

2 and then become a free agent, the result in terms of integrity
3 of the game would be prejudicial to baseball. Did I hear you
4 all right?

5 A That's correct.

6 Q Are baseball owners or players, to your knowledge,
7 more corrupt than football owners or players?

8 A No.

9 Q Vast sums of money are bet on both sports, isn't
10 that true?

11 A It is true, and it is also true that it is an increas-
12 ing problem for all professional sports because that, Mr.
13 Topkis, is a vastly expanding area of commercial activity, both
14 legal and illegal, and the dangers that professional sports
15 face in these areas are heightened every day and every month.

16 MR. TOPKIS: Could the witness be directed, your
17 Honor, to respond to a question, if it permits a yes or no
18 answer, with either a yes or a no?

19 THE COURT: If you can, Commissioner, do so.
20 Very well, proceed.

21 MR. TOPKIS: Thank you, your Honor.
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Kuhn-cross

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Q Now, Commissioner, so far as the integrity point is concerned, you said you were concerned about tampering during the season; is that right?

A Yes.

Q Well, football has that problem, doesn't it?

A I assume so. I don't know.

Q And yet you --

MR. TOPKIS: Withdrawn.

Q Well, if a football player becomes free to negotiate with another team only at the end of the season and another team tried to tamper with him before the season ended, that would be the same problem that you would be concerned with in baseball, isn't it?

A Taking those facts to be correct, yes.

Q And yet you stand by your testimony that so far as you know football's level of integrity is not different from baseball's; neither is higher than the other?

A That's correct.

Q Now, do you have any opinion, Commissioner, on whether there is an equality of competition or a tendency in that direction among professional football teams, or don't you profess expertise in that area?

A I have the opinion of a fan.

Q And what is that?

A That there is a tendency toward equality of teams.

Q Approximately equaling that among baseball teams?

A Yes.

Q Yet you fear that were there to be the adoption by baseball of football's player option rule, the impact on baseball would be bad in terms of equal competition on the field.

A Yes; I do. There is a difference between these sports.

Q Will you tell us what that difference is, please?

A In football there is one particularly key player, the quarterback. In baseball there are more key players. You can lose one football guard, one tackle, one blocking back and replace him. You cannot replace the quarterback.

In baseball you have a number of players who may be essentially irreplaceable in terms of their quality. You look at the Baltimore Orioles, for instance, and try to replace that team position by position. You couldn't do it. So if you lose several players there, you may be vastly hurt beyond what would happen if a football team lost a tackle.

If you lost a pitcher, one pitcher, if you lost a Tom Seaver, these problems of team balance within a team and the experience of a team playing together and developing

1 team work and then to have it broken up by the loss of a
2 key shortstop who works so beautifully with the second base-
3 man and the third baseman in the infield and has his signals
4 worked out with the catcher and the pitcher in terms of
5 pick-off and so forth -- if you take several players from
6 that, you can devastate a baseball team.

8 Q Well, if you took several players from the Jets
9 or Joe Namath alone, you wouldn't think much of the Jets'
10 chances in the coming season?

11 A I think they would do quite well.

12 Q You are not a betting man, Commissioner?

13 A No; I'm not.

14 Q Commissioner, that story about Abner Doubleday in-
15 venting baseball is just a myth, isn't it?

16 A Well, I am sure General Doubleday was involved in
17 the early development of the game. To what extent I don't
18 think anybody really knows.

19 Q Well, it is not seriously suggested by any historian
20 of the sport today or from your reading of the history of
21 the sport that General Doubleday or Abner Doubleday or
22 whatever --

23 A General Abner Doubleday.

24 Q -- invented the sport.

25 A I would agree with you.

1
2 MR. TOPKIS: Incidentally, this point, your Honor,
3 I have had marked as Plaintiff's Exhibit 23 for identifi-
4 cation a volume entitled, "The Official Encyclopedia of
5 Baseball, Fourth Revised Edition, by Turkin and Thompson,"
6 and I would offer it in evidence.

7 MR. KRAMER: If your Honor please, I am afraid I
8 should have to ask for the evening to look at this exhibit
9 before I can tell if I have any objection.

10 MR. TOPKIS: All right. I will offer another docu-
11 ment, which I have marked Plaintiff's Exhibit 24 for identifi-
12 cation, which bears the less pretentious title of "The
13 Baseball Encyclopedia." It doesn't say "Official."

