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# FEDERAL SPORTS ACT OF 1972

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## HEARINGS

BEFORE THE

### COMMITTEE ON COMMERCE

### UNITED STATES SENATE

NINETY-SECOND CONGRESS

SECOND SESSION

ON

### S. 3445

TO PROTECT THE PUBLIC INTEREST IN THE FIELD OF PROFESSIONAL TEAM SPECTATOR SPORTS; TO PROVIDE FOR FINANCIAL STABILITY AMONG PROFESSIONAL SPORTS FRANCHISES; TO PROTECT THE INTERESTS OF PROFESSIONAL ATHLETES; TO IMPROVE THE RELATIONSHIP BETWEEN PROFESSIONAL AND AMATEUR SPORTS; AND FOR OTHER PURPOSES

JUNE 16, 19, 23, AND 28, 1972

Serial No. 92-96

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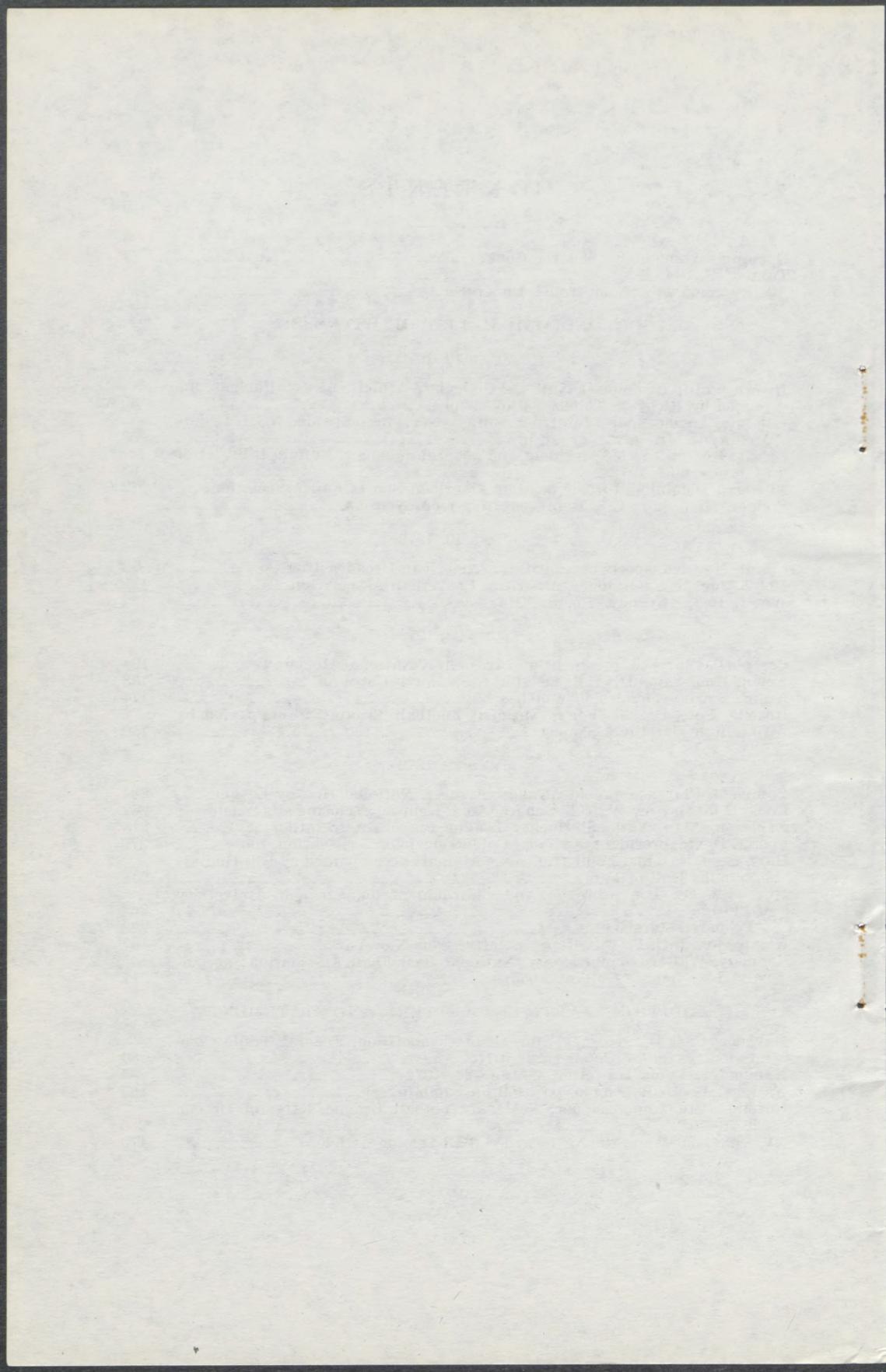
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## FEDERAL SPORTS ACT OF 1972

