



Outside the Lines

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Marvin Miller And Free Agency: The Pivotal Year 1969

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On December 23rd, 1975, Peter Seitz, the neutral arbitrator, awarded Major League Baseball players, both present and future, the greatest Christmas present they would ever receive. He ruled that clause 10a of a player's contract, reserving an unsigned player to his current team, was only valid for one year. After that, a ballplayer could become a free agent if the contract remained unsigned. While it would take another seven months for Marvin Miller to negotiate a new agreement with Major League Baseball, free agency, resulting from the case of Andy Messersmith and Dave McNally, was about to become a reality.

It had taken Miller almost a decade to accomplish what was one of his foremost goals: The rights of a ballplayer to be free to negotiate his own contract and at some point test the market to determine his actual worth. In reality, though, Miller had everything he needed in place years earlier. Officially starting his position as Executive Director of the Players' Association on July 1, 1966, after being ratified by players, coaches and managers, Miller had everything he needed by early 1970 to effect free agency. In particular, four events during the course of 1969, coupled with a serendipitous meeting on the streets of Manhattan in early 1970, were instrumental to establish the groundwork for the favorable Messersmith case ruling.

The first of the key events grew out of a pension dispute, a common saga in early owner/player negotiations. Dissatisfied with what they perceived as cutbacks to their pension plan, the players collectively refused to sign their contracts for the 1969 season. A newly named commissioner, Bowie Kuhn, concerned

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The Business of Baseball Committee co-chairs are Gary Gillette (GGillette@247Baseball.com) and John Ruoff (jruoff@bellsouth.net). Ruoff edits *Outside The Lines*.

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From the Editor

This issue of *Outside the Lines* includes an excellent article by [David Bohmer](#) on Marvin Miller and the advent of free agency.. We thank Dave for his willingness to share his work with us.

The next issue of *Outside the Lines* will come out in the Spring. We are always looking for high quality research on the business side of the game. The deadline for the Spring issue is April 1. If you have research that you would like to share with us, please contact me at jruoff@bellsouth.net.

John Ruoff
Co-Chair Business of Baseball Committee
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about a holdout of spring training during his first months in office, convinced the owners to enhance their offer. The contracts were signed as spring training began.

Two months later, in April, the second component materialized. After the 1967 season, Miller negotiated a basic agreement with Major League Baseball, the first of its kind in any professional sport. A key aspect was that owners and players would appoint representatives to a joint study committee on the reserve system. When that committee finally met in April of 1969, it became obvious that the session would not produce any changes. The owners made it clear "that the control they presently exercised was necessary for the protection of baseball."¹ The negotiating process

would not yield any change in the owners' interpretation that the reserve clause meant that a team controlled a player for life. Miller knew then he would have to explore other approaches.

By late fall, after the World Series had ended, Curt Flood, star center fielder for the St. Louis Cardinals, was traded to the Phillies, setting in motion the third event. For a variety of reasons, Flood wanted nothing to do with Philadelphia and publicly rejected the trade. He approached Miller, stating that he wanted to test the validity of the trade in court. Far from optimistic about the chances, Miller did recommend to the Players' Association that they support Flood's legal fees. They agreed to do so at their December meeting, leading to the filing of a case that would end up in the U.S. Supreme Court.

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¹ Korr, Charles P. *The End Of Baseball As We Knew It: The Players' Union, 1960-81* (Urbana, Illinois: University of Illinois Press, 2002), 79.

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The final component came in the form of a National Labor Relations Board ruling on December 15th. The ruling grew out of an attempt by Major League umpires to organize their own union. The Taft-Hartley Act of 1947 stipulated that the NLRB could, by its choice, be exempted from oversight of any union



formed after that law had passed. Hence, any baseball union, including the Players' Association, could have arguably been exempted from NLRB jurisdiction. In their decision involving a proposed umpires' union, the Board ruled that they did, in fact, have oversight over the Association as well.² Coupled with the Flood case, the breakdown of negotiations on the reserve clause, the players' unity in refusing to sign contracts over the pension dispute and a chance encounter with Bowie Kuhn, Miller would obtain in early 1970 what he needed to undertake a different strategy for free agency – the second Basic Agreement.

