

not have available to us at the time of Mr. Kauffman's testimony.

THE COURT: I do recall.

MR. HADDEN: I simply wish to have the record reflect I have now produced the letter and given a copy of it to Mr. Topkis.

THE COURT: Very well.

MR. TOPKIS: That is correct, your Honor.

DIRECT EXAMINATION BY MR. TOPKIS:

Q Mr. Miller, when you testified earlier you outlined your educational and employment background, but there are a few particulars of it that I would like to go into at this time.

First, over how many years have you spent the major portion of your business life in the field of employer-employee relations?

A Approximately 27 years.

Q And have you been involved in different aspects of employer-employee relations?

A Yes.

Q Would you particularize your experience for his Honor?

A Your Honor, in the field of industrial relations I have been employed in various capacities, including

1
2 serving as a hearing officer for the National War Labor
3 Board, which had the responsibility of resolving most
4 major labor-management disputes during the World War II
5 period; experience as an arbitrator, having the responsibility
6 of making final and binding decisions in industrial
7 disputes; as a United States Commissioner of Conciliation
8 charged with mediating labor-management disputes; involved
9 with the training of commissioners of conciliation through-
10 out the United States; and as a negotiator in major dis-
11 putes representing employees for a considerable period of
12 time.

13 Q You say you have been involved in negotiations.
14 In what industries have you been involved in contract
15 negotiations?

16 A Your Honor, a partial list from memory would
17 include basic steel, aluminum, the other non-ferrous metals,
18 iron ore mining, copper, lead and zinc mining, metal
19 fabricating of various types from the production of nails
20 to the manufacture of Diesel locomotives, tank cars, street-
21 car and subway car manufacture, the rubber industry, canneries
22 and can manufacturing, forgings of various types, parts
23 of the textile industry, local transit, department stores,
24 bottling, container manufacturing industry, paper, paper
25 products, petroleum refining, electric utilities.

1
2 In most of these production and maintenance
3 employees were involved, but in many of them I represented
4 in negotiations both clerical, technical and professional
5 employees as well and, of course, in the last four years
6 I have represented major league baseball players, coaches,
7 trainers and field managers.

8 Q In the answer you just gave, Mr. Miller, did you
9 embody only your experience as a negotiator on behalf of
10 employees or did you also include those industries in which
11 you served as a conciliation commissioner, a hearing
12 officer or an arbitrator?

13 A The latter.

14 Q That is to say, you were covering the entire ambit
15 of your experience, is that right?

16 A Yes.

17 Q In addition to what might be described as the
18 usual type of contract negotiations, have you been involved
19 in any experimental work in the industrial relations field?

20 A Yes. I was involved in two rather extensive
21 experimental projects.

22 Q What were they, sir?

23 A One involved the Kaiser Steel Corporation. This
24 was a project which had as its purpose the creation of
25 what was called a long-range sharing plan. Its design

1 was to produce a formula which would insure the progress
2 of the company, its stockholders and the employees and
3 would also serve the public interest. It was a study which
4 took approximately three years. It was designed to meet
5 the then very seriously growing problems caused by tech-
6 nological change and it was to produce a formula for compen-
7 sation and sharing of the company's progress by building
8 a company-wide incentive to replace a complicated series
9 of individual and small group incentives which are charac-
10 teristic of the steel industry, and to at the same time
11 take into account changing price movements of the products
12 of the company and of the products it purchased, and of the
13 cost of living, and to provide a whole new mechanism for
14 employment stability, the theory being that no successful
15 incentive plan can exist unless the employees are assured
16 that they are not going to work themselves out of jobs.

18 Prior to this it had been assumed that as long
19 as you gave an employee more money for above standard work
20 that was all that was necessary in an incentive plan, but
21 as the technology became more and more complicated in terms
22 of displacement of workers, the theory of this plan was
23 that you had to provide employment security in order to get
24 maximum effort.

25 The plan was put into effect after three years

of study on March 1, 1963, and has had considerable success over these last seven years.

Q This was a study that was embarked upon by labor and management at Kaiser jointly?

A Yes. It had another novel feature. It was tri-partite. It had three distinguished public members as well.

Q I see. But the study was decided upon by joint action between the labor representatives and the management representatives at Kaiser Steel?

A Yes.

Q You said that you had been involved in two such experimental projects or studies. Would you briefly outline the other?

A The other one involved the entire basic steel industry, that is, the eleven major companies with the greatest capacity in the country. It grew out of a very unsuccessful labor-management experience running from about 1936 to 1959. In that 23-year period there were seven industry-wide strikes in the basic steel industry, culminating in the 116-day strike in 1959.

