

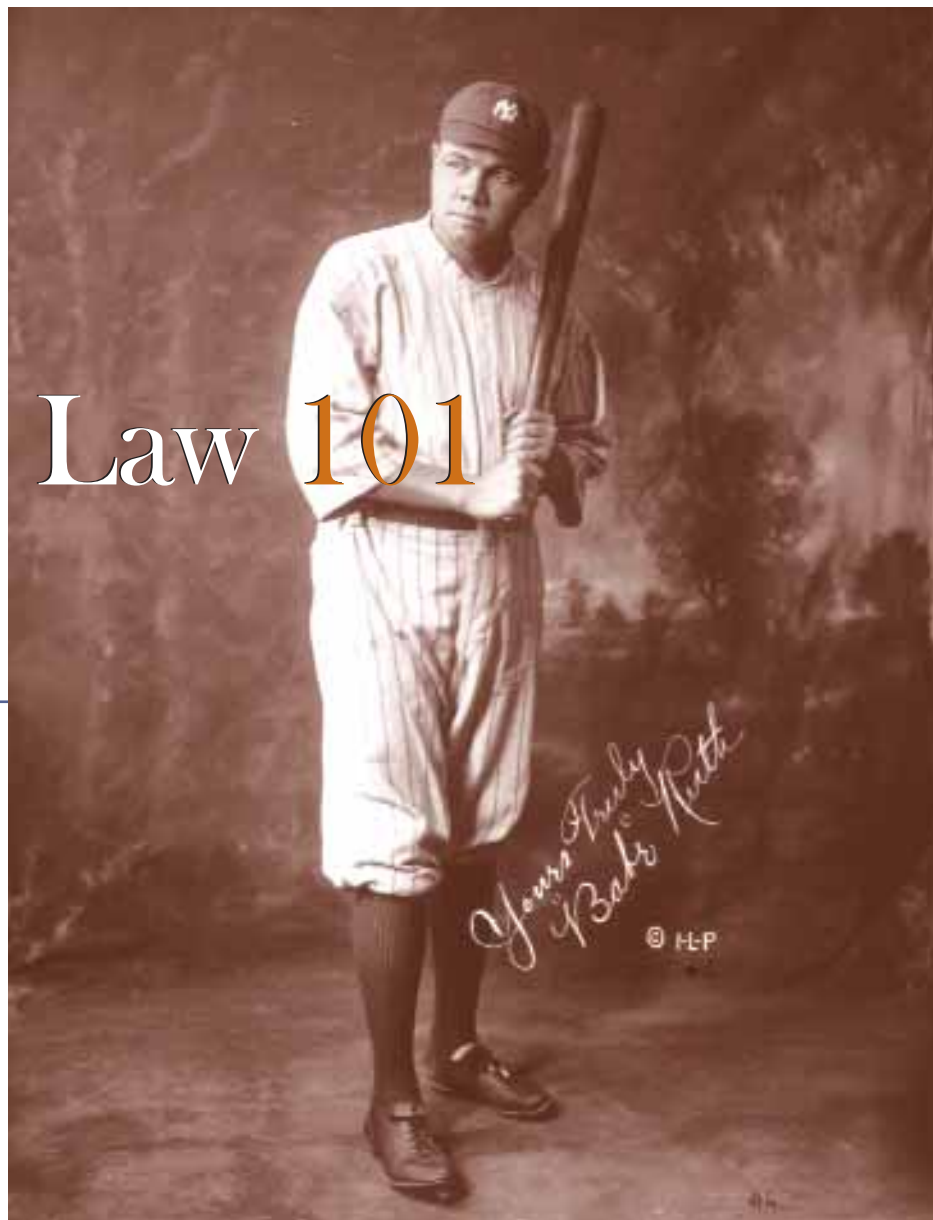
Baseball Law 101

By William J. O'Sullivan

Every Yankees fan and Red Sox fan knows about “The Curse of the Bambino.” After the 1919 season, Sox owner Harry Frazee sold the contract of star pitcher/outfielder Babe Ruth (the “Bambino”) to the Yankees for \$100,000. After one season with the Yankees, Ruth was eligible for free agency. He then signed a lucrative eight-year contract with the Sox, and led them to multiple World Series titles. Meanwhile, the hapless Yankees and their fans endured decades of futility—“the Curse of the Bambino.”

