

Claremont Colleges

Scholarship @ Claremont

Pomona Senior Theses

Pomona Student Scholarship

2020

"I Do Not Feel I Am a Piece of Property to be Bought and Sold Irrespective of My Wishes:" Athlete Activism and the Sociocultural Impact of Curt Flood's Lawsuit Against Major League Baseball

Luka Green

Follow this and additional works at: https://scholarship.claremont.edu/pomona_theses



Part of the [Labor and Employment Law Commons](#), [Legal Commons](#), [Sports Studies Commons](#), and the [United States History Commons](#)

Recommended Citation

Green, Luka, "I Do Not Feel I Am a Piece of Property to be Bought and Sold Irrespective of My Wishes:" Athlete Activism and the Sociocultural Impact of Curt Flood's Lawsuit Against Major League Baseball" (2020). *Pomona Senior Theses*. 264.

https://scholarship.claremont.edu/pomona_theses/264

This Open Access Senior Thesis is brought to you for free and open access by the Pomona Student Scholarship at Scholarship @ Claremont. It has been accepted for inclusion in Pomona Senior Theses by an authorized administrator of Scholarship @ Claremont. For more information, please contact scholarship@cuc.claremont.edu.

**“I Do Not Feel I Am a Piece of Property to be Bought and Sold Irrespective of My
Wishes:”¹Athlete Activism and the Sociocultural Impact of Curt Flood’s Lawsuit Against
Major League Baseball**

Luka Green

A thesis submitted in partial fulfillment of the requirements for the degree of Bachelor of Arts in
History at Pomona College

05/01/2020

¹ Curt Flood and Richard Carter. *The Way It Is* (New York: Trident Press, 1971), 163.

Table of Contents:

Abstract	3
Chapter 1.....	5
Chapter 2	21
Chapter 3	42
Chapter 4	50
Bibliography	62

Abstract

In January 1970, St. Louis Cardinals outfielder Curt Flood filed a suit against MLB Commissioner Bowie Kuhn, protesting the Reserve Clause in Major League Baseball that did not allow players the right to negotiate contract terms with any team but their current one. In doing so, he cemented his status as a divisive figure in baseball, the media, and with the general public. One of the primary reasons for such an extreme reaction was Flood's rhetoric surrounding the case, as he repeatedly invoked slavery and other forms of peonage when describing the working conditions of professional baseball players. This sparked outrage among those who saw him as an ungrateful, overpaid athlete and admiration among those who saw his actions as a continuation of the legacy of African American activist athletes that emerged in the 1960s. *Flood v. Kuhn* was nominally a dispute of baseball's antitrust exemption and labor law in general, but it carried a far greater symbolism than its legal confines would suggest. Flood, a free-thinking black man, questioning the rigid realities of what continues to be known as "America's Pastime" had an outsized impact on both player agency in sports and the public treatment of athlete activism. Though Flood lost the case, his legacy of laying the groundwork for the immense negotiating power and public scrutiny that accompanies professional athletes today remains.

In this paper, I explore *Flood v. Kuhn* as a story of black athlete activism, a case study on media and individual public reaction, and a legal conundrum. In Chapter 1, I will look into athlete activism from both a theoretical and practical standpoint, attempting to place Flood within the context of moderate liberal activism and the Black Power activism more commonly associated with his actions. Chapter 2 views the case from a

media perspective, illustrating how the relationship between both the ideology and the argumentation of divergent opinions on Flood's actions. After studying the methodology and implications of the media reaction to the case, I will explore the individual perspectives of both baseball fans and players as a means of illustrating the reactions and reasoning of both Flood's supporters and detractors in Chapter 3. Chapter 4 evaluates the case from a legal perspective, illustrating how disputed early decisions in the battle against baseball's antitrust exemption led to the convoluted and disputed decision against Flood. Through all of the chapters, *Flood v. Kuhn* will be viewed from an interdisciplinary perspective, unique in the sense that it combines in-depth analysis of the primary issues surrounding the case within a holistic framework of investigation not seen in the (far more common) biographical literature on Flood.

Chapter 1

“Power concedes nothing without a demand. It never did and it never will.”²

This famous assertion by Frederick Douglass, used in the waning chapters of Curt Flood’s autobiography, *The Way It Is*, presents Flood’s very public and ultimately unsuccessful lawsuit against Major League Baseball for its “Reserve Clause” in simple terms. As a means of rhetoric, using this quote in the context of Flood seeing himself and other Major League Baseball players as “sheep, livestock with which higher forms of life may tamper at will” appears to place him well within the legacies of other African American Activist Athletes such as Jackie Robinson, Muhammad Ali, John Carlos, and Tommie Smith.³ In this view, Flood exemplified this lineage; as author Michael Lomax argues in his interpretation of Flood’s within broader cultural developments, the outfielder was a perfect example of another influential “African-American athlete who sought to hasten the dismantling of barriers to racial and structural equality in the professional sports world.”⁴ When considering its fight to combat the inequality and outsized influence of team management in baseball, Flood’s principled stand did resemble the actions of his predecessors and contemporary activists. However, closer examination of *Flood v. Kuhn* within the larger context of athlete activism and black activism after the Civil Rights Act of 1964 reveals a far more complex and ambiguous picture of Flood as black activist.

² Flood, *The Way It Is*, 174.

³ Flood, *The Way It Is*, 118.

⁴ Michael Lomax, “Curt Flood Stood Up for Us: The Quest to Break Down Racial Barriers and Structural Inequality in Major League Baseball,” *Sport in Society* 6 (2003): 66.

For example, the sentences proceeding the Douglass quote in *The Way It Is* summarize the broad outline of the case merely in terms of labor and relatively devoid of larger racial connotations. Flood thus interprets Douglass's words in cold, calculate language, arguing that

“To see the Curt Flood case in that light is to see its entire meaning. I have asked the Federal courts to affirm that national policy requires reasonably equitable relations between employers and employees, and that baseball is no exception. I have promised to pursue the matter to the Supreme Court of the United States, if necessary. I have no choice. The owners left me none.”⁵

This line of reasoning is especially interesting because it causes Flood's own assessment of his lawsuit to be based entirely on the mechanisms of employer power and labor. He does not present himself as an activist; if anything, Flood's autobiographical opinion of *Flood v. Kuhn* paints him as a passive actor within the court system. Within this context, can he be categorized as an activist, or merely a disgruntled employee?

The debate over whether Curt Flood's place within black activism in the late 1960s was a fully intentioned goal or simply a rhetorical tool to maximize the impact of his lawsuit against the MLB remains ambiguous. Flood never explicitly revealed his motivations for the lawsuit, so much of his intent is open to interpretation, meaning that attempts to categorize his actions in the dichotomy of “activism” or “not activism” are less useful than illustrating the convoluted philosophy that results from analyzing his actions. To that end, though Flood's case does have some elements of activism within its rhetoric and time period, these parts of the case tend to oversimplify his place within the

⁵ Flood, *The Way It Is*, 174.

lineage of African American activist athletes because they minimize the fundamental way in which *Flood v. Kuhn* changed the realities of athlete activism and particularly black activism within a very public sphere. As we will see in this chapter, what was initially viewed as a continuation of the activism of Jackie Robinson, Muhammad Ali, John Carlos, and Tommie Smith did in fact herald a long period of time in which African American Athlete activism diminished; the black athlete has only reignited their voice and the power of their public opinion in very recent years. To best understand the journey of the black athlete as an outspoken political figure, we must first understand the reactions to and implications of public action.

Athlete activism has been and is a great source of division in public opinion because many Americans implicitly value sports and attempt to view sports within their own reflections on and opinions of society. The idea that sports is some sort of vessel by which Americans relate to larger cultural values is echoed by Brent Smith and Stephanie A. Tryce in their examination of American reactions to athlete activism. Smith and Tryce conclude that a sporting event “is a microcosm of the larger society and, as such, is a place where ‘inequalities such as racism, sexism, economic stratification and other forms of oppression are reproduced, exacerbated and/or ignored.’”⁶ As a result, what initially can be regarded as “entertainment” that “ostensibly distracts from the harsh realities of everyday life” actually becomes the reverse: a widely-viewed public exhibition of all our sociopolitical challenges, an exhibition that results in literal winners and losers.⁷ The

⁶ Brent Smith and Stephanie A. Tryce, "Understanding Emerging Adults' National Attachments and Their Reactions to Athlete Activism," *Journal of Sport & Social Issues* 43, no. 3 (2019): 171.

⁷ Smith and Tryce, "Understanding Emerging Adults' National Attachments and Their Reactions to Athlete Activism," 171.

additions of strong links to the military and patriotism⁸ as well as its inclusion into the public discourse,⁹ whether it be opinion letters in Curt Flood's time or social media posts in the present, have opened up a fascinatingly unilateral relationship between sports and politics, where "sports are inextricably political" due to the outside parallels and influence that surrounds any game, but simultaneously politics can exist exclusively outside of the political arena.¹⁰

This disconnect between the politics' omnipresence in sports and sports' strategic deployment in politics manifests in a fascinating situation in which, by confronting the political reality of their sport and position, an athlete will inevitably receive intense public scrutiny and backlash. For example, Sappington and Hoffman noted "a pattern of attitudes suggesting that political protest is not part of an athlete's job or responsibilities, that it is ineffective and futile, and in some cases, that it even reflects a lack of sportsmanship or professionalism."¹¹ It is important to note that more diluted "advocacy," which includes smaller-scale activities such as an athlete donating to charity or volunteering in their local community, is not included in these attitudes because advocacy does steer relatively clear of outspoken political action and therefore does nothing to challenge any particular set of values or cultural institutions.¹² While apolitical acts of good receiving more public support than political demonstrations is unsurprising in and

⁸ Smith and Tryce, "Understanding Emerging Adults' National Attachments and Their Reactions to Athlete Activism," 172.

⁹ R Sappington, B.T. Keum, and M.A. Hoffman, "'Arrogant, Ungrateful, Anti-American Degenerates': Development and Initial Validation of the Attitudes Toward Athlete Activism Questionnaire (ataaq)," *Psychology of Sport and Exercise* 45, (2019).

¹⁰ Peter Kaufman, "Boos, Bans, and Other Backlash: The Consequences of Being an Activist Athlete," *Humanity & Society* 32, no. 3 (2008): 218, <https://doi.org/10.1177/016059760803200302>.

¹¹ Sappington, Keum, and Hoffman "'arrogant, Ungrateful, Anti-American Degenerates': Development and Initial Validation of the Attitudes Toward Athlete Activism Questionnaire (ataaq)".

¹² Smith and Tryce, "Understanding Emerging Adults' National Attachments and Their Reactions to Athlete Activism," 176.

of itself, activist athletes are a unique group in the entertainment industry as a whole in the sense that the demonstration of their opinions is generally regarded as an issue.¹³ Merely characterizing this in the generalities of the public considering athlete activism “an issue” does not contribute to understanding *Flood v. Kuhn* without first exploring the specific groups who consider activism a problem.

Sappington and Hoffman directly address this issue, finding that “participants with positive attitudes toward social justice reported more favorable attitudes toward athlete activism... ATAAQ scores were also found to be significantly and negatively correlated with political identity, such that those with conservative political ideologies tended to hold unfavorable attitudes toward athlete activism.”¹⁴ In addition to this, they also found a

“positive relationship between unfavorable attitudes toward athlete activism and a belief that the world is just and equal. This could suggest that negative views toward athlete activists partly arises from a belief that individuals and groups in society are, for the most part, treated fairly, and that athletes do not have a reason to protest.”¹⁵

Somewhat paradoxically, the belief that the world was just and equal was actually correlated with social class such that those of a lower social class had significantly more belief in a fair society and were more likely to express a desire to punish athletes who speak out and more likely to have an overall negative attitude towards athlete activism.¹⁶

¹³ Kaufman, “Boos, Bans, and Other Backlash: The Consequences of Being an Activist Athlete,” 218.

¹⁴ Sappington, Keum, and Hoffman ““arrogant, Ungrateful, Anti-American Degenerates”: Development and Initial Validation of the Attitudes Toward Athlete Activism Questionnaire (ataaq)”.

¹⁵ Sappington, Keum, and Hoffman ““arrogant, Ungrateful, Anti-American Degenerates”: Development and Initial Validation of the Attitudes Toward Athlete Activism Questionnaire (ataaq)”.

¹⁶ Sappington, Keum, and Hoffman ““arrogant, Ungrateful, Anti-American Degenerates”: Development and Initial Validation of the Attitudes Toward Athlete Activism Questionnaire (ataaq)”.

This naturally led to the conclusion that there is a “positive relationship between unfavorable attitudes toward athlete activism and a belief that the world is just and equal,” which could lead to the conclusion that “negative views toward athlete activists partly arises from a belief that individuals and groups in society are, for the most part, treated fairly, and that athletes do not have a reason to protest.”¹⁷ In this sense, though the backlash the activist athlete receives is simply the result of a unilateral political relationship in which athletes are essentially forced to engage in politics but not vice versa, much of the backlash surrounding athlete activism is based on the idea that political unhappiness or differentiation of opinion is generally unwarranted. This directly links to elements of *Flood v. Kuhn* because Flood filing a lawsuit (rather than exclusively pursuing a solution in the realm of collective bargaining) implied the broadcasting of an opinion that was, in the eyes of groups disinclined to support athlete’s political statements, unnecessary and inflammatory in a fair and just world.

This opinion is especially true in the case of a black athlete because they have historically been even more vulnerable to negative comments “consistent with racial stereotypes related to Black athleticism and White intelligence that often serve to organize and reinforce racial power dynamics in sport.”¹⁸ In fact a dominating opinion of what happens when a black athlete asserts their voice in the public sphere is the idea that “American’s response to what the black athlete is saying and doing will undoubtedly not only determine future course and direction of American athletics, but also will affect all

¹⁷ Sappington, Keum, and Hoffman ““arrogant, Ungrateful, Anti-American Degenerates”: Development and Initial Validation of the Attitudes Toward Athlete Activism Questionnaire (ataaq)”.

¹⁸ Sappington, Keum, and Hoffman ““arrogant, Ungrateful, Anti-American Degenerates”: Development and Initial Validation of the Attitudes Toward Athlete Activism Questionnaire (ataaq)”.

social relations between blacks and whites in this country.”¹⁹ As a result, even if a black athlete does try to break the self-commodifying directions²⁰ of the sports business world as Flood did, the mere reality of athlete activism as a present American institution leads to widespread provocation and “an indelible imprint upon the public consciousness.”²¹ In short, while exploring whether or not Curt Flood intentionally embraced and promoted himself as a black activist athlete, it is important to keep in mind that his principled stand and lawsuit alone were enough to provoke a sharp response from those who were philosophically against an outspoken athlete to begin with.

This context can potentially give us a more definitive answer to the question of whether or not *Flood v. Kuhn* fits within the legacy of black athlete activism because it illustrates the reality that, as an athlete and especially a black athlete, Curt Flood was going to receive a similar reaction to his lawsuit regardless of whether or not he clearly defined it as such. Trying to define Flood’s motives and intention with his lawsuit is similarly ambiguous because, despite his reality as a black athlete acting alone and using racial rhetoric (traits generally descriptive of all black activist athletes),²² he was known, “to the day of his death,” to be “railing against the injustices that affected every player, whatever color.”²³ Taking these conflicted narratives into account, Flood can be seen as something entirely different than either an activist continuing the legacy of Black Power established in the 1960s or as a player completely devoid of any racial context: in a larger

¹⁹ Harry Edwards, *The Revolt of the Black Athlete* (Urbana: University of Illinois Press, 2017), 8.

²⁰ Abraham Iqbal Khan, *Curt Flood in the Media: Baseball, Race, and the Demise of the Activist-Athlete*, Race, Rhetoric, and Media Series, (Jackson: University Press of Mississippi, 2012): 15.

²¹ Sappington, Keum, and Hoffman ““arrogant, Ungrateful, Anti-American Degenerates”: Development and Initial Validation of the Attitudes Toward Athlete Activism Questionnaire (ataaq)”.

²² Kaufman, “Boos, Bans, and Other Backlash: The Consequences of Being an Activist Athlete,” 217.