Out of that came a kind of joint determination to try something that would work better.

The idea behind it was to use the time between

1 contract terminations, that is, not wait until 30 or
2 60 days before a contract was about to expire before you
3 began to look into the problems that you were about to face.
4 Instead to begin to work on it immediately. If you had a
5 three-year agreement, that was to be considered a three-
6 year period in which you could address yourselves to your
7 problem.
8

9 Joint study committees were set up throughout
10 the industry. My primary responsibility was to coordinate
11 all of the study committees throughout the industry on
12 behalf of the Steel Workers Union, and these separate sub-
13 committees engaged in joint studies on some of the most
14 complex subjects in the industrial labor-management area.
15 Study committees on seniority --
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Q Excuse me, Mr. Miller, could you keep your voice up a little more?

A Subcommittees studying problems of seniority throughout the entire industry, job evaluation, incentives, scheduling, pensions, supplementary unemployment benefits, and if I could summarize the net result, it was that there has not been an industry-wide strike in the basic steel industry from 1959 until now, that is, there have been four successful contract negotiations in a row in the last decade.

I think prior to that time not more than two years had ever gone by without an industry-wide steel strike.

Q Mr. Miller, have you from time to time been called upon to lecture in the field of industrial relations at various universities throughout the nation?

A Yes, I have.

Q Could you just briefly tick off a few?

A Harvard, Princeton, Columbia, University of Pennsylvania, University of Pittsburgh, Carnegie Tech, Minnesota, Tennessee, Texas, Rutgers, UCLA.

Q Have you got one in the Great Northwest?

A I don't think so.

Q Has the government, the United States Government, from time to time called upon your expertise in the solution

2 of industrial relations problems?

3 A Yes.

4 Q Could you particularize briefly again?

5 A Well, in 1963 President Kennedy decided to appoint
6 a so-called expert committee of 12 to examine into some of
7 the causes of industrial relations problems and to advise
8 with the Director of the Conciliation Service and with the
9 President on industrial relations problems. I was appointed
10 by President Kennedy for a one-year term and served on that
11 panel called the National Labor Management Panel, and was
12 reappointed for a three-year term in 1964 by President
13 Johnson.

14 Q In your experience with these many different in-
15 dustries, Mr. Miller, have you found anywhere the management
16 did not assert that that industry was different from all other
17 industries, was in substantial measure unique?

18 A That was a common claim.

19 Q So that your experience in baseball, where according
20 to the testimony here, management contends that there are
21 unique circumstances which require unique employment practices,
22 that experience in baseball itself is not unique?

23 A Not at all.

24 Q And in your experiences in other industries, have
25 you found that the allegedly unique characteristics really

existed?

A Your Honor, I would have to answer it this way: There are, of course, unique characteristics in many industries, but whether they are unique in the sense that they require special practices, special exemptions, special protections under law is quite another question. I have not found such circumstances in any industry.

MR. KRAMER: Your Honor, I move the answer to the preceding question be stricken on the ground that it was not responsive to the question asked.

THE COURT: I will let it stand. Please try to confine your answers to the questions, but I will let that testimony stand.

Next question.

Q Mr. Miller, based on your experience, would you say that there has been collective bargaining in baseball as to the continuation of the reserve system?

A None at all.

Q When the first basic agreement was signed, that was when, sir?

A That was in February 1968.

Q Would you tell us, please, whether in signing that agreement you accepted the reserve system as it then stood?

A No, your Honor, we did not.

jkbr 4

Miller-direct

THE COURT: Next question.

Q You, however, did sign the agreement on behalf of the Players Association?

A We signed a basic agreement in February of 1968.

Q Did you make any statements in connection with signing that basic agreement re the reserve system?

MR. HUGHES: Now, are these statements to whom, and can we fix the time and place?

THE COURT: Yes.

MR. TOPKIS: Gladly.

THE COURT: Otherwise I would have to sustain an objection.

Q Did you make any statements to the representatives of baseball management to that effect, and if so, please tell the Court when and to whom you made such statements?

A Yes. Your Honor, there were two types of statements, one oral and one written. If I may take the written statement first, it appears in the basic agreement. It was an agreement to conduct a joint study on possible alternatives to the reserve clause as then constituted. It provided that the study was to be undertaken during the two-year life of that basic agreement, to be completed by its termination. The termination of the agreement as then written was December 31, 1969.