Did it really play out that way? Maybe it did in some parallel universe or in the daydreams of Red Sox fans. But in reality, Ruth stayed with the Yankees for fifteen seasons, during which the team won four World Series. He never explored opportunities with other teams (until age 40, when the Yankees released him), because the rules did not allow him. Once a team acquired a player, the team “owned” him for as long as it wanted. After a player signed an initial contract, he never again had the right to choose his employer.

That process, of course, is no longer in practice. Since the mid-1970s, veteran major-league ballplayers have had the right



Babe Ruth (1895–1948). Credit: Library of Congress: LC-USZCA-7246.

to play out their contracts, declare themselves free agents, and offer their services to the highest bidder.

Most fans have a passing knowledge of the legal history that led up to this change, but the story is rarely told in a cohesive way. Hence this article, a primer on the law of baseball. In it, I will focus on the Big Three legal events in baseball history: the 1922 U.S. Supreme Court decision establishing major league baseball’s antitrust exemption; the Supreme Court’s 1972 decision in the Curt Flood case, affirming the antitrust exemption and rejecting Flood’s plea for free agency; and the arbitrator’s award only three years later that sidestepped the *Flood* decision and ushered in the free agency era.

But first, a look at the “reserve clause,” the magic contract language that has generated so much work for baseball lawyers.

The Reserve Clause, Generally

In 1887, the owners of the teams in the National League of Professional Base-Ball Clubs and in the American Association of Base-Ball Clubs¹ entered into a “national agreement” that prescribed a uniform player contract.² In Article 18, the uniform contract provided that “the party of the first part [team] shall have the right to ‘reserve’ the said party of the second part [player] for the season next ensuing the term mentioned

in paragraph 2...[provided that] the said party of the second part shall not be reserved at a salary less than that mentioned in the 20th paragraph herein.”³ That is, once a player’s contract expired, the team could unilaterally elect to renew it for another season at the same salary.

That contract language was the linchpin of what came to be known as the “reserve system”—a system that “centers in the uniformity of player contracts; the confinement of the player to the club that has him under the contract; the assignability of the player’s contract; and the ability of the club annually to renew the contract unilaterally, subject to a stated salary minimum.”⁴

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Player contracts in the early 1970s still had the reserve clause—an updated version that allowed owners to renew contracts at a 20 percent discount from the previous salary.⁵ But in all its iterations, the reserve clause had the same effect of allowing teams to keep their players in perpetuity, on terms dictated by the owners. A player who received an unsatisfactory contract offer from his team had no power to solicit bids from other teams; the closest thing to “leverage” that he had was the threat to retire.⁶ Thus he could either cave in and sign, or allow the team to renew his contract unilaterally. Either way, the player found himself bound by a new contract that contained the same reserve clause, giving the team another one-year renewal option on his services. As a practical matter, a one-year contract became a contract for life.⁷

As previewed above, the reserve clause underwent legal attack in the 1970s. The battleground was shaped in large part by a Supreme Court decision from a half-century earlier, in *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs*.⁸ That case had nothing to do with free agency or player mobility, but nevertheless had a profound impact on those issues.

Federal Baseball and Major League Baseball’s Antitrust Exemption

Major League Baseball, as we know it, was formed by a 1903 merger agreement between the two major leagues that still exist today, the National League and the American League.⁹ However, in 1914 and 1915 the Federal League, a third major league, existed.¹⁰ The Federal League had been founded as a minor league, but in late 1913 the league began to aggressively court major-league players with multi-year contracts that did not feature a reserve clause.¹¹

The upstart league succeeded in luring away more than 200 major-league players; this competition for players led to a doubling of the average player salary.¹²

After a great deal of litigation, major league baseball struck a deal with the Federal League, which included an end to the league and compensation to the Federal League team owners.¹³ The owner of one Federal League team, the Baltimore Terrapins, refused to participate in the agreement.¹⁴ Because every other team in the league had agreed to disband, the Terrapins had no one to play against, and so the Baltimore team had little choice but to cease operations as well.¹⁵

