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MR. GOLDBERG: Mr. Marvin Miller, your Honor.

THE COURT: Let there be order in the courtroom. It is our practice to have everyone sit, including counsel, while the witness is being sworn. That is one of our practices that I hope you will understand.

MR. GOLDBERG: I surely do.

M A R V I N J. M I L L E R, called as a witness by the plaintiff, having been first duly sworn, testified as follows:

THE COURT: Justice Goldberg, do you mind if I say a word or two to the witness before you begin?

MR. GOLDBERG: Surely.

THE COURT: Mr. Miller, you are one of the attorneys here?

THE WITNESS: No, your Honor.

THE COURT: You are not an attorney?

THE WITNESS: That is correct.

THE COURT: All right. I was going to make an appeal to you if you were an attorney to establish a record that would offset what we have heard so often, and that is that a lawyer makes the worst witness, but I don't have to say that to you.

All right, Justice Goldberg.

1
2 DIRECT EXAMINATION BY MR. GOLDBERG:

3 Q You will state your full name, please.

4 A Marvin J. Miller.

5 Q And what is your occupation?

6 A I am the executive director of the Major League
7 Baseball Players Association.

8 Q And I hope you will heed the Judge's wise counsel
9 and speak up so that the back of the courtroom can hear you.

10 A I am trying to.

11 THE COURT: I notice that the only time you speak
12 of my counsel being wise is when it relates to the witness
13 speaking up. I haven't heard any such appellation with
14 regard to anything else that I have uttered.

15 MR. GOLDBERG: The rule of exclusion does not
16 apply.

17 THE COURT: Judge and gentlemen, I hope you will
18 tolerate this attempt at levity once in a while. It
19 relieves me, and while you are not allowed to do it your-
20 selves, tolerate me in that respect.

21 All right, Judge.

22 Q What was your education, background and experience
23 before you became executive director of the Players
24 Association?

25 A I have a Bachelor of Science degree in economics.

1 For a period of approximately eleven years I
2 was employed as an economist for various agencies of the
3 Federal Government, and from 1950 to 1966, the next 16
4 years, I was employed by the United Steel Workers of America,
5 the first ten of those years as associate director of
6 research, the last six of those 16 years as assistant to the
7 president.
8

9 Q How long have you held your present position with
10 the Major League Baseball Players Association?

11 A Since July 1, 1966.

12 Q Where is the office of that Association, the
13 principal office?

14 A 375 Park Avenue, New York City.

15 Q Perhaps I should not have said principal.
16 Is that the only office?

17 A I am afraid so.

18 Q Can you describe to his Honor, Judge Cooper, what
19 the Major League Baseball Players Association is?

20 A It is an organization composed of the Major
21 League Baseball players, coaches, trainers and managers.
22 It is an unincorporated association. It is a labor organiza-
23 tion within the meaning of the law.

24 Q And what are your duties as executive director
25 of the Association?

1
2 A Well, first and foremost, my duty is to represent
3 the best interests of the players in relation to their
4 employment conditions as employees. Now, as director of
5 the organization I have many functions. It is a constitution-
6 al organization. My basic role as director is set forth
7 in the constitution.

8 It provides that I am to carry out and implement
9 the policies of the Association.

10 Q You are referring to the constitution as you
11 describe it?

12 A Yes, sir. It provides that the executive director
13 shall maintain and direct the activities of the permanent
14 office of the Association and that between meetings of the
15 executive board, which is the policy-making group, the
16 executive director shall direct the affairs of the Associa-
17 tion and shall function on behalf of the executive board
18 subject to the approval of the board.

19 Now, it is a very small organization, especially
20 in terms of staff. There is only myself, full time counsel
21 and secretarial assistants, and therefore my duties are
22 many and varied. A large part of my time is spent in
23 coordinating the needs and interests of the players through
24 collective bargaining, to learn from the players what their
25 problems are, what their needs and interests are, to serve

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as their chief negotiator in their relations with the owners and the owners' representatives, and also to serve the membership in terms of problems and grievances that arise under existing collective bargaining agreements.

Q And to renegotiate new agreements, I take it?

A Yes.

Q In the course of your duties as executive director, do you maintain contact with the players, with owners and with the Commissioner?

A Yes. First with the players, if I may just add a word here, it is one of the advantages of a very small organization. That advantage is that it enables one to know all the members.

For example, each year I hold meetings with each of the 24 clubs with all of the players present. In the less than four years that I have been in this job I have held seven such meetings. In other words, I have met with the entire membership a minimum of seven times.

In addition, I have much more contact with the executive board, which is composed of the elected player representative of each club. I see and talk with and write to such members very frequently all throughout the year.

1 The executive board itself meets three to four
2
3 times a year.

4 In addition, many, many players during the season
5 and sometimes in the off season, as they come through
6 New York, come to our office and talk to us about their
7 current problems, their ideas, their suggestions.

8 I also talk with coaches and trainers and
9 managers from time to time, former players.

10 You asked about contact with the Commissioner.
11 That is less frequent but there has been some contact with
12 this Commissioner, with the former Commissioner, and in the
13 course of negotiations and the handling of grievances and
14 arbitrations I have occasion to meet frequently with repre-
15 sentatives of management, League presidents, counsel for
16 the two Leagues, the employee relations adviser and with
17 others.

18 Q You mentioned that your staff is a very small
19 one, it consists of yourself, full time counsel and secre-
20 tarial help. Your counsel I take it is whom?