²³ Jacobson, *Carrying Jackie’s Torch: The Players Who Integrated Baseball—And America* (Lawrence Hill Books, 2007), 180.

sense, Curt Flood's story is a perfect example of how public narrative can mold and shape a story to fit almost any iteration of the black/athlete experience. As Abraham Iqbal Khan views it,

“Perhaps more than any other person in the twentieth-century narrative of the black athlete, Flood embodies the tensions in black public life. Jackie Robinson may have meant more, but his history fits easily into the national progress narrative: Some observers might still say that with respect to race, Robinson is proof positive of liberal integration's triumph. Flood, of course, fails at telling the same smooth story. A loser at virtually every level except as a historic symbol of sport's unjust traditionalism, he is now seen as an individual “ahead of his time” as the righteousness of his cause is rehearsed in public memory.”²⁴

In this sense, the designation of Flood as an individual ahead of his time allows him to be analyzed and compartmentalized in any way an author sees fit. Was Curt Flood part of the black activist athlete legacy? Yes. Was Curt Flood purely motivated by the unfairness of baseball? Sure. Was he somewhere in the middle? Right again.

Some, like author Michael Lomax, view Flood as a direct product of the black activism of the 1960s, a man whose “black rage” brought about by the indignities of his minor league life and mistreatment in St. Louis led him to go on a crusade against baseball's white establishment.²⁵ This perspective focuses on Flood as a both a figurehead of positive race relations within baseball and as a victim of the system, a man “of an unusually complex personality, character, and set of life experiences—dare one say a sensitive psychological makeup” that made him uniquely suited to pursue the

²⁴ Khan, *Curt Flood in the Media: Baseball, Race, and the Demise of the Activist-Athlete*, 205.

²⁵ Lomax, “Curt Flood Stood Up for Us,” 48.

case.²⁶ Flood's context does lend some credence to this argument because of his experiences as a minor league player in the South, "where he was greeted with catcalls, segregation, and other forms of racism"²⁷ in addition to incidents such as his first Spring Training, in which he was swiftly whisked away from the opulent Floridian hotel that the team's white players stayed in to Ma Felder's boardinghouse.²⁸ Or, as Lomax puts it, Black rage that was "First directed at the segregation and discrimination he had endured as a ball player," but came to be "directed at the reserve clause. As Marvin Miller accurately pointed out, Curt Flood found out that his personal life, business connections, friends, family and the roots he had established in the community were of no importance to his employer."²⁹ As a result, Flood, as a notable black athlete and student (particularly in art) of the Civil Rights movement,³⁰ fully embodied the "...disillusionment with white society which set the tone for the Civil Rights Movement as it entered its Black Power phase" and sought to establish himself within the legacy of black activist athletes.³¹

Flood's disillusionment claimed by those viewing his actions as more purely activist is strengthened by the environment of the Cardinal team during his tenure there. The Cardinals of the 1960s developed what Lomax called "unbiased chemistry," forging friendships and racial progress (such as Tennessee native Tim McCarver's overcoming of his segregationist roots) while winning the World Series in 1964 and 1967.³² In this

²⁶ Stuart L. Weiss, *The Curt Flood Story: The Man Behind the Myth*, (Columbia: University of Missouri Press, 2007), 5.

²⁷ "22 Dec 2006, Page D003 - St. Louis Post-Dispatch at Newspapers.Com," *St. Louis Post-Dispatch*, Accessed October 27, 2019, <http://stltoday.newspapers.com/image/151877566/>.

²⁸ Flood, *The Way It Is*, 22.

²⁹ Lomax, "Curt Flood Stood Up for Us," 61.

³⁰ "6 Sep 1968, Page 34 - St. Louis Post-Dispatch at Newspapers.Com," *St. Louis Post-Dispatch*, Accessed October 27, 2019, <http://stltoday.newspapers.com/image/140110580/?terms=Curt%2BFlood>.

³¹ Lomax, "Curt Flood Stood Up for Us," 45.

³² Jacobson, *Carrying Jackie's Torch: The Players Who Integrated Baseball—And America*, 185.

sense, Flood's expectation of baseball's racial reality and the social order of his team was relatively parallel to the changes throughout America-- from demographics to economy to racial attitudes—an expectation that was shattered in Cardinals owner August A. Busch's coded tirade at the team during the spring training of 1969.³³ This, in a sense, shattered Flood's conceptions of his team's progress and, in a way, the reality of the American Dream for the black athlete.³⁴ The crashing down to reality (the nadir of which was Busch's speech) brought about a new, activist awareness for Flood.

Flood can be considered directly within the legacy of black activist athletes by this account, as a disillusioned athlete who at long last noticed that his sport was “shockingly repugnant to moral principals that... have been basic in America... since the Thirteenth Amendment” and resulted in “something resembling peonage of the baseball player.”³⁵ What more completely defines Curt Flood as an activist athlete operating specifically within the principles of the Black Power movement of the late 1960s is the fact that

“The reserve clause had been analogized to slavery for nearly a century, but because Flood was the first African-American player to challenge it, Flood's suit took on racial connotations that had not been part of the earlier anti-trust suits. Flood himself did much to encourage those connotations: he famously referred to himself as “a well-paid slave” in an interview with Howard Cosell that aired on ABC's Wide World of Sports.”³⁶

³³ Joshua C Devine, "Curt Flood and the Show Me Spirit," *Missouri Law Review* 77, no. 1 (2012): 12.

³⁴ Lomax, “Curt Flood Stood Up for Us,” 45.

³⁵ Samuel O. Regalado and Sarah K Fields, eds, *Sport and the Law: Historical and Cultural Intersections* (Fayetteville: University of Arkansas Press, 2014), 4.

³⁶ Stuart Banner, *The Baseball Trust: A History of Baseball's Antitrust Exemption*, (Oxford UK: Oxford University Press, 2013), 190.

By encouraging the links between baseball's outdated labor relations and American slavery, Flood adopted the language of the activist athlete, making his cause more visible and easily identifiable for the American public. However, it is important to note that this action, while easily identifiable, was definitively not safely within the confines of average American liberalism. Flood could have taken the safe route by phrasing his case in the simpler terms of liberalism and merely identifying the ways in which his lawsuit would benefit the baseball world (essentially, keeping his argument firmly in the lines of labor and outside the lines of race), "But calling baseball a slaveholding institution and himself a slave most certainly did not make him sound like a good liberal. It made him sound like a black nationalist."³⁷ Given the context and implications of this statement, it is quite difficult to fully categorize Flood as either a safe liberal or as a black nationalist because, though he used terms that fell clearly along the lines of black nationalism, they were intentionally and publicly utilized as a means to bring more publicity and larger involvement in what was ostensibly a case of failed collective bargaining and antitrust law.

Even his loss grew the activism narrative, as teammate Joe Torre called Flood the "Joan of Arc of all this," establishing Flood as a martyr to all of the players; by sacrificing his own earning potential, Curt Flood was able to grow it for future generations of players.³⁸ Additionally, by threatening the form of capital investments in players, which extended to player development and the minor leagues,³⁹ Flood faced the

³⁷ Khan, *Curt Flood in the Media: Baseball, Race, and the Demise of the Activist-Athlete*, 25.

³⁸ Jacobson, Steve. *Carrying Jackie's Torch: The Players Who Integrated Baseball—And America*. Vol. 1st ed, Lawrence Hill Books, 2007. PG 189

³⁹ Joshua P. Jones, "Notes - a Congressional Swing and Miss: The Curt Flood Act, Player Control, and the National Pastime - for the First Time in Its 125-Year History, Major League Baseball, Under the Recently Passed Curt Flood Act, Will Be Subject to Antitrust Laws. Under the Act, Players Will Be Allowed to Sue Major League Baseball and Its Member Organizations for Anti-Competitive Labor Policies. Such Labor

negative reaction established with activist athletes: “Those who dare voice opinions on issues such as social injustice and political oppression often face a hate-filled backlash of scorn and contempt from teammates, coaches, fans, and sponsors.”⁴⁰ Though his suit was ultimately unsuccessful, the case was a turning point against the reserve clause because it “educated the players and the public and it forced the owners to bargain on the reserve clause.”⁴¹ *Flood v. Kuhn* was a success from this perspective, but the complicated legacy of Flood as an activist athlete remains because his Black Power rhetoric was deployed primarily as a publicity tool. Adding to this complication is the fact that “Instead of seeking out various civil rights organizations to challenge the baseball establishment, Curt Flood turned to the MLBPA to combat the game’s long-standing reserve clause.”⁴² If his case was truly about Flood using the momentum of the 1960s and his power as a black athlete to combat racial inequality, then why would he use the non-racial support of the MLBPA and ignore that of more symbolically significant civil rights groups?

Considering the intentionality of Flood’s language as well as the reality of the case itself as relatively devoid of racial connotations, the perspective of Flood as directly motivated by and related to Black Power athlete activists ignores many of the ambiguities

Policies Include the Six-Year Reserve Clause, Which Binds a Player to His Team for the First Six Years of His Major League Career. the Actual Impact of the Act, However, Will Likely Be Tempered by the Fact That Courts Recognize a Separate Antitrust Exemption for Issues Growing Out of Labor Union Negotiations, Such As Those between Major League Baseball and the Players' Union. This Exemption Requires a Valid Lawsuit Under the Flood Act to Coincide with Decertification of the Players' Union, Which Dissolves the Bargaining Relationship between the Two Parties. This Note Will Argue That Such Decertification Is Not Likely to Occur. Further, If the Players' Union Could Successfully Decertify and Sue Major League Baseball on Its Anti-Competitive Labor Policies, This Note Concludes That a Decision Striking the Six-Year Reserve Clause Policy Could Have Disastrous Consequences on the Financial Structure on the Game of Baseball. Specifically, the Institution of Minor League Baseball, a Source of Civic Pride and a Timeless Piece of Americana, Would Be Jeopardized through the Successful Assertion of an Antitrust Claim Under the Flood Act," *Georgia Law Review* 33, no. 2 (1999): 639.

⁴⁰ Kaufman, “Boos, Bans, and Other Backlash: The Consequences of Being an Activist Athlete,” 216.

⁴¹ Regalado and Fields, *Sport and the Law: Historical and Cultural Intersections*, 39.

⁴² Lomax, “Curt Flood Stood Up for Us,” 45.

and contradictions of Flood's actions because this view is an exercise in selectivity and contextual overextension. Viewing Flood's actions as caught between full-on radical black activism and mild liberalism provides the most coherence as far as illustrating the meaning of his lawsuit because this perspective allows for a more complete and holistic explanation of the mixed messaging of his actions.⁴³ Khan alludes to Flood's apparent struggle between identities, describing Flood's strategic response to owners' complaints that his lawsuit would ruin baseball as

“a form of double-consciousness derived from black experience but deprived of racial identity. The ‘slave’ that Flood urged others to embody might recognize the abstract conditions of slavery without having necessarily lived life in ways that felt like slavery. Flood's slave in this sense was potentially raceless, its subordination following from an abstract relation of bondage but dislocated from the concrete social experiences that had allowed Flood to recognize racist dehumanization for what it was.”⁴⁴

As a rhetorical strategy, this demonstrates both Flood's personal difficulty in the case and the struggle with defining it in the present because his attempted separation of slavery from its historical and cultural ties was simply impossible. How could Flood's intentionally strong words (which elicited a response from his main antagonist, St. Louis Post-Dispatch sports editor Bob Broeg, that Flood “‘penned what has to be the most discouraging sentence to all who think they've learned to accept a man for what he is and does, not for what he looks like’”) keep their merit while also maintaining that their

⁴³ Khan, *Curt Flood in the Media: Baseball, Race, and the Demise of the Activist-Athlete*, 28.

⁴⁴ Khan, *Curt Flood in the Media: Baseball, Race, and the Demise of the Activist-Athlete*, 32.

speaker was ultimately pushing for a non-racial goal?⁴⁵ When the players association “asked him if he was doing this because he was black,” Flood “said no. And we believed him,”⁴⁶ showing that, despite his racial argument in the media, Flood pursued the case, at least to his peers, within the confines of himself as a baseball player exclusively. This in many ways explains how Flood could have an aged Jackie Robinson stand up on his behalf in the courtroom for what could ultimately be described as the right for athletes to be paid more; the assertion of black player power that began with Robinson resulted in the reality in which a black player did find himself powerful enough to fight for (according to many opponents of Flood’s case) far less important economic justice.⁴⁷ What many claimed to be a case of Black Power athlete activism was in reality a far more complex evolution of the black athlete’s journey through sports, an evolution in which the racial dimensions of the lawsuit were not necessarily vital to the struggle itself, but nevertheless forwarded it in a way that many would see as a direct continuation.

Flood’s actions cannot simply be categorized in the dichotomy of activism/inactivism because his awareness of activist predecessors and black consciousness influenced his approach to his lawsuit, but, at the same time, *Flood v. Kuhn* evolved beyond these issues and in many ways combined the goals of contemporary liberalism with Black Power in a way that was close to unrecognizable to either. This is further clouded by the fact that, in a cruel irony, *Flood v. Kuhn* paved the way for such lucrative financial incentives for athletes that the backlash from activism could literally disincentivize future athletes to speak. While Flood did in part continue the

⁴⁵ Khan, *Curt Flood in the Media: Baseball, Race, and the Demise of the Activist-Athlete*, 120.

⁴⁶ “27 Jan 1970, Page 15 - St. Louis Post-Dispatch at Newspapers.Com,” *St. Louis Post-Dispatch*, Accessed October 27, 2019, <http://stltoday.newspapers.com/image/140071461/?terms=Curt%2BFlood>.

⁴⁷ Khan, *Curt Flood in the Media: Baseball, Race, and the Demise of the Activist-Athlete*, 40.

struggle of the black activist athlete on a national scale, it is reductionist to classify his struggle as yet another Robinson or Smith or Carlos or Ali, because while

“What they seem to have in common, and the reason they are linked together, is their willingness to speak, to decry injustice despite the risks, and to embody in the category they create what it means to speak truth to power. There can be no question that all of these athletes holds a claim in the larger context of the black freedom struggle, but the language ideology that always urges more conversation hides differences between the manner in which these athletes offered their ideas and arguments.”⁴⁸

Following this line of thinking, Flood did contribute to the black freedom struggle, but not in the same universal way that we traditionally view as “activism.” This idea is furthered in the realization that Flood in a sense did herald a long period of time in which the activist athlete essentially didn’t exist because his lawsuit set the stage for professional sports to be the far more lucrative and moneyed institution it is today.⁴⁹ The more immediate result of the influx of big money in professional sports of athletes proximate to Floods time was a massive increase in awareness of an individual athletes marketing and the bottom line; this firmly entrenches *Flood v. Kuhn* as a paradoxical case athlete power and public action because,

“despite our memories of Flood’s better conscience, which presumably trumps the cynicism of our age, he corrupts our canon of “golden men” from within in two ways: Flood helped to manufacture the false dreams that reproduce inequity and

⁴⁸ Khan, *Curt Flood in the Media: Baseball, Race, and the Demise of the Activist-Athlete*, 30.

⁴⁹ Khan, *Curt Flood in the Media: Baseball, Race, and the Demise of the Activist-Athlete*, 21.

despair, and Flood helped cultivate the financial climate that robs our athletes of their incentive to speak with courage.”⁵⁰

From this perspective, *Flood v. Kuhn* established a battle of precedent versus change both in terms of how we think about black activist athletes and in the literal Supreme Court case that came with it. The reality that those who consider athletes’ expressions of sociopolitical opinions to be out of line are generally those who consider the world as a just place shapes the entire conversation surrounding Curt Flood’s actions because it can shape our understanding of *Flood v. Kuhn*. Whether or not Flood’s actions surrounding and publicizing the case perfectly fit into Black Power athlete activism or the mild liberal argument for fairer labor conditions, the division of opinion for the press and the public created by such an event reduces the importance this type of definition because at its core, what matters was that a black athlete took it in his hands to create change. Regardless of definition, people were going to react.

⁵⁰ Khan, *Curt Flood in the Media: Baseball, Race, and the Demise of the Activist-Athlete*, 37.

Chapter 2

“One thing about Flood. It’s obvious that it’s not the money in his case. It’s the principle of the thing.”⁵¹

When Richard Dozer of the *Chicago Tribune* set out to argue his opposition to Curt Flood’s lawsuit, he nevertheless put his admiration of Flood’s character and moral consistency on display for his national audience to see. While a mildly interesting but seemingly insignificant piece of press reaction to *Flood v. Kuhn*, the duality of Dozer’s position in this passage is in fact vital to understanding the reaction to Flood’s case in the media. One of the most fascinating misinterpretations of the reception to *Flood v. Kuhn* is the fact that much of the common literature on Flood characterizes his reception by the press as universally hostile, when it was in fact similar to the reception of athlete activism from society as a whole. In fact, while a smattering of sportswriters throughout the country took great umbrage to Flood referring to himself as a slave, many pointing out that “no slave had ever earned the five-figure income that he received that year,”⁵² Flood was actively supported by national, influential writers for publications such as the *New York Times*, the *Sporting News*, and most every black newspaper in the country.⁵³ The wide array of viewpoints were “reflective of the opinions, fears, hopes, and confusion of the American public during this period. Views among white Americans on the changes of the 1960s were not monolithic, with conservative, “silent majority” Americans on one

⁵¹William Gillis, "Rebellion in the Kingdom of Swat: Sportswriters, African American Athletes, and Coverage of Curt Flood's Lawsuit against Major League Baseball," *American Journalism: The Publication of the American Journalism Historians Association* 26, no. 2 (2009): 80.

