

2:00 P.M.

2 C U R T I S C. F L O O D resumed.

3 THE COURT: Cross-examination.

4 MR. GOLDBERG: Your Honor, if I may just say
5 a word. Mr. Hughes was kind enough to give us the exact
6 figures of Mr. Flood's earnings in the earlier years, and
7 with your leave I will read them into the record.

8 THE COURT: Certainly.

9 MR. GOLDBERG: 1956, 4000; 1957, 4000; 1958,
10 5000; 1959, 10,000 plus \$2000 signing bonus; 1960, 10,500
11 plus 2000 signing bonus.

12 THE COURT: Mr. Leisure, why aren't you here?

13 MR. LEISURE: I am very happy back here. Thank
14 you.

15 THE COURT: I can get you a chair.

16 MR. HUGHES: May I proceed, your Honor?

17 THE COURT: Certainly.

18 CROSS-EXAMINATION BY MR. HUGHES:

19 Q Mr. Flood, can you hear me?

20 A Yes.

21 Q Mr. Flood, what are you doing at the present time
22 for a livelihood?

23 A I am operating two photography studios and I am
24 doing portraits in St. Louis, Missouri.
25

1
2 Q Are you engaged in any other business activity
3 of any kind?

4 A No, sir.

5 Q I want to go back. When was the year you signed
6 your first baseball contract?

7 A That was 1956.

8 Q And did I understand you to say on your direct
9 examination that at that time there was a bonus provision
10 in connection with signing the contract?

11 A Yes.

12 Q And you were aware of that bonus provision at
13 the time, were you?

14 A Yes.

15 Q Were you aware of the other provisions of the
16 contract or was that the only one that you were aware of?

17 A No, I was not aware.

18 Q Pardon me?

19 A I said no, I was not aware of the other provisions.

20 Q You were not aware of the other provisions
21 is your answer?

22 A I am sorry. I thought I answered your question.
23 I said no.

24 MR. GOLDBERG: You will have to talk up. It
25 is hard to hear.

gwb-3

Flood-cross

Q Didn't you know at the time that you signed your first contract that players' contracts were transferred from club to club?

A No.

Q Hadn't you ever heard about that at that time at all?

A Yes, I guess I heard about it.

Q And that's all I am really asking you. You had an awareness that baseball players' contracts were transferred from club to club from time to time, isn't that right?

A I didn't know how it was done.

Q But you knew it was done?

A Yes.

Q And you knew this at the time when you signed your initial contract, is that a fair statement?

A That is fair, yes.

Q At the time that you signed that contract in 1957, were you what is known in baseball parlance as a free agent, that is to say, were you free to sign with anybody?

A Yes, I was.

Q Did a representative of the Cincinnati Reds seek you out to sign the contract?

A Yes.

1
2 A Yes.

3 Q And where was this contract signed? Where were
4 you at the time?

5 A In Oakland, California.

6 Q Is that where your home was at the time?

7 A Yes.

8 Q Were you in high school at the time?

9 A No. I just graduated when I signed.

10 Q Can you fix the approximate date when you signed?

11 A January 20, 1956.

12 Q Now, at the time when you signed that contract,
13 were you eager to get into organized baseball?

14 A Yes.

15 Q You wanted to play baseball, didn't you?

16 A Yes.

17 Q At that time were you considering any other
18 career except baseball?

19 A No.

20 Q At that time did you have any talents that would
21 fit you for any other occupation except a career as a
22 baseball player?

23 A Yes, I did.

24 Q You had a high school education, did you not?

25 A Yes.

Q Did you have any special skills at that time which would have fitted you for any other occupation?

A Yes, I did.

Q What were they?

A Well, as a commercial artist I could have made an X number of dollars.

Q Well, at the time you were in high school had that skill as a commercial artist developed to the point where you were using it?

A No.

Q Did you have that talent at the time or was this something that you acquired in later years? That is what I am getting at.

A No, I had the talent at the time.

Q Were you using it commercially in any way?

A No.

Q And your decision to sign a contract was a deliberate choice to enter organized baseball as against any other possible career you might then pursue, is that correct?

A Yes.

End 1 PM

T2

Q Over the years, Mr. Flood, you signed I believe it was 14 such player contracts. Am I correct about that?

A Yes.

Q Two of them were with the Cincinnati Club and the remaining 12 with the St. Louis Club; is that correct?

A Yes.

Q And during the course of your direct examination, your counsel referred to certain of the provisions of the player contract and read them. Do you recall that?

A Yes, I recall.

Q This morning?

A Yes.

Q And are you generally familiar with the provisions of the contract?

A Yes.

Q As you negotiated and signed these contracts, did you read them?

A Yes.

Q And you are familiar with the so-called renewal option in the contract?

A Yes.

Q And you were familiar with that option as you signed and successively signed each of these contracts over the years; is that correct?

