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Flood's Case at Final Door

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we believe...

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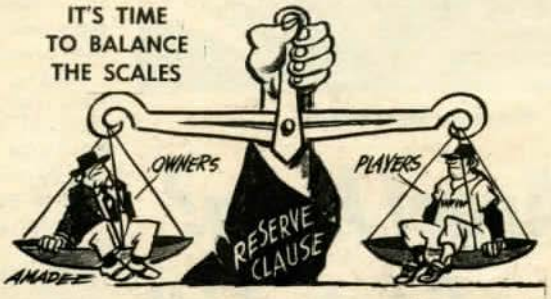
ST. LOUIS, Mo.—Attorneys for Commissioner Bowie Kuhn and the major leagues have filed a brief with the U. S. Supreme Court in opposition to Curt Flood's petition for a review of the adverse decisions in the lower courts in his antitrust suit against baseball's reserve clause.

The former outfielder, who apparently has been in Europe since quitting the Senators last April 27, sued when his request for free agency was denied after he was traded by the Cardinals to the Phillies in October, 1969. He sat out the 1970 season but played briefly this year with the Senators, who obtained him from the Phillies under an agreement that his appearing with the Washington club would not prejudice his suit.



A judgment in favor of baseball was returned in New York after a 15-day trial of Flood's case in U. S. District Court last year. The decision was affirmed by the U. S. Circuit Court of Appeals. Attorneys employed by the Major League Baseball Players Association in Flood's behalf then filed a petition with the Supreme Court for a writ of certiorari.

In answer to Flood's legal move, baseball's lawyers cited the game's exemption from the antitrust laws, as set out by Justice Oliver Wendell Holmes in 1922, and pointed out that this immunity had not been disturbed by the courts or Congress since that time.

As for the reserve clause, which binds a player to whatever club holds his contract, the brief said:

"The collective bargaining process remains the proper means for resolving this dispute. The issue here is not whether the reserve system must be abolished. Petitioner's own witnesses have conceded that baseball would be chaotic without a reserve system and Petitioner admits that he seeks only 'modification' of the reserve system 'so as to legalize it.' . . .

"The suggestions made by the Petitioner's witnesses at the trial—the adoption of salary arbitration, automatic salary progression, limitations on the number of years of the reserve system's application, etc.—are plainly matters to be negotiated between the club employers and player employes."

As a matter of record, negotiations on the issues involved in maintenance of the reserve clause were in progress at the time Flood's suit was filed. However, the players' association and the clubs realized that meaningful bargaining was impracticable during the pendency of the litigation and formally agreed to suspend negotiations until the case finally was determined.

We believe, if the Supreme Court turns down Flood's petition for a review, as it is likely to do, that both parties should sit down again and dispassionately resume their consideration of the reserve clause. Some modifications may be beneficial.

In our opinion, U. S. District Judge Irving Ben Cooper of New York, who originally ruled against Flood, put the situation in perspective when he said:

"(We) are convinced that the conflicts between the parties are not irreconcilable and that negotiations could produce an accommodation on the reserve system which will be eminently fair and equitable to all concerned. In essence, what is called for here is continuity with change."