

AFTERNOON SESSION

2:30 p.m.

(Discussion off the record in the robing room.)

(The following occurred in the robing room.)

THE COURT: Let the record show that there has been an informal discussion here with respect to admitting into evidence D for identification. I think the record may already reveal that we received from Mr. Kramer toward the close of last week, I think it was Thursday, a memorandum of law supporting his position that D for identification should be accepted.

Mr. Topkis wants the record to show that the plaintiff objects to the admissibility into evidence of D for identification.

It has been held by the First Circuit in an opinion authored by Judge Magruder that:

"The official report of a legislative or Congressional committee is admissible in evidence in a judicial proceeding as an exception to the hearsay rule where the report, within the scope of the subject matter delegated to the committee for investigation, contains findings of fact on a matter which is in issue in the judicial proceeding."

(Stasinkevich versus Nicholls, 168 Fed 2d 474, First Circuit,

1948).

There, as here, ultimate findings made by Congressional committee in its report were sought to be introduced. That Court held such ultimate findings properly admissible in evidence. At the same time -- and I emphasize this -- Judge Magruder took care to caution against an uncritical or wholesale adoption of such findings of a legislative committee in a judicial proceeding, writing as follows:

"Though the Court may receive the report in evidence or may take judicial notice of its existence and contents, this does not mean that the Court must accept the findings in the report as indisputable truth. The findings are mere evidence of the facts asserted. The credibility of such evidence will vary according to the thoroughness and impartiality with which the committee conducted its investigation, the fairness of its procedure, the fullness of opportunity is afforded accused individuals or organizations to develop their side of the story, and, of course, the other party may introduce evidence tending to prove the contrary of the facts asserted in the official report."

We see much wisdom in the cautions expressed by Judge Magruder and contemplate its applicability right here.

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1  
2 other side that such a confrontation is going to take place,  
3 no opportunity for the other side to look into the background  
4 of this report to see who were the witnesses, to see whether  
5 or not some of the criteria that Judge Magruder points up or  
6 met, and on the whole I must say that while I am dutybound  
7 and have no alternative but to recognize that that is the  
8 law of the case with respect to this particular Exhibit D for  
9 identification, I must say that I take the report with cer-  
10 tain misgivings as to how much reliability I can place upon  
11 its contents.

12           Accordingly, putting aside, as we must and is our  
13 duty, our personal inclinations -- no one solicits them, no  
14 one is concerned with them, but I am human and I put upon  
15 the record my reactions for what they are worth -- I must ac-  
16 cept D for identification into evidence and adhere to the  
17 opinion of the First Circuit.

18           Mr. Clerk, mark D for identification into evidence  
19 as an exhibit.

20           (Defendant Kuhn Exhibit D received in evidence.)

21           MR.TOPKIS: I want to say only this, your Honor,  
22 that in the light of your Honor's ruling on D for identifi-  
23 cation, I would ask the Court to receive in evidence the full  
24 text of the Celler Committee report, similarly a report of  
25 a Congressional subcommittee inquiring into the matters of



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organized baseball. I would think it every bit as admissible as the Hart Committee report, and recognizing your Honor's misgivings, I would think they would apply to either document.

MR. KRAMER: If your Honor please, could we respond to that tomorrow after we have time to think about it?

THE COURT: Certainly.

May I inquire whether there is any additional information with regard to the witness Veeck?

MR. TOPKIS: Yes, your Honor. I should have called that to your attention earlier. I spoke with Mr. Veeck yesterday afternoon, and, in the light of the hoped for acceleration that Mr. Hughes mentioned, I asked him if he could testify next Wednesday. I asked him also whether he could testify next Tuesday. He told me he had a commitment to speak at both lunch and dinner on Tuesday but that he could testify on Wednesday. He promises me that he will be available here at 10 o'clock next Wednesday, which I suppose is June 10th.

THE COURT: Thank you. I am so glad because, as you know, from the very outset I have been anxious that all witnesses that either side sought should be made available and if they didn't respond I wanted to use our offices to help you effectuate that goal. I was disturbed about whether or not this would result in Mr. Veeck staying away -- by this I mean the change in dates -- and I am glad it has been

resolved.

Tell him we shall take his testimony Wednesday morning regardless of whether all the evidence is in or not.

MR. TOPKIS: I shall do so, your Honor, and thank you for that.

THE COURT: I will try to place it, of course, in its proper position, not use it except as rebuttal.

MR. TOPKIS: Of course, your Honor. We thank you.

THE COURT: Is there anything else? In other words, suppose we are through with all the evidence by Monday or Tuesday. I am for the proposition that we keep the case open and not close the testimony until we have heard from witness Veeck.

MR. TOPKIS: That will be very kind of your Honor.

THE COURT: Please tell him that definitely has been arranged, and I am arranging my schedule and possibly inconveniencing counsel, and so forth.

MR. TOPKIS: I will advise him so immediately, your Honor.

MR. KRAMER: Your Honor, I would also like to reserve, if I may, the question whether, in view of your Honor's ruling on Exhibit D, I need to call the witness Kuhn back. I don't think I will have to, but I would like to think about that.

2 THE COURT: Please remember this, and this goes for  
3 all of you. You have done an excellent job. You are human  
4 and you may forget things and, as evidence develops, something  
5 may suggest itself that didn't occur to you before, and I want  
6 you to count on this, that I shall support any application  
7 by anyone to recall any witness.

8 MR. KRAMER: Thank you, your Honor.

9 THE COURT: Thank you, gentlemen.

10 (In open court.)

11 VAUGHAN P. DEVINE, resumed.

12 THE COURT: Please continue, Mr. Topkis.

13 MR. TOPKIS: If your Honor please, the plaintiff has  
14 concluded his cross examination of Mr. Devine.

15 You may inquire, Mr. Hughes.

16 REDIRECT EXAMINATION BY MR. HUGHES:

17 Q Mr. Devine, just one or two questions. In the course  
18 of cross examination you were questioned about the player  
19 contracts of Richie Allen and player Carlton -- I don't know  
20 what his first name is -- Steve Carlton, and I understood you  
21 to say that after the 10-day notice was sent out that Mr.  
22 Allen was playing under the renewal provision of the former  
23 contract.

24 Do you want to correct that statement?

25 A Yes. Allen actually is playing under a contract



which he signed after the renewal notice, just as Carlton is.

Q Is that also true of Carlton?

A Correct.

MR. HUGHES: I have no further questions.

THE COURT: Mr. Kramer?

MR. KRAMER: No, your Honor.

THE COURT: Anything further, Mr. Topkis?

MR. TOPKIS: No.

THE COURT: You are excused, Mr. Devine.

(Witness excused.)

THE COURT: Something occurs to me. Would you step up for half a moment.

It is all right, Mr. Court Reporter.

(Discussion off the record at the side bar.)

THE COURT: I used the word "cricket" to get away from the issue right in front of me.

MR. HUGHES: Your Honor, the defendant clubs and leagues call as their next witness Mr. Joe Garagiola.

J O S E P H      H E N R Y      G A R A G I O L A, called as  
a witness by the defendants, having been first duly  
sworn, testified as follows:

THE COURT: Do you always have a smile like that?

THE WITNESS: Yes, always.

THE COURT: That is a blessing.