Accordingly, the Federal Baseball Club of Baltimore, Inc. sued major league baseball,¹⁶ claiming injury from the dissolution of the league and resulting shutdown of its franchise.¹⁷ The plaintiff asserted that by effectively putting the plaintiff out of business, the baseball establishment had violated the Sherman Antitrust Act.¹⁸

At trial, the Baltimore team obtained a judgment under the Sherman Act for \$240,000, including treble damages, plus attorneys’ fees and costs.¹⁹ However, on appeal to the Court of Appeals for the D.C. Circuit, the judgment was reversed.²⁰ In its

decision, the Court of Appeals observed that the Sherman Act illegalized acts “in restraint of trade or commerce among the several states,” and cited the narrow meaning of “trade and commerce” that prevailed at the time:

[T]rade and commerce require the transfer of something, whether it be persons, commodities, or intelligence, from one place or person to another. The concomitant of this concept is the principle, approved by the Supreme Court of the United States, that ‘importation into one state from another is the indispensable element, the test, of interstate commerce.’²¹

The court then examined the nature of major league baseball, and found that the “interstate” aspect of its operations was incidental to the production of a purely “local” event:

The players, it is true, travel from place to place in interstate commerce, but ... [n]ot until they come into contact with their opponents on the baseball field and the contest opens does the game come into existence. It is local in its beginning and in its end.²²

The court, therefore, found that major league baseball did not constitute interstate “trade or commerce”:

[T]he game effects no exchange of things according to the meaning of ‘trade and commerce’ as defined above. The transportation in interstate commerce of the players and the paraphernalia used by them was but an incident to the main purpose of the appellants, namely, the production of the game. It was for it they were in business—not for the purpose of transferring players, balls, and uniforms. The production of the game was the dominant thing in their activities.²³

The Court of Appeals thus concluded that federal antitrust law did not apply, and reversed.²⁴

The case proceeded to the U.S. Supreme Court. In a cursory opinion penned by Justice Oliver Wendell Holmes, the court largely adopted the reasoning of the D.C. Circuit:

The business is giving exhibitions of base ball, which are purely state affairs.

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...[T]he fact that in order to give the exhibitions the Leagues must induce free persons to cross state lines and must arrange and pay for their doing so is not enough to change the character of the business....[T]he transport is a mere incident, not the essential thing. That to which it is incident, the exhibition, although made for money would not be called trade or commerce in the commonly accepted use of those words. As it is put by defendant, personal effort, not related to production, is not a subject of commerce.²⁵

The Supreme Court therefore concluded that the “conduct charged against the defendant [was] not an interference with commerce among the States,” and affirmed the judgment of the Court of Appeals.²⁶ On the basis of this extremely dubious logic, thus was born the “antitrust exemption” enjoyed by major league baseball.

The Curt Flood Case

In the decades that followed, the *Federal Baseball* opinion became increasingly recognized as the legal relic that it was. The U.S. Supreme Court reaffirmed the decision in a 1953 *per curiam* opinion, *Toolson v. New York Yankees*,²⁷ but with no pretense that the case had been correctly decided in the first place. Instead, applying *stare decisis* in its starkest form, the Court simply observed that Congress had never legislatively overruled the decision, that the baseball business had developed in reliance on the ruling, and it was up to Congress, not the courts, to implement any fix.²⁸ Justice Harold Burton, joined by Justice Stanley Reed, penned a withering dissent in which he ridiculed the notion that major league baseball did not implicate interstate commerce, citing the interstate travel of players, fans, money, and equipment, and the interstate nature of baseball-related advertising, radio broadcast, and telecasts.²⁹

Federal Baseball did not improve with age after the *Toolson* decision. In 1957, the U.S. Supreme Court ruled that federal antitrust law *did* apply to professional football,³⁰ making *Federal Baseball* an obvious anachronism.³¹ And in 1970, Judge Henry Friendly, writing for a three-judge panel of the Second Circuit, “freely acknowledge[d] our belief that *Federal Baseball* was not



one of Mr. Justice Holmes' happiest days.”³²

Thus by January 16, 1970, one might reasonably believe that Justice Holmes' handiwork was vulnerable to attack. That was the day on which Curt Flood, a three-time All-Star centerfielder for the St. Louis Cardinals,³³ sued major league baseball in the U.S. District Court for the Southern District of New York, claiming that the reserve clause in the standard player's contract violated federal antitrust law.³⁴