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FRIDAY, JUNE 16, 1972

U.S. SENATE,  
COMMITTEE ON COMMERCE,  
*Washington, D.C.*

The committee met at 10:08 a.m. in room 5110, New Senate Office Building, Senator Marlow W. Cook, presiding.

Present : Senators Cook and Pastore.

### OPENING STATEMENT BY SENATOR COOK

Senator Cook. We will bring these hearings to order.

Today, the Senate Commerce Committee begins 4 days of hearings in regard to S. 3445, the Federal Sports Act of 1972. I have dual interest in this legislation. As its sponsor, and as a participant in the legislative process, I am urging its most serious consideration by the Senate as a measure which I believe is essential to preserve the professional sports system in the United States.

As a sportsman, I am interested in the proposal as a mechanism for best assuring a vital, dynamic recreational form, which I have long enjoyed.

As you may detect from this last comment, the orientation of the legislation and the area upon which I intend to focus these hearings, is the interest of the sports fan, and as I said in my remarks upon introduction of this legislation, "The first right to be protected is the right of the sports fan to a stable professional sports system; one upon which he can rely, and one which he can enjoy."

Without the support of the American sports fans, who now number well over half of the Nation's population, the Sunday afternoon spectacles would be nothing more than sandlot skirmishes, and our six figure, bubble gum card heroes could not capture the huge public followings they now enjoy.

I sincerely believe in the value of sports to our society and our culture. Not only can the spirit of competition be an asset to the psychology of the Nation, but there are also many sociological benefits to the country in the field of race relations, inner-city development, and community enthusiasm.

Sports, however, has been recently threatened by diminishing public confidence. To the sports fan like myself, it is hard to understand how owners, players, agents, and other principals can ignore the emotional commitment which those fans have made to certain teams, boost ticket prices, move franchises, engage in strikes, and blackout television broadcasts of events to which no tickets are available.

The fan is entitled to consideration, and the sports world, as commercialized as it has become, should be more aware of its obligation to honor those rights.

The proposal under consideration in these hearings is the creation of a Federal sports commission, whose primary function would be to protect the rights and regulations in those areas of professional team sports where his interests are most commonly abused.

The areas which are specified in the legislation are: Television blackouts, drafting procedures, the sale and movement of team franchises, and contract problems. Some of these areas may better be left to other regulatory processes, and there may well be others—for instance “ticketing problems”—which should be added.

I have tried to make it clear during the past few weeks that the specific provisions of the bill are not merely important to me as the concept of the commission.

It should also be clear that this proposal is not designed to be a national labor relations board of sports. There are existing mechanisms for handling the player-team conflicts, and unless those conflicts impinge upon the stability of the sport, it is not the intention of this proposal to usurp the rights of the players and teams to negotiate any conflicts.

Similarly, it is not the design of the legislation to become a regulatory body in the mold of the FCC or the ICC, whereby every activity of a team must be approved by a governing board.