21 A My counsel is Mr. Richard Moss.

22 Q Will you describe, if you can, his background?

23 A. Yes. Mr. Moss has been with the Players Associa-
24 tion since January 1, 1967. Prior to that time he was
25 associate counsel of the United Steel Workers of America for

1 about six or seven years, as I recall. He is a graduate
2 of the Harvard Law School and I believe practiced privately
3 for a while, too.
4

5 Q Now, in your description of the activities in
6 which you have been engaged since you have become executive
7 director of the Association, have those activities continued
8 up to and including the present time?

9 A Yes.

10 Q And they are characteristic of what is going on
11 today in your Association with the various elements in
12 organized baseball that you have described?

13 A Yes.

14 Q Now, in the course of your duties as executive
15 director of the Association, have you been called upon to
16 make a study of the operation of the reserve system?

17 A Yes.

18 THE COURT: Yes is the answer. Next question.
19 Now you are beginning to act like the lawyer witness.
20 Intuitively I thought I had to say something to you.

21 THE WITNESS: You are right, your Honor. It is
22 catching.

23 Q Now, therefore, from that experience and your
24 study would you explain to the Court how the reserve system
25 operates in actual practice?

1 THE COURT: Now you can expand.

2 THE WITNESS: Thank you.

3 A Well, I am glad you --

4 THE COURT: No, no.

5 A It is true that in explaining how it operates
6 it must be explained as a system rather than as a clause,
7 because there is no such thing as a clause.

8 Players from the time they first want to be
9 professional baseball players begin to be affected by opera-
10 tions of the reserve clause system. For example, there
11 is something known as the so-called free agent draft. This
12 is a draft which is held twice a year and it is a draft
13 of players who have not yet signed their first contract.

14 Q Is this either in the major leagues or the minor
15 leagues or in both?

16 A In both.

17 Q This is organized baseball?

18 A Yes.

19 Q Does that encompass the minors and the majors?

20 A It does. Such would-be professional players
21 do not have a choice in terms of dealing with a particular
22 club or a group of clubs. When they are drafted, they are
23 told that there is only one club that they may deal with.

24 Q Before you go into that, would you explain to
25

1 his Honor what is meant by when they are drafted? What is
2 a draft system?
3

4 A At the two draft meetings which are held each
5 year there are names of players and a system of selection by
6 which each club in turn indicates what its choice is. Club
7 A may decide that its first round choice is John Jones.
8 The clubs pick in the first round on the basis of their
9 standing in their leagues. In other words, in one of the
10 drafts it is based on the standings at the close of the prior
11 season, with the last place clubs getting the first pick
12 and so on until the World's Series winner gets the last pick.

13 The other draft is held in somewhat the same
14 fashion but it is based on the standings as of a particular
15 date rather than the prior year.

16 Q Is that a particular date during the course of
17 the baseball season?

18 A Yes.

19 Q Do you remember what that date is?

20 A No, I do not.

21 MR. GOLDBERG: We will furnish it, your Honor,
22 for the record.

23 Q Starting with the first draft, and you will
24 explain whether the second one is different, do I take it --
25 and you correct me if I am wrong -- here is a baseball

1 player who aspires to enter organized baseball. Where would
2 he come from at that stage? He is a young player. Where
3 would he come from?
4

5 A He might come from a high school, he might come
6 from a college ball team, he might come from other types of
7 organized activity that is not considered organized pro-
8 fessional baseball such as an American Legion program, and
9 I believe there are others.

10 Q That type of activity would not be part of the
11 structure that is called organized baseball?

12 A That is right.

13 Q And then would you go on and explain what happens
14 then?

15 A A player who is so drafted is advised the name
16 of the club which is the only one that he may deal with.
17 The usual procedure then is attempted negotiation. The
18 club that has picked him would like to sign him to a contract.
19 The player at that point has only two alternatives. He
20 may accept what is being offered or he may decline in which
21 case no other club can approach him until the next draft
22 six months subsequently, at which time he can be drafted
23 again, but not by the club which drafted him first, and
24 which he refused to sign with.

25 Q On the second draft, what happens?

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1
2 A Really the same thing. Another club will draft
3 that player, and at this point he has the same alternative,
4 to sign on the club's terms or not play ball.

5 Q How long has the draft system, as such, been part
6 of the reserve system of organized baseball?

7 A This draft that we have been talking about, this
8 so-called free agent draft, is about four or five years
9 old.

10 Q Are you familiar with what happened prior to that
11 time?

12 A Yes.

13 Q Will you tell his Honor what happened prior
14 to this innovation four or five years ago?

15 A Prior to that time a player not being drafted
16 was perfectly free to solicit offers from any and all
17 clubs that he could and attempt to negotiate the best arrange-
18 ment that he could for himself. As far as I know, there
19 were no restrictions whatsoever because then such a player
20 really was a free agent.

21 Q I take it from what you have said that the
22 change was introduced four or five years ago?

23 A Yes.

24 Q Does that relate in any way to the so-called
25

bonus system in baseball?

A Yes, it does.

Q In what way?

A I am not expert on all of the aspects of the bonus system. One of the obvious ways that it has had an impact is that the bonuses paid to such free agent have fallen markedly in amounts ever since the draft was first instituted, for rather obvious reasons. Since the player who is now drafted has little or no bargaining power, it is to be expected that bonuses which are designed to make a player sign or get him interested in signing would fall under such circumstances, and that is precisely what has happened.

Q You have studied the figures on this as part of your duties as executive director of the Association?

A I have studied the available figures.

Q Those made available to you by whom?

A Made available to me by players, made available to me by the parents of some players, and made available to me by agents who have kind of entered this picture, agents of youngsters subject to the draft.