⁵² Devine, "Curt Flood and the Show Me Spirit," 38.

⁵³ Khan, *Curt Flood in the Media: Baseball, Race, and the Demise of the Activist-Athlete*, 26.

side, and liberal, racially sensitive do-gooders on the other.”⁵⁴ As a result, opinion columns throughout the country displayed a marked and significantly spread-out set of opinions on Flood, not the monolithic and overtly hostile perspective that clouds some of the biographical works on *Flood v. Kuhn*.

In an already divisive case, the press reflected public opinion; that said, there is a noticeable divide in between the positive opinion of Flood and the negative one, a divide that can fairly well be categorized by a combination of geography and school of thought. In the first part of this chapter, I will argue that one of the main differentiators for columnists on the Flood case was reach and audience, as is illustrated in the contrast between Middle American local writers like Bob Broeg (who ultimately can be considered Flood’s primary antagonist in the press), and coastal elite writers such as Leonard Koppett of the New York Times (who was recognized by Flood as reporting the “case and its background with entire accuracy”).⁵⁵ By separating out the way in which the more socially-conscious national press handled Flood’s case from the overt cynicism and homerism that defined Broeg’s transition from a Flood fan to the foremost Flood detractor in the media, we can get a sense of the scope and intensity of media reactions surrounding his case.

Bob Broeg’s transition in attitudes on Curt Flood are fascinating because his work in many ways defined him as an old-school sportswriter; from his rampant favoritism and homerism to his conservative attitudes on player movement and salary, Broeg fully embodied the type of local writer that would almost inevitably turn on an independent-

⁵⁴ Gillis, "Rebellion in the Kingdom of Swat: Sportswriters, African American Athletes, and Coverage of Curt Flood's Lawsuit against Major League Baseball," 86.

⁵⁵ Flood, *The Way It Is*, 167.

mindful player like Flood. There is some irony in this attitude however, because Broeg's emphasis on supporting any and all endeavors of Cardinal players (as long as they were still on the team) led to some gushing articles on the very independence and outside interests that he would later use as ammunition against Flood. For instance, Broeg was initially enamored with Flood's artistic interests of painting and photography,⁵⁶ claiming that "if he chose, Curt could score big at his studio in Clayton. He has been paid as much as \$500 for a single canvas, he acknowledged, and, without extending himself too much,



Photo Franchise Promotion

Cardinal centerfielder **Curt Flood** (center) and James C. Kirkpatrick, Missouri Secretary of State, sever a ribbon to signify the official opening of **Curt Flood** Photographic Studios, 3543 Lindell Boulevard. William Jones (directly behind **Flood**) is executive vice president of **Curt Flood & Associates, Inc.**, which is developing the new photo studio franchise operation. The Lindell studio will be the prototype for similar franchised studios in major league cities throughout the country, starting next year.

has earned \$15,000 the past two years through his ability to dabble in oils so skillfully and faithfully.”⁵⁷ Additionally, Broeg described Flood's portrait painting as “a brisk secondary business for a man who recognizes that he's still a ball player first. After all, he'll be paid something in the nice neighborhood of \$72,500 to run down flyballs and set up runs for the Redbirds this summer.”⁵⁸ Taking note of Flood's “temperamental”⁵⁹ painting and of the fundraising accomplishments of his art such as for a seven-year-old girl with leukemia or the B’Nai B’rith

program, Broeg's writings on Flood's art (pre-trade of course) took a tone of fervent

⁵⁶ “13 Jul 1969, Page 60 - St. Louis Post-Dispatch at Newspapers.Com,” *St. Louis Post-Dispatch*, Accessed October 27, 2019, <http://stltoday.newspapers.com/image/140173801/?terms=Curt%2BFlood>.

⁵⁷ “20 Mar 1968, Page 67 - St. Louis Post-Dispatch at Newspapers.Com,” *St. Louis Post-Dispatch*, Accessed October 27, 2019, <http://stltoday.newspapers.com/image/140348976/?terms=Curt%2BFlood>.

⁵⁸ *St. Louis Post-Dispatch*, “20 Mar 1968, Page 67 - St. Louis Post-Dispatch at Newspapers.Com.”

⁵⁹ *St. Louis Post-Dispatch*, “20 Mar 1968, Page 67 - St. Louis Post-Dispatch at Newspapers.Com.”

admiration, calling Flood a “Hall of Fame candidate” and opining that “Great artists just are never fully appreciated in their lifetimes.”⁶⁰ That said, even Broeg’s praise for Flood somewhat foreshadows the major issues that would eventually cause him to repeatedly seek to discredit Flood’s argument and do his best to characterize *Flood v. Kuhn* as the work of an egotistical player who sought to “hurt the game.”

CASH IN WITH CURT FLOOD

Curt Flood, long-time star center fielder for the St. Louis Cardinals, and one of the world's leading portrait artists offers for the first time:

- Established, highly profitable Photography and Portrait Studio Franchises.
- On the job training by company executives.
- Million dollar market in your specific area.
- Localized professional promotional campaigns.
- National advertising and publicity.

Cash requirement \$14,975. Financing available. To get in on the ground floor, write, wire, or call Marketing Director:

CURT FLOOD STUDIOS, INC.

7366 North Lincoln Avenue, Lincolnwood, Ill. 60646
Area Code (312) 673-4664



61

While Broeg’s early pieces on Flood (like the art piece) are quite complementary and appear to be removed from his later attacks on Flood, reading into his article shows us some of Broeg’s focuses when he wrote about hometown Cardinal players: salary, intense focus on the job as a baseball player, and the ability to not let outside passions or interests disrupt that job. For instance, Broeg mentions both Flood’s salary for the Cardinals and the money he made off of painting. This mention was intended in the art article as a means to demonstrate how Flood made money off of his passion in addition to his large salary as a professional baseball player, but clearly demonstrates that Broeg, even in a puff piece, established his idea that the volume of money itself was clearly of utmost importance to the professional baseball player. Additionally, Broeg’s assurance that Flood was a “ball player first” and wasn’t “extending himself” in his artistic endeavors reveals his prioritization that his hometown players (and any baseball

⁶⁰ *St. Louis Post-Dispatch*, “6 Sep 1968, Page 34 - St. Louis Post-Dispatch at Newspapers.Com.”

⁶¹ “18 Jan 1970, Page 48 - St. Louis Post-Dispatch at Newspapers.Com,” *St. Louis Post-Dispatch*, Accessed October 27, 2019, <http://stltoday.newspapers.com/image/140065376/?terms=Curt%2BFlood>.

player in general) must embody a clear set of priorities that, if disrupted, would signal something greatly wrong with that player. Though this is quite a close reading of an article that was completely both earlier and unrelated to much of the content that Broeg later produced about Flood, it is especially impactful to see him clearly prioritize money and a lack of individualism as perhaps the key components in the baseball player's life in an unrelated context.

Broeg's belief that money should be the primary motivator for players like Curt Flood became especially clear during Flood's lawsuit because Broeg utilized the issue of money to both attack Flood's reasoning for suing in the first place and to attack Flood's personal life and financial dealings in later articles. One of his opinion articles on *Flood v. Kuhn* bore the aggressive title of "\$100,000 a Year—What A Way To Be Mistreated,"⁶² an article in which Broeg argued that S. D. N. Y. Judge Cooper (who ruled in favor of MLB commissioner Kuhn) "must have been aware that not only are ball players now highly paid with an outstanding pension plan, hardly the sign of peonage or slavery, but that the reserve system already has been improved in recent years."⁶³ In this article, we can see that Broeg ignored the principled stand for labor rights that Flood had outlined in public and private (for example, "When told by MLBPA head Marvin Miller that even if he won the case, he was unlikely to receive damages or get to play baseball again, Flood said 'But would it benefit all of the other players and all of the players to come, wouldn't it?'"⁶⁴ in order to fully focus on the money involved in the case. In Broeg's view, there was no amount of labor rights violated or inability to control one's

⁶² "14 Aug 1970, Page 34 - St. Louis Post-Dispatch at Newspapers.Com," *St. Louis Post-Dispatch*, Accessed October 27, 2019, <http://stltoday.newspapers.com/image/139799573/?terms=Curt%2BFlood>.

⁶³ *St. Louis Post-Dispatch*, "14 Aug 1970, Page 34 - St. Louis Post-Dispatch at Newspapers.Com."

⁶⁴ *St. Louis Post-Dispatch*, "22 Dec 2006, Page D003 - St. Louis Post-Dispatch at Newspapers.Com."

own destiny that was not worth the big-league salary: "...it's hard as heck to feel that a man has been mistreated when he has reached sex-figure income in his profession, plus majestic fringe benefits."⁶⁵ As we can see, Broeg centered his grievances with Flood's lawsuit almost solely in terms of money, though this ironically implied a commodification quite similar to the very thing that Flood was primarily interested in fighting.

Broeg's insistence on money also led him to portray Flood within the "spoiled athlete" narrative that often accompanies athletes fighting injustice; this perspective essentially characterizes the athlete as so rich and out of touch that their problems are largely irrelevant. Broeg's attack on Flood's character took multiple angles, arguing both that Flood was spoiled and had finally gotten his due after his negotiations for a \$90,000 contract left him no longer "the big boss's personal favorite. (it was Busch who had requested years before that he be given a chance to play regularly)."⁶⁶ Ignoring the reality that black player negotiation was vital in a sport where signing bonuses for black players ranged up to roughly \$5,000, compared to \$60,000-80,000⁶⁷ for their "North American White" counterparts,⁶⁸ Broeg described the lawsuit as a "\$3,000,000 get-rich-quick assault against the restrictions of the reserve clause."⁶⁹ By painting Flood as both a beneficiary of preferential treatment by a benevolent team owner and a player seeking to "get-rich-quick," Broeg leaned into the racially-coded language that often goes hand-in-hand with the idea of the spoiled athlete.

⁶⁵ *St. Louis Post-Dispatch*, "14 Aug 1970, Page 34 - St. Louis Post-Dispatch at Newspapers.Com."

⁶⁶ "3 May 1971, Page 16 - St. Louis Post-Dispatch at Newspapers.Com," *St. Louis Post-Dispatch*, Accessed October 27, 2019, <http://stltoday.newspapers.com/image/140671414/?terms=Curt%2BFlood>.

⁶⁷ AIKENS, CHARLES. "THE STRUGGLE OF CURT FLOOD." *The Black Scholar* 3, no. 3 (1971): 10–15. Pg 14

⁶⁸ Flood, *The Way It Is*, 63.

⁶⁹ *St. Louis Post-Dispatch*, "3 May 1971, Page 16 - St. Louis Post-Dispatch at Newspapers.Com."

Advancing this narrative, Broeg spun the MLBPA's offer to pay the legal fees for the case (a perfectly reasonable thing to do given that the lawsuit was ultimately in the union's interest) to describe Flood as being gifted an undeserved resource.⁷⁰ This resource would be necessary, according to Broeg, because Flood had "mishandled his money" to the point that he had to "rely on the civil rights conscience of the liberal United States Supreme Court to keep him from going broke."⁷¹ Furthermore, even Flood's principled stand and decision to sit out the following year of baseball as his case progressed was suspicious because "Presumably, counsel felt Curt couldn't make a good case for damages, active or punitive, if he collected a sizable salary. So Flood permitted a valuable year to slip off the athletic calendar and, instead of chasing outfield flies, he would up chasing bar flies in a Copenhagen bistro."⁷² He even went as far as to include illustrations such as "a somewhat vicious cartoon by *Post-Dispatch* cartoonist Amadee Wohlschlaeger that depicted a beret-wearing Flood working on a canvas on which he had painted an enormous dollar sign," meant to indicate that all of Flood's efforts, even the artistic ones that had once merited exorbitant praise, were designed to make money.⁷³ In these examples we can clearly see how Broeg utilized the spoiled athlete narrative to personally and professionally attack Curt Flood's character. By bringing in the idea that Flood was both somehow undeserving and over-desiring for money in his case and that a sort of apologetic civil rights conscience in the nation's highest justice system would

⁷⁰ *St. Louis Post-Dispatch*, "14 Aug 1970, Page 34 - St. Louis Post-Dispatch at Newspapers.Com."

⁷¹ *St. Louis Post-Dispatch*, "14 Aug 1970, Page 34 - St. Louis Post-Dispatch at Newspapers.Com."

⁷² *St. Louis Post-Dispatch*, "14 Aug 1970, Page 34 - St. Louis Post-Dispatch at Newspapers.Com."

⁷³ Gillis, "Rebellion in the Kingdom of Swat: Sportswriters, African American Athletes, and Coverage of Curt Flood's Lawsuit against Major League Baseball," 76.

have to save him from his own mistakes, Broeg also consistently sought to use Flood's blackness as yet another point of attack.

What is highly ironic about Broeg's writings on Flood's sin of veering out of his lane as both a baseball player and black athlete, however, is the way in which he treated the player Flood was traded for, Richie Allen. Allen, while a good player, was known to be mercurial and not a team player,⁷⁴ yet Broeg ignored his liabilities and gushed about him in his articles, using scouts to illustrate the potential that Allen brought to the team.⁷⁵ In fact, Allen had even been quoted as saying that he was "treated like cattle" during his time in Philadelphia⁷⁶ and had publicly stated through his adviser that he "hoped to go to the Mets... But, you can't pick your team."⁷⁷ In this sense, what Richie Allen brought to the Cardinals was a clear dissatisfaction with both the reserve clause and the team and had even used the same type of rhetoric as Flood. However, the headline of Broeg's trade articles focused on Flood's supposed misdeeds: "Allen a Card; Traded Flood Quits"⁷⁸ and

⁷⁴ Weiss, *The Curt Flood Story: The Man Behind the Myth*, 140.

⁷⁵ "04 March 1970, Page 67 - St. Louis Post-Dispatch at Newspapers.Com," *St. Louis Post-Dispatch*, Accessed October 27, 2019,

<https://www.newspapers.com/image/139796460/?terms=%2C%2BPage%2B67%2Bpost%2Bdispatch>.

⁷⁶ "October 9, 1969, Page 53- *NewsBank: America's News – Historical and Current*," *San Francisco Chronicle*, Accessed April 30, 2020, <https://infoweb-newsbank-com.ccl.idm.oclc.org/apps/news/document-view?p=AMNEWS&docref=image/v2%3A142051F45F422A02%40EANX-1514695F9FC86875%402440504-1514485FD0FA16F0%4052>.

⁷⁷ "Document View | America's News ? Historical and Current | NewsBank." Accessed August 26, 2019.

https://infoweb-newsbank-com.ccl.idm.oclc.org/apps/news/document-view?p=AMNEWS&t=decade%3A1960%211960%2B-%2B1969&sort=YMD_date%3AD&page=1&fld-base-0=alltext&maxresults=20&val-base-0=%22Curt%20Flood%22&docref=image%2Fv2%3A142051F45F422A02%40EANX-1514695F9FC86875%402440504-1514485FD0FA16F0%4052&origin=image%2Fv2%3A142051F45F422A02%40EANX-1514695F9FC86875%402440504-1512135262ED70BA%4053-1512135262ED70BA%40

⁷⁸ "Document View | America's News ? Historical and Current | NewsBank." Accessed August 26, 2019.

https://infoweb-newsbank-com.ccl.idm.oclc.org/apps/news/document-view?p=AMNEWS&t=decade%3A1960%211960%2B-%2B1969&sort=YMD_date%3AD&page=1&fld-base-0=alltext&maxresults=20&val-base-0=%22Curt%20Flood%22&docref=image%2Fv2%3A142051F45F422A02%40EANX-1514695F9FC86875%402440504-1514485FD0FA16F0%4052&origin=image%2Fv2%3A142051F45F422A02%40EANX-1514695F9FC86875%402440504-1512135262ED70BA%4053-1512135262ED70BA%40

⁷⁸ "Document View | America's News ? Historical and Current | NewsBank." Accessed August 26, 2019.