1 The oral statement was made at either the final
2
3 or next to the final negotiating session in trying to wrap
4 up the agreement as a whole, and it was to the effect that
5 we did not accept the reserve system as legal and that there-
6 fore we wanted the Player Relations Committee to know that
7 when we agreed on a clause, for example, which is a normal
8 clause, that we will do our best efforts to carry out the
9 provisions of the agreement, that they should know that the
10 reserve clause we considered illegal and therefore we could,
11 of course, not agree to use our best efforts to carry that
12 out.

13 Q Now, the first basic agreement, Mr. Miller, Exhibit
14 F in evidence, provides, as you stated, that there should
15 be a joint review of the reserve clause. The agreement
16 was signed in February of 1968, you say?

17 MR. KRAMER: Objection. I move that the words
18 "as you stated" be stricken because that is not what the
19 witness said. He called it a joint study.

20 MR. TOPKIS: Excuse me if I misspoke. I apologize.

21 THE COURT: Yes, but Mr. Kramer is right.

22 MR. TOPKIS: I apologize, your Honor.

23 THE COURT: Will you reframe it, please, Mr. Topkis?

24 MR. TOPKIS: Surely, your Honor.

25 Q The first basic agreement was signed in February of

1 jkbr 6

Miller-direct

2 1968, is that right?

3 A I am trying to think of the date of signature. It
4 is dated February 1968.

5 Q All right, that is satisfactory. Now, the agree-
6 ment calls, as Mr. Kramer tells me, for a joint study --

7 MR. KRAMER: No, it calls for a joint review.

8 Q It calls for a joint review -- that is what I thought
9 of the reserve clause, right?

10 A Yes, sir.

11 Q Now, did you have some meetings with the representa-
12 tives of major league baseball in conjunction with that study
13 or with reference to th-t study?

14 A Yes.

15 Q When did the first of those meetings take place?

16 A In April of 1969.

17 Q 14 months later?

18 A Yes.

19 Q Were there a number of such meetings?

20 A I believe there were a total of four meetings, the
21 first of which was to attempt to lay the ground rules for
22 the committee review.

23 Q At anytime in the course of those meetings did the
24 representatives of management ever come forward with any
25 proposal for modification of the reserve system in the

slightest degree?

A No.

Q Were there various proposals submitted by you?

A Yes.

THE COURT: Various proposals of what kind?

Q With reference to possible modification of the reserve system submitted by you?

A Yes, your Honor.

Q Did there come a time when the joint study or review ended?

A Yes.

Q When was that?

A I believe it was in the late summer of 1969.

Q Had agreement been reached on anything in the course of this review?

A Nothing that I can recall.

Q And that was the end of the review?

A Yes.

Q Did any report emerge from this review?

A If I may, your Honor, I had suggested the possibility of a joint report. The management representatives did not think that was a good idea in view of our lack of accomplishment. I did issue a report on behalf of the Players Association.

Q But no joint report emerged?

A That is correct.

Q Some months later, I think in late December of 1969, the news became public of a possible lawsuit by the plaintiff here, Mr. Curt Flood.

A Yes.

Q And at that time were there any discussions going on between you and representatives of baseball's management with reference to the reserve system?

A Yes.

Q In what context were those discussions being carried on?

A In the context of our joint attempts to negotiate a new basic agreement to replace that first one.

Q The first one being scheduled to expire December 31, '69?

A Under its terms. However, it, in fact, did not expire until later because a notice had not been issued by us.

Q So that there were discussions going on into the new basic agreement, is that correct?

A Yes,

Q And in those discussions, one of the subjects that you had under consideration was the reserve system?

A Yes.

Q Did you make proposals as to possible modification of the reserve system in those discussions?

A Yes.

Q Were any of them in the slightest degree accepted by representatives of management?

A No.

Q Did representatives of management come forward with any proposal whatsoever for modification of the reserve system in the slightest degree?

A No.

Q When the news of Mr. Flood's impending suit became available, did that news have any impact upon the discussions which you were having?

A No.

Q You were in court when Commissioner Kuhn and Mr. Gaherin testified?

A I was.

Q Did you hear them testify that, in effect, the news of Mr. Flood's suit brought discussion of the reserve system to a crashing halt?

A I heard it.

MR. HUGHES: I object to that.

THE COURT: Yes, crashing halt.

MR. TOPKIS: Excuse me.

THE COURT: Strike out "crashing" brought to a halt.

Q Brought to a halt?

A I heard it.

Q Does that testimony conform with your recollection?

