A panoramic photograph taken of Busch Stadium during Game 4 of the 1967 World Series between the St. Louis Cardinals and the Boston Red Sox. [Arthur Witman Photograph Collection (S0732)].

Flood at 50: How Curt Flood Changed the Game of Baseball

Christopher P. Graham

"I am pleased that God made my skin black. I just wish he had made it thicker."
— *Curt Flood*

In his December 2019 press conference, New York Yankees pitcher Gerrit Cole, newly signed for nine years and $324 million, took the unusual approach of thanking a former Major League player named Curt Flood, causing some in the audience to wonder, "Who the hell is Curt Flood?" Cole said that catcher John Buck, who played with Cole during his rookie year, made sure that Cole knew the history of the game.

"One of his favorite things was he would call you up to the front of the bus after a few pops, and he would get in your face he would ask you, 'Who's Curt Flood? Tell me about Curt Flood! Why is he so important?' I hope that goes on on every bus. I want everybody to know, because challenging the reserve clause was one of the first stepping stones to ultimately the system we have today, which I believe brings out the most competitive, you know, genuine competitiveness, that we have in baseball,'" Cole said.[1]

This year marks the 50-year anniversary of the U.S. Supreme Court's 1972 decision in *Flood v. Kuhn* and how Curt Flood changed the game of baseball forever. To understand fully Flood's story, however, one must first travel back in time more than 130 years. Two highly significant things happened in 1890 that forged the relationship between baseball and the law for the next 80 years: one in the U.S. Congress and one in the New York court system.

First, reflecting the country's hostility toward the growth of enormous business monopolies in post-Civil War America, Congress passed the Sherman Antitrust Act. In addition, by 1890, what had started out as an amateur pursuit in fields and parks across the country had evolved into an organized sport in which its players were paid professionals. And as the number of professional baseball teams increased, so did the competition for players.

But without any real organization or structure, players freely moved from team to team in search of a better salary. In 1876, team owners formed the National League to provide some order to scheduling and allocate specific geographic territories to participating teams. More important, though, the league created the "reserve system" in order to deal with the problem of players moving from club to club.

Early history of the "reserve clause"

By 1890, the entire rosters of National League teams had to agree to a "reserve clause" inserted into their annual contracts. Under the "reserve clause" a player was effectively bound to his team for the entirety of his career through a series of annual contracts. In contrast, nothing bound the teams to their players (other

Curt Flood, St. Louis Cardinals Baseball, Sports. [Arthur Witman Collection, S0732. S0732-20562.] The State Historical Society of Missouri, Photograph Collection.

than the one-year contract). The team could sell or trade any player at any time. In addition, the team could cut any player on 10-days' notice.

From the outset, players bristled at the idea of being bound to a club for their entire career as it prevented them from negotiating a salary. One such player, John Montgomery Ward, who played for the New York Giants and was a graduate of Columbia Law School, began the formation of a separate league of players, the Players League. The response from the Giants was swift, however, and the club's owner, The Metropolitan Exhibition Company, filed suit against Ward to keep him from playing in the new league based on his 1889 contract with the Giants. In January of 1890, the New York Supreme Court issued its decision in the case, holding that the Giants could not enjoin Ward from playing in the other league.[2] Notably, the court cited the "want of fairness and of mutuality" in Ward's contract.[3]

By 1922, the issue had made it all the way to the United States Supreme Court. In 1914, yet another league appeared to challenge the supremacy of the Major Leagues (National and American). The Federal League emerged and, like its predecessors, intended to fill its rosters with defectors from the National and American Leagues. The Federal League filed a lawsuit in federal court against the American and National Leagues, but the groups eventually settled the lawsuit as the Major Leagues agreed to incorporate most of the Federal League's teams into the fold.

Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs

One team, the Maryland Terrapins were left out of the settlement, however, and in 1916, their owner sued the National League, this time using a new legal theory: that organized baseball operated as a monopoly in interstate commerce in violation of the Sherman Antitrust Act. The owner argued that the "reserve clause" that was attendant in all Major League player contracts, monopolized the business of baseball and that the Major Leagues had used that monopoly power to in essence destroy the Federal League.

The U.S. Supreme Court disagreed.[4] Justice Oliver Wendell Holmes, Jr. issued the Court's opinion. According to Justice Holmes, the business of baseball consisted of giving "exhibitions," which were "*purely state affairs*."[5] Organized baseball was thus not involved in *interstate* commerce or trade and therefore the "restrictions by contract" (*i.e.,* the "reserve clause") and "other conduct" designed to keep players from signing with another team was "not an interference" with such commerce.[6]

In the years following the *Federal Baseball Club of Baltimore* case, other players took on the reserve system,[7] thus setting the stage for Flood's challenge. It is worth noting, however, that continued existence of the reserve system in the Major Leagues rendered baseball an anomaly in professional sports. Indeed, in 1957, the U.S. Supreme Court ruled in *Radnovich v. National Football League* that its holding in *Federal Baseball Club of Baltimore* only applied to baseball, and that since Congress had not seen fit to change baseball's exempt status from the Sherman Antitrust Act, that status could continue.

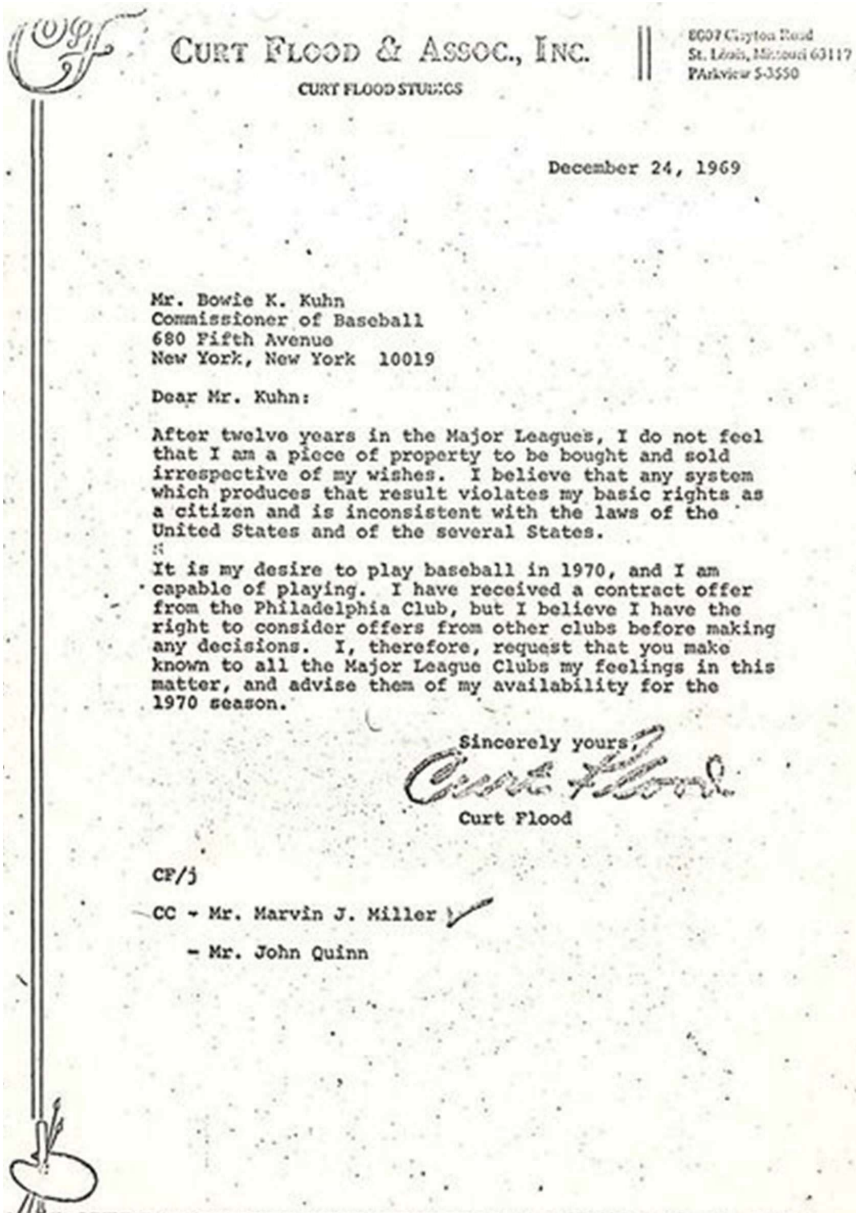
The National Football League, on the other hand, as interstate commerce, was subject to federal antitrust legislation, which effectively prevented the NFL or any other professional league aside from Major League Baseball from relying on the reserve system as a way to prevent players from moving to another team at the end of the player's contract.[8]