Even before the events of 1969 had played out, Miller had made considerable progress for the Players' Association. When he came on board in 1966, the minimum salary for a ballplayer had only been raised from \$5000 to \$6000 in the previous 20 years. A player could be cut or traded solely at the whims of an owner. The pension plan, which was one-half contributory, was tied strictly to revenue from the All Star game and World Series. Spring training monetary allowances for meals and travel had changed little from when they had initially been granted twenty years before. And the reserve clause was interpreted by owners as a means to expand a yearly agreement into a lifetime contract. The Players' Association had accomplished little since its conception twenty years before

By 1969, however, there were notable improvements. Shortly after he began in 1966, the pension became fully non-contributory. By 1967 he had negotiated a royalty deal with Coca Cola and a year later made significant improvements in the agreement with Topps Bubble Gum in their payments to players. With the first Basic Agreement at the end of 1967, to last for two seasons, Miller gained important concessions. The minimum salary was raised to \$10,000. Players were given considerably more meal money to cover their costs during spring training. They also gained first class travel and accommodations on road trips during the regular season. Most important to Miller was the establishment of a formal grievance procedure, although the Commissioner was the final decision maker in any arbitration. Owners could no longer change a contract unilaterally without negotiating with the Association. And, as alluded to earlier, an agreement was reached to set up a study committee to examine the reserve clause.³ This was a solid framework for the second Basic Agreement, negotiated in early 1970, but not as instrumental as were the developments that took place in 1969.

It is possible the owners of the Major League ball clubs felt their players had already made too many gains, thus provoking them to take a stand on the pension plan that was up for renewal in 1969. As negotiations began after the end of the 1968 season, the owners insisted upon significant alterations to the plan. They insisted upon freezing amounts paid to former players and coaches. They offered only a small increase in the pension for current players. They also proposed to decrease the amount committed to the plan from television revenue and even recommended that funding of the pension plan no longer be tied in any way to revenues from the All Star Game and World Series, breaking a twenty year old precedent. On top of those changes, the owners offered no increases in the plan to account for the four new fran-

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² The United States. *Decisions and Orders of the National Labor Relations Board* 180 (1971): 190-94 in Sullivan, Dean A., Ed. *Late Innings: A Documentary History Of Baseball, 1945-72* (Lincoln, Nebraska: University of Nebraska Press, 2002), 250-53. Miller, Marvin. Phone interview. 29 Jan. 2008.

³ Miller, Marvin. *A Whole Different Ball Game: The Sport and Business of Baseball* (New York: Birch Lane Press Book, 1991), 97-98, 161-62. Korr, *The End Of Baseball As We Knew It*, 71-72. Lowenfish, Lee and Tony Lupien. *The Imperfect Diamond: The Story Of Baseball's Reserve System and The Men Who Fought To Change It* (New York: Stein and Day Publishers, 1980), 203.

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chises, with 100 additional players, created by expansion for the 1969 season.⁴ For all intents, the players were being offered a pension plan that basically undermined a considerable portion of their benefits.

Miller's advice to the Association representatives at their December meeting was that they should treat the pension and benefit plan as part of their compensation. If it remained an issue at contract time, the players should consider not signing their contracts. Such was the case. By an overwhelming vote, the players rejected the owners' pension proposals and voted not to sign their contracts until the issue was resolved to their satisfaction.⁵ As



spring training approached, sports pages around the country headlined the names of stars who refused to sign contracts – Willie Mays, Mickey Mantle, Frank Robinson, Carl Yastrzemski,

Tom Seaver, and Roberto Clemente among the most notable. Some wondered if spring training camps would even open on time.

