

you described, and I believe you referred in your answer to the fact that the absence of strikes during the on-going period was an indication that the system had been successful.

Do I misstate the substance of your testimony?

A No, in a general way that is true.

Q And how long, Mr. Miller, have you been associated with the Players Association?

A July 1st will be four years.

Q And is it not a fact, Mr. Miller, that during that period the Players Association and the major league baseball clubs have engaged in a series of negotiations, the first one of which was an increase in the clubs' contributions to the players' benefit plan from a level of about 2.6 million dollars to a level of 4.1 million dollars with corresponding increased benefits; thereafter the negotiation of the first basic agreement with the increased benefits which are in the record; thereafter a renegotiation of the benefit plan to increase the clubs' contributions from 4.1 million dollars to 5.45 million dollars with increased benefits correspondingly; and most recently an extension for three years of the basic agreement; four principal negotiations; and is it not a fact that those have all been concluded without any players refusing to make their services available to their

clubs during the major league season?

A It's a long question, Mr. Hadden.

THE WITNESS: Your Honor, may I have just the first part of the question?

THE COURT: Of course, certainly.

Will you please, Mr. Court Reporter.

(Portion of question read.)

A I don't want to quibble, your Honor, but the first one was the checkoff agreement.

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Miller-cross

Q You are quite correct. Adding that to the question, would you now give the Court your testimony, please.

A The answer is yes.

Q Now, I also understood you to say, Mr. Miller, that in the course of the first basic agreement negotiations it was stated across the bargaining table by the Players Association that the Players Association felt that the reserve rule system, to use your phrase, was illegal. Am I correct in that summary of your testimony?

A Yes.

Q I ask you, sir, is it not a fact that the strongest statement which you ever made across the table in those bargainings was the Players Association had doubts about the legality of the reserve system?

A No, that is not true.

Q Will you tell me where and when you expressed a stronger statement than that and who was present?

A I would say we issued stronger statements on a number of occasions, but one I remember specifically --

Q Issued statements?

A Made statements on a number of occasions to members of the Player Relations Committee during negotiations. The one I remember best, perhaps because it is one of the most recent --

gwb-2

Miller-cross

Q I am asking you, Mr. Miller, with reference to the first basic agreement negotiations?

A The first basic agreement negotiations.

Q Does that change your answer?

A No, it doesn't change my answer. I am trying to pinpoint a date. It is certainly not the strongest statement we ever made during that period.

Q Do you want this Court to understand that as a firm position you stated in bargaining which resolved the vast majority of the terms and conditions of employment of the baseball players with the exception of the benefit plan for a period of two years it was your position as stated to the clubs that the reserve system was illegal?

A Absolutely.

Q In the joint study, Mr. Miller, about which you testified and which took place last summer or last spring and summer, I believe I understood you to say that certain proposals were made by the Players Association.

Did you use the word "proposals" in the sense that if accepted by the clubs it would resolve any issue with regard to reserve system?

A No. These were proposals for study and for comment and for reaction.

Q These were never offers which were open to



gwb-3

Miller-cross

1  
2 acceptance?

3 A Your Honor, I can't answer it the way it has --  
4 a study committee by its very nature is not a negotiating  
5 committee.

6 Q Mr. Miller, it was your objective, was it not,  
7 or it is your testimony, if I understand it, that it was  
8 your hope that a joint resolution could be achieved in the  
9 study?

10 A A joint resolution in the sense of the parties  
11 being able to recommend to their principal agreement as  
12 a result of a study, yes.

13 Q And again I ask you, with regard to a proposal  
14 or proposals made by the Players Association in the joint  
15 study, were those proposals which were put forward by the  
16 Association with the meaning and understanding that if  
17 management was willing to recommend those proposals to its  
18 principals you would do likewise?

19 A No. We never got that far.

20 Q At the conclusion of the joint study, Mr. Miller,  
21 and at the final session which wound up the joint study,  
22 will you tell the Court, please, whether or not it is a  
23 fact that a discussion took place with reference to what  
24 public announcement, if any, should be made and will  
25 you answer, please, whether it was not agreed that the

parties would, if called upon to comment publicly, say that a useful exchange of views had taken place?

A Yes.

Q In your rebuttal testimony, Mr. Miller, you stated that, in substance, there was no appreciable effect upon the conduct of the negotiations with reference to the reserve system by the filing of the Flood suit. Am I correct in summarizing your testimony that way?

A You are.

