5/1 MR. HUGHES: Mr. Hoynes is ready to proceed, your Honor.

THE COURT: Please do.

MR. HOYNES: Thank you, your Honor.

CROSS EXAMINATION BY MR. HOYNES:

Q Mr. Kennedy, you testified a few moments ago that the National Basketball Association did not have any procedure which we have come to call the procedure of playing out your option, is that correct?

A That's correct, yes.

Q You also stated that some National Basketball Association players had in the past few years, both during the term of their basic contract and afterwards, jumped, I think is the phrase you used, to another league in the American Basketball Association.

A Yes.

Q To your knowledge has any National Basketball Association player ever jumped or moved without the consent of his club to another National Basketball Association club under your jurisdiction?

A No, to the best of my knowledge, no.

Q I believe you mentioned that you had not disapproved a rider attached to the contract of the Cincinnati now Milwaukee player Oscar Robertson which provided, in ef-

fect that his contract could not be assigned by the Cincinnati club without his consent; is that correct?

A Yes.

Q In your experience in basketball are you aware of any other instance in which such a rider or provision varying the assignability clause was included in a player contract?

A I recall none.

Q Mr. Topkis elicited from you the fact that there are some lesser basketball leagues, at least two, existing in the United States. I believe you mentioned the Eastern League and the Mid American Conference. Does the NBA have any working arrangements with these leagues?

A No, they do not.

Q Does the NBA subsidize these leagues?

A No, they do not.

Q Therefore these leagues are not part of the player development structure, if you will, of the National Basketball Association?

A No.

Q Do you view your primary if not exclusive source of player talent and training ground as the American colleges and universities?

A Yes.

Q In Mr. Topkis' examination mention was made of the American Basketball Association. How long has the ABA, for short, been in existence?

A Three years.

Q Do not the club owners of the two major basketball leagues, the American Basketball Association and your league, the NBA, propose, subject to Congressional approval, to merge their operations?

MR. TOPKIS: Objection, your Honor, calling for a legal conclusion from the witness as to Congressional approval.

THE COURT: Can you answer the question, Commissioner?

THE WITNESS: I believe so.

THE COURT: Objection overruled.

A There have been and are still discussions taking place between representatives of both the ABA and the NBA with the ultimate thought of going to Congress for Congressional approval of a possible merger.

Q Is it not true, Mr. Kennedy, that litigation has been commenced over that subject, litigation against the two basketball leagues brought by individual players, and that the present status of that litigation is that an injunction has been entered by consent prohibiting the merger of the

two leagues but preserving the leagues' right to make a joint appeal to Congress for legislative approval?

t5/2 MR. TOPKIS: Objection, your Honor. I believe the action to which Mr. Hoynes refers has been filed in this court. It is, accordingly, a matter of record before this Court, and I would think that the record would be a far more accurate demonstration of its contents than the witness' testimony.

THE COURT: It would be more accurate, but that doesn't preclude the question to this witness.

Objection overruled.

A Would you repeat the question?

THE COURT: Certainly, Mr. Court Reporter, would you, please, read the question.

(Question read.)

A Yes.

Q Yesterday the plaintiff in this case subpoenaed and called to the stand the Commissioner of the National Football League, Pete Rozelle. Mr. Rozelle testified about the merger in 1966, I believe, of the two rival football leagues, the National Football League and the American Football League, and at that time he testified in substance that the merger of those two leagues was an economic necessity.

In your opinion, as the Commissioner of the National

Basketball Association, is the proposed merger of the NBA and the ABA likewise an economic necessity to some of the member clubs of one or both leagues?

MR. TOPKIS: Objection, your Honor. As I recall, your Honor yesterday ruled that inquiry into these economic matters of unrelated sports was improper. I would think that it would be improper as to basketball as well as to football.

THE COURT: What do you say to that, Mr. Hoynes?

MR. HOYNES: Well, your Honor, it seems plain to me that these witnesses from other sports have been called, particularly basketball, to demonstrate that two rival leagues can get along in fact. That is one of the proposals that has been propounded to your Honor.

I think we are entitled to show that the whole history of professional sports is that rival leagues in one sport in fact do not work out and that ultimately one of those leagues either disappears by dropping by the wayside or by merger, and that in the present instance, the only present instance in professional sports where there are two rival leagues, history is indeed repeating itself.

THE COURT: Well, does your particular question help in that regard?

MR. HOYNES: I think we are entitled to elicit not

only the fact that the two leagues propose to merge, but that it is necessary for them to merge.

THE COURT: Mr. Topkis.

MR. TOPKIS: Well, if your Honor please, if they are going to open this door, we are going to have to inquire, I should think, subject to your Honor's permission, of course, into the whole question of the economics of these teams.

I very carefully, in deference to your Honor's ruling of yesterday, refrained from putting any economics questions to this witness.

THE COURT: That is the only rub that I can see.

MR. HOYNES: Well, we are left with the state of the record, your Honor, that indicates that two leagues are planning to merge but without any indication of why they plan to merge, and I cannot conceive that we can be compelled to leave the record in that state.

THE COURT: All right, then ask the witness that general question, not the way you put it.

Just reframe your question.

Q What are the considerations, Mr. Kennedy, that you have taken into account in proposing and during the merger of the two rival basketball leagues?

MR. TOPKIS: Objection, your Honor, on the grounds previously stated.