A No, it does not, your Honor. There was no difference whatsoever in the nature of the discussions before it was known that Curt Flood intended to file a suit and after it was made known that Curt Flood intended to file a suit. As a matter of fact, there was not even any conversation between the parties concerning the news about the suit.

Q Did discussions about the reserve clause --

MR. HUGHES: Excuse me just a moment. For my benefit, are you now talking about conversations prior to the actual commencement of the action? Is that where we are?

THE WITNESS: Yes.

Q So there came a time when the action was commenced and that was in mid-January, right?

A Yes.

Q Did discussions go on between you and management relating to the reserve system after that date?

A Yes, indeed.

Q For how long a period?

A Until the second part of February, somewhere about February 19th.

Q And what happened then?

A At that point, with time running out in terms of the expiration of the basic agreement, the Players Association suggested that while it would be most desirable if we could work out appropriate amendments and appropriate revisions in the reserve rule system, that if we were unable to do that, for whatever reason, we suggested that the matter be put aside, outside of the basic agreement itself, but that proposal and discussion by us did not take place until on or about February 19th.

Q And was that the end of discussions of the reserve system, in substantive terms?

A Substantive terms?

Q I will make my question clearer. Did your discussions then of possible modification of the reserve system end and did you then go to discussion of a formula by which you would agree to lay the subject aside?

A Yes, but I recall there were several conversations at negotiating meetings in which we pointed out that if we were able to agree upon appropriate revisions that the plaintiff had made a commitment to the Players Association and had made it publicly, as a matter of fact, that he would withdraw his suit. This was said in response to the owners' representatives saying that there was no possibility of

1 talking about the issue since a suit had been filed.

2 Q When you say the owners' representative, whom do you
3 mean?
4

5 A I used the plural. I mean the members of the
6 Player Relations Committee with whom we meet in negotiations.

7 Q You said you were here when Mr. Gaherin testified?

8 A Yes.

9 Q Did you hear him say, in substance, that at a meet-
10 ing you said that if amendments to the reserve system were
11 included in the new agreement irreparable damage would be done
12 to this action, the action brought by Curt Flood?

13 A I heard him say that.

14 Q Was he accurately reporting your statement?

15 A It was completely inaccurate. It was quite the
16 reverse.

17 Q What did you in point of fact say to him?

18 A I said to him that if we could agree on appropriate
19 amendments there would be no Curt Flood suit because Curt
20 Flood had said whatever amendments were acceptable to the
21 players as a group he would accept and withdraw his suit.

22 Q Following that conversation or that meeting, were
23 you able to arrive at any amendments to the reserve system?

24 A No.

25 Q At any time during the entire history of your deal-

ings with the representatives of organized baseball, Mr. Miller, have those representatives proposed the slightest modification of the reserve system?

A At no time.

Q There was testimony, I believe, the other day as to a suggestion made that the reserve system's hold on a man end when he reached the age of sixty-five. Do you remember that?

A Yes.

Q Was such a suggestion made at a meeting between representatives of the Players Association and representatives of the club?

A Yes.

Q Approximately when?

A Some time in January of 1970, I believe.

Q Who made that suggestion?

A Jim Bouton of the Houston Astros.

Q Jim Bouton of --

A The Houston Astros.

Q He is a pitcher, a player?

A Yes.

Q Is he the player representative of the Houston team?

A No. He was in New York and it has been our practice--

THE COURT: You see, that doesn't help us.

1
2 A He is not a player in New York.

3 Q But he was attending the meeting?

4 A Yes.
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Q And he made this proposal?

A Yes.

Q In terms of the flow of that meeting, that is to say, from its beginning to its end, do you recall at what point Mr. Bouton made that suggestion?

A Yes. We had been meeting and discussing a number of subjects, including the reserve rule system. Approximately somewhere around the middle of the meeting.

Q And what was the response that was made and by whom?

A As I recall, the first response was made by Mr. Carroll, attorney for the National League, and he said that that idea could not be entertained because it would mean that we, meaning the Players Association, would thereby get our foot in the door.

Q Did anyone else on behalf of management make a response to this suggestion?

A Yes. Mr. Gaherin did.

Q What did he say?

A He enlarged on what Mr. Carroll said. He said that if such an amendment were made it would simply be used by the players at a later date to get more, and that would disturb the entire system, which he felt served well.

Q Was that the end of the discussion of the

Bouton proposal?

A I believe so.

Q This conversation then turned to other subjects?

A I don't recall.

Q But it turned to some other subjects and you don't recall which ones, is that right?

A We may have continued to talk --

THE COURT: Not you may. Listen to counsel's question.