“Kuhn Rules Against ‘Freedom’ for Flood.”⁷⁹ What we can gather from Broeg’s writings surrounding the Flood-Allen trade is his persistent homerism (clear in the complete ignorance of any of Allen’s previous off-the-field issues) and his clear objective of discrediting Flood’s lawsuit and character to the people of St. Louis.

Broeg even went out of his way to smear Flood in largely unrelated articles. For example, in a piece on Denny McLain’s gambling scandal, Broeg repeatedly mourned the “image of the game” and consistently inserted Flood’s name into his concerns about baseball’s potential downfall and need for a public recovery.⁸⁰ Remember, this was an article that was ostensibly about McLain, a player that gambled on games while active in the MLB, yet Broeg still managed to make much of the concern over baseball’s image focus solely on Flood. His words echo an article from the *Chicago Daily Defender* in which Major League Presidents Joe Cronin and Charles Feeney expressed their confidence in the “rules of professional baseball, which have been central to the success of the game over many decades and which have permitted players such as Curt Flood to reap rich personal rewards”⁸¹ and their confidence that, despite Flood’s suit, the “integrity of the game” would remain intact.⁸² As a result, we can see Broeg’s writings as a version of MLB owners’ voices in the media because of his hardline conservative, money-focused perspective that praised players highly, but only when they were new or in the

⁷⁹ “Document View | America’s News ? Historical and Current | NewsBank.” Accessed August 26, 2019. https://infoweb-newsbank-com.ccl.idm.oclc.org/apps/news/document-view?p=AMNEWS&t=decade%3A1960%211960%2B-%2B1969&sort=YMD_date%3AD&fld-base-0=alltext&maxresults=20&val-base-0=%22Curt%20Flood%22&docref=image/v2%3A136E6A0F0DF56B38%40EANX-13C86C3C16B04950%402440587-13C86BD96BC21EEB%4016-13C86BD96BC21EEB%40.

⁸⁰ “25 Feb 1970, Page 28 - St. Louis Post-Dispatch at Newspapers.Com,” *St. Louis Post-Dispatch*, Accessed October 27, 2019, <http://stltoday.newspapers.com/image/140314594/?terms=Curt%2BFlood>.

⁸¹ “Cronin, Feeney: Curt Flood Suit A Sports Threat,” *Chicago Daily Defender (Daily Edition) (1960-1973)*; *Chicago, Ill*, January 19, 1970.

⁸² “Cronin, Feeney: Curt Flood Suit A Sports Threat.”

front office's good graces. Those who didn't follow Broeg's ideal image of a ball player, like Flood, could only hope that "the Supreme Court can come to his rescue," or "Curt Flood might wind up as mournful as the melancholy Dane."⁸³

Whereas Broeg's Cardinals-biased, scathing critiques of Flood demonstrated a local media animosity towards his cause, Flood actually received significant praise and support from prominent mainstream columnists like Leonard Koppett, Chass Murray, and Red Smith. While these writers were clearly less proximate to the case than Broeg, their articles nevertheless carried important weight for any reader looking to be informed on *Flood v. Kuhn* because they sought to ground their arguments in objective analysis with more occasional references to positively reinforce Flood's deeds, a stark contrast to Broeg's literary berating and character attacks. A combination of these three journalists is one of the best ways to get a strong sense of how Flood was supported by mainstream news writers because each furthered their support through a different style: Koppett's imperative was legal analysis that segued into criticisms of the baseball establishment that sought to directly address the issues of race that lingered in baseball;⁸⁴ Murray sought to humanize Flood with a profile that more fully explored the case from the player's point of view; Smith took a more direct approach, using his longstanding influence as a titan of the sports writing industry and his known evolution in his approach to civil rights and influential black athletes to launch an attack on the MLB in full-throated support of Flood.

⁸³ *St. Louis Post-Dispatch*, "14 Aug 1970, Page 34 - St. Louis Post-Dispatch at Newspapers.Com."

⁸⁴ Gillis, "Rebellion in the Kingdom of Swat: Sportswriters, African American Athletes, and Coverage of Curt Flood's Lawsuit against Major League Baseball," 78.

Koppett's perspective can perhaps best be seen in his widely-publicized arguments surrounding the racial reality of baseball: "It is my contention that racial discrimination [in baseball] takes subtle forms, but is nonetheless real a full generation after the advent of Jackie Robinson."⁸⁵ In the post-Civil Rights Act era, this comment was especially poignant due to its direct confrontation with lingering racism that was generally pushed to the side by writers and the general public alike. However, Koppett's analysis of *Flood v. Kuhn* did not necessarily explicitly take this perspective, as it more clearly took the approach of undermining the MLB's legal position in the case. In fact, Koppett even claimed that the MLBPA was the "real plaintiff" in the case and Flood was merely a proxy for their ultimate goal of the removal of the reserve clause.⁸⁶ By focusing his defense of Flood on legal analysis, Koppett sought to promote Flood's cause from the liberal perspective while largely ignoring the continuing issue of race that he had previously argued was plaguing baseball.

For instance, Koppett's defense of Flood was quite subtle and appears to have rested on his ability to make the legal complexities of the case more accessible to the American public. This can be seen when he noted that the MLB's antitrust exemption had been continued in the 1950s "because investments had been made in good faith on the basis of the original ruling, although the Court acknowledged that the reasoning of 1922 was no longer generally accepted,"⁸⁷ pairing it with the idea that "... the baseball side seemed to rely more on its labor law argument than on outright defense of a continued

⁸⁵ Gillis, "Rebellion in the Kingdom of Swat: Sportswriters, African American Athletes, and Coverage of Curt Flood's Lawsuit against Major League Baseball," 78.

⁸⁶ Leonard Koppett, "High Court Hears Baseball Back Antitrust Exemption: High Court Hears Baseball Defend Antitrust Exemption," *New York Times*. 1972.

⁸⁷ Koppett, "High Court Hears Baseball Back Antitrust Exemption: High Court Hears Baseball Defend Antitrust Exemption."

antitrust exemption.”⁸⁸ Koppett’s criticism that MLB’s defense in *Flood v. Kuhn* rested far more on circumventing the actual antitrust exception that the case sought to eliminate (that the MLB argued should be a result of collective bargaining) is fascinating because it presents complex legal analysis in a coherent manner so that the everyday person could see how the Court’s decision to leave baseball antitrust exemption up to Congress was in many ways just a continuation of the MLB’s deflection of argument.⁸⁹ The folly of such an opinion is perhaps best summed up by Flood contemporary and Charles Aikens when he argued that leaving the issue of the reserve clause up to collective bargaining was “like telling the slavemasters that they should modify slavery. The slaves and any fool knew that couldn’t happen.”⁹⁰ By following some of the more “radical” arguments such as Aikens’ but using analogies that were easily digestible for the general public (such as his conclusion that “If the Supreme Court does accept the case—and at least four of the nine Justices must agree that they want to—it will mean that Flood’s bat has made contact with the ball”), Koppett placed public understanding of the case as a high priority and was able to affect a similar sense of injustice in a more subtle, mainstream manner.⁹¹

What Koppett accomplished in his emphasis on the public understanding the case was simple, but highly effective: even a cursory glance at the case would signal some of the contradictions in Flood’s case and the injustices that were done as a result. While some of Koppett’s writings are relatively inconspicuous in their support of Flood, others,

⁸⁸ Koppett, “High Court Hears Baseball Back Antitrust Exemption: High Court Hears Baseball Defend Antitrust Exemption.”

⁸⁹ Koppett, “High Court Hears Baseball Back Antitrust Exemption: High Court Hears Baseball Defend Antitrust Exemption.”

⁹⁰ Charles Aikens, “The Struggle of Curt Flood,” *The Black Scholar* 3, no. 3 (1971): 10-11.

⁹¹ Leonard Koppett, “Judge in Curt Flood Case Finds Baseball’s ‘Feudal Barony’ Is Kind to Its Serfs,” *New York Times*. 1971, sec. SPORTS.

such as his article titled “Judge In Curt Flood Case Finds Baseball’s ‘Feudal Barony’ Is Kind to Its Serfs” reveal a more outspoken incredulity regarding the case:

“On one hand, the doctrine of stare decisis (a previous ruling) binds the plaintiff because of an initial holding that baseball is not ‘interstate commerce’ within the Sherman Act, and, on the other hand, after there have been significant changes in the definition of ‘interstate commerce,’ he is now told that baseball is so uniquely interstate commerce that state regulation cannot apply.”⁹²

This passage exemplifies Koppett’s excellent ability to both educate and relate to his audience because, in one short sentence, he is able to simultaneously help his audience grasp the important terminology of the case and point out some of the gross incongruences that came to define *Flood v. Kuhn* in court. Koppett was equally skilled in his analysis of quotations. A prime example of this is when he explained Judge Moore’s opinion saying “‘If baseball is to be damaged by statutory regulation, let the congressman face his constituents the next November and also face the consequences of his baseball voting record.’ Note the implication in the word ‘damaged.’”⁹³ In a single sentence, Koppett both reveals strong support for Flood as well as his talent for using the most minute details in educating his audience. Far from the explosive prose of Broeg, Koppett sought to assert his positive opinion of Flood in small but highly meaningful ways.

Koppett’s colleague Chass Murray’s support of Flood took a more outwardly obvious form, as he humanized Flood in a piece several years after the case. Murray’s support is quite clear from early stages of his profile, as he argues that “seven years ago, Curt Flood, boldly and at great sacrifice to his own career and future, pioneered an effort

⁹² Koppett, “Judge in Curt Flood Case Finds Baseball’s ‘Feudal Barony’ Is Kind to Its Serfs.”

⁹³ Koppett, “Judge in Curt Flood Case Finds Baseball’s ‘Feudal Barony’ Is Kind to Its Serfs.”

to gain some freedom for himself and his fellow players, and effort that now has reached fruition.”⁹⁴ Referring to the newly won “free agency” of MLB players, Murray painted a picture of a man who despite “still looking fit at 5 feet 9 inches and about 165 pounds,” was well enough aware of his impact on baseball to know that no ownership group would ever touch him again.⁹⁵ In Flood’s opinion, he sued baseball, so no owner would think to look out for him, especially in a sport where “there is even less room for black exes.”⁹⁶ Murray also captured some of Flood’s reflective opinions of the case, even his self-dismissive ones:

“So what happened five years ago is significant in only one respect, that it gave the ballplayer a chance to think what am I worth, what is my talent worth? Do I have to spend the rest of my life in servitude to this one person? Can he juggle my life any way he wants to? Now these guys are getting what they’re worth and that’s cool.”⁹⁷

In Murray’s profile, we are treated to an insight into one of the most enigmatic players of his time, molded in the high school ballfields of Oakland where the scouts filled the stands like “plantation owners coming to buy slaves at a slave auction,”⁹⁸ (according to Aikens, who lived the same hometown experience as Flood), but who, despite his many trials and challenges during the case, was most affected by the fact that “not one baseball player who was playing at the time came just to see—I didn’t want him to testify—just to see what was going on because it involved them so dramatically.”⁹⁹

⁹⁴ Chass Murray, “Curt Flood, Forgotten Man in Baseball Freedom Fight, Lives in Self-Imposed Exile,” *New York Times*. 1976, sec. Sports.

⁹⁵ Murray, “Curt Flood, Forgotten Man in Baseball Freedom Fight, Lives in Self-Imposed Exile.”

⁹⁶ Murray, “Curt Flood, Forgotten Man in Baseball Freedom Fight, Lives in Self-Imposed Exile.”

⁹⁷ Murray, “Curt Flood, Forgotten Man in Baseball Freedom Fight, Lives in Self-Imposed Exile.”

⁹⁸ Murray, “Curt Flood, Forgotten Man in Baseball Freedom Fight, Lives in Self-Imposed Exile.”

⁹⁹ Murray, “Curt Flood, Forgotten Man in Baseball Freedom Fight, Lives in Self-Imposed Exile.”

Murray's work shows Flood at his most honest and vulnerable, which was both rare and demonstrated more than a tacit support for his actions. Where Koppett supported Flood by taking apart the legal technicalities of the case for the general public, Murray demonstrated significant support by letting Flood's voice be heard, even several years after he was most prominently in the public eye.

Renowned sports writer Red Smith was perhaps one of the more surprising supporters of Flood but also one of his staunchest ones. The man who had once notably condemned activist athletes like Muhammad Ali for his declaration that he had “no quarrel with them Vietcong”¹⁰⁰ but had undergone a transformation, supporting John Carlos and Tommie Smith for their gesture at the Mexico City Olympics in 1968 came down firmly on the side of Flood.¹⁰¹ In fact, Smith is very notable in the context and rhetoric of *Flood v. Kuhn* because he “was using forms of the word “slavery” to describe the conditions under which baseball players toiled” before the origination of Flood's lawsuit.¹⁰² In response to an MLB executive who used a Broeg-like argument to suggest that there was no possible way that any of the players should complain given their salaries, Smith had the perfect response, writing that “it was a beautiful comment, superlatively typical of the executive mind, a pluperfect example of baseball's reaction to unrest down in the slave cabins. Baseball demands incredulously, ‘You mean that at these prices, they want human rights too?’”¹⁰³ Smith further supported Flood's efforts in a

¹⁰⁰ Gillis, "Rebellion in the Kingdom of Swat: Sportswriters, African American Athletes, and Coverage of Curt Flood's Lawsuit against Major League Baseball," 72.

¹⁰¹ Gillis, "Rebellion in the Kingdom of Swat: Sportswriters, African American Athletes, and Coverage of Curt Flood's Lawsuit against Major League Baseball," 72.

¹⁰² Gillis, "Rebellion in the Kingdom of Swat: Sportswriters, African American Athletes, and Coverage of Curt Flood's Lawsuit against Major League Baseball," 77.

¹⁰³ “4 Jan 1970, Page 75 - St. Louis Post-Dispatch at Newspapers.Com,” *St. Louis Post-Dispatch*, Accessed October 27, 2019, <http://stltoday.newspapers.com/image/140310784/?terms=Curt%2BFlood>.

glowing book review, effusing ““When the best portrait artist and most resolute activist in baseball sets out to tell it the way it is, he levels.””¹⁰⁴ Rather than the more elusive and tacit support of Koppett and Murray, Smith used his elevated positioning among sportswriters to truly promote Flood’s cause.

In the contrast between some of Curt Flood’s most notable supporters and detractors in mainstream media, we can clearly see how the narrative of a unilateral media attack on him oversimplifies the reaction to his case in the sports writing world. That said, it is important to see how Broeg, as the Sports Editor of Flood’s hometown newspaper, would have a great influence on what the local media put out and how they approached the case. Aikens argues, “the white people in control of professional baseball clubs eliminated any black who did not fit into the humble role of a dumb, stupid, know nothing ballplayer.”¹⁰⁵ In the case of the media reaction to *Flood v. Kuhn*, we can see how Broeg’s executive-like focus on player salaries and cost in addition to his conservative preconceptions of an ideal ballplayer lent him one of the most aggressive anti-Flood campaigns in his newspaper, while some of the more liberal and removed writers, especially from the northeast, supported Flood both as an individual and as part of the tradition of black athletes standing up to leadership in their professions.”¹⁰⁶

However, merely explaining that the press was not as divided as some claim still does not examine why the misconception of Flood as a victim of the press exists in even his most detailed biographies.¹⁰⁷ This is perhaps a more complicated dimension of the

¹⁰⁴ Gillis, "Rebellion in the Kingdom of Swat: Sportswriters, African American Athletes, and Coverage of Curt Flood's Lawsuit against Major League Baseball," 82.

¹⁰⁵ Aikens, "The Struggle of Curt Flood," 14.

¹⁰⁶ Gillis, "Rebellion in the Kingdom of Swat: Sportswriters, African American Athletes, and Coverage of Curt Flood's Lawsuit against Major League Baseball," 79.

¹⁰⁷ Weiss, *The Curt Flood Story: The Man Behind the Myth*, 168.

press' treatment of Flood's case because it reflects a similar fundamental dissonance to defining Flood's activism. The problem with our future conception of the media treatment of Flood also reflects his scattered messaging throughout his public comments on the case. This greatly influenced the articles that parsed through his case to the point that "Those who supported him did so in ways that were often at odds with each other. Flood's greatest challenge was not that his critics outnumbered his advocates but that he opened himself up to competing forms of advocacy."¹⁰⁸ In this sense, the way in which Flood's platform of activism and publicity left him in the philosophical desert between liberalism and Black Power activism, making the support of either side somewhat diluted by the embrace of the other.