The purpose of establishing a Federal Sports Commission is simply to provide a mechanism for establishing certain guidelines within which the sports world must function in order to provide a stable spectator sports system. The primary purpose of the commission, therefore, is to provide the sports fan with a voice in the operation of that system—a voice which has heretofore been ignored.

It is inevitable that certain protests will be made during the course of these hearings that the area of sports is one that should remain free of governmental interference. I would hope that those witnesses who hold dearly to the concept of sports as being sacrosanct, will consider the idea that it may be preferable to spare the world of sports the embarrassment and turmoil of constant litigation and conflict by establishing such a system of guidelines, rather than to subject sports to front page coverage which does nothing but harm the sports and the parties involved.

In proposing this commission and this concept, I believe we are admitting that sports is, indeed, special; and that with a little cooperation from all parties, the world of sports can return to the status which it enjoyed years ago as I was growing up, where every game was a new adventure, and when one's aspirations and emotions could be played, owners, commissioners, and others who would be affected. competition.

I am hopeful that these hearings will provide the kind of constructive record which will help the Commerce Committee frame a piece of legislation that embodies the concepts and purposes I have mentioned this morning, but which also preserves the basic rights of players, owners, commissioners, and others who would be affected.

I would finally like to offer my deep thanks to Senator Magnuson, who most thoughtfully has allowed me to chair this series of hearings.

(The bill and agency comments follow:)

92D CONGRESS  
2D SESSION

# S. 3445

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## IN THE SENATE OF THE UNITED STATES

MARCH 30, 1972

Mr. Cook introduced the following bill; which was read twice and referred to the Committee on Commerce

---

## A BILL

To protect the public interest in the field of professional team spectator sports; to provide for financial stability among professional sports franchises; to protect the interests of professional athletes; to improve the relationship between professional and amateur sports; and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That this Act be cited as the "Federal Sports Act of 1972".

### DECLARATION OF PURPOSE

5       SEC. 2. The Congress hereby declares that the public  
6       has a right to a stable, financially sound professional sports  
7       system, that unstable conditions now exist within profes-  
8       sional sports, including the arbitrary sale and transfer of

1 team franchises, the pirating of professional athletes by the  
2 various teams and leagues, inequitable arrangements relating  
3 to the broadcast of professional sports events on commercial  
4 television, inefficient and disruptive mechanisms for bringing  
5 amateur athletes into professional sports, and uncertain con-  
6 ditions concerning the forms and provisions of player con-  
7 tracts. It is therefore the purpose of this Act to provide for  
8 the establishment of a Federal Sports Commission within the  
9 United States Department of Commerce, which shall have  
10 the authority to promulgate and enforce rules or other regu-  
11 lations to carry out the purpose of this Act.

12 DEFINITIONS

13 SEC. 3. As used in this Act—

14 (1) the term “professional sports team” means an  
15 organization of more than two professional athletes,  
16 which is a member organization of a professional sports  
17 league;

18 (2) the term “professional athlete” means an ath-  
19 lete who is remunerated under contract or otherwise by  
20 a professional sports team for his athletic performances;  
21 and

22 (3) the term “professional sports league” means an  
23 association of professional sports teams which provides  
24 a competitive schedule for its member teams, and which  
25 provides other administrative services for the association,

1 including but not limited to the following associations:  
2 the National Football League, the National Basketball  
3 Association, the American Basketball Association, the  
4 National Hockey League, the National Baseball League,  
5 the American Soccer League, and the American Baseball  
6 League.

7 FEDERAL SPORTS COMMISSION

8 SEC. 4. (a) A Commission is hereby created and estab-  
9 lished within the Department of Commerce to be known as  
10 the Federal Sports Commission (hereinafter referred to as  
11 the "Commission") consisting of three Commissioners who  
12 shall be appointed by the President, by and with the advice  
13 and consent of the Senate, one of whom shall be designated  
14 by the President as Chairman. The Chairman shall be the  
15 principal executive officer of the Commission and, when so  
16 designated, shall act as Chairman until the expiration of his  
17 term of office. Any member of the Commission may be re-  
18 moved by the President for neglect of duty or malfeasance  
19 in office but for no other cause.