Q After a draft occurs, what happens then?

THE COURT: Every time you use the word "draft" you mean baseball draft?

THE WITNESS: Yes, sir.

A Well, if the player eventually signs a contract with the club that drafted him, from then on he is the property of that organization. He signs a contract which in some cases is a major league contract such as has been described here, or he might sign a minor league agreement, which has certain differences but not significant ones with regard to the reserve rule system, as such.

Having signed such a document, he becomes property, his contract can be assigned and reassigned, he can be optioned to play in other leagues with other teams, he can be sold, he can be traded. His alternatives in general are down to one. He may accept what is done or he may find another way to make a livelihood.

Q Can you explain to the Court how the various contract provisions that we have read into the record and the rules that have been introduced in evidence operate in actual practice with respect to this system?

A Well, I would start --

Q And please tell us what you are referring to to refresh your recollection in this respect.

A I have before me the basic agreement between the Major League Baseball Players Association and the clubs.

1
2 Contained in that agreement is a copy of the
3 Uniform Player's Contract, and I also have some notes of my
4 own next to certain paragraphs.

5 Q You have also access to the rules themselves?

6 A Yes.

7 Q And are those present with you to refresh your
8 recollection or would you like them before you?

9 MR. GOLDBERG: If your Honor will bear with me,
10 these rules are in evidence.

11 THE COURT: Certainly.

12 MR. KRAMER: May the record show the witness
13 has just been handed Plaintiff's Exhibit 6?

14 THE COURT: Yes, indeed.

15 Q Would you proceed then and the question is how
16 they operate in actual practice.

17 A I think basic to understanding this --

18 Q Will you lift your voice so we can hear you?

19 A Basic to an understanding of this is Rule 3(a)
20 in the Major League Rules.

21 Q This is the document which Mr. Kramer just referred
22 to?

23 A Yes.

24 Q What was that, Exhibit 6?

25 MR. KRAMER: Yes, Exhibit 6.

A Rule 3(a) basically provides --

18 pm

Q Rule 3(a) of what?

A Of the Major League Rules, basically provides that all of the players' contracts, the Uniform Player's Contract, must be uniform, it must be in a single form.

THE COURT: These are the rules promulgated by your association; is that right?

THE WITNESS: No, your Honor.

THE COURT: What rules are you talking about?

THE WITNESS: Your Honor, the Major League Rules are rules adopted by the clubs.

THE COURT: Yes.

THE WITNESS: Most of them exist and have existed long before there was a Players Association.

THE COURT: And that is what you are referring to now?

THE WITNESS: Yes.

THE COURT: Very well.

Q Would you refer to the pages so his Honor can follow it and counsel can follow it, too, please?

By the way, is this the 1976 edition that we are referring to?

A Yes, it is. Major League Rule 3(a) is found on page 512.

THE COURT: Thank you.

A Near the bottom.

Q What page is that?

A 512, near the bottom. In essence, it provides that all players' contracts must be in uniform form and it provides that no club shall make a contract different from the uniform contract or a contract containing a non-reserve clause, except with the written approval of the Commissioner.

Q May I interrupt you at this point. In your experience as the executive director of the association, do you have knowledge of the Commissioner ever approving a contract different from the uniform contract?

A No, I do not.

Q Please go on.

A I would like to refer to the uniform player's contract itself. Unfortunately, this is not found in the Blue Book.

THE COURT: Exhibit 6?

THE WITNESS: It is in Exhibit 6.

Q Is it similar to the contract that Mr. Flood signed?

A It is identical.

Q Identical?

A Except as to salary.

Q Salary?

A Right.

Q So that is in evidence. Can you refer to that contract to help you in explaining its operation? We will hand it up to you in just a minute. It has been received in evidence.

MR. KRAMER: It is Plaintiff's Exhibit 3, your Honor.

THE COURT: Thank you. Showing the witness Plaintiff's Exhibit 3.

MR. HUGHES: Your Honor, would you like a copy to follow?

THE COURT: No, thank you. Thank you very much, Mr. Hughes. I am going to enter a general objection on behalf of the public and the court with regard to these rules. The fine printing job is so tiny that it offers ample opportunity to complain and to say one needs perfect eyesight of a youth of 30 or 32, Mr. Flood, but anybody older than that would really have difficulty.

A Paragraph 10 --

THE COURT: Read slowly so I can follow you.

THE WITNESS: All right.

A (Resuming) Paragraph 10(a) of the Uniform Player's Contract is the one commonly referred to as the

reserve clause.

Q Is this a term used in the trade of baseball?

A In a kind of shorthand way.

Q The sport of baseball?

A In a kind of shorthand way. It actually is an option clause rather than a reserve clause. It provides that the club may tender a contract to a player on or before January 15th. For purposes of this discussion, it is the rest of that paragraph which is important. It provides that if there is no agreement between the player and his club by March 1st next succeeding that January 15th, then the club may unilaterally renew last year's contract simply by advising the player with a notice in writing within ten days of March 1st.

The club may place any salary figure it pleases in that contract renewal, except that it may not cut the player's salary by more than 20 per cent below the prior year.

Now, there is another rule which states that a player will not be allowed to play in a regular championship season unless he has signed a contract for the current year.

This means literally that a player not in agreement with the terms offered him receives a notice within ten days of March 1st advising him that he is again under

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contract under a one-year renewal and if he wants to play he must put his signature to that document which, in effect, gives another renewal right for the following year to the club to do the same thing.

So that into perpetuity, as long as the club is interested in exercising this option, the player has no say whatsoever in terms of what conditions he plays under, always bearing in mind he has the one alternative: he may decide to find a different way to make a living.