While the sports pages were abuzz about the threat to delay spring training, the owners were meeting to name an acting commissioner, having recent fired William "Spike" Eckert at their winter meeting. After some deliberation, they agreed upon Bowie Kuhn, a lead attorney for the Major League Baseball, to replace Eckert on an interim basis. Kuhn already had plans to make his new role a more permanent position and was therefore deeply troubled over the unsigned contracts as well as the jeopardized start of spring training. He requested that MLB's labor liaison, John Gaherin, meet with Miller and resolve the dispute. Gaherin was successful, but only at a price. To reach agreement, all of the demands of the players were met and then some. In the largest alteration, the pension plan was changed to include players and coaches with a minimum of four years of service, down from the previous requirement of five. Further, this change was applied retroactively to all former players in the plan. Other components in the previous plan remained unchanged and funds were also provided to account for

the expansion teams.⁶

For the first time, ball players, stars as well as reserves, showed they could unite. Even faced with adverse pressure from the press, they were capable of sticking together to achieve their objectives through negotiations. Miller may not have been convinced they were ready to strike, but he was encouraged by their demonstrated unity. This was an important symbol to all affected parties of the Association's power. It would certainly be remembered a year later when the Basic Agreement came up for renewal.

While spring training and the regular season started on time, with four new teams in Montreal, Kansas City, San Diego and Seattle, another hitch in the negotiating process soon became obvious. The Joint Study Committee on the Reserve System met in April 1969, in conformance with one of the obligations of the first Basic Agreement. That was as far as it got, however, in meeting that commitment. It was quickly clear that the owners had no interest in making any change in the current reserve clause or their interpretation that it gave them the ability to control a player for life.

While disappointed, Miller was not surprised by the outcome. It was finally clear to him that negotiation with Major League Baseball was not going to be the avenue by which to change the reserve clause. He pondered the other alternatives. He was convinced a legislative approach would never work. Congress was highly unlikely to alter something that supposedly could upset the very fabric of the National Pastime. While the Supreme Court was less sensitive to public sentiment, they were also a more unlikely avenue of change. The 1922 Federal Baseball decision granting the game's anti-trust status was upheld in the 1953 Toolson ruling. In essence, the Court, exercising the principal of *stare decisis*, was extremely unlikely to overturn earlier rulings. Miller even pondered a more esoteric approach, a favorable antitrust ruling on the reserve clause from the Department of Justice, which he



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⁴ Miller. *A Whole Different Ball Game*, 98.

⁵ Ibid, 102-04. Korr. *The End Of Baseball As We Knew It*, 75.

⁶ Miller. *A Whole Different Ball Game*, 104-05 and Telephone interview. 11 Feb. 2008.

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quickly ruled out since it was under the Nixon administration. A diehard baseball fan, Nixon was also no friend of unions.

With negotiations no longer an option, there were only two considerations left – a strike or arbitration. Even after the successful holdout on signing contracts, Miller was convinced the players were not ready for the economic repercussions of a strike. There was too great a risk that many players would not go along. Arbitration was the only solution, though even that could never be a serious option as long as the final appeal was decided by the Commissioner.⁷ Miller's thinking thus became even more focused upon the importance of the next basic agreement negotiations.

Miller was still pondering his approach to negotiations after the completion of the 1969 season when he received an unexpected phone call from a discontented Curt Flood, asking if they could meet in person. Miller was later accused by some sportswriters and even the Commissioner of manipulating Flood to sue Major League Baseball for the right to reject his trade and sign with any team of his choosing.⁸

In fact, when the two met in New York, Miller counseled Flood that taking his case to court had "a one in a million chance of winning." Further, even if Flood were, by some fluke, successful, it was highly unlikely that he would receive retroactive damages. Flood was encouraged, however, when Miller acknowledged that a victory in court, even as remote as it seemed, could benefit other players.⁹ That possibility was enough to entice Flood to proceed, provided the Association was willing to pay his legal fees.

Miller agreed to let Flood take his case before the Association representatives at their December meeting in Puerto Rico. While he let the board make its own decision, Miller was strongly supportive of financing

Flood. As he later acknowledged, there was a real danger of bad law coming out of a badly handled case. An unfavorable ruling could have a negative impact on other players. That risk would be minimized if the Association were directly involved in the litigation efforts. After extensive questioning, and with Miller's approval, the Association board voted unanimously to finance Flood's legal costs.¹⁰

By the time negotiations started in early 1970 on the new Basic Agreement, Flood's case had not even reached the courts. Still, the presence of the case had a major impact on the discussion. In the case of Miller, it increased his resolve to insist upon binding arbitration being established, the right to bring disputes between labor and management before a neutral arbitrator, who could cast the deciding and binding vote in a dispute.

