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Curt Flood

Baseball Clippings

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1972

## The Supreme Court Computer

Harold J. Spaeth

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1972

THE SUPREME COURT COMPUTER  
by  
Harold J. Spaeth

Baseball and the Law

Within the next two months the Supreme Court will decide whether professional baseball shall remain immune from the antitrust laws.

Last Fall, the Court agreed to hear Curt Flood's suit. Flood, a former star outfielder for the St. Louis Cardinals, challenged Baseball's reserve clause, which gives a player absolutely no choice of the club he wishes to play for.

The origins of Flood's case go back fifty years. In 1922, the Supreme Court ruled unanimously that baseball did not constitute interstate commerce, and hence was beyond the scope of the antitrust laws.

In 1953, by a 7 to 2 vote, the Court rejected an attack upon baseball's reserve clause on the basis of the 1922 decision. The majority added that if evils existed, Congress should change the law.

Over the next few years, however, the federal courts subjected other professional sports to the antitrust laws. In 1955 and 1957, for example, the Supreme Court held that boxing and football, respectively, were covered by the anti-

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trust laws. The upshot is that baseball now is the only sport not specifically covered.

How will the Court decide Curt Flood's case?

Computer analysis identifies 79 cases decided since 1957 that involve antitrust laws, exclusive of mergers between businesses. The votes of the current justices in these cases are as follows:

<u>Justice</u>	<u>Competition</u>		<u>%</u>
	<u>pro</u>	<u>anti</u>	
Burger	6	0	100%
Blackmun	5	0	100%
Powell	1	0	100%
Rehnquist	1	0	100%
Douglas	74	4	95%
White	54	3	95%
Marshall	14	1	93%
Brennan	70	9	89%
Stewart	35	41	46%

This highly skewed pattern, heavily shifted in opposition to restrictive business activities, is also evident from analysis of the outcome of these cases: Only 8 of the 79 decisions supported business (10%), with 29 of the 71 pro-competition (anti-business) decisions having been decided by a unanimous vote (41%), including all six of the antitrust cases decided so far by the Burger Court.

On the other hand -- and notwithstanding the fact that none of President Nixon's appointees have yet voted in favor of business in an antitrust case -- only Justices Douglas, Marshall, and Brennan have shown support for the value of New Dealism, to which antitrust law pertains. New Dealism concerns attitudes toward economic regulation and is one of

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(...is one of)

three values, along with freedom and equality, which computer analysis has found to explain 85% of the Court's decisions.

Suggestive of a decision against Curt Flood is the presence of the 50-year-old precedent excluding baseball from antitrust regulation.

But the Court did agree to hear Curt Flood's case. And it is not likely -- given the demands upon the Court's time -- that the Court agreed to hear the case simply to reaffirm what it had decided back in 1922 and 1953.

Accordingly, the Supreme Court Computer predicts that Curt Flood will win and baseball will lose. The vote should be unanimous, but Justice Rehnquist may dissent.

The decision, however, should be narrow in scope. Baseball will lose its immunity from the antitrust laws, but the reserve system will not be summarily junked. Lower courts will be asked to decide its "reasonableness" and what modifications should be made. The ultimate outcome, after several years of further litigation, will be to accord baseball the same status under the antitrust laws as obtains for other professional sports.

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