Q Now, does the contract that the player has signed have other provisions relating to the reserve system?

A Yes, sir.

Q And, if so, how do they operate in actual practice?

A Paragraph 5 of the Uniform Player's Contract provides that the player agrees that while under contract and prior to expiration of the club's right to renew this contract he will not play baseball otherwise than for the club, except for certain post-season games.

Now, under this provision, once he has signed his first contract, as long as the club never lets its option renewal lapse, he may never play for any other club.

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Q Now, before you leave that, you are talking now about a man who has signed one contract.

A Just one.

Q Let us go back for a moment so we can all be clear, including counsel, about the man who has been drafted the first time, signed a contract and is subject to the second draft. If that man, a newcomer to baseball, does not sign the second contract tendered to him by the second club that drafted him, what is his alternative, actually the way it works?

A I am not certain. I believe that the same procedure would follow. That is, he could be subject to a third draft, but I am not certain.

Q We will explore that later. Now, take the man who has signed his first contract and pursue it further.

A Paragraph 5 also impinges in terms of the player's ability to make a living. It does not just provide that he cannot play baseball, he cannot play any other sport. That is, he agrees in that paragraph that he will not engage in professional boxing or wrestling and that except with the written consent of the club he will not engage in any game or exhibition of football, basketball, hockey or other athletic sport.

Now, both of those provisions run further than the

season. That is, these prohibitions hold not only while he is under contract, but also when it is prior to expiration of the club's right to renew the contract. So that, let us say, having signed a contract in 1969, and the 1969 season is over, the interpretation given this is that as you get into 1970, if it is before March, for example, these prohibitions, it is said, hold.

Q By whom?

A Well, we have had an arbitration decision by the Commissioner which has said that in the case of a player who was fined for playing basketball in the winter, and the clubs argued that this provision meant that this was an absolute prohibition, he did not get permission of the club, and even though his contract for that season was over, the club's right to renew the option had not yet expired, and therefore the prohibition held, and the arbitrator, in the form of the Commissioner, the former Commissioner, upheld the clubs.

Q Now, you referred to Section 6 of the contract. Is this related to any of the rules as they operate?

A Paragraph 6 provides that the player agrees that this contract may be assigned by the club and reassigned by any assignee club to any other club in accordance with the major league rules and the professional baseball rules.

I apologize for the long-winded answer. The answer

is yes, there are a whole series of rules in the major league rule and the professional baseball rules dealing with the assignment of contracts.

Q Do you recall which rules specifically relate to this?

A No, I don't.

Q Would I refresh your recollection by pointing to Rules 8 and 9? And I am referring to the Major League and Professional Baseball Rules.

A I have it in front of me. There are some of the rules dealing with the assignment of player contracts. They are not the complete rules.

Q Now in looking at the rules, and again in operation of the rules, do they require the consent of the player to an assignment of his contract except for Rule 9F which deals with veterans?

A No, they do not.

Q And are you familiar, do you recall 9F?

A Yes.

Q Applying to veterans?

A Yes.

Q And how does that operate?

A 9F provides that once a player has eight years of major league service --

Q A veteran, is that correct?

A A veteran, he is called a veteran -- he may not be optioned to a minor league without his permission.

Q He may be optioned to a major league but not a minor league?

A Well, the word "optioned" is not used between Major League Clubs. His contract may be traded or sold. He may not be optioned between Major League Clubs.

Q Now, there are other rules which relate to the subject which operate in connection with the so-called reserve system.

Can you, for example, look to Major League Rule 2 and tell us how that operates according to your best recollection?

A Major League Rule 2 deals with a number of subjects. I think the most relevant one, the relevant part of it has to do with the establishment of so-called player limits; the maximum number of players that a team may reserve, the maximum number of players that there may be on the active roster for particular periods during the season, and there are comparable rules dealing with player limits for minor league clubs in another document.

Q While you have the rules before you, you may help my recollection. Is their language in that rule referring

to who has title to the player?

A Yes. That is the way it is described. It starts by saying, "Since the supply of skilled players is not equal to the demand, the Major League Clubs shall not have title to more than 40 player contracts," and then there are certain exceptions indicated.

Q Now, directing your attention to Rule 4A, how does that operate? In each case I want to know, for the edification of the Court and all of us, how it actually works.

A Rule 4A deals with, as its heading indicates, contracts with new players. It really sets forth --

Q Are we referring to the same rule? I am referring to the professional baseball rules, because there are several.

MR. HUGHES: May I suggest that there may be confusion. There is a Rule 4 and there is a Rule 4A.

MR. GOLDBERG: Which is the next one.

MR. HUGHES: Is that the one?

MR. GOLDBERG: Yes, that's the one.

MR. KRAMER: Page 525.

A Rule 4A of the Major League Rules deals with the reserve lists. Basically, in the case of a major league club, each club is allowed to reserve title to no more than 40 players. The reserve list is that list of named players. Those lists are circulated among the clubs and no club may

deal with a player that is not on its own reserve list, no player may deal with a club on whose reserve list he is not, either concerning present employment or prospective employment at any time.

Q Mr. Hughes referred to the tampering rule, which I take it is Rule 3G. Would you refer to that rule and describe to the Court tampering means and how it operates in actual practice?

A Well, the most obvious type of tampering would be a violation of the rule I just indicated. That is, a player not on the reserve list of a club is approached by or approaches that club to discuss with him possible employment, either present or prospective, and that would be considered tampering. It is subject to penalties which are fixed in various ways.

THE COURT: Well, subject to penalties would be enough for our present purposes.

