921, at 2, *available at* http://query.nytimes.com/gst/abstract.html?res=9401E3DA173EEE3ABC4C53DFBE66838A639EDE.
[162] SPINK, 25 YEARS OF BASEBALL, *supra* note 2, at 83-84; ASINOF, EIGHT MEN OUT, *supra* note 103, at 273.
[163] SPINK, 25 YEARS OF BASEBALL, *supra* note 2, at 84 (emphasis added); *see also Baseball Leaders Won't Let White Sox Return to the Game*, N.Y. TIMES, *supra* note 161, at 1.

accused of jury tampering.[164] But the Black Sox decision informed the country that Landis would not permit his judgment to be bound by any court decision and would instead rely solely on his own interpretation of the facts and baseball's best interests.[165]

The Black Sox decision was not even the first time that the commissioner ignored a jury verdict. In 1921, Benny Kauff of the New York Giants was acquitted of all charges concerning his involvement in an auto theft.[166] Unlike the Black Sox case, Kauff's alleged crime had nothing to do with baseball, yet Landis nevertheless felt that "the evidence in the Bronx County case disclosed a state of affairs that more than seriously compromises [Kauff's] character and reputation."[167] The commissioner had placed Kauff on the ineligible list after the player was indicted because such a charge of "felonious misconduct by a player certainly charges conduct detrimental to the good repute of baseball,"[168] and Landis had the authority to make all decisions necessary for the game's best interests.[169] Kauff's acquittal, however, was not sufficient for reinstatement. It did not matter that a jury had found Kauff not guilty of the alleged crime; Landis did not want such a man in baseball. The commissioner justified his decision by heavily criticizing the jury's verdict: "I read every line of testimony, and the acquittal smells to high heaven. That acquittal was one of the worst miscarriages of justice that ever came under my observation."[170] Thus, Landis – concerned with cleaning up baseball and seeing justice through,

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[164] PIETRUSZA, JUDGE & JURY, *supra* note 2, at 120 (quoting Landis: "I don't want a jury of this kind. It is perfectly proper for the litigant [sic] to make an investigation of the jurors, but this is beyond the limit. For an agent of the defendant to approach the juror, directly or indirectly, is the same as the defendant himself trying to influence the juror.").
[165] Sigman, *Jurisprudence*, *supra* note 5, at 307.
[166] PIETRUSZA, JUDGE & JURY, *supra* note 2, at 180-82.
[167] *Id.* at 182.
[168] *Landis Declares Kauff Ineligible*, N.Y. TIMES, Apr. 8, 1921, at 21, *available at* http://query.nytimes.com/gst/abstract.html?res=9D03EFDA103FEE3ABC4053DFB266838A639EDE.
[169] *Conduct of Landis Hearings*, *supra* note 8, at 8-10 (quoting the agreement between Landis and Organized Baseball.
[170] *Benny Kauff Acquitted*, N.Y. TIMES, May 14, 1921, at 10, *available at* http://query.nytimes.com/gst/abstract.html?res=9901E3DB1631EF33A25757C1A9639C946095D6CF; PIETRUSZA, JUDGE & JURY, *supra* note 2, at 180.

regardless of what the American court system had to say on an issue – must have felt liberated as commissioner by no longer being forced to rely on the decisions of juries or anyone else. Indeed, the nature of the commissioner's power meant he was free to hold baseball players to a higher standard of conduct than the common man.

C. Guidance from Landis' District Court decisions

Outside of Landis' willingness to disregard jury verdicts, his rulings as commissioner of baseball were often based in his jurisprudence.[171] While presiding over a conspiracy case in the District Court, Landis had once instructed the jury that, in such cases, "Guilt generally must be proved by circumstantial evidence . . . Common design is the essence of the crime," and the jury should consider "all the facts that tend to show what transpired between [the defendants] during the time of the alleged combination."[172] The commissioner undoubtedly kept those instructions in mind as he followed the Black Sox trial – while the players may not have been criminally guilty beyond a reasonable doubt, there was enough circumstantial evidence of a gambling conspiracy to justify Landis' own decision to ban those men from Organized Baseball for life. Guidance for how Landis may have interpreted the missing confessions of Shoeless Joe Jackson and other White Sox players can be found in his *Holmes v. Dowie* decision, where the judge upheld a challenged codicil on the grounds that the words contained therein, "once committed to paper and his signature attached, are beyond recall."[173]

The severity of his penalty upon the eight White Sox players had foundations in the *Standard Oil* decision, when the judge wrote that "great caution must be exercised by the court lest the fixing of a small amount encourage the defendant to future violations by esteeming the