Flood, who had played with the Cardinals for twelve seasons, was traded³⁵ to the Philadelphia Phillies at the end of the 1969 season.³⁶ Flood had played the 1969 season under a one-year contract that expired at the end of the season.³⁷ But for the reserve clause, the Cardinals would have had no contractual rights to assign to the Phillies after the season ended, and Flood could have shopped his services on the open market. However, because of the reserve clause, the Cardinals had the power to revive Flood's expired contract and sell it to a willing purchaser, and Flood had no say in the matter.³⁸

Flood, an African-American athlete who had endured many indignities as a minor-league ballplayer in the Jim Crow South,³⁹ viewed his situation through the prism of the civil rights movement, and elected to challenge the baseball establishment rather than report to the Phillies.⁴⁰ With the financial and legal backing of the Major League Baseball Players' Association,⁴¹ he sued to enjoin the trade and for monetary damages, directly challenging the continued viability of the *Federal Baseball* decision.⁴²

Not surprisingly, given that the Supreme Court had never overruled *Federal Baseball*, U.S. District Court Judge Irving Cooper ruled against Flood.⁴³ The court noted that, except for Flood himself, “plaintiff's witnesses do not contend that [the reserve clause] is wholly undesirable; in fact they regard substantial portions meritorious. It lends support to our view...that arbitration or negotiation would extract such troublesome fault as may exist in the present system and, preserving its necessary features, fashion the reserve clause so as to satisfy all parties.”⁴⁴ The court went on

to note that only the Supreme Court or Congress had the power to overrule *Federal Baseball*, and entered judgment for the defendants.⁴⁵ The Second Circuit affirmed.⁴⁶

The case then proceeded to the U.S. Supreme Court following a grant of certiorari.⁴⁷ In a flowery opinion that included a reference to the poem “Casey at the Bat,”⁴⁸ the full text of the poem “Tinker to Evers to Chance,”⁴⁹ and a list of eighty-eight legendary baseball figures (followed by the unintentionally ironic observation, “The list seems endless”),⁵⁰ the Supreme Court affirmed, in a 5–3⁵¹ opinion authored by Justice Harry Blackmun.⁵²

The Court freely acknowledged that professional baseball “is a business and it is engaged in interstate commerce,”⁵³ and characterized the *Federal Baseball* and *Toolson* decisions as an “aberration.”⁵⁴ But the Court went on to observe that that aberration “has been with us now for half a century, one heretofore deemed fully entitled to the benefit of *stare decisis*, and one that has survived the Court’s expanding concept of interstate commerce. It rests on a recognition and an acceptance of baseball’s unique characteristics and needs.”⁵⁵ Hewing to the rationale of *Toolson*, the Court concluded that “the remedy, if any is indicated, is for congressional, and not judicial, action.”⁵⁶

After the Flood (decision)— the Messersmith/McNally Arbitration Award

Flood’s loss was a loss for all major-league baseball players, but had the effect of putting the reserve clause near the top of their collective-bargaining agenda.⁵⁷ In the negotiations that commenced in November 1972, five months after release of the Supreme Court’s opinion in *Flood*, the two sides agreed to defer negotiations over the reserve clause until the next round, but implemented the so-called “10-and-5” rule, which gives players with ten years’ experience (and at least the last five with the same team) veto power over trades.⁵⁸ This rule ensured that in the future, veterans in Flood’s shoes could no longer be uprooted against their wishes. The two sides also agreed to permit independent arbitrators to resolve salary disputes involving players with more than two years’ experience in the major leagues.⁵⁹

The first high-profile arbitration decision under the new system involved Jim “Catfish” Hunter, a star pitcher for the Oakland A’s.⁶⁰ His contract for the 1974 and 1975 seasons provided for half of his salary to be paid into an insurance company fund, but team owner Charles O. Finley failed to make any such payments during the 1974