Q I will ask you, sir, whether it was not said to the Players Association's representatives, including yourself, at a bargaining session subsequent to the filing of the Flood suit, and said to you by Mr. Carroll, that the Association had been publicly quoted to be supporting the Flood suit financially and whether Mr. Carroll did not also question you as to whether that did not perhaps constitute a breach of the Association's agreement, as expressed in the basic agreement, that the Association would use its best efforts to insure that all terms and conditions of all Uniform Player's contract would be carried out in full? Did Mr. Carroll make a comment to you of that sort?

A He asked a question of that sort and I responded to it.

Q Very well. And is it not a fact that subsequent

to the filing of the Flood suit it was mutually agreed that the negotiations with respect to the reserve system would be suspended during the pendency of this lawsuit?

A Not for some time after the filing of the suit.

Q The question, however, asks for a yes or no answer, Mr. Miller.

A The question is subsequently?

Q Yes.

A The answer is yes.

Q Were you present in court when Mr. Flood testified?

A Yes.

Q As a matter of fact, you have been present in court virtually throughout the case, have you not?

A Just about.

Q And seated at the trial table?

A Yes.

Q During Mr. Flood's testimony, do you recall his statement with regard to what result he would like to see flow from this litigation?

A I heard his testimony.

Q Did you understand him to say that he would like to see the entire reserve system destroyed, in substance?



gwb-5

Miller-cross

A I heard him say that and its opposite.

Q And what?

A And its opposite.

Q Now, there has been testimony, Mr. Miller, regarding a response given by Mr. Carroll in the course of a negotiating meeting earlier this year, I believe you said in January, in which Mr. Carroll stated his reaction to Mr. Bouton's proposal that there be a free agency or release from reserve at age 65.

Referring to that subject matter, Mr. Miller, I will ask you whether you were not present at a later meeting between representatives of the clubs and the Players Association which was attended by Mr. Hoynes and at which Mr. Carroll was not present, at which the so-called foot in the door statement, if I can so shorthand it, was again referred to and at which Mr. Hoynes asked for an explanation of what was meant, since he had not been present at the prior meeting, and an explanation was given, in which Mr. Carroll was quoted by Mr. Moss to the general effect that you have testified, whereupon Mr. Hoynes stated that the Players Association should be clear that the reserve clause had no practical application at age 65, and that the clubs would have no objection to declaring the inapplicability of the reserve system at age 65? Do you recall that

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exchange, sir?

A No, I really don't.

Q Perhaps some further reference to it will trigger a recollection.

Mr. Moss responded that Mr. Carroll was Mr. Hoynes' senior partner and that Mr. Hoynes' statement appeared to be overruling Mr. Carroll, whereupon Mr. Hoynes said that he was entirely sure of his ground and sure the Players Association had misunderstood Mr. Carroll's intent.

THE COURT: Does that refresh your recollection?

THE WITNESS: No, it doesn't.

THE COURT: All right.

Q Mr. Miller, did there come a time in the course of the negotiations in February of this year when, at a negotiating meeting at which you were present, you, on behalf of the Players Association, offered to accept the National Football League one-year option arrangement together with whatever internal arrangements the clubs wished to adopt with reference to compensation flowing between clubs?

A No. Do you want me to enlarge on it?

Q Would you?

A We did suggest it as an idea --

Q I understand you to contradict yourself in the space of two sentences.

1  
2 A No, I haven't.

3 THE WITNESS: May I have the question, your  
4 Honor?

5 THE COURT: Surely. Put the last question, Mr.  
6 Court Reporter.

7 (Question read.)

8 A The reason for the apparent contradiction, Mr.  
9 Hadden, is we did not offer to accept. We made a proposal  
10 as part of a whole series of proposals to get a reaction.  
11 We did not offer to accept.

12 Q With what other proposals or series of proposals  
13 was this proposal associated in the course of that bargaining  
14 session?

15 A Not necessarily in that bargaining session, but--

16 Q I would like you to restrict yourself, since you  
17 have referred to one bargaining session --

18 A You tell me the date.

19 Q February 9, 1970.

20 A To the best of my memory, we were still talking  
21 about a number of possibilities.

22 Q Of which the football option was one?

23 A That is correct.

24 Q Would it be your testimony today that at that  
25 time and place that was one of the proposals which the

Players Association had open to its consideration?

A Yes.

Q Is it your position today, Mr. Miller, that if an agreement were negotiated between the clubs and the Players Association or for modification of the reserve system which incorporated in it a football one-year option provision -- and you understand what I mean, the entire proposal, including compensation -- that that would be an acceptable arrangement to the Players Association?

