good Marshall Dissents in the
Curt Flood Case, 1972

Petitioner was a major league baseball player from 1956, when he signed a contract with the Cincinnati Reds, until 1969, when his 12-year career with the St. Louis Cardinals, which had obtained him from the Reds, ended and he was traded to the Philadelphia Phillies. He had no notice that the Cardinals were contemplating a trade, no opportunity to indicate the teams with which he would prefer playing, and no desire to go to Philadelphia. After receiving formal notification of the trade, petitioner wrote to the Commissioner of Baseball protesting that he was not “a piece of property to be bought and sold irrespective of my wishes,” and urging that he had the right to consider offers from other teams than the Phillies. He requested that the Commissioner inform all of the major league teams that he was available for the 1970 season. His request was denied, and petitioner was informed that he had no choice but to play for Philadelphia or not to play at all.

To non-athletes it might appear that petitioner was virtually enslaved by the owners of major league baseball clubs who bartered among themselves for his services. But, athletes know that it was not servitude that bound petitioner to the club owners; it was the reserve system. The essence of that system is that a player is bound to the club with which he first signs a contract for the rest of his playing

days. He cannot escape from the club except by retiring, and he cannot prevent the club from assigning his contract to any other club.

Petitioner . . . alleged, among other things, that the reserve system was an unreasonable restraint of trade . . .

Americans love baseball as they love all sports. Perhaps we become so enamored of athletics that we assume that they are foremost in the minds of legislators as well as fans. We must not forget, however, that there are only some 600 major league baseball players. Whatever muscle they might have been able to muster by combining forces with other athletes has been greatly impaired by the manner in which this Court has isolated them. It is this Court that has made them impotent, and this Court should correct its error.

We do not lightly overrule our prior constructions of federal statutes, but when our errors deny substantial federal rights, like the right to compete freely and effectively to the best of one's ability as guaranteed by the antitrust laws, we must admit our error and correct it. We have done so before and we should do so again here . . .

To the extent that there is concern over any reliance interests that club owners may assert, they can be satisfied by making our decision prospective only. Baseball should be covered by the antitrust laws beginning with this case and henceforth, unless Congress decides otherwise.

Accordingly, I would overrule Federal Baseball Club and Toolson and reverse the decision of the Court of Appeals.

This is 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 (1922), and Toolson v. New York Yankees, Inc., 346 U. S. 356 (1953), are totally at odds with more recent and better reasoned cases . . .

In his answer to petitioner's complaint, the Commissioner of Baseball "admits that under present concepts of interstate commerce defendants are engaged therein." . . . There can be no doubt that the admission is warranted by today's reality. Since baseball is interstate commerce, if we re-examine baseball's antitrust exemption, the Court's decisions in . . . United States v. International Boxing Club, 348 U. S. 236 (1955), and Radovich v. National Football League, 352 U. S. 445 (1957), require that we bring baseball within the coverage of the antitrust laws . . .

Marvin Miller Analyzes the Achievement of Free Agency, 1975

Andy Messersmith['s] and Dave McNally['s] . . . willingness to challenge the reserve clause . . .—led to the most important arbitration decision in the history of professional sports.

I had never made a secret of my contention from the beginning that Paragraph 10(a) in the Uniform Player’s Contract clearly stated that the owners had a right to

From Marvin Miller, A Whole Different Ball Game: The Sport and Business of Baseball (New York: Birch Lane, 1991), 238–47.
renew an unsigned player for one year, and one year only. Management had always said that if a team and a player couldn’t agree on salary, the club could review the player’s last contract for one additional year without his signature and that this right of renewal had no limit. Simply stated, the claim was that a club had the right to renew a player’s contract forever. The only alternative a player had to complying with the rule was to quit playing baseball for a living. . . .

. . . The Players Association, in not pressing for a negotiated settlement of the reserve clause issue in 1970 . . . was by no means surrendering its right to do so. We had made a tactical decision: We would fight the reserve clause in court rather than at the bargaining table so as not to divide our energies and resources. But when the Supreme Court in Flood again upheld its fifty-year-old decision . . . exempting baseball from antitrust laws, we were back to square one.

Square one, that is, on paper. For I could sense that the pressure we had put on the owners would cause them to yield somewhere down the line. The judges, after all, had not said that our desire to reform the reserve rules was wrong; they had just said that reform should be accomplished through collective bargaining . . .

With impartial arbitration in effect, we could argue the meaning and interpretation of a contract provision. It was only a matter of time, I felt, before we could test whether a club’s right of renewal of a contract lasted forever or existed only for one additional year. . . .

. . . The clubs, in spite of what they said, didn’t believe an unsigned contract could be renewed more than once. Before too long, a player would find it in his own best interest to finish a season under a renewed contract and then assert that he was a free agent on the grounds that he had no contractual connection with any club.

Enter Andy Messersmith . . . the best pitcher in the National League in 1974. Before going to the Dodgers, Andy had enjoyed five productive seasons with the Angels, and he had been shocked when he was dealt to the Dodgers. In 1974, he signed a one-year, $90,000 contract and led the league in wins (20) and winning percentage (.769). In 1975, the Dodgers and Messersmith were apart on salary, and he asked for a no-trade provision, or at least the right to approve any trade involving him. Walter O’Malley refused, and the club renewed Messersmith’s 1974 contract with a modest salary increase. Andy did not sign . . .

Messersmith was having another terrific season in 1975. When he was pressed for the no-trade provision, O’Malley countered by saying, “Can’t do it. The league wouldn’t approve the contract.”