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season⁶¹—strikingly cavalier treatment of a pitcher who led the American League with twenty-five wins and a 2.49 ERA that season.⁶² Hunter filed a grievance. In December 1974, a three-member arbitration panel headed by Peter Seitz ruled in Hunter’s favor and declared him free of his contract—that is, a free agent, with the right to offer his services to the highest bidder.⁶³ In 1974, the mean player salary was \$40,839.00,⁶⁴ but with market forces on his side, Hunter spawned a bidding war that led to an unprecedented five-year, \$3.5 million contract with the New York Yankees.⁶⁵

Awakened to the possibilities of free agency, pitchers Dave McNally of the Montreal Expos and Andy Messersmith of the Los Angeles Dodgers made themselves test cases by refusing to sign contracts for the 1975 season.⁶⁶ In March 1975, their teams exercised the reserve option and renewed the players’ contracts for that season,⁶⁷ but at the end of the season⁶⁸ the Players Association filed grievances on their behalf, claiming that at the end of the renewal season they had no further ties to their teams, and should be declared free agents.⁶⁹ The case went to another arbitration panel, again chaired by Mr. Seitz.⁷⁰

Seitz dropped his bomb on December 23, 1975. On that day, he issued a 61-page Opinion

of Impartial Chairman of Arbitration Panel, which contained the following money quote:

The grievances of Messersmith and McNally are sustained. There is no contractual bond between these players and the Los Angeles and the Montreal clubs, respectively. Absent such a contract, their clubs had no right or power,

under the Basic Agreement, the Uniform Player Contract or the Major League Rules to reserve their services for their exclusive use for any period beyond the ‘renewal year’ in the contracts which these players had heretofore signed with their clubs...

The leagues...shall take such steps as may be necessary to inform and instruct their member clubs that the [Major League Rules] do not inhibit, prohibit or prevent such clubs from negotiating or dealing with respect to employment with the grievants in this case.⁷¹

The award was confirmed by the U.S. District Court for the Western District of Missouri on February 11, 1976.⁷² Following an expedited appeal, the judgment of the District Court was affirmed by the Eighth Circuit four weeks later.⁷³ The free agency era had begun.

Aftermath

The owners responded in a pique by locking the players out of spring training.⁷⁴ Commissioner Bowie Kuhn persuaded the

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owners to reopen the camps, and the 1976 season began without a new Basic Agreement.⁷⁵

Marvin Miller, the head of the Players' Association, realized that granting free agency to every player would cut against their interests, as an oversupply of free agents would depress their market value.⁷⁶ The owners and players eventually negotiated a deal, finalized in July 1976, making free agency available to unsigned players who had completed six years of service in the major leagues.⁷⁷ While the details have changed over the years, that remains the basic rule of free agency today.

In 2007, with baseball's owners and players awash in money, it is difficult to imagine another cataclysmic legal battle between the owners and the players; it is tempting to conclude that baseball's legal history is a closed book. However, it should be remembered that only a few short years ago, baseball considered eliminating several financially underperforming teams, a step that would have eliminated scores of union jobs and ignited a major battle with the Players' Association. For now, fans should enjoy the current era of labor peace while it lasts. **CL**