Would you repeat it, Mr. Court Reporter.

(Question read.)

A Not necessarily.

Q At any rate, Mr. Miller, discussion of the freedom at age 65 proposal stopped?

A That is correct.

Q And did discussion then go to either the reserve system generally or other subjects which you had up for discussion?

A One or the other.

Q And did the discussion then go on for some time?

A Yes.

Q When Mr. Bouton made his suggestion, was he smiling, laughing or in any other way other than serious?

A He was quite serious.

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Q And Mr. Carroll, when he responded, was he laughing?

A Not that I recall.

Q Mr. Gaherin, when he responded, was he laughing, smiling?

A No.

Q Was any clarification sought by either Mr. Carroll or Mr. Gaherin as to the suggestion?

A The only clarification occurred when Mr. Bouton suggested Social Security age. Mr. Carroll asked him, "What age do you mean?"

Mr. Bouton responded, "Age 65."

Q In the course of your negotiations with the representatives of organized baseball, Mr. Miller, have you taken the position that continuation of the reserve system in its present form is an appropriate subject for collective bargaining like any other controversy between an employer and an employee group?

A Not quite.

Q Why not?

A Well, your Honor, it has been the position of the players and the Players Association that the reserve rule system is illegal and by virtue of that feeling we do not feel that it is in the same category as any other bargainable

subject, that is, it is our feeling that -- if I may use a parallel to explain -- if an employer refuses to pay as much as the statutory minimum wage, we might attempt to bargain with him in order to get him to comply with the law, but the fact that he refuses and insists on violating the law puts that issue in a completely different category, in our view. It does so because it is quite clear in our minds, at least, that no individual and no organization can bargain away somebody's legal rights, a member's legal rights.

If in fact the reserve rule system is illegal and if in fact the plaintiff is being damaged by such illegal restriction, the Players Association can not possibly accept in a package, as has been implied, the continued existence of such illegal restrictions no matter what else is given in the way of concession.

Q And you have expressed that view to representatives of the clubs?

A I have expressed the view that it is illegal. I don't think that we have gone into any detail about the underlying feeling that we have.

MR. HUGHES: Then I move to strike the answer, your Honor, the preceding answer. If this was some attitude of Mr. Miller and the players uncommunicated to the defend-

ants, I submit it is inadmissible, and I move to strike it out.

THE COURT: Mr. Topkis?

MR. TOPKIS: Could I ask a couple of other questions on voir dire, your Honor?

THE COURT: Yes.

Q Mr. Miller, have you expressed the ultimate position that the reserve system is illegal to the owners?

A Yes.

Q And have you explained to them why you felt it to be illegal?

A Yes.

Q And have you explained to them what you felt your responsibilities to your constituency, the players, were?

A Yes. If I may explain, perhaps I can clarify this, your Honor.

In connection with drawing up the new basic agreement, we explained, for example, to Mr. Gaherin and to his associates that the primary reason why we could not have an agreement which incorporated the existing reserve rule system was that under advice of counsel, in view of all the circumstances, we would be liable to be a defendant in a subsequent suit against the reserve rule system.

Q Now, Mr. Miller, there has been testimony here --

MR. HUGHES: I still press the objection.

THE COURT: I will let the testimony stand,
Mr. Hughes.

MR. TOPKIS: I will go to something else, your
Honor.

THE COURT: Before you do, may I ask a question
or two? This troubles me somewhat.

Bearing in mind your activities that you have
here recited, Mr. Miller, assume for the sake of argument
that in such negotiations one side takes a positive position
and the other side says, "No, we don't recognize it, it's
illegal," do you mean to say that in the give and take of
negotiations those seemingly irreconcilable positions can't
be blunted and the substitute adopted which will make both
sides happy? I thought that is one of the biggest
things that peacemakers effect, and you are telling me no,
you stop. You say, "If that is the way you look at it, we
can't pick up any negotiations with you."

Isn't that what you are saying to me? That is
what puzzles me.

THE WITNESS: Not quite, your Honor.

THE COURT: You straighten me out.

THE WITNESS: We have never said and never will
say that continued discussions should not go on in an

attempt to resolve an obvious problem.

THE COURT: Even with regard to the reserve system clause that you label as illegal?

THE WITNESS: Yes, sir. However, it is the position of the management in signing a new basic agreement for three years that they would like to be relieved of the obligation to discuss this. As a matter of fact, their first proposal to us, which they held to for weeks, was that regardless of what happened in this case they wanted to be relieved of discussion for the full three years of the basic agreement and have us admit in the agreement that they had no obligation to even discuss it with us. This was not our position.