20 (b) The Commissioners first appointed under this sec-  
21 tion shall continue in office for terms of three, four, and five  
22 years, respectively, from the date of enactment of this Act,  
23 the term of each to be designated by the President at the  
24 time of nomination. Their successors shall be appointed each  
25 for a term of five years from the date of expiration of the

1 term for which his predecessor was appointed and has quali-  
2 fied, except that he shall not so continue to serve beyond the  
3 expiration of the next session of Congress subsequent to the  
4 expiration of said fixed term of office and except that any  
5 person appointed to fill a vacancy occurring prior to the ex-  
6 piration of the term for which his predecessor was appointed  
7 shall be appointed only for the unexpired term.

8 (c) Not more than two of the Commissioners shall be  
9 appointed from the same political party. No person in the  
10 employ of, or holding any official relation to, any profes-  
11 sional sports team, professional sports league, player associa-  
12 tion, or owning stocks or bonds of substantial value in any  
13 team, or who is in any other manner pecuniarily interested in  
14 any team, shall enter upon the duties of or hold the office of  
15 Commissioner. Commissioners shall not engage in any other  
16 business, vocation, or employment.

17 (d) No vacancy in the Commission shall impair the  
18 right of the remaining Commissioners to exercise all the  
19 powers of the Commission. Two members of the Commission  
20 shall constitute a quorum for the transaction of business. The  
21 Commission shall have an official seal of which judicial no-  
22 tice shall be taken. The Commission shall annually select a  
23 Vice Chairman to act in the absence or in the case of the dis-  
24 ability of the Chairman or in the case of a vacancy in the  
25 office of the Chairman.

1       (e) The Commission shall maintain a principal office  
2 and may meet and exercise any or all of its powers at any  
3 other place. The Commission may, by one or more of its  
4 members or by such agents or agency as it may designate,  
5 prosecute any inquiry necessary to its function anywhere in  
6 the United States. A Commissioner who participates in such  
7 an inquiry shall not be disqualified from subsequently par-  
8 ticipating in a decision of the Commission in the same matter.

9       (f) The Commission shall prepare and submit to the  
10 President for transmittal to the Congress on or before Octo-  
11 ber 1 of each year a comprehensive report on the adminis-  
12 tration of this Act for the preceding fiscal year. Such report  
13 shall include:

14           (1) a thorough appraisal, including statistical  
15 analyses, estimates, and long-term projections, of the  
16 status of professional sports including, but not limited  
17 to, the financial status of teams, the condition of player-  
18 team relations, the condition of relations between pro-  
19 fessional and amateur sports organizations, and status  
20 reports on any problems which may be found to exist  
21 in the Commission's jurisdiction;

22           (2) an evaluation of the degree of observance of  
23 Federal sports rules and regulations, including a list of  
24 enforcement actions, court decisions, and compromises  
25 of alleged violations;

1           (3) a summary of outstanding problems confront-  
2           ing the administration of this Act, in order of priority;

3           (4) a list, with a brief statement of the issues, of  
4           completed or pending judicial actions under this Act;

5           (5) the extent of cooperation between Commission  
6           officials and representatives of the various teams, play-  
7           ers, leagues, and other interested parties in the imple-  
8           mentation of this Act, including a log or summary of  
9           meetings held between Commission officials and repre-  
10          sentatives of the various teams, players, leagues, and  
11          other interested parties; and

12          (6) an appraisal of the significance and potential  
13          effects of any legislation at the State, local, or Federal  
14          level which relates to the responsibilities of the Com-  
15          mission.