One of the most important factors illustrating the competing advocacies within media defense of Flood was the fact that, as a whole, black newspapers promoted an "inclusionist" strategy that attempted to bridge the gap between white liberalism and Black Power principles. Despite the occasional full-throated support of Flood as a figurehead of militant black activism, most newspapers simply dipped their toes into an inclusionist, mild defense of Flood's actions. One of the few black writers who truly threw their support behind Flood as a black militant activist was Dick Edwards, who made a strong argument that "...if making the Lords [of baseball] obey one of the basic tenants upon which a democracy is built, will kill baseball, it's time it was dead anyway,"¹⁰⁹ and that "When a black player can no longer give 150 per cent he had reached the end of the road. To the Lords of baseball, 'he's just a n****r named

¹⁰⁸ Khan, *Curt Flood in the Media: Baseball, Race, and the Demise of the Activist-Athlete*, 26.

¹⁰⁹ Dick Edwards, "Sock It To 'Em Curt!" *New York Amsterdam News (1962-1993)*; *New York, N.Y.* January 24, 1970.

Mose.”¹¹⁰ Edwards’ article is fascinating due to its unabashed anti-establishment, anti-baseball tone, but even luminaries like Aikens, who described Flood’s suit as “hip to the white sports establishment’s game” and “among many events in the black struggle that have heightened awareness of a brutal system where people are still treated as ‘chattel,’ although slavery was supposed to have ended over 100 years ago” and ostensibly agreed with Edwards did not use the same strong language.¹¹¹

The general strategy of discussing the case for black newspapers around the country was in fact strikingly similar to Flood’s. Black newspapers mirrored Flood’s strategy by confining

“the significance of race to Flood’s individual consciousness, removing race from the repertoire of arguments occupying the realm of sincere public deliberation. Race mattered to Flood for good reason, they said, but it had no bearing on the principle for which he stood... black newspapers mediated Flood’s claim about slavery into a purely metaphorical expression that might urge baseball owners to reform the reserve clause. Again following from Robinson, baseball had become a prized cultural showcase for integration’s successes, and the frank possibility that a successful challenge to the reserve clause would mean the “end of baseball as we knew it” brought with it an entire liberal vocabulary of balanced adjustments and fair compromises. Black and white interests were converging, and along with the significance of Flood’s blackness went any productive potential the “well-paid

¹¹⁰ Edwards “Sock It To ’Em Curt!”

¹¹¹ Aikens, “The Struggle of Curt Flood,” 15.

slave” may have held to narrate the race and class inequities in sport or society at large.”¹¹²

Though the strategy of attempting to place the case in terms of a black and white convergence of interests is theoretically fascinating, most of the defenses it produced appeared mild and almost half-hearted. For instance, when “The syndicated black columnist Ken Richardson wrote, “Flood is to be admired,” and “even if a man makes a million dollars, he is not totally free if he can be bought and sold,” he essentially repeated Flood’s already intentionally diluted argument, which left out much of the more radical and frank language that could have been picked up by black columnists.¹¹³ Another example was Bill Nunn, Jr. of the *Pittsburgh Courier*, who wrote that Flood belonged to ““a growing list of black athletes who have placed principle above personal gain”” among contemporaries like Jackie Robinson, Ali, Arthur Ashe, and Jim Brown.¹¹⁴ Though the article did voice a strong support of Flood, the reality was that arguments made in this vein could simply not compete with the level of racial vitriol that came from the “old-school” conservative sports writers like Broeg.

Ultimately, it is because of this school of sports writers’ willingness to use strong and intentionally racially-coded language that the memory of Flood as exclusively a pariah in the press exists. Writers like Broeg, Dick Young, and Arthur Daley (unlike writers like Red Smith and Jimmy Cannon whose views evolved with society) “were dismayed by the changes they saw in society and sports, and they attacked such changes

¹¹² Khan, *Curt Flood in the Media: Baseball, Race, and the Demise of the Activist-Athlete*, 34.

¹¹³ Gillis, "Rebellion in the Kingdom of Swat: Sportswriters, African American Athletes, and Coverage of Curt Flood's Lawsuit against Major League Baseball," 79.

¹¹⁴ Gillis, "Rebellion in the Kingdom of Swat: Sportswriters, African American Athletes, and Coverage of Curt Flood's Lawsuit against Major League Baseball," 79.

in their columns” and “saw Flood as an ungrateful black man threatening the great American pastime.”¹¹⁵ The reality is that none of the black activist athletes who came to fame in the 1960s did much to change these men’s opinions.”¹¹⁶ Broeg continued to view certain ball players as “overpaid and greedy,” conducting interviews and writing full articles from management’s point of view (without consulting or quoting a single player at times).¹¹⁷ When combined with widespread writings like Holmes Alexander’s piece in the *Argus* that characterized *Flood v. Kuhn* as “preposterous” and led to the conclusion that racial consciousness “has increased, rather than lessened, in baseball...Black players, like the Black Caucus in Congress, are racist aggressors,”¹¹⁸ we can see that mainstream conservative columnists were both more willing and more able to express their most inflammatory opinions. While writers in favor of Flood generally co-opted his milder (yet decidedly more factual and impactful) argument, those against him launched a far more memorable and aggressive assault against the character of Flood and the black athlete as a whole. As a result, though Flood received an outpouring of support from prominent members of the press, his backlash was far more indelible because it presented a more focused and clearly opinionated message.

¹¹⁵ Gillis, William. "Rebellion in the Kingdom of Swat: Sportswriters, African American Athletes, and Coverage of Curt Flood's Lawsuit against Major League Baseball." *American Journalism: The Publication of the American Journalism Historians Association* 26, no. 2 (2009): pg 69

¹¹⁶ Gillis, "Rebellion in the Kingdom of Swat: Sportswriters, African American Athletes, and Coverage of Curt Flood's Lawsuit against Major League Baseball," 73.

¹¹⁷ Gillis, "Rebellion in the Kingdom of Swat: Sportswriters, African American Athletes, and Coverage of Curt Flood's Lawsuit against Major League Baseball," 76.

¹¹⁸ Gillis, "Rebellion in the Kingdom of Swat: Sportswriters, African American Athletes, and Coverage of Curt Flood's Lawsuit against Major League Baseball," 77.

Chapter 3

“It kind of makes you wonder when a guy says he’s being treated like a slave. But I don’t know much about the situation.”¹¹⁹

Flood v. Kuhn raised many questions for members of the general public, such as Red Sox fan George Talbot, who were recently educated on the technicalities of *Flood v. Kuhn*. As many had never heard of the reserve clause and its implications prior to the case, their initial reactions and opinions formed were often based on their immediate opinion of what was and wasn’t a just labor system. It is important to evaluate the public’s reaction to the case in addition to the media because, as we saw in the case of Bob Broeg, many of the negative reactions to Flood’s case were based on the idea that the sheer amount of money that Flood was making every season was enough that any unselfish, hardworking American would absolutely accept his labor conditions. This chapter will explore the validity of Broeg’s appeal to the public in the sense that by gauging individual reactions to the case, we will be able to see if the public by and large naturally were influenced by the magnitude of salary or agreed with Flood when he argued that ““Only the totalitarian-minded will believe that high pay excuses virtual slavery.”¹²⁰ While public opinion in both St. Louis and newspaper opinion letters throughout the country did diverge significantly in perspectives, examining public reaction in the time of *Flood v. Kuhn* shows that, fascinatingly, most people either supported Flood in his decision to sue or had more of a problem with his exit from

¹¹⁹ “20 Jun 1972, Page 29 - St. Louis Post-Dispatch at Newspapers.Com,” *St. Louis Post-Dispatch*, Accessed October 27, 2019, <http://stltoday.newspapers.com/image/140236235/?terms=Curt%2BFlood>.

¹²⁰ Devine, "Curt Flood and the Show Me Spirit," 38.

baseball than the money involved in the trade. Somewhat unexpectedly (especially given Broeg's comments) arguments concerning money occurred far more for those who argued for Flood's lawsuit, perhaps demonstrating that, for all of his sometimes contradictory or uninterpretable statements, Flood did receive widespread support from the general public as the result of his principled stand against the MLB.

When the *Post-Dispatch* conducted interviews with ballpark visitors and St. Louis citizens, an Irish cop named Bob Casey (who had incidentally worked at Cardinals' games for 38 years) was the only one who explicitly mentioned Flood's contract as a reason against supporting him, saying that "Flood was a nice enough chap, and he was a damn good ballplayer, but he certainly wasn't a man in bondage with a salary of \$100,000."¹²¹ In a sense, Casey was an outlier and an almost predictable detractor of Flood because of his positioning as a longstanding presence at Cardinals games; his position and longevity in the role immediately suggests a tendency to both listen to Cardinals management and be naturally in line with the institution, not the player. For most fans against Flood, this had far more to do with his temperament than money. In fact, every other interviewee who was against Flood claimed an issue with the player himself. For example, Duke Arnold of Granite City (a huge fan of Cardinals shortstop Dal Maxvill, who was known to have sat across from Flood on the flight to the union meeting where Flood received MLB players' support), said of the decision: "Sounds all right to me. Didn't like Flood no ways, even when he was here."¹²² Other fans who claimed to be "middle of the road" viewers of the case, said "I think he had a bad attitude

¹²¹ *St. Louis Post-Dispatch*, "20 Jun 1972, Page 29 - St. Louis Post-Dispatch at Newspapers.Com."

¹²² *St. Louis Post-Dispatch*, "20 Jun 1972, Page 29 - St. Louis Post-Dispatch at Newspapers.Com."

from the beginning.”¹²³ The opinions of Arnold and the “middle of the road” fans, while negatively reflecting on Flood, are fascinating because they signal personal dislike far more than issues with the money involved in the case.

Negative public opinion on *Flood v. Kuhn* also formed surrounding Flood’s actions being the result of the trade, not as a more general stand for baseball players themselves. As fan John Mobley argued, ““Baseball has functioned all right as the national pastime for the last 100 years and if anyone has been mistreated by trades, I’m not aware of it.””¹²⁴ Mobley’s statement is interesting because, while it doesn’t necessarily take issue with Flood personally, it demonstrates a feeling that somehow he should have lived up to his end of the trade to the Phillies. In a somewhat negative but largely neutral admission to the press, 40-year Cardinal fan Ervin King ““hated to see Flood quit and let his career go down the drain because of the trade,”” following this with the reasoning that

““He should have played the last three years and waited to see how the court decided. I don’t think it’s fair to trade a human being off to another team simply because you don’t like him. Players should be able to negotiate their own contracts. But I still hated to see Flood give up the way he did.””¹²⁵

In this example, we can see the dilemma facing loyal fans like King who had built up organizational trust in the Cardinals but also sympathized with Flood’s issue with the reserve clause. This reflects a somewhat counterintuitive element of the public response to *Flood v. Kuhn*: fans were able to see past Flood’s salary and vociferously sympathize

¹²³ *St. Louis Post-Dispatch*, “20 Jun 1972, Page 29 - St. Louis Post-Dispatch at Newspapers.Com.”

¹²⁴ *St. Louis Post-Dispatch*, “20 Jun 1972, Page 29 - St. Louis Post-Dispatch at Newspapers.Com.”

¹²⁵ *St. Louis Post-Dispatch*, “20 Jun 1972, Page 29 - St. Louis Post-Dispatch at Newspapers.Com.”

with the fact that, no matter how much he was paid, this was a man that was trying to break an unjust system of labor practices put forth by a nationwide organization.

While Broeg, for instance, sought to influence a negative public opinion of Flood by involving money so consciously in his articles, what he actually spawned was a public outcry over the newly unearthed fact that their favorite players had little to no power under their system of employment. An anonymous fan directly alluded to this in a published letter to the *Post-Dispatch*, responding to “the unkind remarks of Bob Broeg in the sports pages” by saying that “Curt Flood is not only a phenomenal ball player but also a fine and courageous human being.”¹²⁶ The same letter ends with this cutting critique of Broeg’s assault on Flood:

“You find it ‘remarkable’ that a man earning \$90,000 a year should file suit to keep from being ‘bought and sold like cattle.’ I believe that you have missed the point. Ball players may be expensive cattle, but they’re still cattle. Certainly some players feel that \$90,000 is worth being treated like prized livestock. Curt Flood doesn’t think so. Perhaps he believes that there is more to one’s career, and to life, than money.”¹²⁷

A great irony of Broeg’s pieces is that they actually spawned a great outcry from fans that directly attacked his focus on money and used this attack to empower and support Flood in his suit against the MLB. The public realization of labor relations within baseball in a sense gave the average worker a sense of astonishment; for instance, while it was astonishing to one *Post-Dispatch* reader that a player would feel so commodified in

¹²⁶ “21 Feb 1970, Page 4 - St. Louis Post-Dispatch at Newspapers.Com,” *St. Louis Post-Dispatch*, Accessed October 27, 2019, <http://stltoday.newspapers.com/image/140312670/?terms=Curt%2BFlood>.

¹²⁷ *St. Louis Post-Dispatch*, “21 Feb 1970, Page 4 - St. Louis Post-Dispatch at Newspapers.Com.”

baseball's contract system, "It is less astonishing though, than the fact that after more than 100 years organized baseball has developed nothing more rational in the way of a fundamental management-employee policy than the so-called reserve clause."¹²⁸

Combined with the fact that "Flood fought to stay, not to leave" St. Louis, the "ordinary" worker actually stood to support a man who, after a decade of service in a city he loved, did not want to be unnecessarily transferred halfway across the country.¹²⁹

Finers Buckingham, "another black fan in his mid-40s," demonstrated his support for Flood through analogy with non-athletic work, saying "It's like any other job and I think a player should be guaranteed that he won't be traded after he's served eight to 10 years with a club."¹³⁰ We see similar ideas with Paul Tickner and Jonathan Harris, who argued that "Baseball has entirely too much control over a man's life... 'Gussie Busch has too much power over his players. He ought to see athletes on a personal basis and treat them as human beings, not as numbers,'" and that in hoping that Flood would win, "It was a matter of pride for him and I guess he really believed his analogy about old time slavery and baseball."¹³¹ In these statements, we can see the somewhat surprising revelation that many fans treated *Flood v. Kuhn* as an example of flawed labor relations, not as some kind of vastly different work environment in which the general public was completely inadequate to evaluate. The familiarity with which the general public treated the lawsuit was striking, even leading some to analogize Flood to an everyman fighting the good fight against his version of the corporate establishment.

¹²⁸ "7 Feb 1970, Page 4 - St. Louis Post-Dispatch at Newspapers.Com," *St. Louis Post-Dispatch*, Accessed October 27, 2019, <http://stltoday.newspapers.com/image/140312670/?terms=Curt%2BFlood>.

¹²⁹ "24 Jan 1997, Page 23 - St. Louis Post-Dispatch at Newspapers.Com," *St. Louis Post-Dispatch*, Accessed October 27, 2019, <http://stltoday.newspapers.com/image/141700048/?terms=Curt%2BFlood>.

¹³⁰ *St. Louis Post-Dispatch*, "20 Jun 1972, Page 29 - St. Louis Post-Dispatch at Newspapers.Com."

¹³¹ *St. Louis Post-Dispatch*, "20 Jun 1972, Page 29 - St. Louis Post-Dispatch at Newspapers.Com."

This view of Flood as a symbol of the everyday worker taking on the establishment is most apparent in East St. Louis resident Vern Crawford's critique of the Supreme Court's decision in favor of Kuhn and the MLB. When asked by the *Post-Dispatch* about why he stood against the decision, Crawford concluded that "The Supreme Court, as now constituted, makes it most difficult for an average individual to win a case when he goes up against the establishment or the rich," said Crawford, a fortyish black man."¹³² In stark contrast to Broeg's spoiled athlete narrative and image of Flood as an aloof money grabber, many of the residents of St. Louis and throughout the country saw the idea version of themselves in Flood: The "proud individualist who had the temerity and imagination to buck the system."¹³³ Where conservative columnists like Broeg and "The owners say that elimination of the clause would destroy baseball," the general public saw them as "throwing a curve."¹³⁴ As a result, Flood's case is unique within the general confines of athlete activism in this era because his side was almost immediately supported and even co-opted by many outspoken, regular workers. What had been portrayed as the elite athlete against the honor of "the game" became, to many people, a story of the underdog worker attempting to shed the shackles of unamerican labor practices.

