



EX ANTE

OUR MISTAKES

Connor Sheehan, an attentive subscriber and a 3L at the University of Wisconsin Law School, notes “There’s an ‘It’s’ that should be an ‘Its’ in the fourth line of Penny McMahon’s introduction to *A Snail in a Bottle: What Happened Next*” in our Winter 2024 issue. Sheehan is correct. We are grateful to him, and apologetic to all our readers.

And in the same issue, on page 102, in the fifth line of the first paragraph, with an embarrassing lack of editorial style, we printed “flare” where “flair” was the correct word. Thanks to Rachel Davies for catching that one.

WHAT WOULD JOHN PAUL STEVENS SAY?

After mourning that “We will never know what might have been,” an article in our Winter issue speculated about what Justice John Paul Stevens, an expert in competition law, might have done or said if he had been a member of the U.S. Supreme Court in 1972, when it upheld the baseball antitrust exemption in *Flood v. Kuhn*. It turns out that Stevens – who served on the Court from 1975 to 2010 – did, in fact, tell us what might have been, but not until after he had retired from the Court. In a speech in Baltimore, at the Sports Lawyers Association’s 41st annual conference, on May 15, 2015, he said:

Nevertheless, discounting my historic bias, it now seems abundantly clear to me – as it did to Justice [William O.] Douglas when he acknowledged in his dissent in *Flood* that his vote in *Toolson* [*v. New York Yankees*, in 1953, to uphold the baseball antitrust exemption] had been wrong – that it simply makes no sense to treat organized baseball differently from other professional sports under the antitrust laws. Nor would it be reasonable to conclude that the San Francisco Giants could not prevent the A’s from moving their ball club to Oakland in 1967 but can now prevent them from moving from Oakland to San Jose.

In his lecture on the Path of the Law printed in the *Harvard Law Review* in 1897, Oliver Wendell Holmes made this oft-quoted observation: “It is revolting to have no better reason for a rule of law than that it was so laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since and the rule simply persists from blind imitation of the past.”¹ I think Justice Holmes would agree that his observation is equally applicable to a statement of law – even in one of his own opinions – “if the grounds upon which it was laid down have vanished and the rule simply exists from blind imitation of the past.”

There you go.

RECOGNITION FOR RIESENFELD

Congratulations to Ryan Greenwood and Patrick Graybill of the University of Minnesota Law Library, who recently received the American Association of Law Libraries’ Joseph L. Andrews Legal Literature Award for their book, *Jewels of the Collection: Treasures of the Riesenfeld Rare Books Research Center*. It is a well-deserved honor for an excellent (and handsome – see page 285) book about a collection that is truly impressive both for its content and for its staff, with whom it is a joy to work.

Jewels of the Collection has not been published for sale to the public, yet, but perhaps it will be if enough of us ask about it. If you do manage to get hold of a copy, make sure to look at page 53.

¹ Oliver Wendell Holmes, *The Path of the Law*, 10 Harv. L. Rev. 457, 469 (1897).