1 A In the later years, yes, I was.

2 Q Well, are you saying that there was a time when
3 you weren't familiar with it, but that there then came
4 a time when you became familiar with it?

5 A Yes.

6 Q Can you fix the time or approximate time when
7 you first became familiar with that provision?

8 A Approximately 1960, '61.

9 Q After 1960 and '61, did you continue to sign
10 player contracts?

11 A Yes.

12 Q In the usual uniform player contract form?

13 A Yes.

14 Q And did you at any time after that in connection
15 with signing those contracts, ever protest or object
16 specifically to the provisions of that option renewal?
17 This calls for an answer of yes or no.

18 MR. GOLDBERG: Well, your Honor, I am not going
19 to raise an objection, nor a technical one, but I would
20 suggest that the question ought to be put and the witness
21 ought to be allowed to answer.

22 MR. EUGERS: I withdraw the question.

23 THE COURT: Question withdrawn.

24 Q Mr. Flood, you testified that in connection with
25

each renewal you had some discussions between you and either Mr. Devine or the other gentleman of the St. Louis Cardinals who was the general manager; is that correct?

A Yes.

Q And after those discussions you arrived at an amount that you would play for in the particular year; is that correct?

A Yes.

Q The contract was prepared with that agreed amount; is that right?

A Yes.

Q And you signed it?

A Yes.

Q In the course of your direct examination, did you give us as fully and completely as you recall it the substance of the conversations that you had from time to time when you executed these renewal contracts?

A Yes.

Q Did I understand you to say -- and, if I didn't, you please correct me -- that for the years 1959, 1960 and 1961 you really had little or no recollection of what was actually said between you and the gentlemen of the St. Louis Club with whom you were negotiating? Is that a fair statement of it?

1
2 A Yes.

3 Q You were with the St. Louis Club for 12 years;
4 is that correct?

5 A Yes.

6 Q And they were good and happy years, were they
7 not?

8 A Yes.

9 Q Isn't it a fact that over those years, in each
10 succeeding year you had salary increases from 1958
11 to 1969?

12 A Yes.

13 Q You said that you also played in three World Series;
14 is that correct?

15 A Yes.

16 Q What were the years of those, please?

17 A 1964, 1967 and '8.

18 Q Now, in 1964 it appears here that your salary
19 was \$23,000. Is that your recollection of it?

20 A Yes.

21 Q Now, in that year, did you, in addition to
22 that salary, receive a player's share of the World Series
23 money?

24 A Yes.
25

Q In other words, that would be over and above your \$23,000 salary; is that correct?

A Yes.

Q In the year 1967, your salary was \$50,000 and you also received a player share over and above that salary; is that correct?

A Yes.

Q And in 1968 your salary was \$72,500 and you received a World Series share over and above that amount of \$72,500?

A Yes.

Q Didn't you from time to time receive additional income from personal appearances and endorsements?

A Yes.

Q And would you agree with me that you would not have obtained that compensation if you had not been a baseball player?

A Yes.

Q There came a time when your contract was assigned to Philadelphia in October of 1969; is that correct?

A Yes.

Q And you told us something of the facts and circumstances. I ask you now, wasn't this assignment of your contract to the Philadelphia Club the first occasion on which you actually voiced any objection to the system of

baseball under which you were being employed?

A No, not really. There were other times when I spoke out about the reserve clause.

Q Well, you say, "No, not really," there were other times when you spoke out. Now, what other times are you referring to?

A There were times where baseball players discussed things and I spoke out for them. There was one --

Q Excuse me; you are now talking about conversations between you and other baseball players?

A Yes.

Q Right. Well, were there any times when you voiced any objection prior to that to any general manager of St. Louis or any other club with which you played?

A No.

THE COURT: Would you have the clerk mark that for identification first, Mr. Hughes.

MR. HUGHES: I ask that it be marked for identification.

(Defendant Feeney's et al. Exhibit A marked for identification.)

Q Look at it and read it.

A It says, "To Mr. John Quinn" --

Q No, just read it to yourself.

A Oh, I'm sorry.

Yes, sir.

Q Do you recognize your signature on that letter?

A As you will please notice, it is signed by my secretary.

Q Well, do you recognize that as your secretary's signature?

A Yes.

Q And at the time that this letter was written, were you in this country?

A I think so, sir. Let me see the date again.

Q December the 4th.

A Yes, I was in this country.

Q And that letter was sent and signed by your secretary with your knowledge and permission, is that correct?

1 A Yes, sir.

2 MR. HUGHES: I offer it in evidence.

3 THE COURT: Show it to counsel, please.

4 MR. GOLDBERG: No objection, your Honor.

5 THE COURT: I take it there is no objection by
6 anyone to the receipt into evidence of that last exhibit.

7 It now becomes what number now, Mr. Clerk?

8 THE CLERK: A, your Honor.

9 THE COURT: A in evidence.

10 (Defendant Feeney's et al. Exhibit A received
11 in evidence.)