THE COURT: I think I understand. All right.

BY MR. TOPKIS:

Q Do I understand, Mr. Miller, that your basic problem with the reserve system as you communicated that problem to the management, is that it has been a system of total or absolute restraint?

A Yes.

Q And you were perfectly willing to attempt to negotiate a system of significantly lesser restraints which you said would possibly make the entire system lawful, is that right?

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2 MR. HUGHES: Your Honor, I submit that that
3 is leading and suggestive.

4 THE COURT: Objection sustained.

5 Q Did you tell the owners what you would be willing
6 to negotiate with them with reference to the reserve system?

7 A Yes, and we made it clear at all times that we
8 didn't think we had a premium on all the brains, and we
9 urged that they make still other suggestions for our
10 consideration, which they never did.

11 ~~THE COURT: I am not pressing my points any~~
12 ~~further.~~ You know I stayed away from interrupting through-
13 out this entire trial, and I am not going to start in now,
14 but I do hope all of this will be thoroughly gone into by all
15 the attorneys. I would like this meticulously developed.
16 I don't want to be in a position where I say to counsel
17 later that old story about, "Do you mind if I ask some
18 questions?" and the lawyer says, "Certainly, your Honor, so
19 long as you don't lose my case."

20 I am going to count on you to develop this bit
21 by bit, because I place a great deal of concern on this
22 phase of the trial.

23 MR. TOPKIS: Your Honor will perhaps forgive me,
24 then, if I seem to go over ground that has previously
25 been covered because I do want to bring out the whole story.

1
2 THE COURT: Sum it up if you go over previous
3 ground.

4 Q Did you say anything, Mr. Miller, in your con-
5 versations with representatives of management about how
6 you would view the legality of a reserve system which was
7 modified in accordance with your suggestions or in accord-
8 ance with suggestions which might come from them?

9 MR. KRAMER: If your Honor will permit, I think
10 it would be more help and more important to your Honor
11 if Mr. Topkis could specify a time period, unless he means
12 any time between '66 and the present.

13 THE COURT: All right, let me suggest this.
14 You know what I am after. You are capable of delivering
15 it. I know of nobody at the bar who can give it to a
16 Judge better than you gentlemen.

17 Short recess. Devise among yourselves how you
18 are going to tackle it.

19 MR. TOPKIS: Very well, your Honor.

20 THE CLERK: Short recess. All rise.

21 (Recess.)
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BY MR. TOPKIS:

Q Mr. Miller, I believe before the recess I was asking you about your conversations with representatives of the major leagues in connection with the reserve system and Mr. Kramer asked, I believe, that we fix a date for these conversations, so let me begin now by putting this question to you.

Did there come a time in your discussions with representatives of organized baseball, either as part of the joint study or as part of your negotiations for a new basic agreement, in which or at which you discussed the legality of the reserve system and the possible effect on its legal status of modification?

A Yes.

Q When was that time, sir?

A I think there were several times. There were negotiations in late 1967 and early 1968 leading to the first basic agreement. There were discussions during the joint review period and there were discussions in late '69 and early 1970 during the negotiations of the new basic agreement. I cannot pinpoint dates for you, but there were numerous discussions.

Q Now, in these numerous discussions did you express substantially the same position as to the legality of the

1 reserve system and the effect on that legality of modification
2 or did your position change?
3

4 A It did not change with respect to the legality
5 question and with respect to our proposals, they were to
6 modify and not to abolish.

7 Q And would you sum up for the Court what the position
8 was that you expressed at these various meetings?

9 A Basically the position was that it was our position
10 that the reserve rule system was illegal in that its re-
11 strictions were just about total, that it was inconceivable
12 to us that you could have a game of baseball with no rules,
13 but that it seemed quite reasonable to us that modifications
14 which were less restrictive than the present system could be
15 made, were practical, and presumably could make the system
16 safe from an attack in terms of its illegality.

17 Q You mean would make the system lawful?

18 A Yes, sir.

19 MR. HUGHES: Well, your Honor, I move to strike the
20 answer.

21 THE COURT: Motion granted. It is stricken and
22 disregarded.

23 Q Was anything said by you, Mr. Miller, as to the
24 feasibility of your accepting the reserve system in its pre-
25 sent form as part of an overall package containing other

2 elements which perhaps would be more beneficial to players?