"I am not a piece of property to be bought and sold irrespective of my wishes."

By the end of the 1969 season, Flood had played in the Major Leagues for 12 years. His team, the St. Louis Cardinals, had played in three World Series, winning in 1964 and 1967. Flood had won seven consecutive Gold Glove awards and was a three time All-Star. The 1969 season, however, had proven to be frustrating for Flood as his batting average and number of hits had dropped from the previous year and the team fined Flood for missing the team's promotional banquet for season ticket holders during spring training. In Flood's mind, his days with the Cardinals appeared numbered.

Flood's prognostication proved true when, on October 8, 1969, by way of a phone call and a one-sentence letter, the Cardinals traded Flood to the Philadelphia Phillies without Flood's consent.[9] Flood hired an attorney and, with the help of its director, Marvin K. Miller, secured the assistance and support of the fledgling Major League Baseball Players Association ("MLBPA")[10] to take on Major League Baseball's ("MLB") reserve system. On Christmas Eve of 1969, Flood sent the letter pictured on the following page to MLB Commissioner Bowie Kuhn.

Kuhn responded six days later, stating that Flood had entered into his annual contract with the Cardinals containing the same assignment provision that had



CURT FLOOD & ASSOC., INC.
CURT FLOOD STUDIOS
8007 Clayton Road
St. Louis, Missouri 63117
PArkview 5-3550

December 24, 1969

Mr. Bowie K. Kuhn
Commissioner of Baseball
680 Fifth Avenue
New York, New York 10019

Dear Mr. Kuhn:

After twelve years in the Major Leagues, I do not feel that I am a piece of property to be bought and sold irrespective of my wishes. I believe that any system which produces that result violates my basic rights as a citizen and is inconsistent with the laws of the United States and of the several States.

It is my desire to play baseball in 1970, and I am capable of playing. I have received a contract offer from the Philadelphia Club, but I believe I have the right to consider offers from other clubs before making any decisions. I, therefore, request that you make known to all the Major League Clubs my feelings in this matter, and advise them of my availability for the 1970 season.

Sincerely yours,

Curt Flood

Curt Flood

CF/j

CC - Mr. Marvin J. Miller

- Mr. John Quinn

been in place since Flood first joined the team in 1956 and questioning the applicability of Flood's analogy to a piece of property.[11]

The press and the court of public opinion vilified Flood for his position, calling Flood greedy and questioning his motives.[12] For example, Bob Broeg, the respected sports editor of the St. Louis Post-Dispatch, like many, questioned Flood's motives, calling Flood's challenge "not a matter of principle, but of principal."[13] But to Flood, it *was* a matter of principle. Even though the Phillies offered Flood a $10,000 increase in salary over what he made in St. Louis, Flood didn't want to play in what he called "the nation's northernmost Southern city." When asked by Howard Cosell on ABC's *Wide World of Sports* about his retort to a man making $90,000 a year not exactly being slave wages, Flood replied, "a well-paid slave is nonetheless a slave."[14]

Curt Flood takes on Major League Baseball

Less than a month after Kuhn's response, on January 16, 1970, Flood filed his complaint against Kuhn, the presidents of the National and American Leagues, and all 24 MLB clubs in the U.S. District Court for the Southern District of New York. Flood alleged, among other things, that baseball's reserve system constituted a conspiracy on the part of all the defendants in violation of the Sherman Antitrust Act.

