

1 he can go about his business, is that right?

2 MR. GOLDBERG: Yes, sir.

3 THE COURT: You are excused.

4 THE WITNESS: Thank you, sir.

5 (Witness excused.)

6 THE COURT: Next witness, please.

7 MR. GOLDBERG: May we now recall Mr. Miller, and
8 with your permission, Mr. Topkis will conduct this phase.

9 THE COURT: Certainly.

10 M A R V I N J. M I L L E R recalled.

11 THE COURT: Mr. Miller, it is my duty, no matter
12 who the witness is, to say to a witness whose testimony
13 is continued after a night has intervened that you are
14 continuing with your testimony under oath. You understand
15 that?

16 THE WITNESS: I understand that.

17 THE COURT: Without the necessity of being re-
18 sworn.

19 THE WITNESS: I understand, your Honor.

20 DIRECT EXAMINATION BY MR. TOPKIS (continued):

21 Q Mr. Miller, you recall your testimony of the other
22 day about the so-called free agent draft?

23 A Yes.

24 Q On checking the transcript, it occurred to us
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2 that it did not disclose in full detail how the so-called
3 free agent draft works. Would you outline that to his
4 Honor, please?

5 A The essence of the draft of players who have not
6 yet entered organized professional baseball is that the
7 various clubs agree on a procedure for selecting from these
8 players. There are two drafts a year. The draft that
9 takes place during the winter has an order of selection
10 based on the standing of the various clubs at the end of the
11 prior year, with the last place clubs obtaining the first
12 selection.

13 I think the basic importance of it is this: No
14 player entering into professional baseball for the first
15 time can determine with which club he would like to play
16 or even negotiate. Instead he is told that a particular
17 organization has selection rights to him. As a result,
18 a new player or, for that matter, any player is faced with
19 the problem of being in competition with other players,
20 of course, whereas the club that he is negotiating with in
21 theory has taken care of it in advance to see that there
22 is no competition, because no other club may talk to that
23 player while the first club still has selection rights to
24 him.

25 Q You spoke of the club with which he is negotiat-

ing in theory. What do you mean by "in theory"?

A I mean I do not consider that an accurate use of the word "negotiate." Negotiation is between people with equal alternatives and a certain balance of bargaining power.

Q You mean that the player has no alternative except to deal with this club?

A That is correct.

Q Now, to whom does this so-called free agent draft apply? Who are the people about to enter professional baseball whom you speak of?

MR. HUGHES: Your Honor, I don't want to interrupt, but we went over this. He testified to all of this on direct examination yesterday. He stated the categories of people. I don't want to appear to be interrupting, but if we are just going to go through all of this all over again, it is repetitious.

THE COURT: I took it Mr. Topkis was developing a sort of preface to the main question that he is about to propound. Am I in error?

MR. TOPKIS: No, you are not in error, your Honor. I want to make sure we have the actual mechanics, As I think we had, as your Honor suggested this morning, we had general testimony the other day. I want to get

down to specifics.

MR. HUGHES: Your Honor, the agreements themselves are all in evidence.

THE COURT: I recognize that, Mr. Hughes.

MR. HUGHES: And it has this description.

THE COURT: I am going to hold Mr. Topkis to what he just got through saying, and I am sure he will get right to the point.

Q Who precisely are the people who are susceptible to the free agent draft?

A They are young men and boys who have not yet signed a professional baseball contract.

Q Any young man anywhere in the United States, is that it?

A In theory, yes. In actuality these are young men and boys who have been playing either for high school teams or for college teams or in other arrangements, such as American Legion baseball.

Q And what is the age range of the people who play in American Legion baseball?

A I don't know.

Q So far as high schools are concerned, do I understand you to say that the professional baseball teams and scouts are scouting people who are playing for high school

baseball teams?

A Yes.

Q And they then decide which high school baseball players they want to acquire exclusive rights to negotiate with by this free agent draft, is that it?

A Yes, but there are certain limitations in terms of approaching a student.

Q Would you tell his Honor what those limitations are?

THE COURT: Just sum them up. I think I can understand without amplification.

A In the case of a high school player, unless he is 21, while he is still in high school, while his graduating class has not yet graduated, the rules provide they will not approach him unless he has dropped out of school for one year. In the case of a college player, it is similar except that I believe if he is a dropout for as little as three or four months he can then be approached.

End 7

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Q Now, does this free agent draft in its operation have any impact on the player's contract negotiations down through the years?

A Well, it obviously has an impact on his initial contract and the initial arrangements because, as has been stated before, he has no bargaining power in the club or the scout talking with him has no competition to worry about. Since a starting arrangement, I believe, has an impact in each succeeding year, yes, the answer to the question is yes, it is related.

Q Now, you testified the other day as to certain discussions that you had had with representatives of organized baseball in connection with the reserve system. Did you discuss with the representatives any alternatives to today's reserve system?

A Yes.

Q What alternatives were discussed?

