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2 J O H N J. M c H A L E, called as a witness by
3 the defense, having been first duly sworn, testified
4 as follows:

5 DIRECT EXAMINATION BY MR. HUGHES:

6 Q Mr. McHale, where do you reside?

7 A I reside in West Palm Beach, Florida, and Montreal,
8 Quebec, Canada.

9 Q What is your present occupation?

10 A I am president and chief executive officer of
11 the Montreal Expos.

12 Q Would you tell his Honor briefly what your educa-
13 tional background is?

14 A I attended grade schools and high schools in
15 the city of Detroit. I attended the University of Notre Dame,
16 entered the Navy, attended Central Michigan College, Univer-
17 sity of Detroit, and Northwestern University in the Navy,
18 graduated later from the University of Notre Dame.

19 Q While at Notre Dame, did you play football?

20 A Yes, I played on the football team.

21 Q What position?

22 A I was a center in 1940.

23 Q Varsity center?

24 A Yes.

25 Q And did you play baseball there as well?

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2 A And the Braves. I looked after the whole opera-
3 tion, the operation of the baseball end and the stadium
4 end, the business end. I signed the players and was
5 responsible for the fiscal or the economic health of the
6 ball club.

7 Q Did your duties embrace general supervision over
8 the farm systems of the two clubs?

9 A Yes.

10 Q Did I understand you to say you also had re-
11 sponsibility for negotiating and signing player contracts?

12 A Yes.

13 Q Now, there came a time when you acquired an
14 interest in the Montreal club, is that right?

15 A That's right.

16 Q Can you fix the time, approximately, when you
17 acquired that interest?

18 A August 14, 1968, was the day that the partners
19 assembled in Montreal and finalized the problems of putting
20 together a group to operate the Montreal Expos.

21 Q And were the Montreal Expos an expansion club?

22 A Yes, they were a new club in the National League.

23 Q What was to be the first season they played?

24 A The first season was 1969.

25 Q What was the form of ownership? Was it some

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2 form of partnership?

3 A Yes. I went to Montreal as a representative
4 of the National League to try to straighten out, as it were,
5 the problems that were existing there. As you recall, the
6 franchise had been awarded to the city of Montreal, and
7 the ownership was pretty hazy at the time, and the president,
8 Warren Giles, asked the Commissioner at that time, William
9 Eckert, if I would go up and represent the National League
10 and try to determine who should be or who is the ownership
11 of this club. I became very impressed and interested
12 in the city of Montreal and had had an affection for Canada,
13 having spent summers in Canada while I was in Detroit, and
14 we were able finally to put together six public-spirited men
15 in Montreal who were willing to assume and invest \$10
16 million in United States funds, ten million, eight, in
17 Canadian, I might add, in this new venture and I became a
18 partner with them in this club.
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Q So that you were one of the group of six who became partners in this venture?

A Yes, I became a 10 per cent partner in the investment.

Q And for the investment that you say you made, what is it that you acquired with that particular investment?

A Well, we acquired the right to play baseball in the National League and to acquire under --

Q They call that the franchise, don't they?

A Franchise, and to acquire the players that the league formulated as a plan to stock these clubs.

Q So that the two assets, if I may call them that, were the franchise rights and the rights of the player contracts, is that correct?

A That's right.

Q And it was for those rights that you paid the sum of \$10 million, is that correct?

A Yes.

Q Now, in addition --

MR. TOPKIS: Excuse me, please. Could I have those last two questions read?

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

(Record read.)

Q Did you make any further commitment of funds in connection with the starting up of this expansion club?

A Well, we had no stadium when we went to Montreal, and that became quite a problem. We really went into partnership with the City of Montreal in converting a former amateur baseball stadium into what is now known as Jarry Park, and the partnership assumed all responsibility of improvements over \$3 million. That final figure has not been established, but I heard recently that our obligation is going to be close to another seven hundred to eight hundred thousand dollars in that plus our own improvements that we have made in the club houses, things of that kind that approximate another \$600,000.

