

THE CASE FOR A NATIONAL COMMISSION

Written by Charles Jay
Thursday, 14 August 2003 18:00

The 87th Round

Certainly I wouldn't laugh you out of the room if you concluded that the last 186 chapters of the "Operation Cleanup" series provided a mountain of evidence to support the establishment of a national commission.

After all, we have focused on improprieties and incompetence at the state level, safety problems, and situations throughout the business side of the game that smack of conflicts of interest.

But let's not get ahead of ourselves.

I'm not giving away my train of thought just yet, but one thing I have learned throughout this entire process of examining the landscape of boxing - a process on which I have probably spent more time than almost anyone - is that while there is undoubtedly an argument FOR a national regulatory body, there is also a reasonable case that can be made AGAINST it. And it's my responsibility to offer the highlights of both perspectives.

So what should be offered most strongly IN FAVOR OF national regulation?

Well, the argument is NOT that a national commission is needed to facilitate things like uniformity in rules, contracts, medical forms, or even minimum safety provisions that would apply throughout the country, because all of this can actually be accomplished through legislation alone; in fact, you see it now, in some respects. If you have a bill, for which there is a reasonable expectation of enforcement, you don't have an absolute need for a national board to oversee the implementation of it, because the federal laws would supersede state laws, and the states would have to fall in line anyway.

Rather, the applicability of centralized national oversight of boxing lies in the way the industry itself is structured.

As far as I'm concerned, the most compelling argument for a national commission lies in the fact that conditions of INTERSTATE COMMERCE are not only fundamental, but essential, to the sport and business of boxing in the year 2003.

Many years ago, when boxing was a bigger industry (both in terms of participants and popularity), and fight clubs were everywhere, local fighters comprised the vast majority of participants on local boxing cards. And there was not a proliferation of TV; obviously, it wasn't even a real factor at all until the late 1940's.

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Now, however, things are markedly different. Because there are not as many clubs around, more and more fighters are coming from one locale to another to fight; this is especially true when fights are held in the busiest casino areas, like Nevada, New Jersey, Connecticut, Mississippi, and parts of California. These fighters, in effect, cross state lines for the purposes of doing business, then go back. This was an issue originally raised in *Federal Baseball Club of Baltimore v. National League* - the case where, essentially, major league baseball gained its anti-trust exemption.

At that particular time, the Court ruled that baseball did not constitute interstate commerce. Fifty years later, when Curt Flood challenged baseball's reserve clause, the Court recognized that, indeed, activities in the business of baseball DID constitute interstate commerce, but still upheld the anti-trust exemption on other grounds. By this time, the Sherman Anti-Trust Act had also expanded to include personal services, which had originally afforded baseball a grounds for exemption as well.

Boxing promoters and others had ultimately endeavored to seek protection from anti-trust restrictions under the umbrella of *Federal Baseball v. National League*. But in decisions handed down in two cases - *U.S. v. Shubert* and *U.S. v. International Boxing Club*, the Court ruled that not only were public exhibitions consistent with interstate commerce, by virtue of the fact that the movement of performers and equipment across state lines was more than just incidental, but that only baseball was to enjoy the immunization from anti-trust laws. In *Shubert*, a theatrical production company which also operated a booking agency was ordered to divorce the two. Many parallels can be drawn between that situation and some of the conflicts of interest involving boxing promoters who also operate as "*de facto*" managers or agents.

But it doesn't stop there. With cable television and pay-per-view having become the dominant forms of delivery for boxing on television, and in turn the major engine for the generation of revenues, promoters and their events have become "*national*" in scope, rather than local, and thus, by definition, are "interstate". Don King Productions, for example, concerns itself not so much with the live gate revenue in its non-casino promotions, relying much more heavily on the vast revenues from Showtime and PPV. There's a good reason for it - that's where the dollars reside. Customers from all states, and beyond, pay money for the principal events that represent the staple of a promoter's existence. This money is channeled through the cable companies and winds up in the office of the major promoters who produce these events.