12 MR. HUGHES: Would your Honor like me to read it?

13 THE COURT: Would you mind.

14 MR. HUGHES: It is on the letterhead of Cart
15 Flood and Associates, Inc., dated December 4, 1968, and it
16 is addressed to Mr. John Quinn, General Manager, Philadelphia
17 Phillies, Connie Mack Stadium, 21st Street and Lehigh Avenue,
18 Philadelphia, Pennsylvania, 19132.

19 "Dear Mr. Quinn:

20 "Please accept my apologies for not returning your
21 recent calls but the press of business made it difficult.

22 "As you learned this morning, I am out of town
23 at present and am dictating this letter by phone.

24 "With regard to our conversations, I feel that I

1 must resolve a number of personal problems before I make
2 a final decision. Therefore I intend to give the entire
3 matter serious consideration during the next two weeks
4 and will be in touch with you during the week of December 22nd."

5 Q Now, you make a reference there to a final decision.
6 You recall that in the letter, do you not?
7

8 A Yes, I do.

9 Q And was that final decision to which you refer a
10 decision as to whether you would play ball for the Phila-
11 delphia Phillies?

12 A Yes, I guess it is.

13 Q And did you give the matter serious consideration
14 thereafter?

15 A Yes, I did.

16 Q And did you get in touch with Mr. Quinn during
17 the week of December 22nd?

18 A To my knowledge I didn't.

19 Q When did you actually decide that you would not
20 play baseball for the Philadelphia Phillies?

21 A Probably in the latter part of October. There was
22 no one particular day.

23 Q I am not pinning you down to the exact day. Was
24 it at that time that you definitely and irrevocably made
25 up your mind that you were not going to play for them?

2 A Yes.

3 Q And you thereafter had these conversations both
4 with Mr. Davine and Mr. Quinn?

5 A Yes.

6 Q And you thereafter wrote this letter of December
7 4th?

8 A Yes.

9 Q Well, during the conversations that you had with
10 Mr. Quinn, did you at any time discuss salary?

11 A Yes.

12 Q And I had understood you to say that Mr. Quinn
13 at one point offered you something in excess of \$100,000
14 to play in Philadelphia; is that correct?

15 A Yes.

16 Q Plus some sort of an allowance --

17 A No, sir, that is not correct. He offered me
18 \$90,000, then very close to \$8,000 in spring training ex-
19 penses.

20 Q Well, it is not earth shaking in importance, but
21 was the not of it that he offered you an amount in excess
22 of \$100,000 or was it under \$100,000?

23 A It was under 100,000.

24 Q But in excess of 90,000?

25 A Yes.

Q In the neighborhood of perhaps \$98,000, is that it?

A Yes.

Q Did you ever say that he offered you in excess of \$100,000?

A Pardon?

Q Did you ever say publicly that he offered you more than \$100,000?

A To my knowledge, no, I haven't.

Q Did you ever say that in the program of Mr. Cavett?

A I don't recall.

Q Mr. Flood, I show you what purports to be a transcript of a television interview on what is known as the Dick Cavett Show on January 20th. You were on such a show, were you?

A Yes.

Q And there was Mr. Cavett and a Mr. McGinniss?

A Yes.

Q And Mr. Cosell?

A Yes.

Q And yourself. Now, I call your attention to the last five lines of page 14 of that transcript. I ask you to read them and then, having done so, if you will let me know, I will put a question.

A All right.

Q Would you, having read that portion of the transcript,

1 today?

2
b2 3 A Yes.

4 Q And had you made up your mind to commence an action
5 before consulting him?

6 A I'm sorry, sir, I can't hear you.

7 Q Had you made up your mind to commence an action
8 before consulting him?

9 A Yes, I had.

10 Q And having consulted him, did you consult any other
11 attorney?

12 A Yes.

13 Q And whom else did you consult?

14 A Richard Moss of the Players Association.

15 Q And when did you consult with him?

16 A That was the latter part of November, first of
17 December.

18 Q Did you consult with anybody else connected with
19 the Players Association?

20 A Yes.

21 Q Who else?

22 A I consulted with Marvin Miller, the executive
23 director of the Players Association.

24 Q And when did you consult with him?

25 A At that same time.

say that the Phillies offered you \$100,000 or more?

A No, I wouldn't say that, not after reading this, no.

THE COURT: Well, would you please have that marked for identification.

MR. HUGHES: Page 14 of a transcript of a television show of January 20, 1970, station WABC-TV.

(Defendant Feeney's et al. Exhibit B marked for identification.)

Q In any case, Mr. Flood, you say that you came to the decision not to play for Philadelphia in October of 1969, is that right?

A Yes.

Q Notwithstanding that decision, you had these conversations with Mr. Quinn and with Mr. Devine concerning which you testified on your direct examination, is that correct?