MR. GOLDBERG: Yes.

THE COURT: Next question.

MR. HUGHES: Your Honor, may we have the answer to that question be read?

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

(Answer read.)

Q Now, would you explain again, from your experience and knowledge of the practice, how is this system, this reserve system collated from the various provisions enforced?

A Well, a player who would violate the no tampering rule, to put it bluntly, would be blacklisted. To my knowledge, there have not been recent cases. I guess the most recent case -- I am not sure it is quite in point -- but those players who really left the reservation, that is, during the middle 1940s, who went to Mexico, even though they were on the reserve list of clubs here and who played in Mexico, some were blacklisted; at least one ended up in a court case.

Q What is the meaning of a term which I understand is used in baseball of a restricted list and a disqualified list? Are those terms which are commonly employed?

A There are specific lists known as the restricted list and a disqualified list. A player who fails to report can be and is placed on the restricted list. A player who violates his reservation can be and is placed on the disqualified list.

Q And what does this mean?

A It means that he cannot play for any club in organized ball.

Q Major leagues and minor leagues?

A And Japan.

1
2 Q Are they part of the organized player system?

3 A Yes, sir.

4 MR. GOLDBERG: I didn't realize, your Honor, that
5 internationalism had flourished that far.

6 Q Now, you have mentioned that you have spoken with
7 many players about the operation of the reserve system, and
8 I take it from what you have said it is part of your duties
9 as their representative in collective bargaining to ascertain
10 their views.

11 A Yes.

12 Q Have you recently done so?

13 A Yes.

14 THE COURT: Yes is the answer.

15 Next question.

16 Q And how widespread were your consultations?

17 A This matter was discussed at --

18 THE COURT: No, please, you must answer the question.
19 How widespread?

20 A With all the players in 24 meetings this spring.

21 THE COURT: There is the answer.

22 Next question.

23 Q And from those conversations can you tell the Court
24 what has been their attitude toward the reserve system?

25 MR. HUGHES: Your Honor, I object to that on several

grounds.

It seems to me that this witness has the competence to state his own views with reference to the reserve system, but I don't think that he has the competence to synthesize and express the views of several hundred baseball players. In addition to all of that, I call attention to the fact that it seems to me we are getting into an area which involves the collective bargaining process and I believe that facts and figures and information of this kind more properly are adduced in the give and take of a collective bargaining negotiation, and for all of those reasons I object to the question.

THE COURT: Justice Goldberg, would you like to respond?

MR. GOLDBERG: Very briefly. Mr. Hughes cross examined very extensively in this area, and therefore in my opinion the subject is now appropriate for investigation by our side.

THE COURT: It is subject to investigation, except that you are attempting to get this witness to sum up out-of-court reactions of hundreds of persons who are not here to be cross examined and who are not here to be confronted with testimony. No, these are off-the-record comments by others. That I think is the danger of it and I must, and I am compelled, as I understand the law of evidence, to sustain the objection without, however, limiting you to going into this

general subject.

Q Now, in your opinion, Mr. Miller, what is your own view, based upon your own expertise in the area, of how the reserve system operates today to affect baseball players and their profession?

A In my own opinion I think it is unnecessarily and unduly restrictive. I do not believe that you can operate without rules. It is quite clear that you need rules and you need rules relating to the contracting of players with employer clubs, but I do believe that the set of very tight restrictive provisions which currently exist are unnecessary, can be modified in a manner that would preserve the interest of the club owners, the players and the fans.

Q Have you had occasion in this connection to study the operation of rules and contracts used in other professional sports?

A Yes.

Q Would you describe the reserve system as it exists in, say, professional basketball?

MR. HUGHES: Now, your Honor, before this witness goes into this area I think it is appropriate that either Justice Goldberg or perhaps myself, if I am allowed some preliminary questions, explore his expertise in this area before he is called upon to give his explanation, as I under-

stand it, of what the rules and regulations in other sports are and how they in fact operate.

THE COURT: I should think so, but let me ask Justice Goldberg: Is this whole line of inquiry imperative, in view of the fact that there may be so many factors that are responsible for their operation in one enterprise as distinguished from another? You are going to open up no end of discussion as to why a rule works well with one enterprise and doesn't with another, and then you would have to explain that in the greatest detail.

Now, you have thought these things out. You are both extremely competent, highly regarded attorneys, and we are complimented in having you, and I must lean on you, as we always should. A Judge has to look to counsel. I presume you have given this a great deal of thought, and do you think you must go into it?

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2 MR. GOLDBERG: I shall explain why, your Honor.
3 You will recall some of the discussions we had when you
4 settled the pleadings for us. Among the discussions we
5 had were that the rule of reason ought to apply instead of
6 the per se determination as a fall-back position of my
7 adversaries.

8 You will recall first they said under Toolson, and
9 so on, that they thought there was no necessity for a trial.
10 Then they said it had to be an extensive trial because the
11 rule of reason would then be a fall-back position.

12 Now, we are dealing with professional sports, and
13 what takes place in other professional sports is relevant,
14 therefore, to the position that has been asserted.

15 How do you explore then the rule of reason? You
16 look through analogies in other sports -- and certainly the
17 witness may be cross examined, other witnesses may be pro-
18 duced to determine the similarities and the differences --
19 and as far as the expertise, we have qualified a man who has
20 now devoted several years of his life to the conduct of re-
21 presenting professional sportsmen.

22 And I could ask another question. I said, "Are you
23 familiar." I could expand it.

24 THE COURT: Judge, I understand then that you are
25 resolved to go into the comparison.

1 jwbr 2

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2 MR. GOLDBERG: I think it is very pertinent.