THE COURT: I will receive it and subject to a motion to strike after I hear the answer.

A I am not in a position to answer that question as it has been asked of me because the conditions of an accommodation or a merger or whatever ultimately may take place with Congressional approval has been totally carried on between two merger committees composed of owners of both leagues. I am not a part of the negotiations nor part of either committee.

THE COURT: That is a complete and positive answer. Next question.

Q Mr. Kennedy, you have no opinion, then, on the necessity of the merger of the two leagues?

A No.

Q Mr. Kennedy, when appeal is made to Congress for a merger, do you intend to support that appeal?

A Do I intend to support the appeal?

Q Yes.

A Well, the form of the appeal at the Congress has not taken place yet. Until I see it I would not be in a position to offer any suggestion whether I could or could not support it.

Q Mr. Kennedy, during the last few years when these two leagues, the NBA and the ABA, have been existing side

by side, each has conducted a separate draft of college players?

A Yes.

Q Have there been a number of players drafted by clubs in the rival leagues, double drafted, drafted by an ABA club and drafted by an NBA club?

A Yes.

Q Has there been intense competition between the two leagues for the signing of these draft choices who have been sought by both leagues?

A In some instances, yes.

Q One feature of the proposed merger would be to adopt a common draft, pursuant to which the two leagues would engage in one unified draft, is that correct?

A Yes.

MR. HOYNES: Excuse me a second.

(Pause.)

Q Mr. Kennedy, except for those times when expansion of the leagues produces an internal player draft which stocked the new franchises -- I believe you just conducted one of those --

A Yes.

Q -- is there any internal draft for the purposes of equalizing player strength, whereby a club, one NBA

club may draft a player from the roster of another NBA club?

A Other than a college draft?

Q I am not talking about drafting a professional player; in an internal draft, not your college draft. You have an internal draft, have you?

A The NBA does not have such draft.

Q Except for the case of expansion?

A Yes.

Q Where special drafts are made to stock expansion franchises.

A Yes.

MR. HOYNES: We have no further questions.

THE COURT: Mr. Kramer.

MR. KRAMER: Yes, your Honor, thank you.

BY MR. KRAMER:

Q Mr. Kennedy, I represent the Commissioner of Baseball, and I want to ask you whether, when you were made Commissioner of the National League, Plaintiff's Exhibit 16, which is the National Basketball Association Uniform Player Contract, was in effect or were you Commissioner when this was prepared?

A When that was prepared?

Q Yes.

A There was a Uniform Player Contract in existence

at the time I became Commissioner in 1963. Since that time there have been certain changes in the player contract, but basically it is as it was when I took office.

Q Thank you.

Now, I notice that attached to Plaintiff's Exhibit 16, which is the Uniform Player Contract, there is an excerpt from the constitution of the Association entitled Misconduct of Officials and others, and I further notice that Section

t5/3 15 of the contract itself says, "The player and the club acknowledge that they have read and are familiar with Section 35 of the Constitution of the Association, a copy of which as in effect on the date of this agreement is attached hereto. Said section provides that the Commissioner and the Board of Governors of the Association are empowered to impose fines upon the player and/or upon the club for causes and in the manner provided in said section."

Now, Mr. Kennedy, have you had occasion at any time to impose fines pursuant to that paragraph?

A Would you please read me the paragraph? I am not familiar with it off the top of my head.

MR. KRAMER: May I approach the witness and hand it to him?

THE COURT: Surely.

(Handed to witness.)

MR. KRAMER: Your Honor, may we have the pending question read?

THE COURT: Surely. Mr.Court Reporter, would you please?

(Question read.)

A Yes.

t6/1 mp Q One final question --

MR. KRAMER: Could we give the witness the constitution and bylaws?

MR. TOPKIS: Surely.

THE COURT: Exhibit --

MR. KRAMER: 17. Plaintiff's Exhibit 17.

Q Mr. Commissioner, is it not a fact that Article 35 gives the Commissioner in conjunction with the Board of Governors power to punish any official or player of basketball who gambles on or fixes any game?

A Yes.

Q And is it not also a fact that Paragraph 35(d) provides that:

"If in the opinion of the Commissioner any other act or conduct of a person at or during a game has been prejudicial to or against the best interests of the association or the game of basketball, the Commissioner shall impose upon such person a fine not exceeding $1,000" -- and

so on?

A Yes.

Q Do you happen to know if you ever had occasion to invoke Paragraph 35(d) of the constitution?

A Yes.

MR. KRAMER: Thank you. No further questions.

THE COURT: Anything further?

MR. TOPKIS: No redirect, your Honor.

THE COURT: Anything further, Mr. Hughes?

MR. HUGHES: Nothing further, your Honor.

THE COURT: Commissioner, you are excused. Mr. Galandz, may I thank you for your full cooperation. I knew I could count on it.

MR. GALANDZ: Yes; you could. You are most welcome.

MR. TOPKIS: If your Honor please, Mr. Iverson will examine the next witness.

MR. IVERSON: Plaintiff calls Mr. Alan Eagleson.

R O B E R T A L A N E A G L E S O N, called as a witness by the plaintiff, being first duly sworn, testified as follows:

THE COURT: Will you keep your voice up, Mr. Eagleson, please, so we can all hear you, and wherever you can answer yes or no to a question, will you please do that?