A Yes.

Q When did you first consult counsel about instituting an action?

A Oh, perhaps in the earlier part of November.

Q With whom did you first consult?

A My attorney in St. Louis is Allan Zerman. I talked with him in St. Louis concerning it.

Q Is he one of the gentlemen here in the courtroom

Q Did you consult with any other attorney prior to the commencement of the action?

A Yes.

Q With whom?

A Mr. Justice Goldberg.

Q When?

A To the best of my knowledge, sir, it was in the middle part of December. I am not sure.

Q When you consulted with him was either Mr. Miller or Mr. Moss with you and did they participate in the consultation?

A Yes.

Q And you already told us that by that time you had already made up your mind to commence a litigation, is that right?

A Yes.

Q And did you retain Justice Goldberg to commence the action for you?

A Yes.

Q And he did so?

A Yes.

Q Have you ever read the complaint in the action?

A I beg your pardon?

Q Have you ever read the complaint in the action?

1

2

A Yes, I have.

3

Q When did you read it for the first time?

4

A Shortly after the suit was filed. I don't know the exact date, sir.

6

Q About how soon after the action was filed did you read the complaint?

7

8

A It must have been shortly thereafter.

9

Q Well, shortly thereafter does not help me too much. Will you make it a little closer than that?

10

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A I apologize. I don't really recall exact days.

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1 Q If I were to tell you that the summons issuing
2 out of this court, which is a document attached to the
3 complaint, is dated January 16, 1970, would that help you
4 to fix the date when you first read the complaint?
5

6 A No, it wouldn't. I am sorry, but I don't recall

7 Q But it would be some time after that date?

8 A Yes.

9 THE COURT: Would Mr. Hughes and Mr. Kramer and
10 Justice Goldberg come up to the bench for just a moment.

11 (Discussion off the record at side bar.)

12 MR. HUGHES: Mr. Stenographer, may I have the
13 last question and answer, please?

14 THE COURT: Would you do so, Mr. Court Reporter.

15 (Record read.)

16 Q Are you a member of the Players Association?

17 A Yes, I am.

18 Q And have you been a member since the Association
19 was founded?

20 A Yes.

21 Q Is the Players Association financing the expense
22 of this litigation?

23 A Yes.

24 Q Are they paying all of the expenses of the
25 litigation?

1 A Yes.

2 Q That is to say, the counsel fees and whatever
3 expenses there are incidental to the litigation, is that
4 right?
5

6 A Yes.

7 Q Is that pursuant to any written agreement?

8 A No, I don't think so.

9 Q That is an oral understanding between you and
10 the Association?

11 A To the best of my knowledge, yes, sir.

12 Q And who on behalf of the Association made that
13 agreement with you?

14 A Myself and the members of the Association Board

15 Q Did anybody else participate in that agreement?

16 A I don't understand "anybody else".

17 Q Are your attorneys also a party to that agreement?

18 A I don't know.

19 Q What I am getting at is do they understand that
20 they will look to the Players Association for their com-
21 pensation in connection with the prosecution of this
22 litigation?

23 A Yes.

24 THE COURT: If you know. Do you know that?

25 THE WITNESS: I don't know that for sure, no,

1 sir, I don't.

2 Q When you say you don't know it for sure that
3 gives me some notion that you have some inkling, and will
4 you give us what that inkling may be?

5 A What is the question, sir?

6 THE COURT: Mr. Flood, we are undoubtedly going
7 to be with you for some time as a witness. The trial
8 is a public trial. People have a right to come into this
9 courtroom. That is the American way. I presume a good
10 number of them have come here purposely to see you. They
11 want to hear you. They have a right to know what is going
12 on, and I am going to ask you, and I hope it will be for
13 the last time, to really almost shout, if you have to,
14 because we want to hear what you have got to say.

15 THE WITNESS: Yes, your Honor.

16 THE COURT: It isn't a method of playing up to
17 anybody, but everybody in the courtroom who has come here
18 has a right to hear what counsel have to say and what the
19 witnesses have to say. I know that you appreciate why
20 it is I have to prompt you to raise your voice.

21 THE WITNESS: Of course, your Honor.

22 THE COURT: Now, Mr. Court Reporter, let's have
23 the last question.

24 The clerk usually takes care of the drinks.
25

Is that anything special there?

MR. TOPKIS: We do our best, your Honor.

MR. HUGHES: Your Honor, I think Mr. Flood has given some indication that he may be confused by the question and may I request that the stenographer read the last two questions?

THE COURT: Certainly. Will you do so, Mr. Court Reporter, please.

(Record read.)

Q What inkling do you have that your attorneys know that they are to look to the Players Association for their compensation in the prosecution of this litigation?

A Sir, I don't know. I don't know how they look to it.

Q But they do look to it, is that correct?

A Possibly, yes.