14 THE COURT: May I suggest that you designate the
15 particular portion that you would like to offer in evidence?
16 You are not offering those entire volumes?

17 MR. TOPKIS: Well, I offer them as compendia of
18 baseball records.

19 Your Honor will recall that this morning I objected
20 to the receipt of a few pennant race results. I would like
21 to be free to use these books to prove the results of those
22 pennant races.

23 THE COURT: All right, but have mercy on the Judge.
24 If you put that in as an exhibit, I've got to go through
25 that.

2 MR.TOPKIS: Could I undertake to spare your Honor that
3 task --

4 THE COURT: I didn't think the day would come when
5 I would have to solicit that kind of consideration.

6 You just designate the pages -- be good enough to
7 do that. Your men and you undoubtedly know not only the pages
8 but actually the words and the punctuation marks that you want
9 in.

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

11 THE COURT: All right.

12 Q Now, Mr. Kuhn, going back to General Abner Doubleday
13 we had agreed, I think, that no historian of baseball suggests
14 that he invented the game all by himself.

15 A Well, I think there are some. I think the question
16 you asked before was more accurate. Modern historians, yes.

17 Q So modern historians no longer suggest that General
18 Doubleday was the inventor of the game?

19 A I think that is correct.

20 THE COURT: Gentlemen, please keep your voices up.
21 You are inclined to drop them on occasion, and you know, I
22 must make the observation -- I don't want to wait for these
23 things; I like to face up to them -- it is one thing to play
24 up to an audience, which I won't permit. It is another thing
25 to remember that the public has come here to hear the testimony

and you don't have to be concerned with their reaction,
but they are entitled to hear what is going on.

There are gentlemen there in back who are taking
notes. They have a right to take the notes, and if they
don't hear you they can't take notes.

Very well.

Q Commissioner Kuhn, am I right in believing that
some modern historians suggest that the myth of General
Doubleday's invention of baseball was invented by a gentleman
named A.G. Mills?

A I don't know.

Q Do you happen to know how old Mr. Mills was in 1914?

A I do not.

Q Now, Commissioner, your job was once held by the
late Ford Frick, was it not?

A Yes.

Q What was his tenure?

MR. KRAMER: He is still alive.

MR. TOPKIS: I beg your pardon -- not your pardon,
but Mr. Frick's.

THE WITNESS: He will forgive you.

A His tenure was from the latter part of 1951 until
December 1965.

Q Mr. Frick, or Commissioner Frick testified before the

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Celler Committee that the Commissioner is a law unto him-
self. Do you remember that testimony?

A I do not.

Q Didn't you testify that you read the report of the
Celler Committee?

A I did.

Q Did you read this statement at page 117 of that
report --

MR. KRAMER: I object and wish to be heard before
you read the statement.

Are you reading, sir, from a page whose accuracy has
been stipulated between counsel for the parties in this
case?

MR. TOPKIS: I don't know.

MR. KRAMER: May we find out first, because you
objected to my engaging in the same practice just a few hours
ago, and your objection was successful.

MR. TOPKIS: No, if your Honor please. This wit-
ness has testified that he read four books to prepare himself
to be an expert in this case.

THE COURT: Now, now, don't get off the point. The
point is whether or not you can read from the source that you
hold in your hand. Now, what is it that you hold in your
hand?

MR. TOPKIS: The report of the Celler Committee.

THE COURT: What is your objection exactly, Mr. Kramer?

MR. KRAMER: My objection is that he may not read into evidence any part of the Celler Committee report except those parts which we have stipulated, and I was attempting to find out if we had stipulated this part. That was the sole purpose of my question.

THE COURT: What do you say, Mr. Topkis?

MR. TOPKIS: I am not trying to read it into evidence. I am asking the witness if he read it.

THE COURT: Well, I don't intend to allow that any more than I allowed D, to which you objected, and I upheld you. I can't let you read something to this witness that is not in evidence. Do you think I should?

MR. TOPKIS: I do, your Honor. The witness testified that he had read this report and that this report was one of the four books on which he based his testimony of this morning.

That being so, it seems to me I am entitled to cross examine him about the books that he said he read.

MR. KRAMER: I have no objection to his showing the witness the passage, and perhaps if he would be so kind as to show it to me, perhaps I won't have to --

THE COURT: Suppose you do that, Mr. Topkis.