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Notes

1. The American Association (not to be confused with the American League, which was founded in 1901), was a short-lived league that lasted only from 1882 to 1891. Thorn, John, *Total Baseball*, p. 68, 6th Edition (Total Sports 1991).
2. *Metropolitan Exhibition Co. v. Ewing*, 42 F.198, 202 (C.C.S.D.N.Y. 1890).
3. *Id.*, 42 F. at 200.
4. *Flood v. Kuhn*, 407 U.S. 258, 259, 92 S.Ct. 2099, 2100, 32 L.Ed.2d 728 (1972).
5. Pursuant to section 10 of the 1973 version of the Uniform Player's Contract, each team had until January 15 of a given year to tender contracts to its players; if the team and a given player did not agree to terms by March 1, "then on or before 10 days after said March 1, the Club shall have the right by written notice to the Player at said address to renew this contract for the period of one year on the same terms, except that the amount payable to the Player shall be such as the club shall fix in said notice; provided, however, that said amount, if fixed by a Major League Club, shall be an amount payable at a rate not less than 80% of the rate stipulated for the preceding year." *Flood, supra*, 407 U.S. at 260, 92 S.Ct. at 2100.
6. *Flood v. Kuhn*, 316 F.Supp. 271, 273, 274 (S.D.N.Y. 1970); Snyder, Brad, *A Well-Paid Slave: Curt Flood's Fight for Free Agency in Professional Sports*, 2, 74 (Viking, 2006).
7. *Flood v. Kuhn, supra*, 316 F.Supp. at 274; Snyder, *supra*, at 2.
8. 259 U.S. 200, 42 S.Ct. 465, 66 L.Ed. 898 (1922).
9. *Zimbalist, supra*, p. 15.
10. In 1915, the National League had teams in Boston, Brooklyn, Chicago, Cincinnati, New York, Philadelphia, Pittsburgh, and St. Louis; the American League had teams in Boston, Chicago, Cleveland, Detroit, New York, Philadelphia, St. Louis, and Washington; and the Federal League had teams in Baltimore, Brooklyn, Buffalo, Chicago, Kansas City, Newark, Pittsburgh, and St. Louis. Thorn, *supra*, p.p. 2048-2053.
11. *Zimbalist, supra*, p. 15.
12. *Id.*, pp. 15, 16.
13. *Id.*, pp. 16.
14. *Id.*; *National League of Professional Baseball Clubs v. Federal Baseball Club of Baltimore*, 269 F. 681, 682 (D.C.Cir. 1920).
15. *National League*, 269 F. at 682.
16. The defendants were the National League; its eight (8) franchises; the American League; its eight (8) franchises; National League President John K. Tener; American League President Bancroft A. ("Ban") Johnson; and August Herrmann, chairman of major league baseball's National Commission. *Id.*, 269 F. at 682, 683.
17. *Id.* at 682.
18. 15 U.S.C. section 1. At the time, the Act was codified at 26 Stat. 209. Then, as now, the Sherman Act declared every contract, combination, or conspiracy "in restraint of trade or commerce among the several states...to be illegal." *Id.*; *National League, supra*, 269 F. at 684.
19. *National League, supra*, 269 F. at 682.
20. *Id.* at 688.
21. *Id.* at 684.
22. *Id.* at 684, 685.
23. *Id.* at 685.
24. *Id.* at 688.
25. *Federal Baseball, supra*, 259 U.S. at 208, 209, 42 S.Ct. at 466.
26. *Id.*
27. *Toolson v. New York Yankees*, 346 U.S. 356, 74 S.Ct. 78, 98 L.Ed. 64 (1953). The case was an antitrust suit by a player in the New York Yankees' system, George Toolson, who had been placed on the "inactive list" following his refusal to report to a minor league team. *Toolson v. New York Yankees*, 101 F.Supp. 93 (S.D.Cal. 1951).
28. *Toolson v. New York Yankees, supra*, 236 U.S. at 357, 74 S.Ct. at 78, 79.
29. *Id.*, 236 U.S. at 357, 358, 74 S.Ct. at 79.
30. *Radovich v. National Football League*, 352 U.S. 445, 77 S.Ct. 390, 1 L.Ed.2d 456 (1957).
31. After trial of the Flood case, *infra*, but before release of the Supreme Court decision in that case, the Court held that professional basketball, like professional football, enjoyed no exemption from federal antitrust law. *Haywood v. National Basketball Association*, 401 U.S. 1204, 91 S.Ct. 672, 28 L.Ed.2d 206 (1971).
32. *Salerno v. American League of Professional Baseball Clubs*, 429 F.2d 1003, 1005 (2nd Cir. 1970).
33. Flood had a career .293 batting average and .733 OPS, with 85 home runs in 1,759 games. Flood led the National League with