MR. GOLDBERG: Your Honor, if you will allow me to interrupt, I would be very glad to state for the record that we, in conversation with Mr. Miller, not Mr. Flood, have made arrangements that we will look to the Players Association for compensation in this litigation. Thus far we have received none.

MR. HUGHES: I am sorry to hear that.

MR. GOLDBERG: That is mutually shared.

1
2 Q Now, Mr. Flood, has any other sports group of
3 any kind agreed to finance you in any way during the course
4 of this litigation?

5 A No.

6 Q Mr. Flood, were you aware at the time that you
7 commenced this action that the Players Association was con-
8 ducting negotiations with the owners with reference to a
9 new basic agreement?

10 A Yes.

11 Q And are you aware that those negotiations are
12 still continuing?

13 A Yes.

14 Q And are you aware that one of the subjects which
15 has been discussed in those negotiations is the so-called
16 reserve clause and reserve system?

17 A Yes.

18 Q And if Mr. Miller succeeded in inducing the
19 clubs to modify the reserve clause, would you drop this
20 lawsuit?

21 A Yes, I would.

22 Q Isn't that really the basic reason for the suit?

23 A To do something about the reserve clause, yes,
24 if that is your question.

25 Q That is my question and that is your answer?

1
2 A Yes.

3 Q And isn't the Players Association a very interested
4 party now in this litigation?

5 A Yes.

6 Q Do I understand that it is your position that
7 you do not want the Court to abolish the reserve system,
8 but merely to modify it, is that your position?

9 A Yes.

10 Q Well, do you or do you not want the Court to
11 declare organized baseball and the reserve system unlawful?

12 A Pardon me. Would you repeat the question again?

13 MR. HUGHES: Surely.

14 THE COURT: Mr. Court Reporter, would you do
15 so, please.

16 (Question read.)

17 A Yes.

18 Q Do you want an injunction prohibiting the defend-
19 ants from enforcing the reserve system against you?

20 MR. GOLDBERG: Your Honor, if you will allow me,
21 I had not intended to make any objections. There is a
22 complaint on file with the authority of the plaintiff which
23 declares what relief is sought. I do not think it
24 appropriate under any evidentiary rule I know to pursue this
25 line of inquiry.

1 THE COURT: Mr. Hughes?

2 MR. HUGHES: There is a complaint on file and
3 Mr. Flood has read the complaint and I am exploring with
4 him what it is that he wants your Honor to do in this
5 litigation. I think it is a perfectly proper inquiry.
6

7 THE COURT: I will let you proceed.

8 Objection overruled.

9 Q Do you want an injunction prohibiting the defend-
10 ants from enforcing the reserve system against you?

11 A Yes.

12 Q Do you want an injunction against the defendants
13 from conspiring not to allow any club but Philadelphia to
14 negotiate with you?

15 A Yes.

16 Q Is that what you want or do you only want some
17 modification of the system?

18 A I think some modification would do that for me.

19 Q Well, which is it that you want? Do you want a
20 modification or do you want the whole system to be struck
21 down and declared illegal?

22 A I would like the whole system to be struck
23 down and declared illegal.

24 Q So that you do want something more than a
25 modification of the system, is that right?

1 A Yes, I guess you are right.

2 Q So are you correcting the answer you gave to
3 me a little while ago in which you said you didn't want
4 to have it declared illegal but merely to modify it?
5

6 A Yes.

7 Q You are correcting that?

8 A I am correcting that.

9 Q You want to be a free agent?

10 A Yes.

11 MR. HUGHES: Bear with me one moment, please.

12 THE COURT: Certainly.

13 (Pause.)

End 4 PM 14

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Flood-cross

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2 Q Mr. Flood, do you recall a television interview
3 with Mr. Cosell on January 3, 1969?

4 A Yes, I do.

5 Q That was an interview just between you and Mr. Cosell
6 and at a certain point you listened to Mr. Cronin over the
7 telephone; is that right?

8 A Yes.

9 Q And did you, in the course of that interview, have
10 this colloquy with Mr. Cosell; this would be Mr. Cosell to
11 you:

12 "If in the current negotiations Mr. Miller succeeds
13 in inducing baseball to modify the reserve clause, would you
14 drop your suit?"

15 And then you are recorded as answering:

16 "Well, that is the basic reason for the suit, to
17 get something short of what it is now. Any revision of the
18 reserve clause, something both parties can live with would
19 be just fine with me."

20 Do you recall saying that?

21 A Yes, I recall saying that.

22 Q And is that the way you feel now?

23 A Well, you want to know how I feel right now?

24 Q Yes.

25 THE COURT: Now, don't. Is that --

A I misunderstood you.

THE COURT: No. Is that the way you feel now, meaning the way you answered Mr. Cosell on that particular occasion?

THE WITNESS: No, that's not the way I feel now.

THE COURT: It is not the way he feels now; all right?