2 You do point out a difference, and I agree with you, but do
3 it his way. I prefer it.

4 MR.TOPKIS: Gladly, your Honor.

5 MR. KRAMER: Your Honor, I have no objection to
6 his asking the witness if he read that passage and if he
7 believes the reporter correctly reported the passage, if he
8 knows, just referring to that.

9 MR.TOPKIS: May I approach the witness, your Honor?

10 THE COURT: Yes; please do. And would you please
11 be precise as to the page number and the line, if you don't
12 mind?

13 MR. TOPKIS: It is page 117, your Honor. It is
14 not lined, but it is the second block of material in small
15 type on that page.

16 THE COURT: Take your time and read that, Commiss-
17 ioner.

18 A I see the material.

19 THE COURT: You have read it?

20 THE WITNESS: I have read it.

21 THE COURT: All right. Now, the question is what?

22 MR. TOPKIS: The question is, does the witness
23 agree with the statement? Since I have already said what
24 the statement is, perhaps I may repeat it, namely, that
25 "The Commissioner is a law unto himself."

MR. KRAMER: I have no objection to that question, your Honor.

THE COURT: Do you agree with the statement?

THE WITNESS: So broadly stated, your Honor, I don't see how I could agree with it.

THE COURT: All right. There is an answer. Next question?

Q Mr. Kuhn, who elected you Commissioner of Baseball?

A Twenty-four major league clubs.

Q Are twenty-three of them defendants in this case?

A Is one missing?

Q Yes.

A If you say so, I accept it.

Q And who pays you, Commissioner?

A My salary is paid from a bank account maintained by the Commissioner's office, for which the funds are drawn from World Series receipts and from a central bank account of the twenty-four clubs.

Q Commissioner, I don't want to probe precisely into your salary, but would it be accurate to say that you are paid more than any player active today in organized baseball?

A I don't know.

Q Don't you have filed with you all the contracts of players?

1
2 A No.

3 MR. TOPKIS: Excuse me, please.

4 Q I had thought, Commissioner, that copies of all
5 contracts of players in the major leagues were filed with
6 your office. Was I in error?

7 A Yes; you are in error.

8 Q Are they filed with the presidents of the leagues?

9 A Yes.

10 Q Who has the power to fire you, Commissioner?

11 A You raise a legal question, in my opinion, and that
12 is whether a person charged with the duty of carrying out
13 arbitration can be fired during the term of a contract for
14 a period certain. I don't know the answer.

15 Q Who was your predecessor as Commissioner?

16 A General Eckert.

17 Q General Eckert had a long-term contract which still,
18 according to its original terms, has not come to an end;
19 is that right?

20 A That is correct.

21 Q He is no longer Commissioner?

22 A That is correct.

23 Q Did he leave voluntarily or did he resign?

24 A I would say that he left essentially voluntarily,
25 yes.

Q Was there some degree of encouragement given him?

A Yes, but he resigned --

THE COURT: Now you are volunteering. "Yes" is the answer.

Q Were you given the same degree of encouragement, would you leave your offices?

A I don't know.

Q The Commissioner was paid the compensation coming to him under the contract for the full term of his contract; is that right?

A Mr. Topkis, it was renegotiated, and some settlement was worked out satisfactory both to the clubs and to the Commissioner.

Q And you say a settlement worked out satisfactory to the clubs. You mean the twenty-four clubs of organized baseball?

A Yes, sir.

Q Now, in your selection, Commissioner, were the players consulted?

A No.

Q There was some litigation recently involving organized baseball, was there not, in Milwaukee?

A Yes.

Q Involving the attempted and ultimately successful

transfer of the Milwaukee club?

A Yes, sir.

Q You appeared as trial counsel in that club for the National League, didn't you?

A Yes, sir.

Q You interrogated witnesses?

A Yes, sir.

Q And for a period since --

MR. TOPKIS: Pardon me. Let me rephrase that, if I may.

Q Did I understand you to say that since 1951 until you became Commissioner, in 1969, you were regularly active in the representation of the interests of the National League of Baseball Clubs?

A On and off.

Q On and off? About what portion of your time would you say that you spent during those years representing the National League?

A There would have been some years when I spent none. There would have been other years in which I spent more than half. Overall, Mr. Topkis, thirty-three per cent, perhaps. I don't know.

Q You performed in that role for approximately eighteen years?