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- 211 hits in 1964, and had career bests of .335 BA (1967), .391 OBP (1961), .421 SLG (1965), and 12 HR (1962). He led the league in fielding average twice, with .993 in 1960 and 1.000 in 1966. Thorn, *supra*, p. 863. Flood won 7 Golden Glove awards. Snyder, *supra*, p. 1.
34. *Flood v. Kuhn*, 316 F.Supp. 271, 272 (S.D.N.Y. 1970). Flood's suit involved other claims as well, under state antitrust law, the Thirteenth Amendment of the Constitution, and others; *id.*; but those claims played a lesser role in the litigation and are not discussed here.
35. At the time, Rule 9 of the Major League and Professional Baseball Rules provided in relevant part as follows: "A club may assign to another club an existing contract with a player. The player, upon receipt of written notice of such assignment is by his contract (paragraph 6(a) of the Uniform Player Contract) bound to serve the assignee." *Flood v. Kuhn*, *supra*, 316 F.Supp. at 274, n.7.
36. *Id.*, 316 F.Supp. at 272.
37. Snyder, *supra*, p. 6.
38. *Flood v. Kuhn*, *supra*, 316 F.Supp. at 274, 275.
39. *Id.* at 3, 42-51.
40. *Id.* at 1-4.
41. Snyder, *supra*, pp. 69-81.
42. Flood sued the twenty-four major league teams; the two league presidents, Charles S. (Chub) Feeney of the National League and Joseph E. Cronin of the American League; and baseball commissioner Bowie K. Kuhn. *Flood v. Kuhn*, 443 F.2d 264, 265 n. 1 (2nd Cir. 1971).
43. *Flood v. Kuhn*, *supra*, 316 F.Supp. at 271.
44. *Id.* at 276.
45. *Id.* at 278, 285.
46. *Flood v. Kuhn*, 443 F.2d 264 (2nd Cir. 1971).
47. 404 U.S. 880, 92 S.Ct. 201, 30 L.Ed.2d 160 (1971).
48. 407 U.S. at 263, 92 S.Ct. at 2102.
49. 407 U.S. at 264, n. 5, 92 S.Ct. at 2103, n. 5.
50. 407 U.S. at 263, 92 S.Ct. at 2102.
51. Justice Lewis Powell recused himself, fearing that his ownership of stock in the Anheuser-Busch Company, a subsidiary of which owned the St. Louis Cardinals, presented at least the appearance of a conflict of interest. Snyder, *supra*, pp. 285, 286.
52. Justice Byron White, apparently unamused by Justice Blackmun's love letter to baseball in Part I of the opinion, pointedly declined to join in that part of the opinion, although he did vote with the majority. 407 U.S. at 258, 92 S.Ct. at 2099.
53. 407 U.S. at 282, 92 S.Ct. at 2112.
54. *Id.*
55. *Id.*
56. *Id.*, 407 U.S. at 285, 92 S.Ct. at 2113.
57. Zimbalist, Andrew, *Baseball and Billions*, p. 20 (BasicBooks, 1992).
58. *Id.*, pp. 20, 21.
59. *Id.*, p. 20.
60. *Id.*, p. 21.
61. *Id.*
62. Thorn, *supra*, p. 1606.
63. *Id.*
64. Zimbalist, *Baseball and Billions*, *supra*, p. 85 (table 4.3).
65. Snyder, *supra*, p. 317.
66. Zimbalist, *Baseball and Billions*, *supra*, p. 21.
67. *Kansas City Royals Baseball Corp. v. Major League Baseball Players Association*, 409

- F.Supp. 233, 235 n. 1, 236 n. 2 (W.D.Mo. 1976).
68. Messersmith had a 19-14 won-lost record and an ERA of 2.29 in 1975, and led the National League with 321 innings pitched, 19 complete games, and 7 shutouts. McNally, in what turned out to be his final season, started 12 games, and finished with a 3-6 record and 5.24 ERA. Thorn, *supra*, pp. 1699, 1694.
69. *Id.*
70. *Id.*, 409 F.Supp. at 236.
71. *Id.*, 409 F.Supp. at 237.
72. *Id.*
73. *Kansas City Royals Baseball Corp. v. Major League Baseball Players Association*, 532 F.2d 615 (8th Cir. 1976).
74. Zimbalist, *Baseball and Billions*, *supra*, p. 21.
75. *Id.*
76. Snyder, *supra*, p. 319.
77. Zimbalist, *Baseball and Billions*, *supra*, p. 21.

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details, examples, anecdotes, and case studies. (If you don't have space for supporting details and examples, the topic is too broad.) **CL**

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