Q When you acquired the club, of course, it had no farm system, did it?

A No. We had nothing except a great desire and spirit to do something about baseball for the first time outside of the United States.

Q Did you set about to establish a farm system?

A Yes. We started immediately to try to compete with the other clubs in the signing of ballplayers, and I think the last count we had about 80 ballplayers under contract in our minor league system.

Q In the first year, that is, last year, can you tell us approximately how much you spent in player development?

1 A Our player development figure last year, about
2
3 \$600,000.

4 Q And what do you contemplate spending on player devel-
5 opment this year?

6 A We have become larger. We have added two more clubs.
7 We are signing more players. We have a better position in
8 the draft, to draft top flight players, and I think our budget
9 this year is going to be about a million dollars.

10 THE COURT: You mean for that particular item?

11 THE WITNESS: Your Honor, for the whole player
12 development package, which is the minor league expense, scouts --

13 THE COURT: That is what I think you ought to tell us,
14 because I am sure everybody interprets that term the same, but
15 let us have it on the record. What do you understand by it?

16 THE WITNESS: Well, we lump it all together and call
17 it, your Honor, player development, which includes the cost
18 of operating minor league teams, the bonuses that are paid
19 to players, to sign them, the scouts' salaries and expenses.

20 THE COURT: Thank you.

21 Q Now, when you became a part owner of the Montreal
22 club, were you aware of baseball's reserve system?

23 A Yes, I was aware of it.

24 Q In fact, as a player you played in that system, is that
25 correct?

A Yes, that's correct.

Q And how many years, including your minor league years, were you an active player?

A Parts of eight years.

Q Now, will you tell us what you understand the nature of that reserve system is?

A I understand the reserve system to be the provision in the Uniform Player Contract, the professional baseball rules, the major league rules that give a club the exclusive right of the player's services while he is under reservation by a club.

Q When you acquired your interest in the Montreal club, were you aware of the legal status of organized baseball under the Federal antitrust laws?

A Yes, I had been in the game and in the offices of baseball during the Toolson case and was quite aware of where we stood.

Q What was your understanding of baseball's status?

A Well, the understanding I had was that the Supreme Court had upheld baseball's position insofar as the reserve clause was concerned and said that if there was going to be any change it should come from the Congress.

Q You are not a lawyer, are you?

A No, I am not.

Q Did you and your associates rely on your understanding of the status of organized baseball as you have described it in making the investment in the Montreal club?

MR. TOPKIS: Objection, your Honor.

I will have no objection to the witness answering as to his own reliance, but his testimony as to his associates' reliance I believe to be incompetent.

THE COURT: I agree with you.

Will you confine your answer to your own reliance, Mr. McHale.

Q Did you rely on your understanding of baseball's status in making your investment in the Montreal club?

A Definitely. I --

THE COURT: Definitely is the answer.

A Definitely, yes.

THE COURT: All right.

Q Now, did you talk about baseball's status --

MR. HUGHES: For the moment this calls for an answer yes or no.

Q -- with the partners in this Montreal venture --

MR. TOPKIS: Objection, your Honor.

Q -- prior to making this investment?

MR. TOPKIS: That is an irrelevant question, I believe.

THE COURT: Mr. Hughes.

MR. HUGHES: Your Honor, I think I am entitled to elicit as a prelude to another question on which there may be some further ruling, I am entitled to find out whether this witness discussed his understanding of baseball's status with his partners prior to making the investment.

THE COURT: Mr. Topkis, you want to say something?

MR. TOPKIS: Not if your Honor is prepared to rule. I don't think it is terribly important.

THE COURT: Yes, I am going to overrule the objection and take a yes or no answer, Mr. McHale.

A Yes, I did advise them.

MR. TOPKIS: May I ask, your Honor, that that be stricken, then, the word "advise."

THE COURT: Yes, I strike it.

Would you put the question again, Mr. Court Reporter. What was Mr. Hughes' question?

Just answer yes or no to it, if you can.