2 A Along with the working arrangement I just described,
3 yes.

4 Q Right. And you have been Commissioner for fifteen
5 months?

6 A Since February 4, 1969.

7 Q Have you ever played baseball?

8 A I tried.

9 Q I will probe no further.

10 Have you ever been an economist, Commissioner?

11 A I have a degree in economics from Princeton Univer-
12 sity.

13 Q How much time did you spend at Princeton in pursuit
14 of that degree?

15 A From October 1945 'til June of 1947.

16 Q You did not graduate work in the field?

17 A No, sir.

18 Q And you have never been consulted by anyone for
19 advice as an economist other than possibly Mr. Kramer?

20 A Not in a professional sense, no.

21 Q Have you ever held yourself out in a professional
22 sense as an economic consultant?

23 A No, sir.

24 Q Now, you testified, Commissioner, that you had made
25 a study of the history of the early days of baseball.

2 You so testified this morning, did you not?

3 A Yes.

4 Q In your opinion, Commissioner, are the circumstances
5 which prevailed in the early days of baseball comparable with
6 those which prevail today?

7 A In some ways, yes, sir; in some ways, no.

8 Q Will you agree with me that times have changed since
9 1870, in many ways?

10 A In many ways for the worse, as far as professional
11 sports are concerned, yes.

12 Q And you will agree with me also that the law has
13 changed significantly since that time?

14 A Yes, sir.

15 Q As a matter of fact, Commissioner, haven't baseball's
16 rules and practices varied a great deal since 1870 or 1880?

17 A Yes, sir.

18 Q In that time, when teams had as many as eleven
19 players, one pitcher did almost all the pitching for the
20 teams, didn't he?

21 A It usually was borne by two, Mr. Topkis.

22 Q I beg your pardon?

23 A It was usually borne by two, I believe.

24 Q Perhaps in those compendia we will be able to find
25 some box scores.

1
2 A As the reserve lists increased, I think the number
3 of pitchers increased.

4 Q And before there were reserve lists, wasn't it
5 customary for a club to get by with one star pitcher?

6 A Yes. Oftentimes they had one pitcher plus another
7 player, like Harry Wright, centerfielder, who would come in
8 and relieve the pitcher when necessary.

9 Q But the custom was for one pitcher to start all
10 of the games, wasn't it?

11 A Yes. I believe so.

12 Q And far fewer games constituted a season then than
13 constitute a season today; is that right?

14 A When you say "then," would you tell me what period
15 you mean?

16 Q 1870, 1880.

17 A I believe the answer is yes.
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Q I notice Exhibit E, if I can find it, my copy of Exhibit E, at any rate, reveals that in 1871 the Philadelphia Club in the National Association won 22 games and lost 7. Does that conform with your recollection?

A The National League?

Q In 1871 I think it was called the National Association.

A I thought you said 1881. I beg your pardon.

Q And that was typical of the way things were done in those days?

A Well, the number --

MR.KRAMER: Objection, your Honor. I don't understand the question. The word "that" confuses me.

Q The relative paucity of games is what I meant.

A Some teams played a great many more games than others. There was no uniformity. The Cincinnati Reds in 1869 and '70, as I recall it, played a great many more games than the team you showed me. Games were made up by agreement between teams. Some played more, some played less.

Q I notice that on this schedule that you have given us -- and this was prepared under your direction?

A Yes, sir.

Q -- the largest number of games that appears to

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Kuhn-cross

have been played by a winning team between 1871 and 1875 was by Boston in 1874, when they played 70 games. Today the schedule is --

A 162.

Q There were no farm systems in those days, were there?

A Oh, there were. If you are alluding to the 1880's, yes, there were.

Q By the 1880's there were farm systems?

A Yes, I believe so.

Q I admit what I subscribed to was that Branch Rickey had invented farm systems.

A Branch Rickey, Mr. Topkis, invented what is the extensive type of farm arrangement that might have run to 30, 40, 50 clubs, but in the '80's and '90's there were minor leagues and there were working arrangements of some kind between some major league clubs and some minor league clubs.

Q In your studies of the early days of baseball, Commissioner, did you find any information as to the capacity of playing fields which were used in those days?

A Yes.

Q What was the largest stadium or whatever in which baseball was played in 1870 or 1880?

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Kuhn-cross

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A I couldn't tell you.

Q Do you have any information at all on the subject?

A Would you direct me to a particular period of years?

Q The 1870's and the 1880's.

A In the 1870's I believe that the capacities were quite small by today's standards. They were larger in the eighties. As the teams became more profitable they were able to use some of their revenues for building stadiums. In the 1860's sometimes they played with no stadium at all.