3 A Yes.

4 Q Would you tell the Court what you said?

5 A We said that in view of our belief we could not
6 agree to accept the present system in an agreement and that,
7 in fact, accepting it in a basic agreement would not make it
8 legal either.

9 Q Did you say anything about your view as to the possible
10 impact on the Players Association of your accepting a new
11 basic agreement which approved the present reserve system?

12 A Yes. As I testified before, I did say that we had
13 been advised by counsel that under all the circumstances to
14 accept that system in an agreement would render us liable in
15 terms of being a defendant in any future action against the
16 reserve rule system.

17 Q Mr. Miller, you have heard the testimony in this
18 courtroom from various witnesses on various occasions that
19 modification of the reserve system in various regards would
20 affect or tend to affect the level of integrity in baseball
21 and the public acceptance of that integrity. Do you recall
22 that testimony?

23 A I do.

24 Q Are you in accord with the views expressed by those
25 witnesses?

1
2 A No, I am not.

3 Q Would you tell the Court why not?

4 MR.HUGHES: Well, I object to that as repetitious.
5 This isn't any part of rebuttal. He has been into this
6 subject extensively in their direct case, your Honor.

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

8 MR. TOPKIS: I had thought, your Honor, in view of
9 the particularization by certain defense witnesses that it
10 would be appropriate for Mr. Miller to comment briefly on
11 that subject.

12 THE COURT: All right, but comment briefly and do
13 not expand. Let's have it now. What is your answer?

14 THE WITNESS: May I have the question?

15 THE COURT: Surely. Mr. Court Reporter, please
16 read it.

17 (Question read.)

18 A There are several reasons: First, I have a great
19 deal of confidence in the integrity of the players. I am not
20 at all convinced that their honesty and integrity is so
21 fragile that the system under which, after a given number of
22 years, they were free agents would result in a player not
23 doing his best for any reason.

24 I have a feeling that the integrity of the owners
25 is too great to accept the belief that they would tamper in

terms of attempting, let us say, bribery on the basis of an offer of future employment.

I do not believe it because the system in football, under which they can play out an option and do, no evidence has been presented to indicate that that has affected the integrity of the game.

And finally, I do not believe so because the Players Association has indicated that a system under which a player could only approach a team in the other league seems to me to answer all questions about the possible damage to the integrity of the game.

Q Now, you have heard the testimony about various possible modifications of the reserve system, either along the lines of the pro football right of a player to play out his option or making a player a free agent at the end of five years or limiting the number of free agents who could be signed or giving a player veto over trades at the end of ten years, those various ideas that have been under discussion here. Would adoption of any or all of these changes, in your view, affect the quality of competition on the field?

MR. HUGHES: Your Honor, this was gone into in great length on his second round of direct examination way back at the beginning of this trial.

MR. TOPKIS: Mr. Hughes is correct, your Honor.

I withdraw the question. It slipped my mind.

THE COURT: Very well, very well.

Q Mr. Miller, in your experience does the right in management and employees to arbitrate salary disputes or wage disputes affect employer-employee relations adversely?

A No.

Q Have you ever known any industry in which such a right operated so to affect employer-employee relations?

A No.

Q What has been the effect of the availability of arbitration?

A In my experience, your Honor, the availability of arbitration has done nothing but improve the relationship between employers and employees. It has done so for fairly obvious reasons, whether you are talking about the arbitration of grievances which arise under a contract or a grievance to arbitrate basic terms and conditions of employment, because the arbitration mechanism is used as a last resort instead of using the strike weapon as a last resort, and therefore almost regardless of satisfaction or dissatisfaction with a particular arbitration award, employer-employee relations have been better than if the only other alternative was to have a strike or lockout.

MR. KRAMER: If your Honor please, I move to strike

the last answer on the ground that I thought he was going to tell us about experience in other industries concerning arbitration of salary disputes, the only issue with which we are concerned. So far as I can tell from his answer it referred to arbitration of everything but salary disputes.

THE COURT: Well, that may be so. I will let the testimony stand and allow you an opportunity for cross examination.

MR. KRAMER: Thank you.

MR. TOPKIS: May I ask a qualifying question, your Honor?

THE COURT: Yes.

Q Mr. Miller, your testimony just concluded, did you mean it to cover salary disputes as well as all other disputes?

A In my response --

THE COURT: No. Did you? Yes or no? That is all, really, Mr. Miller.

THE WITNESS: I said it --

THE COURT: When you begin to expand --

THE WITNESS: I'm sorry, your Honor.

THE COURT: -- that is when we open the door for a great deal of reaction, you know.

THE WITNESS: Yes.