3 THE COURT: All right; that is what I wanted to
4 know.5 Mr. Hughes, I presume that you also regard this
6 as pertinent to the primary issues before me, this whole
7 subject of the comparison, or the analogies?8 MR. HUGHES: Well, your Honor, we did not raise
9 the question of similarities or dissimilarities between base-
10 ball and any other sport, but the question has arisen in the
11 course of the pretrial discussion.12 My position on this is that if, indeed, it is rele-
13 vant, then the burden is upon the plaintiff to show, first,
14 its relevance and the respects in which these other sports
15 are either the same as or vary from organized baseball.

16 My precise objection here is that --

17 THE COURT: I hate to interrupt you. I know your
18 precise objection and I am going to sustain it,

19 MR. HUGHES: Yes, sir.

20 THE COURT: The point is, I want to be mighty sure
21 that in going into this new area of a new enterprise that you
22 are both resolved that it is imperative that we do it. And
23 I gather that you find no good reason to oppose it.24 MR. HUGHES: No, I don't say it's imperative for us
25 to go into it at all.

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2 THE COURT: Yes, but I don't get any strong reaction
3 against it, frankly.

4 I am going to allow Mr. Hughes to conduct the
5 equivalent of a voir dire examination of the witness to test
6 out his expertise in the other fields.

7 t10/2 + MR. GOLDBERG: May I say just another word? Then
8 I will cheerfully relinquish Mr. Miller.

9 We also have court decisions from the Supreme Court
10 which are very pertinent in this area where the Supreme Court
11 of the United States has said, absent Toolson, studying these
12 other sports, we see no reason why there should be a differ-
13 ence of approach. And here we have authoritative pronounce-
14 ments by the highest court saying that the general operations
15 are such that they are similar institutions that they do
16 take judicial notice of.

17 So that on the question of his competence to talk
18 about other sports, if your Honor would like to hear from
19 Mr. Hughes, would you like to hear from him now?

20 THE COURT: I just want to test you both out. And
21 I am convinced that you think it properly belongs in the
22 record, and that's that. I do think he ought to be given an
23 opportunity, now that I am convinced that you are determined
24 upon your course, to test out the witness' qualifications
25 in this other enterprise.

1 jwbr 4

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2 MR. GOLDBERG: I could ask another question and then
3 I will cheerfully relinquish Mr. Miller.

4 THE COURT: Please do.

5 MR. HUGHES: Your Honor, may I just make one thing
6 clear -- I thought I had, but my colleagues seem to think
7 perhaps I hadn't -- but we don't regard this as a relevant
8 inquiry. We say if it is relevant, the burden is on them
9 to go into it, but we don't concede its relevance.

10 THE COURT: Very well. The record clearly shows
11 your position, and if, as I hear the evidence, I conclude
12 that there is merit to your contention, there is always the
13 motion to strike.

14 MR. HUGHES: Yes, sir.

15 THE COURT: We have no jury here and I won't hesitate
16 to strike out anything that doesn't belong and by training
17 disregard what doesn't belong.

18 Now, what is your question, Justice Goldberg?

19 Q My question is: In the course of your duties as
20 Executive Director of the Association, have you had occasion
21 and have you actually pursued an inquiry into how the reserve
22 system operates in other professional sports?

23 A Yes.

24 Q And having had that opportunity, can you explain
25 how, for example, it operates in professional basketball?

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2 MR. HUGHES: I object to that.

3 THE COURT: Objection sustained, with permission given
4 to Mr. Hughes to conduct a voir dire examination of this wit-
5 ness before we receive testimony relating to the last question
6 propounded by Justice Goldberg.

7 MR. HUGHES: Yes, sir.

8 VOIR DIRE EXAMINATION BY MR. HUGHES:

9 Q Mr. Miller, have you ever been connected in any
10 way, shape or form with any of the basketball leagues?

11 A Connected with?

12 Q Yes.

13 A I don't know what you mean by "connected with."

14 Q Have you ever been an officer of the National Basket-
15 ball Association?

16 A No.

17 Q Have you ever been a director of the National Basket-
18 ball Association?

19 A No.

20 Q Have you ever been a coach of the National Basketball
21 Association?

22 A No.

23 Q Have you, I repeat, in any way, shape or form ever
24 been connected with the National Basketball Association?

25 A Any way, shape or form?

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2 Q Yes.

3 A Yes.

4 Q In what way, shape or form?

5 A I have met frequently with the counsel for the
6 National Basketball Association Players' Association and
7 with basketball players for the express purpose of reviewing
8 with them how the reserve system works and is different
9 from that found in baseball, football and hockey.

10 Q Have you given us now the totality of the way, shape
11 and form in which you are connected with the National Basket-
12 ball Association?

13 A Yes.

14 Q Nothing more?

15 A Nothing more in the way of connection.

16 Q So that you have derived whatever knowledge you
17 presently have by reason of conversations with persons in
18 the National Basketball League or Association and players of
19 that Association; is that correct?

20 A No, it is not correct.

21 Q How have you come by the knowledge?

22 A In addition to meeting with them?

23 Q Yes.

24 A I have read the reserve rule, so-called reserve
25 rule, really the option clause, in the Uniform Player's

1 jwbr 7

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2 Contract and each of those clauses and I have talked with
3 player representatives who were familiar, for example, in the
4 case of football, with what playing of the option has meant,
5 what happens when a player played out an option, together with
6 their ideas as to why so relatively few people in football
7 have played out an option.