“Bull,” I said, when Messersmith told me of O’Malley’s reply. “Absolute bull! There’s no such regulation.” . . .

Despite his policy of nixing no-trade contracts, my guess was that O’Malley would sign Messersmith. First off, he was the ace of the Dodgers’ staff. He had won 19 games in 1975 with a 2.29 ERA. Secondly, though management professed they would win should the case go to arbitration, they certainly preferred to postpone a grievance as long as possible. After all, if the decision didn’t go their way, they were in danger of losing it all.

. . . I found that the only other unsigned player during the 1975 season was former Orioles pitcher Dave McNally. McNally had pitched thirteen seasons for the Orioles, including four straight twenty-win seasons. After the 1974 season,
McNally was the perfect player to challenge the reserve rule. He was a good union man; he had once been player rep in Baltimore. And having no intention of pursuing a career in baseball, he was immune to retaliation. Messersmith could sign with the Dodgers and we would still have a test case.

I told McNally, "I'd like to add your name to the grievance as insurance if Andy decides to sign a new Dodger contract."

"If you need me," he said, "I'm willing to help." . . . Once we had McNally as a reserve test case, O'Malley no longer had any reason to offer Messersmith a no-trade clause. . . .

. . . My guess is that other prominent owners were opposed to the loss of control implicit in a player's being able to veto a trade and, having been erroneously informed by Kuhn and the lawyers that the arbitrator would rule against the Association, urged O'Malley to stand firm. Besides, the challenge to the reserve rule could no longer be sidetracked by signing Messersmith. Dave McNally was waiting in the wings—a fact Kuhn conveniently forgets.

We filed two grievances on the last day of the 1975 season. Predictably, management screamed that the sky was falling. National League president Chub Feeney said that if owners bid for players' services, it would be so disastrous that "we might not have a World Series." Dodger manager Walter Alston predicted graver consequences: "If Messersmith is declared a free agent, then baseball is dead." I half expected him to claim that Los Angeles would fall into the Pacific. . . .

Peter Seitz, the arbitrator who had ruled against Charles Finley in the Catfish Hunter case, set the hearing date for November 21. An experienced lawyer, Seitz had been a full-time arbitrator for twenty years. He had a reputation as a professional, intelligent arbitrator, but I didn't consider him to be prounion. . . .

Some of his more recent opinions and awards had impressed me with their objectivity. While reviewing his record, however, I found something that seemed significant. As an arbitrator for the National Basketball Association and the NBA Players Association, Seitz had noted in an opinion the 1969 California Court of Appeals ruling which gave NBA star Rick Barry the right to sign with the Oakland Oaks of the rival American Basketball Association after playing out his option year with the San Francisco Warriors. That court found that the standard basketball contract permitted a club to renew a player's contract for one year only. The wording of the renewal clause in the NBA's Uniform Player's Contract was almost identical to ours—in fact, it was copied from baseball's. Given the similarities, Seitz's opinion containing that reference to the California court ruling caught my eye. It seemed significant to me. . . .

Once the hearing started, the first matter to be considered was management's argument that the grievance was outside an arbitrator's jurisdiction. After each side had presented its case, the hearing recessed for a week. Seitz reviewed the transcript and ruled that the grievance was arbitrable. . . .

The arbitration panel consisted of John Gaherin, Peter Seitz, and me. . . . The transcript of the hearings and the correspondence between Seitz and the principals shows that Seitz did all in his power to get the parties to take the case from him by
negotiating a settlement. . . A settlement would be much wiser than risking the whole ball game.

**Mayor Lionel J. Wilson Explains Why Oakland Needs the Raiders, 1984**

. . . I want to describe why we feel so strongly about the Raiders staying in Oakland. . . . The Raiders and the NFL are a major civic asset in the Oakland area; they have made Oakland a big league town. . . .

To the City of Oakland and to the millions of Oakland Raiders supporters throughout Northern California, the Raiders are far more than simply a football team. They are a key part of the local economy. The Raiders’ modern football stadium, called the “Oakland-Alameda County Coliseum,” was built especially for the team. Financed by a public bond issue, the City and County acquired many acres of land to provide for this football stadium and attendant parking and other necessary facilities. Located entirely within the City, the stadium’s present replacement value is in the range of $65 to $70 million.

From an economic standpoint, the presence of the Raiders in Oakland regularly attracts thousands of people from outside the city, and results in people within the city spending on local businesses that would not exist without the draw of a professional football team. One Oakland business community estimate is that direct spending in this connection amounts to $36 million annually, with the indirect benefits totalling $180 million. In addition, the Coliseum sports complex has served to catapult Oakland’s image as a “major league” city, thus enabling the City to attract numerous and substantial outside investors for many of its projects, both public and private. So in pure economic terms, the Raiders have given us an image and a status that communities such as ours strongly need.

But the Raiders have a more important value to us than simply an economic one—they are a creative and vital part of our community. A professional football team, and especially one as successful as the Raiders, can be a tremendous unifying force to a community. People of all ages, races, and income levels are able to share a highly rewarding common interest and experience. Sports teams represent and often mirror their communities and, in turn, the communities become a part of their team. . . . As Gene Upshaw, the captain of the Raiders put it, “The Raiders and Oakland have given each other”—and I emphasize that—“given each other a sense of pride and identity.” . . .

Oakland needs the pride and identity it gets from the Raiders and, in return, we have taken the team into our hearts. It is difficult for me to convey the sense of abandonment, of loss, and yes, of outrage with which East Bay residents greeted the Raiders’ announcement that they were leaving Oakland for Southern California merely because a larger California community had offered them a candy store of

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