A We have discussed a number, and perhaps the word "alternatives" is not proper, if I may explain. We have discussed a number of modifications which cannot be taken singly, but need to be considered perhaps in combination. They are not alternatives each in and of themselves to the present entire system. For example, we have suggested that instead of the club having an option on a player's services

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2 for life, that that option be for an agreed upon period of
3 years, such a period of years to be his years in organized
4 ball, in major league ball, and preferably in a combination
5 of both of those; that at the end of such agreed upon period
6 that a player for the first time in his whole career be given
7 an opportunity to establish what his market value is by be-
8 ing permitted to talk with and obtain bids from other clubs.

9 We have discussed the possibility that even when he
10 establishes his market value and obtains bids from other
11 clubs, that it might be possible to have a rule that his
12 own club could still retain him, simply by matching the bid
13 that he received, and if the continuity of his employment
14 with the club were that important, the club could obtain that
15 continuity simply by matching the bid that the player had
16 received.

17 We have suggested, really in response to an argu-
18 ment, that it would also be possible to prevent the so-called
19 wealthiest club from garnering all the talent by establishing
20 a system that is not perfect but obviously better than the
21 present one and agree that no one club or two or three or
22 four could sign more than X number of such free agents in
23 any given period of time, thereby preventing any domination
24 of all the talent by a club or a group of clubs.

25 We have suggested the possibility of getting at the

1 problem of the player of major league caliber, who as wit-
2 nesses have testified, sit on the bench and who, in addition,
3 quite often are optioned to the minors despite the fact that
4 they are of major league caliber.
5

6 We have suggested the possibility of a salary pro-
7 gression, year by year, a minimum salary progression that
8 would have as its purpose making it too expensive for a
9 club to pay that kind of a salary and option the recipient
10 to the minors or keep him on the bench and thereby encourag-
11 ing moving him to a club where his talents could be utilized.

12 We have suggested the possibility of reserving less
13 than the number of players now reserved. The number of players
14 now reserved far exceeds the active roster. In a sport like
15 hockey, the reservation is less than --

16 THE COURT: No, there you go. There you are stretch-
17 ing.

18 MR. HUGHES: Just a moment.

19 THE COURT: Don't do that. Stick to your knitting,
20 that is, your field.

21 All right.

22 A It is possible, it is conceivable to have a maximum
23 reservation list which is less than the active roster. We
24 have discussed the possibility of competitive leagues. It
25 is conceivable that in a free enterprise economy that the

competition between two separate leagues might be a very good thing for the sport as well as for the players and the owners.

We have suggested the possibility that in any period when the owners have control over the player's professional life, that there be a system for resolving impartially a legitimate salary dispute rather than have that salary named unilaterally by the club which controls the player's services.

We have, I believe, discussed a number of other possibilities, but I think these are the major ones that we have talked about.

THE COURT: Next question.

Q Now, these alternatives to the present reserve system which you have been describing, were they proposed by you or by the representatives of the owners?

A They were proposed by --

THE COURT: No, just answer. That is simple, by you or by --

THE WITNESS: I cannot answer it.

THE COURT: You cannot answer it. All right, go on.

A They were proposed by the players.

Q And what has been the owners' response to these proposals?

THE COURT: He did answer that. That is all I wanted

you to do, just answer it without any amplification.

THE WITNESS: I'm sorry, your Honor.

THE COURT: Proposed by the players. All right.

Q Was it your problem that you --

A You put it in the second person.

Q You are Miller, the voice, but the proposers were the players?

A That's right.

Q What did you hear from the voice of the owners?

A Throughout these discussions -- and they have on and off now extended for a period of about three years -- throughout these discussions we have never heard a positive response on these alternatives or other ideas. We have not heard any counter proposals or any suggested modifications whatsoever.

Q Now, Mr. Miller, you described to the Court the other day the impact of the reserve clause on the players in various ways. Did you describe to the Court at that time, on reading through your testimony, the full ambit of that impact or were there some matters that you did not touch upon?

A There were matters I did not touch upon.

Q Would you lay those before the Court briefly now, if you would?

1 A One of the matters I did not touch upon is the
2 fact that when there is a completely tight control of a
3 player's entire professional life it seems to just seep over
4 into the question of how the player is handled as an employee;
5 that is the question of whether ballplayers are able to pro-
6 ceed in dignity or not. And based on my experience and my
7 knowledge of players and players' conditions, there have been
8 too many occasions where this tight control of a player's
9 life has manifested itself in control of a player's personal
10 life.

12 Q Would you describe to the Court the kind of control
13 you have in mind?

14 A I mean the kinds of very direct pressures with respect
15 to what a player may wear and how he shall dress and how long
16 his hair shall be and whether he shall have a mustache or
17 not. It extends to, in isolated instances, I am willing to
18 state, but nevertheless disturbing instances of players being
19 told with whom they may converse and according to the con-
20 tract, even of what they may write, if they write during
21 a season.

