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Gaherin-cross

2 THE COURT: Do you have any objection to producing
3 such notes?

4 Let's resolve that in the first place.

5 MR.HADDEN: May we have a moment to consider the
6 question, your Honor?

7 THE COURT: Yes. I was wondering whether Mr. Topkis
8 would care to just leave that at this juncture and go to some-
9 thing else for the remaining time that we have before we
10 adjourn till Monday.

11 MR. TOPKIS: Your Honor, I can say in candor that
12 except for matters that I would want to inquire about in
13 connection with the notes, I am concluded.

14 THE COURT: Oh, fine. You just think about it and
15 I will await your pleasure.

16 MR. HADDEN: In the meantime, your Honor, may I
17 offer the missing exhibit? I now have a copy of one paper
18 which I was not able to lay my hand on in direct examination.

19 Do you have any objection?

20 MR. TOPKIS: No, of course not.

21 (Defendant Feeney et al. Exhibit R marked for
22 identification.)

23 DIRECT EXAMINATION BY MR. HADDEN (CONTINUED):

24 Q May I show you a document marked for identification
25 Exhibit R and ask you if that is the proposal received by

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the Player Relations Committee from the Players Association at the end of October 1969 in which they made their formal proposal for a change in the reserve system?

A It is, Mr. Hadden.

THE COURT: You offer Exhibit R in evidence?

MR. HADDEN: I do so.

THE COURT: Any objection, Mr. Topkis?

MR. TOPKIS: May I just run through it quickly, your Honor, while they are conferring?

THE COURT: Certainly. And we will go on until you are finished. You understand that. We will sit until you are finished with your cross.

MR. TOPKIS: Plaintiff has no objection to Defendant Feeney Exhibit R, your Honor.

THE COURT: Received in evidence. Will you mark it, Mr. Clerk, please.

THE CLERK: Yes, your Honor.

(Defendant Feeney Exhibit R received in evidence.)

THE COURT: Now, are you prepared to give an answer to the request for the notes?

MR. HADDEN: Yes, I am, your Honor.

It has been suggested by Mr. Topkis that in some fashion or other I was designated as an official recorder or reporter, by what procedure I don't know. That is not

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2 the fact. I was present as counsel for the Major League
3 Baseball Clubs. I made notes simply as a part of what I
4 believed to be my obligation to my clients. In the notes
5 are not only an attempt to summarize what transpired, but
6 there are also conclusions and notes to myself and I would
7 urge the Court that that is not a proper document to be
8 produced.

9 THE COURT: I don't think Mr. Topkis is calling
10 for that type of notes, unless I am mistaken.

11 MR.TOPKIS: I would not, of course, your Honor.

12 THE COURT: No, he is not calling for that, so the
13 answer is he has been misinformed as to the role you played
14 at that particular meeting.

15 MR. HADDEN: That is correct, your Honor.

16 MR. TOPKIS: Very well, your Honor.

17 THE COURT: Now, what about the other notes?
18 Do you want those?

19 MR.TOPKIS: Well, there seem to be no other.

20 MR. HADDEN: That is correct, your Honor.

21 THE COURT: No, I mean from the other side.

22 MR. TOPKIS: From Mr. Moss? I presume we are good
23 friends and if I want them I can have them.

24 THE COURT: I gathered so. I just want the record
25 to show that the good friendship exists.

MR. TOPKIS: I hope it will last a lot longer than that, your Honor.

THE COURT: I am sure it will.

CROSS EXAMINATION BY MR. TOPKIS (CONTINUED):

Q Mr. Gaherin, it has been suggested to me that there were not five or six meetings of this joint study, as you testified, but three. I don't mean, of course, to suggest anything other than a possible faulty recollection.

Is it possible that there were just three meetings?

A No. I think -- I would be almost positive to say there were more than three.

Q Do you have any notes of those meetings?

A Well, I probably have a diary somewhere of what I was doing on the particular days. I could flush it out, I guess.

Q But you have no notes of what was said at those meetings, or the positions taken by either side?

A No, particularly in the joint study, I did not make notes, and as a normal routine, in the negotiations, I find it pretty hard to make notes and keep your eye on the ball.

Q I will tell you, I have the same problem in court, so I can sympathize with you.

Now, you testified, I believe, Mr. Gaherin, in connection with Exhibit P, which was the letter of Mr. Miller,

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dated August 29, 1969, to you, the reopening notice, and which includes the proposed amendments and additions to the basic agreement of February 19, 1968, you testified in connection with that, I believe, that adjustments were made in the second basic agreement pursuant to each provision of Exhibit P.

Would you tell me, please --

A No, no.

MR. HADDEN: Mr. Topkis, I believe the question that I put to the witness was substantially all, or words to that effect.

THE WITNESS: Yes.

Q Well, there was nothing done about the reserve system, isn't that right?

A Yes, I think there was. Exhibit B is what we did about the reserve system.

Q Exhibit B for Baker?

A B for Baker of that piece of paper you have got, attachment B.