8 I have also learned, first, from reading about and
9 then asking the players and players' counsel directly how, for
10 example, is it possible for an Oscar Robertson to refuse a
11 trade, to learn that they don't have the same Uniform Player's
12 Contract provisions so that it's possible for a player to
13 negotiate certain terms and conditions for himself that do not
14 have to be approved by anybody except his club.

2 Q Are you finished?

3 A Yes, sir.

4 Q What you are telling us, is it not, is that all
5 the information you have gleaned is either from what players
6 or someone connected with one of these leagues has told you,
7 is that correct?

8 A Yes.

9 Q If I were --

10 A And from reading.

11 Q Reading what -- the player contract?

12 A Yes.

13 Q Anything else?

14 A No.

15 Q If I were to put the same questions to you
16 with reference to the -- is it ABA? Would your answers
17 be substantially the same?

18 A Yes.

19 Q If I put the same questions to you with refeence
20 to the National Football League, would your answers be
21 substantially the same?

22 A Yes.

23 Q And if I put the same questions to you with
24 reference to the National Hockey League, would your answers
25 be substantially the same?

1
2 A Yes. May I correct a prior answer?

3 Q You may.

4 A I have also had extensive conversations with
5 knowledgeable sports writers in these fields.

6 Q So that to the totality of your knowledge now
7 you are adding conversations with the gentlemen of the
8 Fourth Estate, is that correct?

9 A Yes.

10 Q So again it is something that somebody told you,
11 is that correct?

12 A Or something that I read.

13 Q Is there any other sport -- socker?

14 MR. GOLDBERG: Hockey.

15 Q Would the answers be the same in socker or
16 have you any familiarity at all with socker?

17 A None.

18 MR. HUGHES: I press the objection.

19 THE COURT: Mr. Goldberg, would you like to
20 amplify on the witness's qualifications?

21 MR. GOLDBERG: No, your Honor. I think he
22 has stated frankly what his qualifications are. I think
23 by tested rules they are adequate. They are subject to
24 cross-examination, as they have been.

25 THE COURT: Mr. Hughes, what do you say?

1 MR. HUGHES: I am sorry.

2 THE COURT: Will you read, please, Mr. Court
3 Reporter, what Justice Goldberg just said.
4

5 (Record read.)

6 MR. HUGHES: Of course I press the objection
7 because I feel that as a result of the answers of the witness
8 it is abundantly clear that he does not have expertise in
9 this area, that there are obvious and clear ways in which
10 this kind of testimony can be developed if the plaintiff
11 chooses to adduce it. There are primary sources, and
12 those are the appropriate sources. There isn't an area
13 as complex as this where secondary evidence, if I may call
14 it that, really hearsay compounded on hearsay, is the basis
15 for making comparisons between a sport like baseball,
16 with its enormously complicated structure, and the other
17 sports with their complicated structure and varying factors
18 that go into the reasons for their rules.

19 THE COURT: The keystone of the argument is really
20 the word "complications," and then, too, the seriousness of
21 the particular challenge to the reserve clause before me.

22 I would say that on that particular subject I
23 would, with all due respect to the witness, want someone
24 with a greater background of familiarity of every detail.
25 I am going to sustain the objection. I will receive the

evidence, but not from this witness on that score.

MR. GOLDBERG: We will have some witnesses, your Honor.

THE COURT: I gathered so.

BY MR. GOLDBERG:

Q Now, Mr. Miller --

THE COURT: May I say at this juncture, Judge, what is your pleasure?

MR. GOLDBERG: Your Honor's.

THE COURT: We can go on to five, we can stop now, we can go on for a little while. How do you feel?

MR. GOLDBERG: I can tell you that I will need about another fifteen minutes with Mr. Miller.

THE COURT: Is that agreeable with counsel?

MR. HUGHES: Yes.

MR. KRAMER: Yes.

THE COURT: Go on, Judge.

MR. GOLDBERG: Perhaps it might be a good way to close this aspect of the testimony and start afresh in the morning.

THE COURT: You don't have to bother saying that last part unless you are trying to lay a record to show I should be replaced or something.

MR. GOLDBERG: I thought perhaps it was directed

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2 to the question whether I should be replaced.

3 THE COURT: All right, Judge, go ahead.

4 BY MR. GOLDBERG:

5 Q You have negotiated with, as Mr. Hughes has
6 indicated, the major league team owners on behalf of the
7 Major League Players Association for several years now.
8 What currently, putting past history aside, has been their
9 response to alternatives for modifications to the reserve
10 system?

11 A Their response has been completely negative.
12 We have not to this day heard a single counter proposal or
13 a proposal for any modification whatsoever in any of the
14 various ramifications and rules that make up the reserve
15 rule system. The response we have received I think it is
16 accurate to say can be condensed as follows: The owners'
17 representatives have advised us that they like the system
18 the way it is and they do not feel that they want to change
19 it.

20 Q Now, Mr. Hughes also inquired about the pendency
21 of this lawsuit with respect to these negotiations. As one
22 who has been in charge of the negotiations for the players,
23 in your view does the pendency of this lawsuit prevent the
24 negotiation of modifications of the reserve system?

25 A No.

1 Q Now, you, I take it, as executive director
2
3 of the Players Association, have negotiated the pension plan
4 for Major League Ball Players?

5 A Yes.

6 Q Under the terms of that plan, is the fact that
7 Mr. Flood is not playing this year affecting his pension
8 rights?

9 A Yes.

10 Q In what respect?

11 A The plan, first of all, covers more than what is
12 commonly known as a pension plan. It is called a benefit
13 plan, and it consists of retirement benefits, which had
14 widows' benefits, life insurance and health care coverage,
15 among other things. By not playing, Mr. Flood, in the
16 case of retirement benefits, is losing twenty dollars a
17 month per year of service starting at age 50 for the rest
18 of his life.