Given the reaction of baseball's fan base and much of the audience's adoption of Flood as the everyman, the reaction of active MLB players was mostly muted or outwardly anti-Flood. While the occasional player like Tommie Agee of the Mets (as a result of teammate Al Weis' success for his club after being relegated to the Chicago

¹³² *St. Louis Post-Dispatch*, "20 Jun 1972, Page 29 - St. Louis Post-Dispatch at Newspapers.Com."

¹³³ "Mailbox: On Curt Flood," *New York Times*. 1976, sec. Sports.

¹³⁴ *St. Louis Post-Dispatch*, "7 Feb 1970, Page 4 - St. Louis Post-Dispatch at Newspapers.Com."

White Sox bench under the reserve system) came out in favor of the clause, even Flood's own teammates like relief pitcher Joe Hoerner and the ever-popular Dal Maxvill came out against the lawsuit.¹³⁵ Hoerner was quoted as simply saying ““There's no way I want to be a free agent,”” while Maxvill, ever the fan favorite, characterized the potential of free agency as doing far more to benefit stars than it would the regular player.”¹³⁶ Notwithstanding Maxvill's obvious misinterpretation of the potential benefits of free agency (yes, stars would earn more money, but the marginal major leaguer who couldn't have caught on with his original team but could find success in a new home, like Al Weis, would stand to gain the most by having the ability to seek the longevity they once could never dream of), seeing Flood's teammates come out against the lawsuit is dissonant with the theoretical and press-forwarded idea that the case was for the MLBPA as a whole. Even player representatives like Steve Hamilton of the New York Yankees, ““while reaffirming the Players Association's backing of Flood, said he felt negotiation is the best way.”¹³⁷ While it was true that there had been talk of the players and owners meeting to modify the reserve system in the offseason that year,¹³⁸ this quixotic idea brings back the metaphor Aikens used in his analysis of negotiation: this was like telling the slavemasters that they should negotiate labor conditions with their slaves.

The reactions of both the general public and active players were surprising and inverse in their own rights; whereas one group was expected to negatively view *Flood v. Kuhn* as a battle of an already privileged black man seeking even more of the immense

¹³⁵ *St. Louis Post-Dispatch*, “27 Jan 1970, Page 15 - St. Louis Post-Dispatch at Newspapers.Com.”

¹³⁶ *St. Louis Post-Dispatch*, “27 Jan 1970, Page 15 - St. Louis Post-Dispatch at Newspapers.Com.”

¹³⁷ “13 Aug 1970, Page 21 - St. Louis Post-Dispatch at Newspapers.Com,” *St. Louis Post-Dispatch*, Accessed October 27, 2019, <http://stltoday.newspapers.com/image/140145116/?terms=Curt%2BFlood>.

¹³⁸ *St. Louis Post-Dispatch*, “13 Aug 1970, Page 21 - St. Louis Post-Dispatch at Newspapers.Com.”

wealth he had already gathered and the other, as the beneficiary of this immense wealth, was expected to view it positively, reactions manifested inversely. This speaks to the power of analogizing and understanding for the general public, as many people were able to view the case as an outsized version of their own lives and labor conditions, and it speaks to the vast power of MLB ownership that the players had such milquetoast, negative-skewing public comments on the case. At a certain point, one must consider the impact that speaking out in support of the case might have on any player because this would essentially elevate them to the same level of suspicion and rebellion that Flood received. In short, those whose labor reality was actually at stake (especially easily replaceable, end-of-the-roster players like Hoerner) could have recognized the potential self-inflicted damage than an endorsement of Flood's suit would have brought and chosen the easy route to preserve their own careers. In either case, when it came to active players involved in his case and despite the MLBPA's financial support, Flood was alone.

Chapter 4

“Let’s let somebody who is unemotional and uninvolved decide what’s right.”¹³⁹

Curt Flood’s sentiment that the Supreme Court would finally bring an end to his personal struggle and the struggle of baseball players to take charge of their negotiating power and labor as a whole was surprisingly naïve and shortsighted given the nature of his case. What began as a reaction to an unfavorable trade would soon wade into the murky and occasionally downright baffling waters that was baseball’s antitrust exemption. In fact, *Flood v. Kuhn* looms as one of the Supreme Court’s outlier decisions because, in both the precedents it applied and the language of the opinion itself, the decision reveals itself to be the ultimate manifestation of a snowball effect of misapplied definitions of interstate commerce, a startling appearance of the Court using baseball’s status as the national pastime as a justification for these mishaps, and a series of almost unthinkably poor decisions in opinion writing that are now infamous in Court history. According to legal scholars Spencer Waller, Neil Cohen, and Paul Finkelman, “In any event, regardless of the mistakes and misapplied strategies, the *Flood* case looms, at best, as an aberration and, at worst, as a proverbial derelict in mainstream antitrust jurisprudence.”¹⁴⁰

¹³⁹ “Document View | America’s News? Historical and Current | NewsBank.” Accessed August 26, 2019. https://infoweb-newsbank-com.ccl.idm.oclc.org/apps/news/document-view?p=AMNEWS&t=decade%3A1960%211960%2B-%2B1969&sort=YMD_date%3AD&fld-base-0=alltext&maxresults=20&val-base-0=%22Curt%20Flood%22&docref=image/v2%3A144FDEA786229ACC%40EANX-15602220C6D4E7CD%402440587-155FE2F9CDABCC51%4023-155FE2F9CDABCC51%40.

¹⁴⁰ Spencer Weber Waller, Neil B Cohen, and Paul Finkelman, *Baseball and the American Legal Mind*, (New York: Garland Pub, 1995), 141.

In this chapter, I will seek to explain how this almost universal opinion of legal scholars came to be and why the Supreme Court decision failed to bring about the kind of closure that Flood sought to have in his lawsuit. This explanation will parse through previous case law through the lens of the suit as an attempt to fight unjust labor practices within business in general and subsequently baseball because considering *Flood v. Kuhn* in this manner provides an especially poignant context for the courts' faulty consistencies and failures throughout the process of the lawsuit. In short, analyzing the case within the confines of antitrust law is important because it more prominently reveals how baseball's cultural significance and influence became such an unavoidable issue for many justices that it influenced key decision-making. The case began simply, with Flood asserting "the virtual bankruptcy of the collective bargaining process in baseball, arguing that player bargaining power is weak and that the clubs have adamantly refused to negotiate on the reserve system."¹⁴¹ This petition constructed much of the framework of *Flood v. Kuhn*, but before the case and its contemporary realities are discussed, it is necessary to examine the history of baseball's antitrust exemption and how it so fully and completely undermined player bargaining power.

In Major League baseball's infancy, one of the most common ways in which writers would criticize the game was by calling it a trust. This argument that the lack of competitive alternatives and options for all involved made it an illegal monopoly (which was, somewhat ironically in the context of *Flood v. Kuhn*, parried by National League president Harry Pulliam with the notion that "conditions were never so good for the ball player as they are at the present time"), a perspective that was consistently deployed by

¹⁴¹ Curtis C. FLOOD, Petitioner, v. Bowie K. KUHN, et al., Respondents., 1972 WL 125826 (U.S.), 19.

those seeking to criticize the game.¹⁴² Early player/coach/manager John Montgomery Ward even acknowledged this, but argued that “‘even a monopoly is better than the squabbling and discord which came very near killing the sport’ before the club owners instituted the reserve clause.”¹⁴³ This almost open acknowledgement that baseball was a monopoly contextualized the 1922 case *Federal Baseball Club of Baltimore v. National League*, in which a club from a rival league refused to cease its operations in the face of Major League baseball; however, this refusal was short lived, as “the U.S. Supreme Court decided that the Sherman Antitrust Act did not apply to professional baseball, on the ground that baseball was not a form of interstate commerce.”¹⁴⁴ The early legal machinations behind Justice Holmes’ opinion, which was clearly odd given that baseball teams traveled between the different states to play each other, was that

“baseball exhibitions were a form of business, but they were purely state affairs and therefore did not constitute interstate commerce. Although the players moved between states, the game itself when played was held in one state. Therefore federal antitrust law did not apply to baseball. Baseball is also not commerce, says Holmes, because it is personal effort not related to production. This convoluted ruling set what came to be regarded as the antitrust exemption for baseball.”¹⁴⁵

In this sense, by treating each baseball game as an isolated event that occurred *intrastate*, the Court concluded that by considering the singular games of baseball that made up a season as somewhat independent, the sport could not be regulated under the

¹⁴² Banner, *The Baseball Trust: A History of Baseball's Antitrust Exemption*, 35.

¹⁴³ Banner, *The Baseball Trust: A History of Baseball's Antitrust Exemption*, 38.

¹⁴⁴ Banner, *The Baseball Trust: A History of Baseball's Antitrust Exemption*, 63.

¹⁴⁵ Regalado and Fields, *Sport and the Law: Historical and Cultural Intersections*, 34.

interstate commerce clause in the Constitution. Given the relatively narrow conception of interstate commerce that existed at the time, this was an odd, but acceptable decision.

The conception of baseball's antitrust exception that resulted from its initial intrastate designation took on different trajectory after *Federal Baseball*, as "Even within professional baseball, the idea was pervasive by the 1940s that baseball could be under the regulation of antitrust law but would simply not be violating it when it was applied because of its promotion of fair competition for the public good."¹⁴⁶ In this sense, the idea that each team within the MLB promoted "fair competition for the public good" would continue to lead to antitrust legislation, namely the Sherman Act, not being applied. This was challenged in 1953 by George Toolson, a minor league pitcher in the Yankees organization who refused to accept a demotion to Class A ball after a previous season in Triple A. He was blacklisted from the game, and ruled against throughout the court system, which relied on *Federal Baseball*.¹⁴⁷ While Justice Hugo Black wrote a short opinion relying on the mechanisms of *Federal Baseball*, Chief Justice Earl Warren suggested the opinion was incomplete and

"pointed out, baseball was not interstate commerce, so Congress could not subject it to the antitrust laws even if Congress wanted to. Warren urged Black 'to make it clear that Congress has the right to regulate baseball if and when it desires to do so.' He asked Black to add one more clause to the opinion's last sentence, to clarify that the Court was relying on *Federal Baseball Club*, 'so far as that

¹⁴⁶ Banner, *The Baseball Trust: A History of Baseball's Antitrust Exemption*, 95-96.

¹⁴⁷ Regalado and Fields, *Sport and the Law: Historical and Cultural Intersections*, 34.

decision determines that Congress had no intention of including the business of baseball within the scope of the federal antitrust laws.”¹⁴⁸

The convolution that defined baseball’s future antitrust debates quickly become clear here, as the decision to let Congress regulate baseball, but not with the application of antitrust laws since only the Court, not Congress, had the power to do so.¹⁴⁹ As Stuart Banner writes, “Even if the justices thought the reserve clause was unfair, they might well have thought that imposing retroactive liability on baseball was even more unfair,” implying that the MLB could not pay for its future without literally having to pay its liability from the past.¹⁵⁰ In short, as a result of *Toolson*, nothing could force baseball’s hand except for Congress, or a Supreme Court that was willing to go against precedent to forge a new set of antitrust laws relating to baseball.

This was the context set forth primarily by *Federal Baseball* and *Toolson* and bolstered by a 1957 case in which “the Supreme Court ruled that professional football indeed was included in antitrust coverage. The court once again cited baseball’s immunity through the 1922 case and suggested legislation as the cure if the decision against pro football appeared discriminatory”¹⁵¹ when Flood came to MLBPA head Marvin Miller, received a unanimous vote to support him, and got in touch with ex-Supreme Court Justice Arthur Goldberg to be his lawyer.¹⁵² Flood filed his lawsuit

¹⁴⁸ Banner, *The Baseball Trust: A History of Baseball's Antitrust Exemption*, 119.

¹⁴⁹ Banner, *The Baseball Trust: A History of Baseball's Antitrust Exemption*, 91.

¹⁵⁰ Banner, *The Baseball Trust: A History of Baseball's Antitrust Exemption*, 122.

¹⁵¹ *St. Louis Post-Dispatch*, “4 Jan 1970, Page 76 - St. Louis Post-Dispatch at Newspapers.Com.”

¹⁵² “Document View | America’s News? Historical and Current | NewsBank.” Accessed August 26, 2019. https://infoweb-newsbank-com.ccl.idm.oclc.org/apps/news/document-view?p=AMNEWS&t=decade%3A1960%211960%2B-%2B1969&sort=YMD_date%3AD&fld-base-0=alltext&maxresults=20&val-base-0=%22Curt%20Flood%22&docref=image/v2%3A144FDEA786229ACC%40EANX-15602220C6D4E7CD%402440587-155FE2F9CDABCC51%4023-155FE2F9CDABCC51%40.

against MLB Commissioner Bowie Kuhn, and Kuhn responded with a letter saying “When a player refuses to honor an assignment, he violates his contract, in which he agrees that assignments may be made, and he violates the fundamental baseball rules, including the reserve clause, which experience has shown to be absolutely necessary to the successful operation of baseball.”¹⁵³ The letter reflected the one-sided relationship between players and management, as “Even the letter’s salutation— “Dear Curt,” in contrast with Flood’s “Dear Mr. Kuhn”—drove home the point that the club owners dictated the conditions of the players’ employment.”¹⁵⁴ While Flood had hoped to find a more receptive and change-seeking court, what he ultimately found was more of the same—stubborn adherence to precedent even when legal definitions had changed past the point of recognition of the original cases.

Justice Blackmun, the writer of the infamous *Flood v. Kuhn* opinion, even acknowledged this, stating that it was “a difficult case because we are torn between the principle of stare decisis and the knowledge that the decisions in *Federal Baseball Club v. National League*, 259 U.S. 200, 42 S.Ct. 465, 66 L.Ed. 898 (1922), and *Toolson v. New York Yankees, Inc.*, 346 U.S. 356, 74 S.Ct. 78, 98 L.Ed. 64 (1953), are totally at odds with more recent and better reasoned cases.”¹⁵⁵ However, despite his admission of difficulty in the case, Blackmun and the Court came out with an opinion that almost unilaterally sided with the MLB’s argument that eliminating the reserve system would “place in jeopardy the goodwill and public confidence which baseball has earned over the decades”¹⁵⁶ and dismissed Flood’s additional argument that the reserve system be a

¹⁵³ Cronin, Feeney: Curt Flood Suit A Sports Threat.”

¹⁵⁴ Banner, *The Baseball Trust: A History of Baseball's Antitrust Exemption*, 190.

¹⁵⁵ *Flood v. Kuhn*, 407 U.S. 258, 290, 92 S. Ct. 2099, 2116, 32 L. Ed. 2d 728 (1972)

¹⁵⁶ *Curtis C. FLOOD, Petitioner, v. Bowie K. KUHN, et al., Respondents.*, 1972 WL 125826 (U.S.), 9.

mandatory subject of collective bargaining due to the reserve system already being exempted from federal antitrust laws.¹⁵⁷

For his part, Blackmun did acknowledge that baseball had been ruled upon differently than any other sport; however, his deflection simply takes the tone of avoiding responsibility, arguing that ““If there is any inconsistency or illogic in all this, it is an inconsistency and illogic of long standing that is to be remedied by the Congress and not by this Court.”” He went on to further say that Congress not acting upon the case at that point indicated a complicity with the Courts ruling within Congress.¹⁵⁸ The court, according to Blackmun, concluded that Congress didn’t intend to place baseball under antitrust statutes.¹⁵⁹ Even in the legal mechanisms of the opinion we can see that the opinion established a level of irresponsibility by failing to truly acknowledge many of the changes in nationwide antitrust law since either *Federal Baseball* or *Toolson*. This irresponsibility was repeatedly cited by Justice Douglas in his dissent, which emphasized how much of antitrust legislation had changed outside of the case and insisted that ““I do not see how the unbroken silence of Congress can prevent us from correcting our own mistakes.””¹⁶⁰ Douglas’ dissent has a minor level of fame for its passion and willingness to adapt the law to fit new realities. Even Justice Burger, who concurred with Blackmun, had sympathy for Douglas, though he made a similar argument that the financial implications of deals done after the errors of *Federal Baseball* and *Toolson* made too many people’s affairs dependent on adhering to precedent.¹⁶¹ Despite Douglas’ best

¹⁵⁷ *Flood v. Kuhn*, 407 U.S. 258, 285, 92 S. Ct. 2099, 2113, 32 L. Ed. 2d 728 (1972)

¹⁵⁸ “19 Jun 1972, Page 1 - St. Louis Post-Dispatch at Newspapers.Com,” *St. Louis Post-Dispatch*, Accessed October 27, 2019, <http://stltoday.newspapers.com/image/140236051/?terms=Curt%2BFlood>.