Q Commissioner, do you happen to know the year in which the most lopsided record in terms of wins and losses was compiled by an American League team?

A No, I do not.

Q That is, by a winning team?

A By a winning team?

Q Yes.

A The largest number of games won?

Q Yes.

A I would think it was the Cleveland Indians in 1954, but I don't know.

Q That of course was my information. And do you

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Kuhn-cross

happen to know the National League team which amassed the highest number of victories in winning a pennant?

A I do not.

Q Would it refresh your recollection for me to suggest that it was the Chicago Cubs winning 116 in the early 1900's?

A Do you believe that is correct?

Q I am so advised.

A I will accept it.

Q Thank you. And how about the most awful record ever compiled by a major league baseball club, Commissioner? Do you happen to know when that record was set?

A No, I do not.

Q You are not a native New Yorker?

A No, I am not.

Q Would it refresh your recollection for me to suggest to you that it was set by our own Mets in 1962?

A I have no reason to dispute it. As a native Washingtonian, I thought I had some evidence, but you perhaps have more.

Q Commissioner, there is a publication called The Sporting News, isn't there?

A Yes, sir.

Q Is that very widely read in the baseball trade?

2 A Yes, sir.

3 Q Is it relied on as a source of information?

4 A Yes, sir.

5 Q Commissioner, did you ever hear of a baseball
6 player being traded for a turkey?

7 A I have heard the story.

8 Q To the best of your knowledge, it is true?

9 A I have no knowledge whether it is true or false.
10 I wouldn't know.

11 Q If it were reported in The Sporting News,
12 Commissioner, would you believe it?

13 A Not necessarily.

14 Q Did you ever hear, Commissioner, how a baseball
15 player named, I understand from one of those encyclopedias,
16 William Booth Birddog Hopper got his name?

17 A No, sir, I do not.

18 Q Would it refresh your recollection for me to
19 suggest that it came about by reason of his having been
20 traded for a bird dog?

21 A No, sir, it would not.

22 Q Have you ever heard that story?

23 A I have some vague recollection of having heard
24 that story, yes.

25 Q Commissioner, you testified, I believe, that the

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Kuhn-cross

resources of the owners involved in organized baseball --
in major league baseball vary?

A Yes, sir.

Q Has any owner rendered a net worth statement to
you, Commissioner?

A No, sir.

Q CBS owns the Yankees today either directly or
through a subsidiary or two, is that right?

A Yes.

Q Anheuser-Busch owns the Cardinals?

A If Mr. Carroll will so stipulate, I would say
yes. Otherwise I would have to say I don't know.

Q Well, I think we have here a document on the
subject.

A Mr. Carroll nods and if your Honor doesn't mind
I will answer yes.

THE COURT: We have great respect for Mr. Carroll,
and it's nice of you to pay tribute to your mentor and I
like to see all of that, but it is not evidence.

Q From whatever source comes your guidance, Com-
missioner, would you be willing to assert that Anheuser-
Busch owns the Cardinals?

A I believe that is correct.

1
2 Q And how about the Cubs? Are they predominantly
3 owned by Mr. Phillip K. Wrigley?

4 A I believe so.

5 Q That is the same Phillip K. Wrigley who owns
6 the Wrigley Company?

7 A He owns an interest. I don't know the extent
8 of the interest.

9 Q Commissioner, would you have any knowledge on
10 which one of the last three entities I have named, namely,
11 CBS, Anheuser-Busch or Mr. P.K. Wrigley, is the wealthier?

12 A I honestly don't know what that question means.

13 Q I will reframe it in an effort to clarify it.
14 Commissioner, would you have any knowledge on
15 which one of those entities, CBS, P.K. Wrigley or Anheuser-
16 Busch, has the greatest resources?

17 MR. KRAMER: Objection.

18 THE COURT: Sustained.

19 Q You testified that the resources of the owners
20 vary.

21 MR. KRAMER: Vary widely.

22 Q Would you tell us, please, what club is owned
23 by the owner having the least resources?

24 A I couldn't tell you precisely.
25

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2 Q And would you tell us, please, what club is
3 owned by the owner having most resources?

4 A I could not tell you precisely.

5 Q Let me put that same question to you about each
6 of the two major leagues. Could you tell us as to either
7 league which team is owned by the owner having most and
8 least resources?