As one baseball author has noted, "How could baseball argue that Curt Flood was wrong and the industry was eminently fair to players if their only appeal on grievances was to the commissioner?"¹¹ John Gaherin, with a strong background in labor relations, was also cognizant of the issue and understood Miller's adamancy. However, Commissioner Kuhn insisted that he maintain his authority over arbitration.¹² As negotiations approached, the issue seemed to remain at an impasse.

That was so even in spite of the NLRB ruling that was handed down on December 15 of 1969. When coupled with the Flood case, it seemed to place Kuhn in a precarious position by remaining the final decision maker in any arbitration, especially since he was hired and paid by the owners.

The decision providing for NLRB oversight of Major League Baseball and the Players' Association certainly added to Miller's confidence and strengthened his position going into negotiations in early 1970. Nor

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⁷ Miller recalled his thought process after the breakdown of the study committee during a personal interview. Miller. Personal interview. 23 Aug. 2007.

⁸ Snyder, Brad. *A Well Paid Slave: Curt Flood's Fight For Free Agency In Professional Sports* (New York: Viking – The Penguin Group, 2006), 111. Kuhn, Bowie. *Hardball: The Education Of A Baseball Commissioner* (New York: Times Books, 1987), 80.

⁹ Miller. Personal interview. 23 Aug. 2007. The best description of Miller's involvement with the Flood case can be found in Miller. *A Whole Different Ball Game*, 170-202, in the chapter entitled "Flood Gate."

¹⁰ Miller. Personal interview. 23 Aug. 2007.

¹¹ Helyar, John. *Lords Of The Realm: The Real History Of Baseball* (New York: Villard Books, 1994), 104.

¹² Ibid, 105-09 for a detailed discussion of the dynamics.

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was the ruling a fortuitous surprise to the Association's director.

Early in 1969, the umpires, feeling overworked and underpaid, were attempting to unionize, under the leadership of Al Salerno and Bill Valentine, who had been fired for their efforts. The two leaders approached Miller with the hope that he might take their organization in under the umbrella of the Players' Association.



Miller balked. His concern was the fact that since umpires have disciplinary authority over ballplayers, their inclusion in the same organization would present a conflict of interest. He did agree to assist them in obtaining a favorable ruling from the NLRB, knowing that it might benefit the Players' Association as well.

To attain NLRB intervention, Miller felt he needed more clout in presenting the appeal. He approached George Meany, head of the AFL-CIO, asking for his support in a "friend of the court" petition. Meany was not supportive of either a players' or an umpires' union, but he was trying to gain NLRB jurisdiction over the nursing home industry he was organizing. He agreed to intervene on Miller's behalf in a reciprocal arrangement, resulting in the mid December ruling that bypassed Taft-Hartley and brought the Players' Association and the umpires' union under the jurisdiction of the NLRB.¹³ Coupled with the pending Flood case, the ruling presented additional problems to Major League Baseball.

Commissioner Bowie Kuhn, however, didn't initially see it that way. He remained unconvinced that he needed to relinquish any of his authority over player grievances, even with the apparent conflict. It looked as if his unwillingness would dominate the bargaining in the next basic agreement until Marvin Miller happened to run into him on a street corner in midtown Manhattan. After acknowledging the impasse, Miller

pointed out to Kuhn that the lack of a neutral grievance arbitrator meant every issue would be dumped in the Commissioner's lap. Further, the Association would have every motivation to increase the number of grievances significantly. In every case, Kuhn would have to make a decision for one side or the other, meaning that each ruling would leave someone angry with him. In effect, the Commissioner would find himself continuously in a no-win situation.¹⁴ After reflecting on Miller's comments, Kuhn ultimately agreed to a compromise in which he would retain the right to rule on any issue involving "the integrity or public confidence in the game." Otherwise, while not believing the concession to be either "necessary or beneficial," Kuhn conceded the inclusion of binding neutral grievance arbitration in the 1970 Basic Agreement.¹⁵

When the Basic Agreement became public, the establishment of neutral arbitration did not receive much attention. *The Sporting News* noted that "a three-man arbitration panel will settle player grievances, formerly the commissioner's domain." The piece also added, somewhat ironically, that "the reserve clause remains untouched in the new agreement."¹⁶ There was little recognition of how dramatic a move this actually was. Almost all player grievances, other than salary matters, were now placed before a representative of Major League Baseball, of the Players' Association, and a mutually agreed upon neutral, professional arbitrator. A third party, not the Commissioner, now would decide the fate of any grievance, including, potentially, the meaning of contract clause 10a, the infamous reserve clause.