22 Q You say with whom they converse. You are not re-
23 ferring to the bar on conversations with the representatives
24 of organized gambling, are you?

25 A No, sir, I am not. I am talking about the situ-

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2 ation this year of a player being threatened with a fine
3 if he is seen talking with a female in a hotel lobby.

4 Q Now, are ballplayers today typically married or
5 unmarried, Mr. Miller?

6 A They are typically married.

7 Q And does the reserve clause in its operation, or
8 the reserve system, have any particular impact on players who
9 are married and have families?

10 A Yes, it has a serious impact in this way:

11 The fact that a player's contract can be assigned
12 and reassigned without notice to the player, and if it is
13 during the season, he is required to report within 72 hours,
14 it has this type of impact: It is not just that he has to
15 pick up and leave one city and go to another for his place
16 of employment; he has the choice usually of separating him-
17 self from his family or moving the entire family, with all
18 that that means. His community ties -- and players typically
19 today have many important community ties; they are part of
20 the community in a very real way -- it means, in the case of
21 players who are somewhat older, that the plans that they had
22 been developing for supporting families when their baseball
23 life is over become disrupted because usually those plans
24 are being made in the city where the player has been living
25 and playing for many years.

1 In the case of players with children -- and this is
2 the overwhelming majority of the married players -- it quite
3 often means a change of school for the children, and this
4 should not be viewed as a single action, because typically
5 when a player begins to be traded, he is traded quite re-
6 peatedly; sometimes more often than even once a year there
7 are players traded two, three or four times in a year.

8
9 Q Major league players?

10 A Major league players. It means in the case of
11 trying to move at a moment's notice of suffering economic
12 loss and difficulty, of trying to sell a house and buy a house
13 perhaps in a tight money mortgage market situation, and none
14 of these losses are taken into consideration. It has all
15 of the typical difficulties that I think people know about,
16 that is involved when you are forced to move suddenly.

17 Q Are there any other impacts of the reserve system
18 on the player, on the player's life, to which you have not
19 adverted?

20 A They don't come to mind at the moment.

21 Q Very well. You testified the other day, Mr. Miller,
22 about the loss that Mr. Flood would suffer in terms of bene-
23 fits under the pension program by reason of his not playing.
24 I believe that we don't have the particulars on the record with
25 precision and so I would ask you to state them, if you will.

Let us suppose Mr. Flood does not play at all this year. What will be the impact on his pension benefits by reason of that fact?

A As I testified two days ago, his pension retirement benefit, starting at age 50, would be \$20 a month less than if he were playing this year.

Now, the life expectancy table used by the actuaries of the pension committee under the major league baseball players' pension plan sets forth that the normal life expectancy of a male aged thirty-two, which I believe is Mr. Flood's age, would be another forty-four years, which would bring him to age seventy-six. Therefore, if he started to draw his retirement benefits at age fifty, his normal life expectancy would permit him to collect that pension for twenty-six years.

The \$20 a month by which his retirement benefit would be reduced by virtue of his not playing this year would approximate \$6,200 by the time of his death.

Q Now, let us suppose that Mr. Flood did not play for five years rather than just one year. Would the total loss to him in pension revenues be multiplied by five?

A Yes.

Q It would be approximately \$31,000?

A Yes.

Q Are there also insurance programs for ballplayers?

A Yes.

Q Will Mr. Flood's rights under those programs be affected in any way by his not playing this year?

A Yes, they are already affected.

Q In what way?

A An active player is covered by a \$50,000 life insurance policy under that plan, \$100,000 in the case of accidental death. An inactive vested player, which is currently Mr. Flood's status, has coverage of half that much, namely, \$25,000 life insurance, \$50,000 for accidental death.

In addition, an active player is covered under the entire health care benefit provisions without payment whereas an inactive player can purchase those benefits from the plan at a current cost of \$180 a year.

Q At a cost of \$150 a year?

A \$180 a year.

Q \$180 a year.

Now, you were in court this morning, I believe, when Mr. Greenberg was being queried about the need for a continuity and stability in a team, were you not?

A Yes.

Q And you made it your business to be familiar with

the line-ups and rosters of major league baseball teams for the last four or five years?

A This is the fifth year, yes.

Q Can you tell the Court the kind of stability which has characterized major league line-ups during the period that you have had them under such observation?

A I think the best way I can describe it is to say that in over a five-year period such as this one you will find no club where a majority of that active roster have played together as long as five years.

MR. TOPKIS: Thank you, Mr. Miller.

I have no further questions, your Honor.

MR. HUGHES: Your Honor, this was much more than clearing up a few matters, and I respectfully suggest, your Honor, that as far as the witness had gone as of yesterday we had waived any cross examination. We do now want cross examination and we want an opportunity to consider the cross examination, and I would request, your Honor, that we recess at this time.

THE COURT: Certainly. Rest assured that it will not take more than a request to get you the opportunity to cross examine.

It being now a little after 12:20, we start promptly at 2 o'clock.