9 A Could I hear that question?

10 THE COURT: Surely. Mr. Court Reporter, would
11 you repeat the question?

12 (Question read.)

13 A I could not tell you precisely.

14 Q Yet you adhere to your testimony that the re-
15 sources of the owners of major league teams vary widely?

16 A I certainly do.

17 Q Commissioner, you testified this morning that
18 one of the safeguards, I think you called it, for players
19 or protections for players that has come along in recent
20 years has been the adoption in the standard contract of
21 a provision that a player's salary can't be cut more than
22 20 per cent in any year; do you remember that testimony?

23 A Yes.

24 Q Have you ever calculated, Commissioner, what
25 the impact on a player's salary would be if he started

1 out with an annual salary of \$50,000 and had it cut the
2 maximum 20 per cent each year for eight years?
3

4 A I have not calculated that, no.

5 Q Well, actually, I haven't either for eight years,
6 but I have calculated it for seven, and I wonder whether
7 you would check my arithmetic for me.

8 MR. TOPKIS: May I approach the witness, your
9 Honor?

10 THE COURT: Surely. But first mark the paper for
11 identification.

12 MR. TOPKIS: Certainly, your Honor.

13 (Plaintiff's Exhibit 25 marked for identifica-
14 tion.)

15 (Mr. Topkis hands Plaintiff's Exhibit 25 for
16 identification to witness.)

17 (Pause.)

18 A I don't pose as an expert in mathematics either,
19 but that would appear to be correct mathematically.

20 Q Thank you. So that we could agree that if a
21 player were paid \$50,000 in the first year, in the eighth
22 year he would be paid \$10,688?

23 MR. KRAMER: Objection. I think if your Honor
24 would have the question read, the ground of my objection
25 would be understood.

gwb-10

Kuhn-cross

THE COURT: I am sorry, Mr. Kramer. I didn't quite hear what you said.

MR. KRAMER: I object to the question and I would like it read before your Honor rules on my objection.

THE COURT: You would like the question read?

MR. KRAMER: Yes.

THE COURT: Read it.

(Question read.)

MR. KRAMER: I don't understand how the question can be answered other than no, and therefore I assume that the question is incomplete. But I will withdraw my objection, your Honor.

THE COURT: All right, objection withdrawn.

A If the \$50,000 a year is counted as the first year?

Q That is what I intended, Commissioner.

A It adds up to eight years and that would bring it down to the figure you used, yes.

Q \$10,688?

A Yes.

Q And, Commissioner, that could happen to a ball-player under the rules of organized baseball today, could it not, unless he chose to quit the sport?

A Yes.

gwb-11

Kuhn-cross

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Q Do you wish to withdraw the term "safeguard"?

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THE COURT: Do you wish to withdraw the term --

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MR. TOPKIS: "safeguard."

5

A Of course not.

6

Q Commissioner, in your capacity as commissioner,

7

do you retain records of former commissioners, that is to

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say, is the Commissioner's office an ongoing office with

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ongoing files?

10

A Yes, sir.

11

Q Are you familiar with a report rendered in 1964

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or thereabouts, on the desirability of eliminating the minor

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leagues, which report I understand recommended the elimination

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of all but the Triple A League, and was rendered by a

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committee of which two of the three members were Mr. C. S.

16

Allen, and Mr. Bing Devine?

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A No, sir.

18

Q Now, Commissioner, you have certain powers as

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an arbitrator, isn't that right?

20

A Yes, sir.

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Q You don't have any power, though, over salaries,

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player salaries?

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A Under Major League Rule 22, you have a precise

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statement as to the Commissioner's jurisdiction in the

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salary area, the limitations on that jurisdiction.

1 Q Well, I ask the question, Commissioner, I may
2 say, with familiarity of Rule 22, but I was really inquiring
3 whether there might be some provision that had escaped
4 my attention. Rule 22 reads in part:
5

6 "All disputes between players and clubs shall
7 be referred to the Commissioner and his decisions shall be
8 accepted by all parties as final. Negotiations between
9 player and club regarding the player's compensation under
10 his contract shall not be referable to the Commissioner."

11 Is there any provision anywhere else in the
12 rules which in any way relates to that subject?

13 A No, there is not.

14 Q So that if a player and a club are unable to
15 agree on the player's salary in the next year of his contract,
16 you have no jurisdiction over that subject?