¹⁵⁹ *St. Louis Post-Dispatch*, “19 Jun 1972, Page 1 - St. Louis Post-Dispatch at Newspapers.Com.”

¹⁶⁰ Banner, *The Baseball Trust: A History of Baseball's Antitrust Exemption*, 196.

¹⁶¹ Regalado and Fields, *Sport and the Law: Historical and Cultural Intersections*, 38.

efforts, the Court did so and preserved an opinion that even in its first iteration required significant legal machination in favor of Major League Baseball.

However, *Flood v. Kuhn* becomes far more notable as a case when one looks outside of the decision that, according to the Kuhn, was ““constructive in its recognition that baseball has developed its present structure in reliance on past court decisions,”” using the same reasoning of financial protection and investment that was used in *Toolson* in yet another (now entirely removed from initial context) iteration of what was essentially the same case.¹⁶² Blackmun’s opinion itself, as Banner argues, would have been somewhat debatable if not unremarkable if he had simply followed Potter Stewart’s advice and ““acknowledged that the exemption rested on an outdated understanding of interstate commerce, but it would have emphasized that large investments had been made over many years in reliance on that understanding and that courts lacked the power to make purely prospective changes in the law.”¹⁶³ In this scenario, the issue of the Supreme Court lacking the responsibility and courage to acknowledge changes in the law and being unwilling to provide a new decision for a similar case would have been the primary complaint.

However, this was not the case. Blackmun’s opinion is so notorious because, to open up the opinion, he began an ode to the game of baseball which included ““many names, celebrated for one reason or another, that have sparked the diamond and its environs and that have provided tinder for recaptured thrills, for reminiscence and

¹⁶² Banner, *The Baseball Trust: A History of Baseball's Antitrust Exemption*, 213.

¹⁶³ Banner, *The Baseball Trust: A History of Baseball's Antitrust Exemption*, 215.

comparisons, and for conversation and anticipation in-season and off-season”¹⁶⁴ and the long-winded assertion that

“Baseball's status in the life of the nation is so pervasive that it would not strain credulity to say the Court can take judicial notice that baseball is everybody's business. To put it mildly and with restraint, it would be unfortunate indeed if a fine sport and profession, which brings surcease from daily travail and an escape from the ordinary to most inhabitants of this land, were to suffer in the least because of undue concentration by any one or any group on commercial and profit considerations. The game is on higher ground; it behooves every one to keep it there.”¹⁶⁵

While the respondents brief did include a section in which Flood’s team argued that “Americans love baseball as they love all sports” and therefore the general public might assume that legislators have it in their minds foremost as did fans, but “It is this Court” that made the players “impotent, and this Court should correct its error,”¹⁶⁶ This kind of exaggerated language can be chalked up to courtroom pageantry. What cannot be overlooked or excused, and what is the primary reason why Blackmun faced great ridicule for his opinion, was the list of 88 of his favorite players and the argument that it was everyone’s, (including the Court’s) duty to keep the game on higher ground. This appears as if a Justice of the Supreme Court let his fandom and reverence for the game of baseball greatly impact his conduct and decision-making in the courtroom. When Curt Flood argued for someone that was unemotional and uninvolved in baseball to decide the

¹⁶⁴ Flood v. Kuhn, 407 U.S. 258, 285, 92 S. Ct. 2099, 2113, 32 L. Ed. 2d 728 (1972)

¹⁶⁵ Flood v. Kuhn, 407 U.S. 258, 285, 92 S. Ct. 2099, 2113, 32 L. Ed. 2d 728 (1972)

¹⁶⁶ Flood v. Kuhn, 407 U.S. 258, 292, 92 S. Ct. 2099, 2117, 32 L. Ed. 2d 728 (1972)

case once and for all, he could not have possibly expected an opinion in which the history of baseball and a Justice's favorite players were given equal footing to his own case.

Despite the fact that between 1953 and the time of *Flood v Kuhn*, there were “more than 50 bills” introduced to Congress to modify or eliminate baseball’s antitrust exemption, but none were effective and despite Flood’s loss, baseball players would eventually see victory in their fight for free agency.¹⁶⁷ Andy Messersmith and Dave McNally “played the 1975 season without negotiating a new contract with their teams and became free agents,”¹⁶⁸ circumventing the inability of MLB players to use antitrust law to relax player restraints and forcing the league to use the players’ only recourse, collective action.¹⁶⁹ MLB owners realized that every player could ultimately take this action, so free agency in some form quickly followed.¹⁷⁰ Ultimately, in 1998 the aptly named Curt Flood Act was passed, declaring that antitrust laws applied to the business of baseball; it did so in a peculiar way, as “of the Flood Act’s 1,002 words, 73 describe what the legislation does; the other 929 words discuss what the Act does *not* do.”¹⁷¹ Additionally, “...when properly read, the CFA neither codifies professional baseball’s exemption nor reflects congressional acquiescence in broad-based antitrust immunity for the sport,”¹⁷² so in a sense, the act does not quite have the official repeal of MLB’s antitrust exemption.¹⁷³ That said the language within the act that states that “The Curt Flood Act does not “create, permit or imply a cause of action” by which to challenge

¹⁶⁷ “4 Jun 1972, Page 47 - St. Louis Post-Dispatch at Newspapers.Com,” *St. Louis Post-Dispatch*, Accessed October 27, 2019, <http://stltoday.newspapers.com/image/140231163/?terms=Curt%2BFlood>.

¹⁶⁸ Nathaniel Grow, “The Curiously Confounding Curt Flood Act,” *Tulane Law Review* 90, no. 4 (2016): 874.

¹⁶⁹ Waller, Cohen, and Finkelman, *Baseball and the American Legal Mind*, 295.

¹⁷⁰ Grow, “The Curiously Confounding Curt Flood Act,” 874.

¹⁷¹ Grow, “The Curiously Confounding Curt Flood Act,” 860.

¹⁷² Grow, “The Curiously Confounding Curt Flood Act,” 863.

¹⁷³ Grow, “The Curiously Confounding Curt Flood Act,” 881.

MLB business practices under antitrust law and the Sherman Antitrust Act,” which is generally accepted to either expressly or implicitly endorses repealing baseball’s antitrust exemption.¹⁷⁴ Though Curt Flood may have lost his case, he sparked a player movement for labor rights and undeniably changed the landscape of both baseball and professional sports forever.

In many ways, *Flood v. Kuhn* was about everything but the technicalities of antitrust law. The case dealt with the rapidly changing race relations in the wake of the Civil Rights Act, the legacy of athlete activism, the generational gap of the 1960s (in both sportswriters and the general public), and a legacy of Supreme Court failure, wrapping up some of the largest sweeping changes in our history into one ostensibly small labor relations case.¹⁷⁵ Whether or not Flood’s actions led to a period of diminished athlete activism, the very nature of his efforts and his case reflect a true individual who never seemed to waver from his principled stand against baseball’s establishment. Flood finally received recognition for his efforts with the 1992 NAACP Jackie Robinson Award (a fitting award given Robinson’s stirring testimony during the *Flood v. Kuhn* trial)¹⁷⁶ for his contributions to the world of black athletes and went on to give a speech to Major League players as they prepared to strike in 1994, receiving a standing ovation.¹⁷⁷ Though it stood as a simple reinforcement of precedent at the time, “Flood’s case was named as one of the 20 that ‘shaped this business world’ by Fortune Magazine in 2005.”¹⁷⁸ Curt Flood accomplished a great deal in showing athletes, especially black

¹⁷⁴ Grow, "The Curiously Confounding Curt Flood Act," 861-862.

¹⁷⁵ Banner, *The Baseball Trust: A History of Baseball's Antitrust Exemption*, 188.

¹⁷⁶ Regalado and Fields, *Sport and the Law: Historical and Cultural Intersections*, 36.

¹⁷⁷ Allen Barra, "How Curt Flood Changed Baseball and Killed His Career in the Process," *The Atlantic*, July 12, 2011, <https://www.theatlantic.com/entertainment/archive/2011/07/how-curt-flood-changed-baseball-and-killed-his-career-in-the-process/241783/>.

¹⁷⁸ *St. Louis Post-Dispatch*. "22 Dec 2006, Page D003 - St. Louis Post-Dispatch at Newspapers.Com."

athletes, everywhere that principle and a drive for change were ultimately more important than money. His value to baseball and sports is understood by those who seek to empower athletes. In St, Louis, the home he fought to never leave, the home he sacrificed his career for, his number is not retired.¹⁷⁹

¹⁷⁹ *St. Louis Post-Dispatch*. “22 Dec 2006, Page D003 - St. Louis Post-Dispatch at Newspapers.Com.”

Bibliography

Primary Sources:

“Cronin, Feeney: Curt Flood Suit A Sports Threat.” *Chicago Daily Defender (Daily Edition) (1960-1973); Chicago,*

Ill. January 19, 1970.

“Curtis C. FLOOD, Petitioner, v. Bowie K. KUHN, et Al., Respondents. | Briefs |

Westlaw.” Accessed August 26,

2019. [https://1-next-westlaw-](https://1-next-westlaw-com.ccl.idm.oclc.org/Document/Idda09a596bf111d89939f7baf3c805cd/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad6ad3a0000016ccf179589886b63dd%3FNav%3DBRIEF%26fragmentIdentifier%3DIdda09a596bf111d89939f7baf3c805cd%26parentRank%3D0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=9df3530e52f85cc188bb9d63d828f9d0&list=ALL&rank=1&sessionScopeId=4414110590d2928d01a577af83cea622fbe4e6c990bcf33052884bfe7dd3bf8a&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29)

[com.ccl.idm.oclc.org/Document/Idda09a596bf111d89939f7baf3c805cd](https://1-next-westlaw-com.ccl.idm.oclc.org/Document/Idda09a596bf111d89939f7baf3c805cd)

[/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2](https://1-next-westlaw-com.ccl.idm.oclc.org/Document/Idda09a596bf111d89939f7baf3c805cd/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad6ad3a0000016ccf179589886b63dd%3FNav%3DBRIEF%26fragmentIdentifier%3DIdda09a596bf111d89939f7baf3c805cd%26parentRank%3D0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=9df3530e52f85cc188bb9d63d828f9d0&list=ALL&rank=1&sessionScopeId=4414110590d2928d01a577af83cea622fbe4e6c990bcf33052884bfe7dd3bf8a&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29)

[Fi0ad6ad3a0000016ccf179589886b63dd%3FNav%3DBRIEF%26fragmentIdentif](https://1-next-westlaw-com.ccl.idm.oclc.org/Document/Idda09a596bf111d89939f7baf3c805cd/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad6ad3a0000016ccf179589886b63dd%3FNav%3DBRIEF%26fragmentIdentifier%3DIdda09a596bf111d89939f7baf3c805cd%26parentRank%3D0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=9df3530e52f85cc188bb9d63d828f9d0&list=ALL&rank=1&sessionScopeId=4414110590d2928d01a577af83cea622fbe4e6c990bcf33052884bfe7dd3bf8a&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29)

[ier%3DIdda09a596bf111d89939f7baf3c805cd%26parentRank%3D0%26startInde](https://1-next-westlaw-com.ccl.idm.oclc.org/Document/Idda09a596bf111d89939f7baf3c805cd/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad6ad3a0000016ccf179589886b63dd%3FNav%3DBRIEF%26fragmentIdentifier%3DIdda09a596bf111d89939f7baf3c805cd%26parentRank%3D0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=9df3530e52f85cc188bb9d63d828f9d0&list=ALL&rank=1&sessionScopeId=4414110590d2928d01a577af83cea622fbe4e6c990bcf33052884bfe7dd3bf8a&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29)

[x%3D1%26contextData](https://1-next-westlaw-com.ccl.idm.oclc.org/Document/Idda09a596bf111d89939f7baf3c805cd/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad6ad3a0000016ccf179589886b63dd%3FNav%3DBRIEF%26fragmentIdentifier%3DIdda09a596bf111d89939f7baf3c805cd%26parentRank%3D0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=9df3530e52f85cc188bb9d63d828f9d0&list=ALL&rank=1&sessionScopeId=4414110590d2928d01a577af83cea622fbe4e6c990bcf33052884bfe7dd3bf8a&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29)

[%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search](https://1-next-westlaw-com.ccl.idm.oclc.org/Document/Idda09a596bf111d89939f7baf3c805cd/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad6ad3a0000016ccf179589886b63dd%3FNav%3DBRIEF%26fragmentIdentifier%3DIdda09a596bf111d89939f7baf3c805cd%26parentRank%3D0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=9df3530e52f85cc188bb9d63d828f9d0&list=ALL&rank=1&sessionScopeId=4414110590d2928d01a577af83cea622fbe4e6c990bcf33052884bfe7dd3bf8a&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29)

[&listPageSource=9df3530e52f85cc188bb9d63d828f9d0&list=ALL&rank=1&s](https://1-next-westlaw-com.ccl.idm.oclc.org/Document/Idda09a596bf111d89939f7baf3c805cd/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad6ad3a0000016ccf179589886b63dd%3FNav%3DBRIEF%26fragmentIdentifier%3DIdda09a596bf111d89939f7baf3c805cd%26parentRank%3D0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=9df3530e52f85cc188bb9d63d828f9d0&list=ALL&rank=1&sessionScopeId=4414110590d2928d01a577af83cea622fbe4e6c990bcf33052884bfe7dd3bf8a&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29)

[essionScopeId=4414110590d2928d01a577af83cea622fbe4e6c990bcf33052884bf](https://1-next-westlaw-com.ccl.idm.oclc.org/Document/Idda09a596bf111d89939f7baf3c805cd/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad6ad3a0000016ccf179589886b63dd%3FNav%3DBRIEF%26fragmentIdentifier%3DIdda09a596bf111d89939f7baf3c805cd%26parentRank%3D0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=9df3530e52f85cc188bb9d63d828f9d0&list=ALL&rank=1&sessionScopeId=4414110590d2928d01a577af83cea622fbe4e6c990bcf33052884bfe7dd3bf8a&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29)

[e7dd3bf8a&](https://1-next-westlaw-com.ccl.idm.oclc.org/Document/Idda09a596bf111d89939f7baf3c805cd/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad6ad3a0000016ccf179589886b63dd%3FNav%3DBRIEF%26fragmentIdentifier%3DIdda09a596bf111d89939f7baf3c805cd%26parentRank%3D0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=9df3530e52f85cc188bb9d63d828f9d0&list=ALL&rank=1&sessionScopeId=4414110590d2928d01a577af83cea622fbe4e6c990bcf33052884bfe7dd3bf8a&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29)

[originationContext=Search%20Result&transitionType=SearchItem&contextData](https://1-next-westlaw-com.ccl.idm.oclc.org/Document/Idda09a596bf111d89939f7baf3c805cd/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad6ad3a0000016ccf179589886b63dd%3FNav%3DBRIEF%26fragmentIdentifier%3DIdda09a596bf111d89939f7baf3c805cd%26parentRank%3D0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=9df3530e52f85cc188bb9d63d828f9d0&list=ALL&rank=1&sessionScopeId=4414110590d2928d01a577af83cea622fbe4e6c990bcf33052884bfe7dd3bf8a&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29)

[=%28sc.Search%29.](https://1-next-westlaw-com.ccl.idm.oclc.org/Document/Idda09a596bf111d89939f7baf3c805cd/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad6ad3a0000016ccf179589886b63dd%3FNav%3DBRIEF%26fragmentIdentifier%3DIdda09a596bf111d89939f7baf3c805cd%26parentRank%3D0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=9df3530e52f85cc188bb9d63d828f9d0&list=ALL&rank=1&sessionScopeId=4414110590d2928d01a577af83cea622fbe4e6c990bcf33052884bfe7dd3bf8a&originationContext=Search%20Result&transitionType=SearchItem&contextData=%28sc.Search%29)

“Document View | America’s News | Historical and Current | NewsBank.” Accessed

August 26, 2019.

[https://infoweb-newsbank-com.ccl.idm.oclc.org/apps/news/document-](https://infoweb-newsbank-com.ccl.idm.oclc.org/apps/news/document-view?p=AMNEWS&t=decade%3A1960%211960%2B-)

[view?p=AMNEWS&t=decade%3A1960%211960%2B-](https://infoweb-newsbank-com.ccl.idm.oclc.org/apps/news/document-view?p=AMNEWS&t=decade%3A1960%211960%2B-)

%2B1969&sort=YMD_date%3AD&fld-base-0=alltext&maxresults=20&val-base-0=%22Curt%20Flood%22&docref=image/v2%3A144FDEA786229ACC%40EANX-15602220C6D4E7CD%402440587-155FE2F9CDABCC51%4023-155FE2F9CDABCC51%40.