19 Q Mr. Hughes also referred to conversations between
20 you and Mr. Flood prior to his bringing of the lawsuit.
21 Can you tell the Court when and where and what these con-
22 versations were about?

23 A The first conversation with Mr. Flood was very
24 close to the end of November. It was at the Summit Hotel
25 here in New York City. Present were Mr. Flood, Mr. Zerman,

his counsel from St. Louis, Mr. Moss, my counsel, myself and I think a gentleman whose name escapes me, a business adviser of Mr. Flood, from St. Louis.

Q And now would you relate the substance of these conversations as best you can recall it?

A Yes. Mr. Flood opened the conversation by advising that he had made a decision that he was going to file a lawsuit alleging that the reserve rule system was illegal and that he had made that decision and would shortly put it into play.

We spent, I think probably the next two hours, discussing this and the substance of what --

Q What did you say?

A -- -- of what I said was as follows: I said that I thought it was a most serious step to take. I thought that the risks for him were great. I tried to learn from him how much he had thought the problem through.

Q This is what you said to him?

A Yes, sir. I asked him if he realized that a case of this type most likely would take several years because it was highly unlikely that it would finally be decided until it reached the Supreme Court. I pointed out to him that in addition no matter how much merit there was in his case no one could give him assurance as to how it would

1
2 turn out.

3 I asked him if he understood that at
4 his age, which he told me -- he was approaching 32 at the
5 time -- that not to play for a year or two could well mean
6 that he would never play again, that it was therefore poss-
7 ible to win the case but never play.

8 I asked him if he understood that if he had any
9 ambition in terms of a front office job for baseball
10 management, that he would have to forget it because the odds
11 were that he would be blacklisted from such a job for such
12 an action. In short, I presented every negative reason I
13 could think of, and when I got through Mr. Flood advised
14 me that I had not told him anything that he hadn't thought
15 of before.

16 Nevertheless, I asked him to return to St. Louis
17 and at least think about the whole problem again before
18 he took action. That was the end of that conversation.

19 Q Now, Mr. Hughes has also talked as to the
20 financing of this litigation. Would you explain to his
21 Honor how you made arrangements of this type and with whom
22 you consulted about it?

23 A I consulted with the policy-making group of the
24 Players Association, the executive board, the elected
25 player representatives from each club. At a meeting in

1
2 San Juan, Puerto Rico, in mid-December, Mr. Flood attended
3 part of that meeting, explained his position to the executive
4 board, subjected himself to questions for an extended
5 period from the executive board, and after he retired from
6 that meeting the executive board made several decisions.

7 One was that they would support Mr. Flood's
8 case; (2), that they would assist him in his legal expenses,
9 (3), that all bills for legal expenses would have to be
10 approved by the executive board before any could be paid out
11 and that is the existing arrangement covering Mr. Flood's
12 legal expenses.

13 Q And since we have opened the area which I
14 thought might have been rather confidential of arrangements
15 with me, would you explain what you said to me and what I
16 said to you on this subject?

17 A May I ask at which meeting you are talking about?

18 Q When you talked to me reporting what the decision
19 was.

20 A My problem is we had two meetings.

21 Q Well either or both.

22 A At the most important one, the first one, you
23 advised me that you felt this was an important case in principle
24 that you did not want any fee or retainer, that if there
25 were expenses they would have to do with the usual expenses

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connected with a case on trial and with time charges based on actual time spent on the case.

Q And on the second conversation?

A At the second conversation you advised me that having read and having felt that some of the owners were getting some of the players to raise a row about money, that if that turned out to be the problem there would be no fees and no expenses whatsoever in this case, that they would not scare you out of this case.

MR. GOLDBERG: That is all.

THE COURT: Gentlemen, I think you recall my attempt at complimentary remarks at the very outset of today's proceeding. I reiterate them and thank you. If I have any fault to find with my own comments, it is that I didn't go further than I actually did. You have been very helpful. I thank you for your courtesy to one another and to me.

Yes, Mr. Hughes, did you want to say something?

MR. HUGHES: Only when your Honor was finished. I think it was a little unkind of me to say that. I assure you it was in good humor.

THE COURT: I am finished.

MR. HUGHES: I have here a letter which I think before the session breaks up I would like in some way to

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1
2 be made part of the record. I would like to show it. It
3 is a letter from Mr. Topkis to us.

4 (Counsel confer.)

5 MR. GOLDBERG: Your Honor, I have no objection
6 to this letter. This relates to the damages. We will
7 have plenty of time to put it in, and I also had a subpoena
8 served upon me today and I will enlarge upon this letter
9 so as to obviate the necessity of producing a lot of docu-
10 ments, which we obviously can not produce today, about
11 some outside expenditures. I have no objection to having
12 this go in.

13 MR. HUGHES: As I understand it, your Honor,
14 there is no claim for damages being asserted.

15 MR. GOLDBERG: Yes, there is.

16 MR. HUGHES: Then will you please clarify to
17 what extent.

18 MR. GOLDBERG: At an appropriate time.

19 MR. HUGHES: If that be so --

20 MR. GOLDBERG: We certainly claim damages for
21 loss of his salary. We said in our complaint if an injunction
22 would not issue making him play, we would assert a claim
23 for damages. This relates to his photographic studio.

24 MR. HUGHES: Do I understand no claim is going
25 to be made for damages to his studio business?