17 THE WITNESS: Your Honor, I have difficulty
18 answering that question yes or no.

19 MR. TOPKIS: I would be glad to have the witness
20 expand.

21 THE COURT: Answer it any way you think you can.

22 A It is my view, Mr. Topkis, that circumstances
23 could arise where I could have jurisdiction with respect
24 to a phase of salaries. For example, in the 1969 season
25 there was a trade between the Boston Red Sox and the Cleveland

1 Indians involving a number of player contracts, including
2 that of player Ken Harrelson. At the time the trade
3 was announced, player Harrelson announced his intention
4 of retiring. I asked Mr. Harrelson, the general manager
5 of the Boston Club, Mr. O'Connell, and the general manager
6 of the Cleveland Club, Mr. Paul, to come to my office to
7 see if we could resolve the problem. We resolved it. A
8 new contract was negotiated with Mr. Harrelson under my
9 general supervision and Mr. Harrelson reported to Cleveland.
10

11 Instances like this could arise, so I can't
12 answer the question yes or no.

13 Q But there is no provision anywhere in the rules
14 of organized baseball other than Rule 22 relating to this
15 subject, is that right?

16 A May I expand?

17 Q Please.

18 A I think what I did in the Harrelson situation
19 was something in which I proceeded under the best interests
20 of baseball, because I felt that the matter needed a prompt
21 solution. I asked the parties to come in, and in that
22 broad sense there might be another provision, yes.

23 Q Where you of your own motion intervened, is that
24 right?

25 A Yes.

gwb-14

Kuhn-cross

Q But no player has an absolute right under any of the provisions of organized baseball to solicit your exercise of jurisdiction over a salary dispute between him and his club?

A I think he does. He does not have an absolute right to insist that I determine the dispute in the sense that it might be referred to an arbitrator. He has an absolute right, in my judgment, to appeal to my good offices

Q No player has done so during your tenure?

A Well, during the course of our meeting with Mr. Harrelson, certainly Mr. Harrelson in effect did so.

Q You having called him in originally?

A Correct.

Q But other than the Harrelson incident, no player has?

A Oh, yes. This past spring player Camillo Pasquale of the Cincinnati Club contacted me about his salary dispute with the Cincinnati Reds. I imagine Camillo called me four or five different times. We discussed various phases of that. I took certain action with respect to the Cincinnati Club. For instance, Camillo said that while they were negotiating the Cincinnati Club had announced that he had voluntarily retired and that this hurt his position in trying to negotiate with other clubs. I

gwb-15

Kuhn-cross

1 contacted the Cincinnati Club. They denied that they had
2 made any such announcement and I said, "Put out an announce-
3 ment to the effect that it is not true that Camillo Pasquale
4 has voluntarily retired."
5

6 Such announcement was put out the next day.
7 They continued their negotiations and at various stages
8 of it either I or Mr. Feeney, at my request, the president
9 of the National League, attempted to help the thing to a
10 solution. Ultimately Mr. Pasquale was released by the
11 Cincinnati Club and signed by the Los Angeles Dodgers.

12 Q In both the Pasquale case and the Harrelson case,
13 there was an announcement of impending retirement either
14 by the player or the club, wasn't there?

15 A Not in the Pasquale case, no.

16 I am sorry. There was a newspaper story to that
17 effect.

18 Q A newspaper story, that is right.

19 A There was no announcement by either the player
20 or the club.

21 Q But there was an announcement?

22 A There was.

23 Q Commissioner, you were asked some questions earlier
24 by Mr. Kramer relating to the possible impact on baseball
25 of the adoption of a rule barring transfer of a player's

gwb-16

Kuhn-cross

contract after he had been in the majors five years without his consent.

Do you remember those questions?

A Could I hear that question?

THE COURT: Please repeat it, Mr. Court Reporter.

(Record read.)

A Yes, I do.

Q And I think you testified that there would be no problem so far as the matter of integrity of the game is concerned except that if the player had the right to veto a deal the terms might become public and that would affect team morale; that was your testimony, wasn't it?

A Yes.

End 7

1
2 Q Now, that would be true only if the trade took
3 place during the playing season, wouldn't it?

4 A No, that is not correct.

5 Q Well, today a player can be traded in the off
6 season, can't he?

7 A Yes.

8 Q And I take it that in today's system that is not
9 regarded by you, those trades are not regarded by you as
10 having a detrimental effect on the integrity of the game.

11 A If you are asking me whether off season trades
12 have a detrimental effect on the integrity of the game, the
13 answer is no, they do not. Quite the contrary.