Q How do you feel now?

A Well, I feel that we ought to start all over again just wipe the thing out and do something different.

Q You believe the whole reserve system should be scrapped?

A Absolutely.

Q And you can think of no provision in that system is beneficial either to the players or to organized baseball is that right?

A In the reserve system? No.

Q Yes. As far as you are concerned, it is totally inadequate; is that right?

A Yes.

Q From the players' standpoint?

A Yes, sir.

Q Do you want all of the clubs in the National League to be required to negotiate with you for a contract to play baseball this current year?

A Yes.

Q Do you want the clubs in the American League to be required to negotiate with you?

A Yes.

Q Are you aware of the fact that the Philadelphia Club made an offer to pay you \$90,000 for the current season without a contract and without prejudice to this lawsuit?

A I heard that. I don't know that it is a fact.

Q Well, from whom did you hear it?

A I heard it rumored from other people.

Q Didn't your lawyers tell you that?

A No, just some friends.

Q What friends?

A One of my business partners, a Bill Jones, in St. Louis.

Q And was that the only source by which you were made aware of that offer?

A Yes.

Q Mr. Miller didn't tell you?

A You mean prior to this minute? No.

Q Prior to this minute, that's right. Mr. Moss didn't tell you?

A No.

Q Mr. Goldberg didn't tell you --

1
2 A No.

3 Q -- Justice Goldberg didn't tell you?

4 A No.

5 Q So except for this friend who mentioned it to you,
6 it is really news to you that that offer was made; is that
7 right?

8 A Yes.

9 Q Now would you play in Philadelphia now without a
10 contract for \$90,000?

11 A Without a contract? No, I would not.

12 Q Are you prepared to sign a contract with Philadelph
13 for \$90,000 to play?

14 A No, I'm not.

15 Q Are you ready and eager to play baseball now?

16 A Yes.

17 Q With whom do you want to play?

18 A The team that makes me the best offer.

19 Q And that's the position that you take, that you will
20 play with the team that makes you the highest offer?

21 A Yes.

22 Q And if there are no offers you won't play at all;
23 is that correct?

24 A Yes.

25 Q Would you be prepared to play with Philadelphia if

made the highest offer?

A Yes.

Q Is it your position that every player after playing out his initial option should be a free agent?

A No, that's not my opinion, no.

Q Was it your position that at some point in time a player should become a free agent?

A Yes.

Q You know that it is part of the system that the player can't become a free agent after playing out his initial option? You are aware of that, aren't you?

A Can't become a free agent?

Q Yes.

A No, I was not aware of that. I didn't know he could become a free agent.

MR. HUGHES: Would you repeat the question?

THE COURT: Do that, Mr. Wolf, please.

(Read.)

A Can or cannot?

Q Cannot.

THE COURT: I think you better reframe the question. You used the word "can't" and I don't know whether he heard it as can or can't, meaning cannot.

MR. HUGHES: Mr. Stenographer, physically change it

from can to cannot and put the question again, please, if that is satisfactory to your Honor.

THE COURT: Certainly.

(Record read as requested.)

A I am confused. What option are you talking about playing out?

Q I am talking about the renewal option in the player contract.

A No, I guess I am not aware of that.

Q Mr. Flood, what do you think would happen if every player were a free agent at the end of each playing season?

MR. GOLDBERG: Now, your Honor, I must voice a strenuous objection. I asked a similar question and that was objected to and the objection was sustained. And I must, therefore, voice an objection to this question.

THE COURT: Mr. Hughes?

MR. HUGHES: I think it is a proper question. This witness has said that he was in favor of the total elimination of the system. I think I can explore with him what his views are on some of the aspects of this system.

THE COURT: As I recall your question, Justice Goldberg, you predicated it upon this witness' understanding of others.

MR. HUGHES: Right.

THE COURT: Coupled with his own. This question calls for this witness' sole reaction to the question.

Objection overruled. I will take his answer.

Read the pending question, Mr. Court Reporter, please.

(Read.)

A I think then every ballplayer would have a chance to really negotiate a contract just like in any other business.

Q You think that --

THE COURT: Do you want that answer stricken, Justice Goldberg?

MR. GOLDBERG: No, I like that answer.

Q You think that all the good players would wind up with the clubs that could afford to pay the most money?

A No, I don't think so.

Q Do you think that over a period of years that would be the general impact and effect of it?

A No, I don't think so. I think this: If -- why penalize the ballplayer merely because these owners don't trust themselves.

Q Well, are you suggesting now that it is part of the system by which the owners agree that they will not negotiate with players who are under contract or option to another

club? Is that what you are saying?

A I am not suggesting that, no. I merely --

Q But there is such a provision, you are aware of that; is that right?

A Yes, I think it is a tampering provision.

Q Yes. You think the tampering provision is a good provision?

A No, I don't. As far as me as a ballplayer, no, sir. I don't.