“Document View | America’s News | Historical and Current | NewsBank.” Accessed August 26, 2019.

https://infoweb-newsbank-com.ccl.idm.oclc.org/apps/news/document-view?p=AMNEWS&t=decade%3A1960%211960%2B-%2B1969&sort=YMD_date%3AD&fld-base-0=alltext&maxresults=20&val-base-0=%22Curt%20Flood%22&docref=image/v2%3A136E6A0F0DF56B38%40EANX-13C86C3C16B04950%402440587-13C86BD96BC21EEB%4016-13C86BD96BC21EEB%40.

“Document View | America’s News | Historical and Current | NewsBank.” Accessed August 26, 2019.

https://infoweb-newsbank-com.ccl.idm.oclc.org/apps/news/document-view?p=AMNEWS&t=decade%3A1960%211960%2B-%2B1969&sort=YMD_date%3AD&fld-base-0=alltext&maxresults=20&val-base-0=%22Curt%20Flood%22&docref=image%2Fv2%3A142051F45F422A02%40EANX-1514A29272E8FE91%402440587-1514A2250E73DE6D%4034&origin=image%2Fv2%3A142051F45F422A02%4

0EANX- 1514A29272E8FE91%402440587-1512089328AB71E9%4035-
1512089328AB71E9%40.

“Document View | America’s News | Historical and Current | NewsBank.” Accessed August 26, 2019.

https://infoweb-newsbank-com.ccl.idm.oclc.org/apps/news/document-view?p=AMNEWS&t=decade%3A1960%211960%2B-%2B1969&sort=YMD_date%3AD&page=1&fld-base-0=alltext&maxresults=20&val-base-0=%22Curt%20Flood%22&docref=image%2Fv2%3A142051F45F422A02%40EANX-1514695F9FC86875%402440504-1514485FD0FA16F0%4052&origin=image%2Fv2%3A142051F45F422A02%40EANX-1514695F9FC86875%402440504-1512135262ED70BA%4053-1512135262ED70BA%40

Edwards, Dick. “Sock It To ’Em Curt!” *New York Amsterdam News (1962-1993)*; *New York, N.Y.* January 24, 1970.

Edwards, Harry. *The Revolt of the Black Athlete*. 50th anniversary ed. Sport and Society. Urbana: University of Illinois Press, 2017.

Flood, Curt, and Richard Carter. *The Way It Is*. New York: Pocket Books, 1972.

“Flood Flies Baseball’s Coop for Spain.” *Los Angeles Sentinel (1934-2005)*; *Los Angeles, Calif.* April 29, 1971.

“Flood v. Kuhn | Cases | Westlaw.” Accessed August 26, 2019. <https://1-next-westlaw-com.ccl.idm.oclc.org/Document/Id4c671e39c1d11d991d0cc6b54f12d4d>

/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2F
Fi0ad6ad3a0000016ccf179589886b63dd%3FNav%3DCASE%26fragmentIdentifi
er%3DId4c671e39c1d11d991d0cc6b54f12d4d%26parentRank%3D0%26startInd
ex%3D1%26contextData
%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Sear
ch&listPageSource=9df3530e52f85cc188bb9d63d828f9d0&list=ALL&rank=1&s
essionScopeId=4414110590d2928d01a577af83cea622fbe4e6c990bcf33052884bf
e7dd3bf8a&
originationContext=Search%20Result&transitionType=SearchItem&contextData
=%28sc.Search%29.

“Flood v. Kuhn | Cases | Westlaw.” Accessed August 26, 2019. <https://1-next-westlaw->

com.ccl.idm.oclc.org/Document/Ib9518a36550011d9bf30d7fdf51b6bd4
/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2
Fi0ad6ad3a0000016ccf179589886b63dd%3FNav%3DCASE%26fragmentIdentifi
er%3DIb9518a36550011d9bf30d7fdf51b6bd4%26parentRank%3D0%26startInde
x%3D1%26contextData
%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Sear
ch&listPageSource=9df3530e52f85cc188bb9d63d828f9d0&list=ALL&rank=2&s
essionScopeId=4414110590d2928d01a577af83cea622fbe4e6c990bcf33052884bf
e7dd3bf8a&
originationContext=Search%20Result&transitionType=SearchItem&contextData
=%28sc.Search%29.

Koppett, Leonard. "High Court Hears Baseball Back Antitrust Exemption: High Court Hears Baseball Defend

Antitrust Exemption." *New York Times*. 1972.

Koppett, Leonard. "Judge in Curt Flood Case Finds Baseball's 'Feudal Barony' Is Kind to Its Serfs." *New York*

Times. 1971, sec. SPORTS.

"Listen to Curt Flood's SABR Oral History Interview on the Supreme Court's Reserve-Clause Decision | Society for

American Baseball Research." Accessed August 26, 2019.

<https://sabr.org/latest/40-years-supreme-court-ruled-against-curt-flood>.

"Mailbox: On Curt Flood." *New York Times*. 1976, sec. Sports.

Murray, Chass. "Curt Flood, Forgotten Man in Baseball Freedom Fight, Lives in Self-Imposed Exile: Curt Flood:

Forgotten Man In Baseball Freedom Fight." *New York Times*. 1976, sec. Sports.

St. Louis Post Dispatch. "3 May 1971, Page 16 - St. Louis Post-Dispatch at Newspapers.Com." Accessed October

27, 2019.

<http://stltoday.newspapers.com/image/140671414/?terms=Curt%2BFlood>.

St. Louis Post Dispatch. "4 Jan 1970, Page 75 - St. Louis Post-Dispatch at Newspapers.Com." Accessed October 27, 2019.

<http://stltoday.newspapers.com/image/140310784/?terms=Curt%2BFlood>.

St. Louis Post Dispatch. "4 Jun 1972, Page 47 - St. Louis Post-Dispatch at Newspapers.Com." Accessed October 27, 2019.

<http://stltoday.newspapers.com/image/140231163/?terms=Curt%2BFlood>.

St. Louis Post Dispatch. "6 Mar 1970, Page 34 - St. Louis Post-Dispatch at Newspapers.Com." Accessed October 27, 2019.

<http://stltoday.newspapers.com/image/139799573/?terms=Curt%2BFlood>.

St. Louis Post Dispatch. "6 Sep 1968, Page 34 - St. Louis Post-Dispatch at Newspapers.Com." Accessed October 27, 2019.

<http://stltoday.newspapers.com/image/140110580/?terms=Curt%2BFlood>.

St. Louis Post Dispatch. "7 Feb 1970, Page 4 - St. Louis Post-Dispatch at Newspapers.Com." Accessed October 27, 2019.

<http://stltoday.newspapers.com/image/140312670/?terms=Curt%2BFlood>.

St. Louis Post Dispatch. "13 Aug 1970, Page 21 - St. Louis Post-Dispatch at Newspapers.Com." Accessed October 27, 2019.

<http://stltoday.newspapers.com/image/140145116/?terms=Curt%2BFlood>.

St. Louis Post Dispatch. "13 Jul 1969, Page 60 - St. Louis Post-Dispatch at Newspapers.Com." Accessed October 27, 2019.

<http://stltoday.newspapers.com/image/140173801/?terms=Curt%2BFlood>.

St. Louis Post Dispatch. "14 Aug 1970, Page 34 - St. Louis Post-Dispatch at Newspapers.Com." Accessed October 27, 2019.

<http://stltoday.newspapers.com/image/140145888/?terms=Curt%2BFlood>.

St. Louis Post Dispatch. "18 Jan 1970, Page 48 - St. Louis Post-Dispatch at Newspapers.Com." Accessed October 27, 2019.

<http://stltoday.newspapers.com/image/140065376/?terms=Curt%2BFlood>.

St. Louis Post Dispatch. "19 Jun 1972, Page 1 - St. Louis Post-Dispatch at

Newspapers.Com.” Accessed October 27, 2019.

<http://stltoday.newspapers.com/image/140236051/?terms=Curt%2BFlood>.

St. Louis Post Dispatch. “20 Jun 1972, Page 29 - St. Louis Post-Dispatch at

Newspapers.Com.” Accessed October 27, 2019.

<http://stltoday.newspapers.com/image/140236235/?terms=Curt%2BFlood>.

St. Louis Post Dispatch. “20 Mar 1968, Page 67 - St. Louis Post-Dispatch at

Newspapers.Com.” Accessed October 27, 2019.

<http://stltoday.newspapers.com/image/140348976/?terms=Curt%2BFlood>.

St. Louis Post Dispatch. “21 Feb 1970, Page 4 - St. Louis Post-Dispatch at

Newspapers.Com.” Accessed October 27, 2019.

<http://stltoday.newspapers.com/image/140314114/?terms=Curt%2BFlood>.

St. Louis Post Dispatch. “22 Dec 2006, Page D003 - St. Louis Post-Dispatch at

Newspapers.Com.” Accessed October 27, 2019.

<http://stltoday.newspapers.com/image/151877566/>.

St. Louis Post Dispatch. “24 Jan 1997, Page 23 - St. Louis Post-Dispatch at

Newspapers.Com.” Accessed October 27, 2019.

<http://stltoday.newspapers.com/image/141700048/?terms=Curt%2BFlood>.

St. Louis Post Dispatch. “25 Feb 1970, Page 28 - St. Louis Post-Dispatch at

Newspapers.Com.” Accessed October 27, 2019.

<http://stltoday.newspapers.com/image/140314594/?terms=Curt%2BFlood>.

St. Louis Post Dispatch. “27 Jan 1970, Page 15 - St. Louis Post-Dispatch at

Newspapers.Com.” Accessed October 27, 2019.

<http://stltoday.newspapers.com/image/140071461/?terms=Curt%2BFlood>.

St. Louis Post Dispatch. "28 Feb 1971, Page 86 - St. Louis Post-Dispatch at Newspapers.Com." Accessed October 27, 2019.

<http://stltoday.newspapers.com/image/140667753/?terms=Curt%2BFlood>.

Secondary Sources:

AIKENS, CHARLES. "THE STRUGGLE OF CURT FLOOD." *The Black Scholar* 3, no. 3 (1971): 10–15.

Banner, Stuart. *The Baseball Trust: A History of Baseball's Antitrust Exemption*. Oxford UK: Oxford University Press, 2013.

Barra, Allen. "How Curt Flood Changed Baseball and Killed His Career in the Process." *The Atlantic*, July 12, 2011.

<https://www.theatlantic.com/entertainment/archive/2011/07/how-curt-flood-changed-baseball-and-killed-his-career-in-the-process/241783/>.

Devine, Joshua C. "Curt Flood and the Show Me Spirit." *Missouri Law Review* 77, no. 1 (2012). 2012. Accessed October 27, 2019.

Gillis, William. "Rebellion in the Kingdom of Swat: Sportswriters, African American Athletes, and Coverage of Curt Flood's Lawsuit against Major League Baseball." *American Journalism: The Publication of the American Journalism Historians Association* 26, no. 2 (2009): 67.

Goldman, Robert Michael. *One Man Out: Curt Flood Versus Baseball*. Landmark Law Cases & American Society. Lawrence, Kan.: University Press of Kansas, 2008.

Grow, Nathaniel. "The Curiously Confounding Curt Flood Act." *Tulane Law Review* 90, no. 4 (2016).

Harrison, Maureen, Steve Gilbert, and United States. Supreme Court. *Landmark*

Decisions of the United States Supreme Court V. Landmark Decisions Series. San Diego: Excellent Books, 1995.

Jacobson, Steve. *Carrying Jackie's Torch : The Players Who Integrated Baseball-- and America.* 1st ed. Chicago, Ill.: Lawrence Hill Books, 2007. 2007. Accessed September 5, 2019.

Jones, Joshua P. "Notes - a Congressional Swing and Miss: The Curt Flood Act, Player Control, and the National Pastime - for the First Time in Its 125-Year History, Major League Baseball, Under the Recently Passed Curt Flood Act, Will Be Subject to Antitrust Laws. Under the Act, Players Will Be Allowed to Sue Major League Baseball and Its Member Organizations for Anti-Competitive Labor Policies. Such Labor Policies Include the Six-Year Reserve Clause, Which Binds a Player to His Team for the First Six Years of His Major League Career. the Actual Impact of the Act, However, Will Likely Be Tempered by the Fact That Courts Recognize a Separate Antitrust Exemption for Issues Growing Out of Labor Union Negotiations, Such As Those between Major League Baseball and the Players' Union. This Exemption Requires a Valid Lawsuit Under the Flood Act to Coincide with Decertification of the Players' Union, Which Dissolves the Bargaining Relationship between the Two Parties. This Note Will Argue That Such Decertification Is Not Likely to Occur. Further, If the Players' Union Could Successfully Decertify and Sue Major League Baseball on Its Anti-Competitive Labor Policies, This Note Concludes That a Decision Striking the Six-Year Reserve Clause Policy Could Have Disastrous Consequences on the Financial Structure on the Game of Baseball. Specifically, the Institution of Minor League

Baseball, a Source of Civic Pride and a Timeless Piece of Americana, Would Be Jeopardized through the Successful Assertion of an Antitrust Claim Under the Flood Act." *Georgia Law Review* 33, no. 2 (1999): 639.

Kaufman, Peter. "Boos, Bans, and Other Backlash: The Consequences of Being an Activist Athlete." *Humanity & Society* 32, no. 3 (2008): 215–37.
<https://doi.org/10.1177/016059760803200302>.

Khan, Abraham Iqbal. *Curt Flood in the Media: Baseball, Race, and the Demise of the Activist-Athlete*. Race, Rhetoric, and Media Series. Jackson: University Press of Mississippi, 2012. 2012. Accessed September 6, 2019.

Lomax, Michael. "'Curt Flood Stood Up for Us': The Quest to Break Down Racial Barriers and Structural Inequality in Major League Baseball." *Sport in Society* 6 (2003): 44-70.

"RECONSIDERING FLOOD V. KUHN | Secondary Sources | Westlaw." Accessed August 26, 2019. <https://1-next-westlaw-com.ccl.idm.oclc.org/Document/If44ba9b136ed11db8382aef8d8e33c97/View/FullText.html?navigationPath=Search%2Fv1%2Fresults%2Fnavigation%2Fi0ad6ad3a0000016ccf179589886b63dd%3FNav%3DANALYTICAL%26fragmentIdentifier%3DI44ba9b136ed11db8382aef8d8e33c97%26parentRank%3D0%26startIndex%3D1%26contextData%3D%2528sc.Search%2529%26transitionType%3DSearchItem&listSource=Search&listPageSource=9df3530e52f85cc188bb9d63d828f9d0&list=ALL&rank=1&sessionScopeId=4414110590d2928d01a577af83cea622fbe4e6c990bcf33052884bfe7dd3bf8a&>

originationContext=Search%20Result&transitionType=SearchItem&contextData
 =%28sc.Search%29.

- Regalado, Samuel O, and Sarah K Fields, eds. *Sport and the Law: Historical and Cultural Intersections*. Sport, Culture & Society. Fayetteville: University of Arkansas Press, 2014.
- Sappington R, Keum B.T, and Hoffman M.A. "“arrogant, Ungrateful, Anti-American Degenerates”": Development and Initial Validation of the Attitudes Toward Athlete Activism Questionnaire (ataaq)." *Psychology of Sport and Exercise* 45 (2019). doi:10.1016/j.psychsport.2019.101552.
- Smith, Brent, and Stephanie A. Tryce. "Understanding Emerging Adults' National Attachments and Their Reactions to Athlete Activism." *Journal of Sport & Social Issues* 43, no. 3 (2019).
- Waller, Spencer Weber, Neil B Cohen, and Paul Finkelman. *Baseball and the American Legal Mind*. New York: Garland Pub, 1995.
- Weisman, Steven. *Sports Law: The Essentials*. St. Paul: West Academic, 2017. 2017. Accessed October 27, 2019.
<https://public.ebookcentral.proquest.com/choice/publicfullrecord.aspx?p=5245385>.
- Weiss, Stuart L. *The Curt Flood Story: The Man Behind the Myth*. Sports and American Culture Series. Columbia: University of Missouri Press, 2007. 2007. Accessed September 6, 2019.