The same thing happens, on a smaller scale, with the national cable networks. They are paid per subscriber, by the cable companies, which are not a group of local concerns but instead now a relatively small group of MSO's (major system operators), who carry the network's programming as part of its "basic" or "premium" menu. Cable networks pay for the rights to broadcast fight promotions, which has kept many a mid-level promoter going. This is not local business, but national.

All of this activity constitutes interstate commerce. And as such, it cannot be monitored and/or regulated on a state-by-state basis, but only on the national level.

A few chapters ago I talked about the television industry's role vis-a-vis the boxing business. In

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support of that, I used the scandal at USA Network to bring into question the ethics and behavior of the very people who are in a position to dictate the programming at networks, making it an issue of conflict of interest and "kickbacks" rather than a by-product of the normal course of doing business. In cases like this, the states, and especially state commissions, have no authority whatsoever to investigate wrongdoing that is contrary to the public interest, nor to establish any sort of regulatory guidelines of behavior. That job is partially in the hands of the FCC (Federal Communications Commission), and partially in the hands of the Justice Department's Anti-Trust division.

That's a key here. The ANTI-TRUST laws are established to regulate and oversee market conditions in all industries. In the professional boxing market, there exists characteristics of both a monopoly and an oligopoly.

A *"monopoly"*, according to Webster's Dictionary, is defined as *"exclusive ownership through legal privilege, command of supply, or concerted action"*

. An

"oligopoly"

is defined as

"a market situation in which each of a few producers affects but does not control the market"

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In the United States, the boxing industry, as concerns televised boxing, can be characteristic of an oligopoly. There is a small group of major *"producers"* - certainly Don King Productions (Don King), Top Rank (Bob Arum), and Main Events have numbered among this group for years, with others having a foothold at various times, including Cedric Kushner Productions, Goossen-Tutor (formerly Ten Goose), Gary Shaw Productions, and DiBella Entertainment.

Still other entrants - the example years ago of HBA (Houston Boxing Association) immediately comes to mind - have tried to crack the hierarchy, but have fallen by the wayside. Make no mistake - there ARE other promoters in boxing, and some are successful, but none of them participate in a large way in the power structure, at least not without giving up consideration to one of the "majors".

Within this oligopoly, though, are a number of *"monopolies"*. And herein lies the secret of how the top operators are able to perpetuate their power. This is done through two avenues - monopolizing a network, or monopolizing a title.

As far as TITLES are concerned, this is dealt with to a certain extent in the Ali Act by putting limitations on the use of options. Check out Round 83 of *"Operation Cleanup 2"* for more exploration into that.

In terms of NETWORKS, it happens when a promoter has a deal with a specific network carrier which effectively blocks his major competitors from having access to that network. Some promoters have challenged certain "exclusive" deals and won, but it hasn't happened often. Even when these deals aren't exclusive, television dates are scarce enough that "hidden" output deals can stunt competition. USA Network's Brad Jacobs, while his "Tuesday Night

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Fights" was still running, allocated close to 60% of all dates to promoters with whom he had some kind of financial dealing on the side. In that particular case, he created his own little oligopoly, which had the effect of monopolizing nearly the entire TV schedule for the year.

It's not so much that Major Promoter "A" would want to freeze Major Promoter "B", for example, out of a major network deal simply as a matter of competitive advantage. That would be understandable. It's that new and upstart entrants into the field, who may indeed possess the product (in terms of fighters) to make an impact, along with the administrative infrastructure to make a promotion work, and otherwise have no financial barriers to preclude them from putting on a credible show, often cannot approach one of these major television outlets and cut a deal without giving away some kind of concession to one of the larger promoters. More often than not, they must give up control of the rights to their own valuable commodity, the fighter - something that may have been developed over a period of years. And that severely curtails their ability to grow as an organization, thus keeping the power among a select few.

State commissions can not deal with matters of anti-trust, restraint of trade, or market manipulation. But legislation that can enable a national board to work hand-in-hand with federal agencies to deal with this, as it often happens in the boxing industry, might be long overdue.

So a national commission is a no-brainer, right? Well, not so fast.

There's also a quite different side to the story.

fightpage@totalaction.com

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