Q You think that should also be abolished, is that right, totally?

A Yes.

Q So that there is no tampering rule at all; is that right?

A Yes.

Q So that at any time and from time to time any club would be free to contract with any player for the services of that player; is that what you are saying?

A Yes.

Q Now, I show you a letter dated March 4, 1970 on the letterhead of the Philadelphia Phillies and ask you if that is a copy of a letter which you received from Mr. Quinn?

A Yes.

MR. HUGHES: I offer it in evidence.

MR. GOLDBERG: May I have it?

THE COURT: Gentlemen, I am going to ask you to be good enough -- I find it helps the accuracy of the record -- if every time a paper is shown you would be good enough to have the clerk first mark it for identification. You will find in the long run that it will pay off.

Is there any objection to the latest offer?

MR. GOLDBERG: No, your Honor, I have no objection.

THE COURT: Very well, received in evidence.

(Defendant Feeney, et al. Exhibit C received in evidence.)

MR. GOLDBERG: I would hope to have a copy of it so that we can follow the exhibits, as we have furnished copies to the other side.

THE COURT: I assume Mr. Hughes is about to read it and will be glad to furnish you with a copy. In addition, you will have it right in the record.

MR. HUGHES: This is a letter dated March 4, 1970 to Mr. Flood:

"Dear Curt:

"You are hereby notified that, pursuant to Paragraph 10(a) of your Uniform Players Contract dated March 3, 1969 entered into with the St. Louis National Baseball Club, Inc., and assigned to this club, this club hereby renews the

said contract for the period of one year on the same terms, including \$90,000 compensation payable to you.

"Pursuant to Regulation 6 of said contract, you are hereby directed to report forthwith to Clearwater, Florida, for spring training practice and participation in exhibition games of this club. Upon your arrival in Clearwater, Florida, your travel expenses will be reimbursed.

"Sincerely yours."

That is signed by John J. Quinn, vice-president and general manager.

Q Mr. Flood, did the Philadelphia club forward you a contract for the 1969 year?

A Yes.

Q You did not sign it?

A No.

Q I meant 1970. You did not sign it?

A No, I didn't.

THE COURT: Would you fix the date, please, Mr. Hughes? Approximately when?

MR. HUGHES: I will be glad to.

January 8, 1970.

THE COURT: Thank you.

Q Does that accord with your recollection, approximately, Mr. Flood?

1
2 A Yes.

3 MR. HUGHES: Mr. Goldberg, do you have the letter
4 which Mr. Flood wrote to the Commissioner? It is one of
5 the exhibits in evidence.

6 MR. GOLDBERG: Yes, I do.
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T6 pm

Q Mr. Flood, I show you this letter of December the 24th, from you to Commissioner Kuhn, Exhibit 4 in evidence.

Do you recall that letter?

A Yes, I do.

Q Did you compose that letter?

A Yes.

Q Did anybody help you to compose it?

A My secretary.

Q Anybody else?

A No.

Q Mr. Flood, you have told us that you read this complaint.

A Beg your pardon?

Q You have told us that you read your complaint, right?

A Yes.

Q And I call your attention to the paragraphs 39 and 40 of that complaint and I ask you to read those paragraphs, and having done so, if you will let me know, I would like to put a question to you.

A Which one, sir? I beg your pardon.

Q Having read it I wish you would let me know and then I will put a question to you, paragraphs 39 and 40.

A All right, sir.

2 Q Now, in those paragraphs, Mr. Flood, you say, in
3 substance, that the requirement of the playing solely
4 for one club to the exclusion of others is peonage and in-
5 voluntary servitude. You saw those allegations, is that
6 right?

7 A Yes.

8 Q Is that your sole basis, those allegations of
9 the complaint your sole basis for claiming peonage and
10 involuntary servitude?

11 A No.

12 Q What other facts and circumstances do you claim
13 as constituting a basis for your allegation that you are
14 subjected to peonage and involuntary servitude?

15 A Because I have no choice of where I can work.

16 Q Isn't that what paragraph 39 and paragraph 40 say?

17 A Well, I imagine it to be. I thought you wanted
18 something further.

19 Q Now, I am saying is it anything more than what is
20 alleged in paragraphs 39 and 40? Doesn't 39 and 40 cover
21 the totality of your claim in that respect?

22 A In this respect, yes.

23 Q Now, except for advances from time to time on
24 salary, you were never indebted to the St. Louis Club,
25 were you?

A No.

MR. HUGHES: Your Honor, may I have a few minutes' recess?

THE COURT: Certainly.

Will you announce a short recess.

THE CLERK: Short recess. All rise.

(Recess.)

THE COURT: If at any time the recesses are too short, you are to indicate it to the clerk, because I want you to be fully accommodated. And also when there is extensive reading, may I suggest that it is all right with me if you will have one of your associates do the reading and relieve you from the constancy of exercising your voice.