A Not by itself.

Q Not by itself.

THE COURT: Would it be a giant step forward?

THE WITNESS: Yes, your Honor.

Q Mr. Miller, have you ever made any public statements -- let me rephrase that -- statements for publication, and which you knew were for publication, in which you characterized or gave your opinion with regard to the football one-year option system?

A I think I must have.

Q Do you recall, sir, an interview, a telephone interview, which you gave to a Mr. Sandy Grady, a sports columnist for the Philadelphia Evening Bulletin, on or about January 6, 1970?

A I think I do.



gwb-10

Miller-cross

Q Did you discuss with Mr. Grady the subject of the football one-year option provision?

A I believe so.

Q Do you recall what you said to him about it?

A I gave him my honest opinion at the time, which, as best I recall, was that the football system had weaknesses in that the original playing-out-the-option idea did not carry with it the additional rule that the Commissioner of Football could determine the compensation to be rewarded to the team losing the player by the team gaining the player, and that in my opinion the addition of that rule under which the Commissioner, whom I considered and still do consider to be an employee of the owners, could have the final determination which was binding and unappealable was not a good system.

Q And did you say in words or substance to Mr. Grady on that occasion that:

"Football has a bastard thing, because four or five years ago they gave the Commissioner authority to rule on trades involving those free agents and in practice a football player isn't that free. It's semi-fraudulent"?

A Yes.

Q And you made that same statement and characterized the football one-year option with those very words



on other occasions, have you not?

A I am quite sure.

Q And is it not also true that in other interviews, Mr. Miller, you have made statements to the following effect, in words or substance: "Football changed its internal rules and made the Commissioner of Football sole judge about what compensation the club who is losing the player should get from the club that is gaining the player, and it is provided that the Commissioner's decision in that case shall be final and unappealable. It seems that any time the Commissioner wants to put a stop to that he can and, in fact, does."

Have you given interviews to that effect, Mr. Miller?

A Yes.

Q Have you in any bargaining session with the representatives of the major league clubs ever told those representatives what changes in the reserve system would be sufficient in your judgment to protect the Players Association from antitrust suits at the hands of third parties?

A We have proposed --

Q Can you answer that question yes or no, Mr. Miller?

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Miller-cross

THE COURT: He is entitled to a yes or no, if you can.

THE WITNESS: I am not sure I can.

THE COURT: Would you like to hear the question?

THE WITNESS: Yes, please.

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

(Question read.)

A Yes, on several occasions.

Q I want you to be sure you understand my question, Mr. Miller. You stated in your rebuttal testimony that at some juncture in the course of recent negotiations you stated to the representatives of the clubs that your advice from your counsel -- and by that I take it you mean Justice Goldberg, do you?

A Not alone.

Q Was to the effect that to sign an agreement incorporating the various features of the present reserve system would expose you to a possibility of suit, correct?

A Yes.

Q My question is this and it is a very precise question. Did you ever in any bargaining session say to the representatives of management what the minimum changes would be which would remove that objection?

1 A I want to be perfectly sure I know what your  
2 question is. Subsequent to the statement?  
3

4 Q Yes.

5 A No.

6 Q One additional question, please, Mr. Miller.

7 You gave the reporter at the beginning of your  
8 rebuttal testimony a detailed description of your prior  
9 experience which was interesting.

10 Is it not a fair assumption that you have never  
11 been engaged in industrial relations in any capacity  
12 on the side of management?

13 A Your Honor, I can not answer it with a yes  
14 or no. It would be misleading.

15 Q Let me withdraw the question and rephrase it,  
16 Mr. Miller.

17 Is it not a fact that the vast majority of your  
18 experience has been on the side of labor?

19 A Yes.

20 Q And is it not a fact, Mr. Miller, that you hold  
21 yourself out, and candidly so, as biased in favor of labor?

22 A Definitely.

23 MR. HADDEN: Thank you.

24 THE COURT: Mr. Kramer.

25 MR. KRAMER: Thank you.

CROSS-EXAMINATION BY MR. KRAMER:

Q Mr. Miller, you testified, as I understood you, that the football option system as it presently exists is semi-fraudulent but that, among other things, you would be willing to accept it in the negotiations with management, is that correct?

A Not quite.

Q Correct me.

A The football system as it has operated and been operated by the owners and the Commissioner, I consider in that category, not necessarily the provisions themselves.