[171] *See* Sigman, *Jurisprudence*, *supra* note 5, at 329 ("Presiding over baseball . . . he ruled in a manner similar to his behavior on the bench.").
[172] PIETRUSZA, JUDGE & JURY, *supra* note 2, at 143.
[173] 148 F. 634, 640 (N.D. Ill. 1906).

penalty to be in the nature of the license."[174] Indeed, a draconian penalty was required to send a message and deter baseball players from conspiring with gamblers in the future. This helps explain the ban of Buck Weaver, who did not actually partake in the World Series fix, but had 'guilty knowledge' of his teammates' involvement.[175]

Landis also incorporated other legal principles that had previously been unknown to Organized Baseball. He applied the doctrine of *respondeat superior* to settle a dispute between a player, a team, and a fan over who should pay for injuries that the fan had sustained as the result of a foul ball hit by the player.[176] The commissioner even suggested to the baseball owners that the sport adopt a statute of limitations for "baseball offenses," particularly with regard to gambling offenses that took place before Landis became commissioner.[177] With his power over the game consolidated and secure, the Black Sox case helped establish that "Landis had become the game's court."[178]

D. Bringing the Commissioner to Court

While Landis was always subject to appellate review during his time on the bench, his authority was only challenged once during his 25 years as baseball's commissioner.[179] Since the players' contracts were relatively oppressive, with the team holding virtually all of the leverage, the sport had rules to prevent owners of major league teams from effectively hiding players on minor league teams through various transactions without first offering those players to other

[174] Standard Oil II, 155 F. at 320 (justifying the hefty fine levied upon Standard Oil).
[175] *See* SPINK, 25 YEARS OF BASEBALL, *supra* note 2, at 108. The Commissioner's willingness to disregard both jury verdicts and Weaver's 5th Amendment rights are also noteworthy. *Id.* (quoting Landis: "If the incriminating evidence was false, the baseball public had a right to Weaver's denial under oath. Of course, it is true that a verdict of not guilty was rendered in Weaver's favor. It was also likewise true that the same jury returned the same verdict in favor of [3 other players], each of whom had confessed his guilt.").
[176] *See* Sigman, *Jurisprudence*, *supra* note 5, at 317.
[177] SPINK, 25 YEARS OF BASEBALL, *supra* note 2, at 123, 171.
[178] *Id.* at 82.
[179] *Id.* at 201.

major league teams.[180] When Commissioner Landis excused a St. Louis Browns player from his contractual obligations due to the club's violation of the aforementioned rule, the Browns sued for interfering with a contract between the player and team.[181]

The suit was brought in the very court where Landis had sat as judge for 17 years. To ensure that there was no bias, the case was tried before Walter C. Lindley, who had been appointed as judge in the *Eastern* District of Illinois by President Warren G. Harding a short time after Landis' resignation from the Northern District bench.[182] Having reviewed the contract that made Landis commissioner, Judge Lindley found that "The various agreements and rules . . . [of Organized Baseball] disclose a clear intent upon the part of the parties to endow the commissioner with all the attributes of a benevolent but absolute despot and all the disciplinary powers of the proverbial pater familias."[183] The judge held that Commissioner Landis' actions were "clearly within his authority"[184] and noted that baseball's owners had "agreed to abide by the decisions of the [commissioner] and *severally waived* the right of recourse to the courts."[185] Thus, if Landis determined that a practice was detrimental to baseball, he had authority to impose whatever remedy he deemed necessary.[186] This essentially ensured that the results of the American court system had no bearing on Landis' decisions regarding baseball matters. Judge Lindley determined that the express intent of the parties involved in appointing Landis as commissioner was to "make the commissioner an arbiter, whose decisions made in good faith,

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[180] *See id.* at 192-200.
[181] *Id.* at 199. The plaintiff in the case was a Milwaukee club, which was the minor league team to which St. Louis was trying to send the player. Both clubs were owned by Phil Ball. *Id.*
[182] Federal Judiciary Center, http://www.fjc.gov/history/home.nsf (last visited May 5, 2009). Judge Lindley was appointed to the Seventh Circuit Court of Appeals in 1949. *Id.*
[183] Milwaukee American Ass'n v. Landis, 49 F.2d 298, 299 (N.D. Ill. 1931).
[184] *Id.* at 304.
[185] *Id.* at 299 (emphasis added).
[186] *Id.*

upon evidence, upon all questions relating to the purpose of the organization and all conduct detrimental thereto, should be *absolutely binding*."[187]