(Question read.)

A Yes.

THE COURT: Next question.

Q And in that conversation you said things to them, is that right?

MR. HUGHES: For the moment that calls for an answer

yes or no.

Q Is that right?

A Yes.

Q What did you say to them in that regard?

MR. TOPKIS: Objection, your Honor. I don't care what he said to them. If he advised them that baseball was immune from the antitrust laws, then that has relevance and conceivable relevance only if they relied on that advice, and he cannot testify to that. That being so, since the only relevant inquiry is impermissible, I submit that the question is irrelevant.

MR. HUGHES: Your Honor, I submit I am entitled to anything this witness said, and I am then entitled to elicit whether following those conversations the investment was made, and that is what I propose to do.

MR. TOPKIS: Oh, no, your Honor. If I may, your Honor --

MR. HUGHES: Well, "Oh, no," that is what I propose to do.

MR. TOPKIS: I was trying to express my position in shorthand. At length, then --

MR. HUGHES: Can we take this question by question, your Honor?

THE COURT: Yes, but he wants to throttle you at the

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threshold of your undertaking. He doesn't want you to get started on it, and he is right, let's listen to him.

MR. HUGHES: I know what he wants to prevent, yes, your Honor.

THE COURT: That is what he is here for.

MR. HUGHES: Yes, sir.

MR. TOPKIS: Your Honor, we know, of course, that we often prove reliance on a lawyer's advice by saying to a witness, "Did you consult your counsel, and don't tell me what he said to you, but then, did you rely on what he said in doing such and such."

But here we don't have that situation. We don't have any reason whatsoever for believing that these people, these nameless, faceless people up in Montreal relied on anything that the witness said to them. That being so --

THE COURT: What if they said to him, "Yes, we agree with you"?

MR. TOPKIS: It would be hearsay and inadmissible.

THE COURT: Yes, what do you want to say, Mr. Hughes, anything further?

MR. HUGHES: What I want to say is, regardless of what they said, I think I am entitled to have what he said, and thereupon to find out what they did.

THE COURT: Mr. Kramer, do you want to make any con-

tribution?

MR. KRAMER: Yes, your Honor. I don't know if it will be a contribution.

THE COURT: I wouldn't be soliciting it if I did not think there was a strong likelihood that it would be substantial.

MR. KRAMER: I am wondering --

THE COURT: If you want that remark stricken --

MR. KRAMER: Not at all, your Honor.

MR. TOPKIS: As I said once before, your Honor, engraved in gold.

MR. KRAMER: I am wondering, your Honor --

THE COURT: Now you have got to be good. Now watch your words.

MR. KRAMER: -- whether, in view of the shortness of life, Mr. Topkis doesn't want to give us a stipulation that this witness, if permitted to do so, would testify that he and his associates invested in the Montreal Expos in part in reliance on the Toolson case. I didn't know that he was going to dispute that.

THE COURT: Suppose you think about it and let me turn it over in my mind.

Can you fill up the next ten minutes with something else, Mr. Hughes, or would you rather not? I am soliciting

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your convenience now.

MR. HUGHES: I can go on for a few more minutes, your Honor.

THE COURT: All right. I have an idea that you will work it out. You have saved me on many other occasions a lot of concern by your splendid cooperation.

Q Now, for the time being, Mr. McHale, my questions are going to relate to you and you only and we will lay aside your partners.

I ask you would you have made this investment in the Montreal club if baseball did not have what you understood to be an exemption from the Federal antitrust laws of the United States?

MR. TOPKIS: That question has already been asked and answered, your Honor.

MR. HUGHES: No, it has not been.

THE COURT: I will take it.

A No.

THE COURT: Next question.

Q Did you -- and I am talking about you and not your partners -- consider that the Congress of the United States might at some time remove that exemption? Did you consider that possibility?

A I did not.

Q Now, based upon your experience as a player, as a general manager and as an owner or part owner of baseball clubs, in your opinion is the reserve system as you know it and understand it to be and have described it here, reasonable and necessary for the effective operation of organized baseball?