Q I see. But you were not willing to accept the reserve system because it is illegal, in your opinion, correct?

A I am sorry?

THE COURT: Will you repeat it, Mr. Court Reporter.

(Question read.)

A Yes.

Q You remember in your direct testimony you compared the illegality of the reserve system as you saw it to the illegality of paying less than the minimum wage prescribed by law?

A Yes.



Q Does that bit of testimony illustrate the degree of certainty in which you hold your opinion as to the illegality of the reserve system?

A Yes, but, as you know, I am not an attorney

Q Right. And you know that the attorneys and the Judge in this case have been struggling with this issue for months, do you not?

A Yes.

Q Do you believe that a labor negotiator with 25 years of experience should be this certain about any legal question in his negotiation if he hopes to be successful?

A Yes, when he is so advised by counsel.

Q Very well. Now, I understood your testimony to be that something that my client said, Mr. Kuhn, was either wrong or that you disagreed with it or both.

Do you recall the short phrase of testimony that related to Mr. Kuhn that you gave on direct examination?

A No, I don't.

Q Well, I think what you said, and I didn't make notes and I should have, I think what you said was that you disagreed with what Mr. Kuhn and Mr. Gaherin had said, and so I looked at the transcript to find out what Mr. Kuhn could have said that related to collective bargaining, and I found the only place, I believe. When we are through

I am going to ask you if you had some other place in mind but I think you had this place in mind. It starts on Page 756, Line 16.

My question:

"Q In your opinion, if changes are to be made in the reserve system, how should those changes be made?

"A They should be made by clearly, in my opinion, bargaining between the players and the clubs."

He goes on, but I am stopping at every sentence. You don't disagree with that, do you?

A I disagree in part.

Q Continuing the quote:

"I do not believe they should be made or that they can be made unilaterally by the clubs."

Do you agree or disagree with that?

A I agree.

Q "We are dealing here with items and conditions of the players' employment."

Do you agree or disagree with that?

A I agree.

Q "So the change should be made in bargaining.

"I feel that the reference to court litigation points up a misfortune in the present bargaining context.

1  
2 "It has been my stated opinion repeatedly  
3 that the decision of the Players Association to back Mr.  
4 Flood's litigation here was a serious mistake on their  
5 part."

6 Now, you disagree with that, don't you?

7 A I certainly do.

8 Q "This decision was made as long ago as their  
9 San Juan meeting in the first half of December, 1969."

10 Is that statement one with which you agree or  
11 disagree?

12 A I agree.

13 Q "And to think that they were seriously embarking  
14 on realistic negotiations to find a solution when they had  
15 committed themselves to litigation is nonsense, in my  
16 judgment."

17 Changing the word "nonsense" to "unwise," would  
18 you agree or disagree with that?

19 A I would disagree because it is based on a false  
20 premise.

21 Q "And, indeed, when they effectuated their  
22 determination at San Juan by bringing this litigation in the  
23 middle of January, it quickly resulted in the Players  
24 Association and the clubs bargaining team working out an  
25 arrangement whereby they simply put the reserve system



gwb-18

Miller-cross

question up on the shelf and thereafter ceased, so far as I can determine, to bargain on the subject."

A That statement is completely inaccurate.

Q Right. Now I want you to go over it -- do you want to go over it without hearing it again?

A Either way.

Q You tell us about the "complete inaccuracy" of that statement.

A That statement says that in January immediately upon returning from San Juan the Players Association, in conjunction with the owners' representatives, because of the litigation, put the reserve rule issue in some different category outside the bargaining. That is completely untrue. The discussions, such as they were and such as had been going on intermittently for several years, continued right through January, right through February until February 19. That is why it is a completely inaccurate statement.

Q So that there were discussions starting in '67 about the reserve system?

A Certainly there were discussions.

Q Then you must have a distinction in your mind between discussions and collective bargaining?

A I certainly do.

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Q Now supposing you tell us what that distinction is.

A The discussions that took place consisted of the Players Association putting forth ideas, making suggestions for study, and the owners' representative advising us, in substance, they like what they have, period.

The difference between that kind of a discussion and collective bargaining is that collective bargaining is a give-and-take proposition in which you give serious consideration to the other side's suggestions, point of view, are prepared to examine in the greatest detail exactly what it is that is being proposed, and attempt, if possible, to put forward modifications, suggestions of your own, rather than what really amounted to a brick wall in which we were simply getting back, "We like what we have."