MR. COLLIER: Your Honor, before Mr. Hughes continues, may I make a motion, and that is to strike the answer to the last question and the one before it. I shall say briefly why, if I may.

Mr. Flood is not a lawyer. He is a baseball player. He is being asked a series of questions of the legal import to which he has no right to answer, and which are the responsibility of his counsel who have the duty and responsibility to advise him as to what his legal rights are, and I have said repeatedly I do not want to hear any more of this. I do not conceive that this trial is of this character. But I think the whole

import of questions directed at legal allegations is entirely inappropriate. I prepared this complaint, together with my colleagues. I have drawn some legal conclusions from facts and I am responsible for the advice I gave to Mr. Flood. I do not think it is an appropriate subject to address him about since he is not a person to be able to say whether or not the facts that occurred constitute a violation of the Constitution of the United States and applicable statutes. That is what he has engaged counsel for.

THE COURT: I don't think it is necessary to turn to Mr. Hughes for the disposition of your motion.

There was no question addressed to this witness dealing with the legal sufficiency of the pleadings. There was no question at all dealing with his understanding of any invasion of constitutional guarantees. He wasn't asked anything regarding the legal tenor of any part of that document. He was merely asked what he understands to be the cause of action that he has brought. What do you as a lay witness understand you are complaining about? And this witness can give us the benefit of his reaction to the long, well known, common understanding of passage and enslavement and terminology of that nature.

We don't necessarily have to rely entirely and

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exclusively on legal interpretations for so simple a question.

With regard to everything else, you are perfectly right, Justice Goldberg, but I don't think the questions actually propounded to this witness embraced the grievance which you lodge.

Accordingly, the motion is denied and the testimony stands.

Please proceed.

MR. HUGHES: Your Honor, I have no further questions.

THE COURT: Mr. Krenor.

2 THE COURT: Mr. Kramer.

3 CROSS-EXAMINATION BY MR. KRAMER:

4 Q Mr. Flood, you understand that I represent only
5 the Commissioner of Baseball in this proceeding?

6 A Yes.

7 Q I am going to approach you and hand you Plaintiff's
8 Exhibits 4 and 5, which were an exchange of correspondence
9 between you and my client, Commissioner Kuhn. You don't
10 have to read them, but you might have them before you.

11 THE COURT: Are those already marked for identi-
12 fication?

13 MR. KRAMER: Yes, your Honor, and in evidence,
14 I believe.

15 THE COURT: Did you give them numbers?

16 MR. KRAMER: Yes. Plaintiff's Exhibits 4 and 5.

17 Q My question, Mr. Flood, is, following receipt
18 by you of Plaintiff's Exhibit 5, did you have any communica-
19 tion, written or oral, with the Commissioner?

20 A Yes, I did.

21 Q Tell us when that communication occurred.

22 A It was probably on this date or shortly before.
23 Mr. Kuhn called me on the telephone and merely read this
24 document here to me over the telephone.

25 Q When you say "this document," you mean Plaintiff's

Exhibit 5?

A Number 5, yes. I am sorry.

Q Following that telephone conversation, did you have any other communication with the Commissioner?

A I talked to several people in the Commissioner's office, Monte Irvin. Not several, one person. We --

THE COURT: That is all you were really asked.

THE WITNESS: I am sorry.

THE COURT: Next question.

Q You had no oral or written communication with the Commissioner himself --

A Yes.

Q -- after receipt of the telephone call and the letter, Plaintiff's Exhibit 5?

A No, there was other correspondence. There was a telegram sent to me by the Commissioner expressing his disappointment at my not being able to see him either in New York or Los Angeles as he invited me to.

Q How did you receive the invitation from the Commissioner to see him?

A This was a correspondence with Monte Irvin, who is in the Commissioner's office.

Q Let's get to that. Mr. Irvin did what? He called you or came to see you?

1 A Mr. Irvin called me on the telephone.

2 Q And what did he say and what did you say?

3 A Mr. Irvin invited me to meet with Commissioner
4 Kuhn in New York or in Los Angeles, whichever was convenient
5 for me at that time.

6 Q What did you say to Mr. Irvin after you received
7 that invitation?

8 A I declined.

9 Q And you have not had any conversation with the
10 Commissioner himself since the call from Mr. Irvin, is that
11 right?

12 A Yes, that's right.

13 MR. KRAMER: No further questions, your Honor.

14 THE COURT: Any redirect, Justice Goldberg?

15 MR. GOLDBERG: No, your Honor.

16 THE COURT: Are we all through with this witness,
17 gentlemen? If you say yes, I will tell him he is welcome
18 to stay but equally welcome to go on his way.

19 Any further questions?

20 No answer.

21 Mr. Flood, you are excused and you may remain or
22 leave, just as you see fit.

23 (Witness excused.)

24 THE COURT: Next witness.