What seems somewhat surprising, given how contentious the reserve clause was and how badly Miller wanted to contest it, is that it took six full seasons before the actual challenge went to arbitration. There were certainly opportunities before Messersmith and McNally. Even before the 1970 Basic Agreement, Al Downing reported to the Yankees' spring training camp in 1969 without a signed contract. Initially, the Yankees refused to let him participate in camp, but

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¹³ Miller. Telephone interview. 29 Jan. 2008.

¹⁴ Snyder. *A Well Paid Slave*, 178 is the first published acknowledgement of this chance meeting. Miller provided the details in Miller. Personal interview. 23 Aug. 2007.

¹⁵ Kuhn. *Hardball*, 141.

¹⁶ "A Milestone Agreement." Editorial. *The Sporting News*. 13 June 1970, 16, in Miller files. National Baseball Library.

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Miller pointed out that under clause 10a the team would be violating the contract.¹⁷ In 1972, Ted Simmons started the season without a contract but signed at the All-Star break. Five players began the 1973 season without contracts and seven more did so in 1974, but only one in the latter year, Bobby Tolan of the Padres, actually completed the season still unsigned.¹⁸

Right before an arbitration hearing was scheduled, Buzzie Bavasi, the Padres General Manager, due to strong encouragement from John Gahern, signed Tolan to a lucrative deal.¹⁹ Miller was patiently willing to bide his time on the reserve issue. As badly as he wanted it challenged, he was adamant about not pressuring an individual player and causing him to incur major risks if the player were able by other means to reach an equitable contact.²⁰

A year following Tolan, Messersmith and McNally provided the case that made it to arbitration. The decision would allow players to reap the benefits of free agency, hinted at when Jim “Catfish” Hunter’s contract was nullified, allowing him to become a free agent in 1974. Unlike the Messersmith case, however, there was no precedent for other players in the Hunter decision. That changed in the aftermath of Seitz’s ruling.

Although it took almost a decade from the time Miller was named head of the Players’ Association to alter the interpretation of clause 10a and bring about free agency, the events of 1969 enabled him to gain the one concession essential to bringing about the change, the establishment of binding, neutral, grievance arbitration.

His resolve and his organization of the players in reaction to the proposed changes in the pension plan demonstrated to both owners and players just how unified the Association could be in negotiations. That unity

would certainly help facilitate concessions in the 1970 Basic Agreement.

The breakdown of the joint committee on the reserve system convinced Miller that only through neutral arbitration could any change be effected, bringing that objective to the forefront of his demands. The Curt Flood case made Major League Baseball’s chief labor person, John Gahern, realize how vulnerable they were if the Commissioner remained the final authority on any player grievance.

Finally, the NLRB ruling on December 15 showed that the government was paying close attention to labor issues in baseball and could readily take jurisdiction over an issue. Miller had clearly laid the groundwork in his first three years to help bring relevance to the above events. Without the contract holdout, the committee failure, the Flood case and the NLRB ruling, however, it is highly questionable whether binding arbitration would have been part of the 1970 Basic Agreement. Without it, free agency and the accruing benefits to the players may have taken an even longer time to be achieved. The convergence of events clearly made 1969 a pivotal year in the achievement of free agency.

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¹⁷ Miller. *A Whole Different Ball Game*, 240.

¹⁸ Helyar. *Lords of the Realm*, 124-28.

¹⁹ Ibid, 128-29, Korr. *The End Of Baseball As We Knew It*, 141.

²⁰ Miller. Personal interview. 23 Aug. 2007.