14 Q And wouldn't that be true whether the player had
15 a veto over a trade or not?

16 A The answer I just gave you is yes, it would be true.

17 Q Very well.

18 A But the morale problem remains, whether it is in
19 season or out of season.

20 Q Well, please tell me how it is that morale would
21 be affected more under a system where the player had a
22 veto over an off season trade after five years than it is
23 affected today when a player can be traded without his
24 consent after five years or at any other time?

25 A The problem presented by leaking news of a trade

that isn't made is where the morale problem arises.

THE COURT: Would you go into that, please, Commissioner? Explain that.

THE WITNESS: Yes. If, let us say, a trade involving six ballplayers, like the Ken Harrelson trade, were inhibited by a consent provision, it is inevitable, in my judgment, your Honor, that the news that would get out, even though the trade did not go through because of the consent provision, and the effect of that would be deleterious on the morale of the players who found out that their teams were trying to trade them to another team.

Q Oh, so your problem is that you are afraid you couldn't trust the players to keep the secret, is that right?

A There is a problem in keeping any kind of a secret in baseball, whether it involves players or anybody else, Mr. Topkis.

Q But today you let the clubs keep the secrets but not the players?

A There is no great confidentiality in many of the club deals as well. I think there would be less if there were more people involved, and the example that is very current is that of the Cincinnati Royals' attempted trade of player Robertson to Baltimore, where morale problems certainly erupted.

Q Well, is it your testimony, Commissioner, that it is appropriate to purchase integrity of the game at the price of denying a five-year player a veto, but you are willing to take whatever consequences flow from having the clubs know about the trades they make today?

A May I hear that question?

THE COURT: Surely. Would you read it, please, Mr. Reporter.

(Question read.)

A I don't understand the question.

Q I will try again, Commissioner.

As I understand your testimony, the situation today is that only the clubs know about trades that they are negotiating or have consummated until they are publicly announced, isn't that right?

A Correct.

Q And on occasion the clubs leak that information and that hurts the moral of the players.

A On occasion, yes.

Q And your fear --

A Let me put it this way; on occasion it has leaked.

Q On occasion it has leaked, and the only custodians of the information are clubs when they are negotiating.

A That's correct.

Q So if it has leaked, it must have been somebody on the clubs who did the leaking?

A Through some club process, yes. This may be intentional or unintentional. That is the difference I make.

Q I see. And your concern about the adoption of a five-year veto provision -- and you and I understand what we are talking about --

A Yes.

Q -- your concern about that is that the players would have to be in on the secret and that would surely hurt their morale if the trade were to fall through for any reason?

A That is one reason among a number that I mentioned on the five-year veto provision, yes.

Q And my final question to you was that today the integrity of the game is preserved by keeping the players out of the secret list or out of the list of those possessing the secret, even though you tell us that on occasion the secret is leaked or in other fashion becomes public?

A I never told you the secret was leaked. I said sometimes it gets out --

Q Well --

THE COURT: Wait. Give him a chance to answer.
Yes?

THE WITNESS: I believe, your Honor, the question

1 implied there is an intentional leaking that is not what
2 I said. I said occasionally it gets out.

3 MR. TOPKIS: I think, Commissioner, we are in
4 agreement. I said is leaked or in other fashion becomes
5 public. Perhaps I didn't keep my voice up, and if so,
6 I apologize.

7 Your Honor, would that be an appropriate place
8 at which to break for the afternoon? I am going to another
9 subject and, frankly, the Commissioner's testimony was both
10 lengthy and complex, and I think I could save the Court's
11 time in the long run if I had an opportunity to organize my
12 further cross more precisely.

13 THE COURT: You are putting that in the form of
14 an application?

15 MR. TOPKIS: I am indeed, your Honor.

16 THE COURT: Any objection?

17 MR. KRAMER: No. I am sure it will be shorter if
18 we adjourn.

19 THE COURT: Very well. I adopt your suggestion and
20 we adjourn for the day.

21 Commissioner, it is my practice always to say to a
22 witness whose testimony is not finished, please be here to-
23 morrow morning at 10 to resume your testimony.

24 Announce an adjournment, please, Mr. Clerk, until
25 tomorrow morning, 10 o'clock promptly.

THE CLERK: The Court is adjourned until tomorrow

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morning at 10 o'clock.

(Adjourned to May 28, 1970, at 10 a.m.)

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Bowie K. Kuhn

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