## VI. CONCLUSION

The *Milwaukee* case was a resounding affirmation of Commissioner Landis' authority, so powerful that he would never be challenged in the courts again.[188] It is unlikely that Landis would have been able to command such uniform authority had he not been a prominent federal judge before taking the commissionership. Baseball had desperately needed to clean up its image in the wake of the Black Sox scandal and accordingly looked "to the judiciary for leadership and a return to respectability."[189] The appointment of a federal judge who had become famous through harsh sentences upon large corporations assured the public that the game would be clean again and that, in Landis, baseball had a man who was not afraid to stand up to the most powerful figures in the country. Just as Landis had gone to great lengths to subpoena and later penalize John D. Rockefeller, he not only fined Babe Ruth for violating league rules against barnstorming early in his term as commissioner, but also suspended the game's most prominent player for six weeks.[190] This was no small act, considering that in 1921 only President Harding's name appeared in American newspapers more than that of Babe Ruth.[191]

The judicial background from which Landis came was present throughout his reign as baseball's commissioner, although modified to mete out what Landis determined to be justice. One scholar has written of Landis' two professions: "A pragmatist on the bench and in baseball,

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[187] *Id.* at 302 (emphasis added).
[188] SPINK, 25 YEARS OF BASEBALL, *supra* note 2, at 201.
[189] MACKENZIE, THE APPEARANCE OF JUSTICE, *supra* note 10, at 180.
[190] PIETRUSZA, JUDGE & JURY, *supra* note 2, at 238. While Landis merely upheld one of baseball's laws in punishing Ruth, the commissioner later used the legislative powers of his position to orchestrate a change in that very rule which was more permissive towards postseason barnstorming. Pollack, Take My Arbitrator, *supra* note 14, at 1656.
[191] SPINK, 25 YEARS OF BASEBALL, *supra* note 2, at 100.

Landis comfortably borrowed from the legal principles and procedures of the federal court when it suited his purposes in governing in the non-legal setting of Organized Baseball, while shedding formalistic constraints dictated by either the law itself or the presence of higher authority."[192] While his approach as a judge frequently differed from convention and earned Landis some pointed criticism, his conduct as commissioner received significantly less scrutiny, due not only to the fact that there was no precedent by which Landis could be measured, but also because of the legitimacy that his proceedings – heavily couched in his experience as a federal trial judge – conveyed. In taking on Babe Ruth and justifying his decision as he did all others – by relying upon the rules of baseball and the rationale behind them, just as he had relied on the relevant legislation as a judge – Landis reassured the public of the game's propriety and let the players know that no one was beyond the reach of the game's rules. Landis cleaned up the game of baseball from its lowest point in history, and informed all interested parties that "Law-abiding baseball men need have no fear that the laws of the game will not be enforced."[193]

Kenesaw Mountain Landis left a legacy both to the judiciary and the sport of baseball. History has focused the majority of its attention on Landis' commissionership, as that was the position he held longer than any other and where he exerted the greatest influence. As the first commissioner of any sport, Landis set the standard that all other American sports have followed.[194] The commissionership of baseball has become so prestigious that it was George W. Bush's "dream job" before he ran for President.[195]

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[192] Sigman, *Jurisprudence*, *supra* note 5, at 279.
[193] ROBERT W. CREAMER, BABE: THE LEGEND COMES TO LIFE 247 (1992) (quoting Landis' decision to suspend Ruth).
[194] *See* Pollack, Take My Arbitrator, *supra* note 14, at 1651.
[195] Gail Sheehy, *The Accidental Candidate*, VANITY FAIR, Oct. 2000, *available at* http://www.vanityfair.com/politics/features/2000/10/bush200010. President Dwight D. Eisenhower also would have preferred a career in baseball, having famously said, "When I was a small boy . . . a friend of mine and I . . . talked about what we wanted to do when we grew up. I told him that I wanted to be a real major league baseball player, a

But Landis' impact on the judiciary must not be ignored. Granted, his greatest contribution is somewhat ignominious, but the fact remains that it was his 'misconduct' as a federal judge that finally inspired the ABA to formally adopt a code guiding judicial conduct.[196] Before Landis accepted the commissionership, six other federal judges had been impeached[197] and proposals for judicial canons had been proposed,[198] yet nothing had sufficiently convinced the ABA that official standards were necessary to lay out how a judge should comport himself both on and off the bench. In the end, Landis the Judge merits as much studying as Landis Commissioner, because the actions of the former helped to mold the decisions of the latter, and Organized Baseball never would have given Landis absolute power had he not brought the sport the prestige that came from being a federal judge.

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genuine professional like Honus Wagner. My friend said that he'd like to be President of the United States. Neither of us got our wish." Baseball Almanac, http://www.baseball-almanac.com/prz_qde.shtml (last visited May 3, 2009).

[196] MACKENZIE, THE APPEARANCE OF JUSTICE, *supra* note 10, at 180.

[197] *Conduct of Landis Hearings*, *supra* note 8, at 19.

[198] Lievense & Cohn, *The Parting of the Ways*, *supra* note 128 at 272.