We understood that. That is not collective bargaining.

Q Your position is that all that ever happened regarding the reserve system in negotiations with the players was that management representatives said, "We like what we have and that's it"?

A In substance. Other words were used.

Q Undoubtedly. How much time do you think was consumed in these discussions in which all that was said

was "We like what we have."?

A Your Honor, most of the time I am afraid was spent by the players' representatives doing the talking.

Q I wanted to ask you one question about arbitration of salary disputes, and by salary disputes I mean salary wage levels and not whether an employer is paying the salary that he agreed to pay.

Is it your position that arbitration is a common form of negotiating wage levels in American industry?

A In some industries only.

Q Do you know of any system, outside of professional sports, where individual salary negotiations are subject to arbitration?

A Quite often, if you are talking about individuals. The American Arbitration Association handles many such cases.

Q I meant in industry having 500 persons.

A In industry in general where you have 500 persons, you don't have the kind of individual bargaining that takes place here with a Uniform contract. You have a completely different system. I don't know of any situation where, if you are referring to an industry with 500 professional employees, let us say --

Q For example --

A No, I don't know of any system of arbitration in those circumstances, no.

MR. KRAMER: Excuse me just a moment, your Honor.

THE COURT: Surely.

(Pause.)

Q My colleague, Mr. Heynes, points out that I should ask you a couple of questions about the Commissioner's testimony.

When was the suit in this case filed?

A I believe in January.

Q The 15th of January strike you as about right?

A About.

Q And when was the negotiation of the so-called hang-up agreement, if we understand each other, started? Do you remember that?

A I am not sure I understand.

Q The provision in the current agreement between players and clubs that neither side would do anything about the reserve system until this litigation is over, when was the negotiation of that first proposed?

A To the best of my memory, February 19.

Q So that I will read again to you what Mr. Kuhn said, and the question I am going to ask you after



1  
2 I read it is, is that your quarrel with what he said  
3 must be with the word "quickly."

4 My question is going to be "Is that right?"

5 "And, indeed, when they effectuated their  
6 determination at San Juan by bringing this litigation in  
7 the middle of January, it quickly resulted in the Players  
8 Association and the clubs bargaining team working out  
9 an arrangement whereby they simply put the reserve question  
10 up on the shelf and thereafter ceased, so far as I can  
11 determine, to bargain on the subject."

12 A Your Honor, I have to enlarge on this because --

13 Q I didn't hear you.

14 A The whole context is wrong. The fact is that  
15 on February 19 we were five days away from the end of negotia-  
16 tions on any convenient basis. Starting February 25,  
17 Mr. Moss, counsel to the Players Association, and I were  
18 due in Florida to start a series of meetings, one with the  
19 executive board and 24 separate spring training camps  
20 in Florida, Arizona and California.

21 The reason for approaching the problem on  
22 February 19 in terms of how to set this aside if we are  
23 ever going to have a basic agreement, was a clear absence  
24 of time that was left.

25 It had nothing to do with the suit by the

1  
2 plaintiff or its timing, nothing at all.

3           It was the fact that we were running out of  
4 time to negotiate a basic agreement. And on February 19  
5 we said -- I said that while it would be preferable for  
6 us to negotiate appropriate revisions in the reserve clause  
7 system, that we could agree to, it appeared that we  
8 no longer had time to do this, and that was the reason, and  
9 the reason I objected to the Commissioner's testimony is  
10 that he put it in a completely different context as if it  
11 were related to the suit, and its timing, and it was not.  
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Q Then it must be your position or I haven't understood any of your testimony that the filing of a lawsuit by one side of a collective bargaining team against the other side is a reasonable and fair instrument of labor-management negotiations?

A I have to answer that by telling you that the Players Association is not the plaintiff in this action, but I will answer your question yes anyway.

MR. KRAMER: Thank you. Nothing further.

THE COURT: Anything occur to Mr. Hughes or anyone else on the other side?

MR. HUGHES: Nothing.

THE COURT: Now we come back to Mr. Topkis.

MR. TOPKIS: Just one question if I may, your Honor.

THE COURT: Yes, Mr. Topkis.

REDIRECT EXAMINATION BY MR. TOPKIS:

Q Mr. Miller, you testified, I believe, that Mr. Carroll asked a question with regard to whether the Players Association's support of the Flood suit didn't violate a commitment made in the original basic agreement.

A He asked that question.

Q He asked that question. What was your answer?

A My answer was that it did not.

Q Did you tell him why not?