Q Oh, you mean the decision to put it on ice until the Flood case was over?

A Yes, but that is an agreement by the parties.

THE COURT: Now so that the record is clear, the witness is referring to what?

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MR. TOPKIS: The witness is referring, your Honor -- and thank you for calling our attention to this -- to Exhibit B to this document, Exhibit P, and not, of course, to Exhibit B in this case.

THE COURT: Thank you. I understand that. I want to be pretty sure, though, that we know what he is saying.

Would you be good enough to let me see that just for a moment? I am referring to B of Exhibit P.

MR. TOPKIS: It is not attached to the copy I have.

THE COURT: There it is. I have it.

MR. TOPKIS: Oh, I misspoke myself, your Honor. My friends called to my attention that it is Exhibit B to Exhibit N or it is attachment B to Exhibit N, and here it is (handing).

THE COURT: Yes, all right. Thank you.

MR. TOPKIS: May I have a moment to confer with my colleagues, your Honor?

THE COURT: You certainly may.

(Pause.)

MR. TOPKIS: If your Honor please, we have no further cross.

THE COURT: No further cross.

MR. HADDEN: One moment, your Honor.

THE COURT: Certainly.

(Pause.)

redirect

MR.HADDEN: One question, your Honor, which I may not be entirely within the scope of the cross on, but it was an omission on my part.

REDIRECT EXAMINATION BY MR. HADDEN:

Q During the negotiations, the recently concluded negotiations, Mr. Gaherin, was there a time when the Players Association's representatives offered to accept as a modification of the reserve system the football one-year option provision, including a provision under which the clubs might decide for themselves how a club from whom a player left on playing out of his option was to be compensated?

A Yes.

Q When was that?

A Approximately February of this year.

Q In one of the bargaining sessions?

A Yes. They detailed --

THE COURT: Wait. Don't add on. You are likely to open this up and we will stay here for another hour.

What else?

MR.HADDEN: That is the only question I had, your Honor.

THE COURT: All right. Anything else?

MR. TOPKIS: Could I put just one question, your

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Honor, in connection with what has just been asked?

THE COURT: Surely.

RE CROSS EXAMINATION BY MR. TOPKIS:

Q Mr. Gaherin, this proposal that you say was made, was it made in writing?

A No.

Q Who made it?

A Mr. Miller.

Q And did he say that this was one modification that the Players Association would like in the reserve system?

A Do you mean this was the only modification? Is that what you mean by "one"?

Q That's right.

A He did not say it in that context.

MR. TOPKIS: Very well. No further questions, your Honor.

THE COURT: Are we through with this witness? Mr. Kramer?

MR. KRAMER: Yes, we are through, Judge.

THE COURT: We are through. Very well.

You may step down, sir.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: Did you rise, Mr. Hughes, for any

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2 particular reason?

3 MR. HUGHES: No, your Honor. It was to try to find
4 a copy of an exhibit that belongs to me.

5 THE COURT: Well, gentlemen, I take it that you are
6 content to continue with the trial next Monday morning.
7 Nothing has arisen since we spoke yesterday that prompts you
8 to press for something to the contrary?

9 I do not hear anything at all from counsel, so I
10 assume that you are all in agreement.

11 Before we adjourn, I would like to say to these
12 young people that we are glad that you came. I am particularly
13 glad to have this opportunity to tell you that I don't remem-
14 ber presiding at a trial -- and I have been a Judge for over
15 thirty years, not only in this court but in other courts --
16 where issues involved in the controversy were so hotly contested
17 contested, and yet there has been no vituperation, no expression
18 of hate. Counsel are not acting. They believe in their re-
19 spective positions with all their might and main. They are
20 proceeding under the rules of law and are content to do so.
21 They are not giving in an inch with respect to their be-
22 liefs as to the merits of the case. They are getting the
23 witnesses to answer fully and completely, without anyone be-
24 ing cut off, so that the total is a record which reflects the
25 evidence as complete as possible.

Yet despite these enormous burdens which rest on counsel's shoulders, they have been gentlemanly to one another; they have translated into overt, tangible fashion the high order of advocacy, and they show respect for one another.

As a Judge I am very proud of the professional ability and the high order of the spirit of the profession which these gentlemen have brought to their mission. I think it is something of an answer to the contention so often advanced that the only way you can get your views heard or to be noticed is to club people into paying attention, and that the only way to get thoughts across is to be violent. That may bring a temporary result, but it will only be temporary.

Come again. You certainly have been a pleasure to me, and I wish counsel were able to have faced you the way I did.

You got them to raise their voices which I hadn't succeeded in getting them to do up to your coming.

I say that facetiously.

If that is all, gentlemen, I wish you all a very pleasant weekend. I hope the elements will be better to you than the past few days have indicated. You need rest, and I hope you will get it, and resume the battle Monday morning

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1645a

at 10:30.

Thank you again.

MR. TOPKIS: Pleasant weekend, your Honor.

(Adjourned to Monday, June 8, 1970, at 10:30 a.m.)

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