Flood's case proceeded to trial in front of cantankerous federal Judge Irving Ben Cooper, who was once reported to have described an attorney appearing before him as "that crummy little lawyer from that crummy little Legal Aid Society."[15] Despite the MLBPA's support, only three players testified on Flood's behalf. One of those players, however, was Jackie Robinson, who testified that the reserve system essentially gave players two options: accept their annual contract or not play professional baseball.[16]

Notably, the heads of each of the other three major sports leagues, Alva "Pete" Rozell of the National Football League, Walter Kennedy of the National Basketball League, and Clarence Sutherland Campbell of the National Hockey League all testified that their respective league operated under what they termed a "free agency" or "option reserve" system, meaning that after a player had been with a team for a certain number of years, he was free to sign with another team.[17] Kuhn, the owners of several Major League teams, and even some players testified for the defense, asserting that the reserve system had been influential in the baseball's historical development and that without it, there would be chaos, uncertainty, and ultimately, the lack of even competition between teams.[18]

Judge Cooper ultimately ruled against Flood, holding that the reserve system in baseball was not unduly restrictive and that, aside from Flood and the few other players who testified on his behalf, no one had testified in favor of the elimination of the "reserve clause."[19] Less than a year later, the U.S. Court of Appeals for the Second Circuit upheld Judge Cooper's decision.[20] Given that *Federal Baseball Club of Baltimore* was still good law, both decisions were expected. The stage was now set for Flood to take his case to the U.S. Supreme Court.

Flood Reaches the U.S. Supreme Court

Flood and his legal team were eager to argue the case. After all, former U.S. Supreme Court Justice Arthur Goldberg had agreed to argue on Flood's behalf. But Goldberg's oral argument was, by all

accounts (even his own), somewhat of a disaster.[21] Nonetheless, given the dubious footing upon which *Federal Baseball Club of Baltimore* rested, Flood and his legal team liked their chances. Much had changed since 1922, not the least of which was the idea that baseball being a purely "intrastate" activity was preposterous.

But the Court disagreed. In one of the great anomalies of Supreme Court jurisprudence, on June 19, 1972, the Court by a 5-3 majority upheld the Second Circuit's ruling, effectively ending Flood's case and cementing, for the time being anyway, the reserve system in baseball. Justice Harry Blackman's opinion, as notable as anything else for its incredibly strange beginning where Justice Blackman recited the names of more than 80 former professional baseball players, ultimately concluded that although *Federal Baseball Club of Baltimore* was an aberration, "[i]t is an aberration that 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."[22]

The aftermath

Thus, Curt Flood lost his battle with Major League Baseball and, although he was only 31 years old when the Cardinals traded him, would (with the exception of a brief 13-game stint with the Washington Senators in 1970) never play professional baseball again. The tide had turned, however. By challenging baseball's reserve system, Flood's actions, albeit at great personal expense, forced Major League Baseball to continue collective bargaining with the MLBPA, and within three years after the *Flood v. Kuhn* decision, the elements necessary to collective bargaining fell into place that would result in the rise of free agency in baseball and the end of the reserve system. So, while Flood lost his battle, as Gerrit Cole aptly noted, Flood won the war for all future professional baseball players.

Christopher P. Graham *is a lifelong baseball and (mostly) suffering Boston Red Sox fan. He is currently Chairperson of the Idaho Legal History Section. Chris first learned about the story of Curt Flood while taking a class at Boise State University from Professor Pat Ourada called the "The Legal History of Sports." That class, among a few others, influenced his decision go to law school. He now teaches the same class to Honors College students at BSU.*

Endnotes

1. *See* Kristie Ackert, N.Y. Daily News, Dec. 18, 2019, https://www.nydailynews.com/sports/baseball/yankees/ny-gerrit-cole-free-agency-marvin-miller-curt-flood-20191218-sweqaznlajcudci4bhslbik43a-story.html.