A I think it is, yes.

Q And will you tell his Honor briefly why you think so?

A Your Honor, I think the reserve system as it has been working has been reasonable and fair. I haven't found it creating unfairness or a great hardship on players I have dealt with. I think that for three reasons; first of all, I think of the fan. I think the fan has got to be considered in this, that a player builds up a great affection and following, and for that player to move freely of his own volition I think would be very difficult and hard on franchises. I think the player would suffer. I think he would not really make as good a deal as he thinks he would. I think the game would suffer and therefore the general welfare and the general health of the game would suffer and therefore I think eventually the players' salaries would not be as high.

And thirdly, I think the clubs would lose the financial stability that they have now. You would no longer at-

tract the strength of ownership, the financial backing that is required today to take this highly speculative game and stand behind it.

Those are my reasons.

MR. HUGHES: Your Honor, I think we have reached a point, if it is satisfactory to you.

THE COURT: Thank you.

We resume promptly at 2:15.

(Adjourned to 2:15 p.m.)

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2 JOHN J. McHALE resumed.

3 THE COURT: Please proceed.

4 Did you resolve that issue?

5 MR. HUGHES: No, your Honor.

6 THE COURT: The Court rules that it will allow
7 this witness to testify that he did talk with his colleagues
8 with respect to this enterprise before entering upon it,
9 but he can not disclose, of course, what they said to him
10 and we will allow him to answer yes or no to that question,
11 and also yes or no as to whether or not after that conversa-
12 tion these gentlemen with whom he was associated entered
13 upon the enterprise.

14 DIRECT EXAMINATION BY MR. HUGHES (continued):

15 Q I will therefore ask, Mr. McHale, whether you
16 discussed with your partners your understanding of the
17 status of organized baseball under the American antitrust
18 laws?

19 THE COURT: Yes or no.

20 A Yes.

21 Q And subsequent to that discussion did all of you --
22 you and your partners -- make the investment in the Montreal
23 club?

24 THE COURT: Yes or no.

25 A Yes.

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2 Q You have told us that one of the things that
3 you did was to start a farm system and you gave us the
4 figures, as I recall, of the approximate amounts you spent
5 and the approximate amounts you are projecting for this year.

6 In your opinion, is a farm system necessary
7 to the successful operation of a major league baseball club?

8 A Yes.

9 Q Will you tell us your reasons for that opinion?

10 A Well, it is the only way that you can be com-
11 petitive in baseball is to develop your own players. There
12 is no other source other than those that you seek out and
13 sign and develop, teach, and I think, if I may give an
14 opinion and call on some examples, the clubs that I was
15 with, the Detroit club, after World War II, after they had
16 canceled out their farm system during the war, it took many
17 years to get back and become competitive, and that is the
18 only way they became competitive is through their farm
19 system.

20 Another example is the Braves, and I think probably
21 more recent is the Mets. The success of the Mets really
22 came about through the young players they signed when they
23 were able to put it all together after a period of time.

24 MR. HUGHES: I ask, your Honor, that this paper
25 be marked for identification.

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THE COURT: Please do so, Mr. Clerk.

(Defendant Feeney et al Exhibit K marked for identification.)

Q You were with the Milwaukee Braves, Inc. in 1963, is that correct?

A Yes.

Q And did the Milwaukee Braves in that year make an offering of shares of common stock to the public?

A Yes.

Q In connection with that offering, did the Braves have what is known as a prospectus?

A Yes.

Q Is the document I show you, Exhibit K for identification, a copy of that prospectus?

A Yes.

MR. HUGHES: I offer in evidence, your Honor, Pages 7 through 11 of that prospectus.

THE COURT: Will you show it to Mr. Topkis.

MR. HUGHES: Yes, I shall.

MR. TOPKIS: Could we have an opportunity to study it at somewhat greater leisure and make our response to it at that time?

THE COURT: Certainly.

MR. HUGHES: Subject to your ruling on this