1 A The answer is yes.

2 THE COURT: That's all.

3 Q Mr. Miller, to your knowledge do major league base-
4 ball players have unusual or extraordinary expenses which
5 differentiate them from employees in other businesses?
6

7 A Yes, they do.

8 Q What are those expenses, sir?

9 A I think the primary extra expense is related to the
10 fact that so many players have, in effect, two homes. They
11 maintain -- many of them main --

12 THE COURT: You told us that on direct, as I remember,
13 and you told it to us effectively.

14 Is there anything else you want to add on that point
15 that occurs to you other than what you already testified to,
16 Mr. Miller?

17 THE WITNESS: They have other expenses, your Honor,
18 in spring training, during which time the reimbursement they
19 receive never makes them whole. They have expenses on the
20 road, and a major league player is on the road for one-half
21 the season, and although they get some reimbursement, in
22 the majority of cases a player's on-the-road expenses are
23 greater than his reimbursement.

24 THE COURT: Very well.

25 Q Mr. Miller, going back for just a moment to your

experience with arbitration, in your experience have you on occasion seen arbitrators consider intangibles as well as statistical data?

MR. KRAMER: Objection.

THE COURT: That is a very general question. It doesn't carry too much weight with it. It is allowable. Objection overruled.

A Yes.

Q By what technique?

THE COURT: In a general way now we are talking.

A Most often by a hearing at which testimony was taken from both sides.

Q Very well. Mr. Miller, have you had occasion to compute the average major league life of a ballplayer?

A Not personally.

Q Have such computations been made under your supervision and pursuant to your direction?

A Direction, but not supervision.

Q Have they been reported to you?

A Yes.

Q And have they been used by you in your negotiations and discussions with the management?

A Yes.

Q And has exception ever been taken to the results

of this study?

A No.

Q And what were the results as so found by people working under your direction and reported by you to the major league club owners?

THE WITNESS: May I enlarge on this, your Honor?

THE COURT: Within limits.

THE WITNESS: Because I think it might help to clarify one thing that has been said and never explained.

A The figure of 4-3/4 years as the average major league life of a player of those who stay 60 or more days has this origin: The major league baseball player's benefit plan, pension, insurance and health care plan, provides that you are not a member until you have 60 days of service, and that is why that break-off point. In the negotiations under the benefit plan, the actuary of the pension committee -- and the pension committee is a joint body and the actuary is employed jointly -- was asked what was the average credited major league service of those members of the plan, those who became members of the plan who have 60 or more days, and the four and three-quarter years -- rounded to the nearest quarter year -- is the figure provided by the actuary at some point in our negotiations under the benefit plan.

Q Mr. Miller, in the course of your discussions with

club owners about possible modification of the reserve system, has the claim ever been put forward by any representatives of the owners that they were unable to pay the cost of any modification of the reserve system?

A Quite the reverse.

Q A simple answer to my question is no?

A Sorry. No.

THE COURT: I say this facetiously. Have you got any more of those yellow sheets? I always feel a little relieved as you begin to unburden yourself by putting them on the ledge there to your right. Have you got many left in front of you?

MR. TOPKIS: I have got one left.

THE COURT: All right.

MR. TOPKIS: And as a matter of fact I will not use that.

THE COURT: Oh, come on.

MR. TOPKIS: No further questions.

THE COURT: No, I insist, please.

MR. TOPKIS: No, your Honor, I was not "being mouse-trapped or anything.

THE COURT: Are you sure?

MR. TOPKIS: It is a question that I think is unnecessary.

THE COURT: I was just a little bit concerned about how we were going on time.

MR. TOPKIS: No. I should perhaps tell your Honor that we will not need to call the other witness whom we had intended to call and in consequence, with the exception of Mr. Veeck, it is our current expectation that Mr. Miller will be our last witness.

THE COURT: Fine. And that is said to me as of 3:40 this afternoon.

All right, cross examine, Mr. Hughes.

MR. HUGHES: Mr. Hadden.

THE COURT: I always look to the chief.

MR. HUGHES: Mr. Hadden.

MR. HADDEN: As well you should, your Honor.

THE COURT: The chief designates the person, or by agreement.

All right, Mr. Hadden, you are always welcome.

MR. HADDEN: Thank you, sir.

CROSS EXAMINATION BY MR. HADDEN:

Q Mr. Miller, in your rebuttal testimony, among other subjects that you have referred to, is your experience in the steel industry where, as I understood you, a prior history of somewhat unsuccessful labor management relations was followed up by a better relationship under the circumstances which