2. 24 Abb. N. Cas. 393 (N.Y. Sup. Ct. 1890).

3. *Id.* at 414.

4. *Fed. Baseball Club of Baltimore v. Nat'l League of Prof'l Baseball Clubs*, 259 U.S. 200 (1922).

5. *Id.* at 208.

6. *Id.* at 209.

7. For example, in 1946, Danny Gardella and a number of other post-World War II players signed contracts with teams from the Mexican League. Major League Baseball Commissioner Albert B. "Hap" Chandler subsequently banned Gardella and the other players from returning to play in the Major Leagues for a period of five years, using the "reserve clause" as justification for the ban. Gardella sued Chandler but a federal judge, citing the *Federal Baseball Club of Baltimore* case, ruled against him. On appeal, however, the Second Circuit Court of Appeals overruled the trial court, holding that there should be a trial on whether baseball could ban Gardella and the other players, noting that "the 'reserve clause' as has been observed, results in something resembling peonage of the baseball player." *Gardella v. Chandler*, 172 F.2d 402, 409 (2d Cir. 1949). Judge Jerome Frank, author of the *Gardella* opinion, further remarked that "No one can treat as frivolous the argument that the Supreme Court's recent decisions have completely destroyed the vitality of *Federal Baseball Club v. National League* ... decided twenty-seven years ago, and have left that case but an impotent zombi." *Id.* at 408-09. Several years later, another player, Earl Toolson (coincidentally from Burley, Idaho), again challenged the reserve system. And again, the ultimate result was the same. *See Toolson v. New York Yankees, Inc.*, 346 U.S. 356, 356–57 (1953) ("In *Federal Baseball Club of Baltimore v. National League of Professional Baseball Clubs* ... this Court held that the business of providing public baseball games for profit between clubs of professional baseball players was not within the scope of the federal antitrust laws. Congress has had the ruling under consideration but has not seen fit to bring such business under these laws by legislation having prospective effect. The business has thus been left for thirty years to develop, on the understanding that it was not subject to existing antitrust legislation.").

8. 352 U.S. 445 (1957). Notably, in his *Radnovich* opinion, Justice Tom Clark remarked that that the Court made its ruling in *Toolson* "because it was concluded that more harm would be done in overruling Federal Base Ball than in upholding a ruling which at best was of dubious validity." *Id.* at 450. *See also Haywood v. National Basketball Ass'n*, 401 U.S. 1204, 1205 (1971) ("Basketball ... does not enjoy exemption from the antitrust laws.").

9. Robert M. Goldman, One Man Out: Curt Flood versus Baseball 2 (2008).

10. Notably, a number of MLB players were not happy with Flood's position. For example, Boston Red Sox outfielder Carl Yastrzemski, loyal to his team's owner, indicated that he was against what Flood was trying to do because it would "ruin the game." Brad Snyder, A Well-Paid Slave: Curt Flood's Fight for Free Agency in Professional Sports 117 (2007).

11. *Id.* at 6-7.

12. Flood would later remark, "Do you know what it's like to be called the little black son of a bitch who tried to destroy baseball, the American Pastime?" *Id.* at 136.

13. Snyder, *supra* note 10, at 112.

14. *Id.* at 104.

15. Goldman, *supra* note 9, at 71.

16. *Id.* at 75.

17. *Id.* at 78-79.

18. *Id.* at 79-80.

19. 316 F. Supp. 271 (S.D.N.Y. 1970).

20. 443 F.2d 264 (2d. Cir. 1971).

21. Goldman, *supra* note 9, at 109.

22. *Flood v. Kuhn*, 407 U.S. 258, 282 (1972).