16          (g) That report required by subsection (f) shall con-  
17          tain such recommendations for additional legislation as the  
18          Commission deems necessary to remedy problems which  
19          relate to professional sports, and the relation between pro-  
20          fessional and amateur sports.

21          (h) The Commission shall appoint an Executive Di-  
22          rector, a General Counsel, a Director of Information, and  
23          such other officers and employees as are necessary in the  
24          execution of its functions. Commission employees, other than  
25          those specifically enumerated in the preceding sentence,

1 shall be subject to the provisions of title 5, United States  
2 Code, governing appointments in the competitive service.

3 FEDERAL SPORTS RULES

4 SEC. 5. The Commission shall have authority to promul-  
5 gate rules or other regulations which relate to—

6 (a) the procedures for imposing territorial restric-  
7 tions on the broadcast of professional sports events on  
8 commercial television (said rules shall be promulgated  
9 only after consultation with the Federal Communica-  
10 tions Commission) ;

11 (b) the sale and/or transfer of professional team  
12 franchises ;

13 (c) the mechanisms or procedures for transferring  
14 amateur athletes into professional sports ;

15 (d) the form of player contracts (but not the terms  
16 of those contracts), in order to best assure adequate dis-  
17 closure of the terms of such contracts to the contracting  
18 parties.

19 FEDERAL SPORTS RULES—PROCEEDINGS

20 BY THE COMMISSION

21 SEC. 6. (a) Whenever the Commission finds that a rule  
22 or other regulation authorized by section 5 is necessary to  
23 protect the interests of the public, to prevent the financial  
24 failure of professional sports teams, or to protect the rights

1 of professional athletes, the Commission shall commence a  
2 proceeding for the development of such a rule or regulation.

3 (b) A proceeding for the development of such a rule  
4 or regulation shall be commenced by the publication of a no-  
5 tice in the Federal Register. The notice shall state—

6 (1) the rule or regulation;

7 (2) the reason for such rule or regulation; and

8 (3) the manner and the period within which all  
9 interested persons may present their comments on such  
10 rule or regulation or the need therefor.

11 (c) As soon as practicable after the publication of a  
12 proposal to promulgate a rule or regulation, the Commis-  
13 sion shall, by order published in the Federal Register, act  
14 upon such proposed rule or regulation, or withdraw the ap-  
15 plicable notice of proceeding. The order shall set forth the  
16 rule or regulation, the reasons for the Commission's action  
17 (including reasons for the promulgation of a rule or regula-  
18 tion materially different than those set forth in the proposal),  
19 and the date or dates upon which such rule or regulation,  
20 or portions thereof, shall become effective. Such date or  
21 dates shall be established so as to most effectively achieve  
22 the purposes of this Act.

23 (d) The Commission shall not promulgate a sports rule  
24 or regulation, unless it determines and includes such deter-  
25 mination in the order promulgating such rule or regulation,

1 that its findings show that such rule or regulation (includ-  
2 ing the effective date thereof) is reasonably necessary to  
3 carry out the purposes for which such rule or regulation  
4 is authorized by section 5, and that the promulgation of  
5 such rule or regulation is in the public interest.

6 Disputes of fact

7 (e) The Commission may conduct a hearing in accord-  
8 ance with such conditions or limitations as it may make  
9 applicable thereto, for the purpose of resolving any issue  
10 of fact material to any finding required to be made by the  
11 Commission under this section.

12 REVOCATION OR AMENDMENTS OF RULES OR REGULATIONS

13 SEC. 7. (a) The Commission may revoke, in whole or in  
14 part, any rule or regulation, upon the ground that there no  
15 longer exists a need therefor or that such rule or regulation  
16 is no longer in the public interest. Such revocation shall be  
17 published as a proposal in the Federal Register and shall set  
18 forth such rule or regulation or portion thereof to be revoked,  
19 a summary of the reasons for its determination that there may  
20 no longer be a need therefor or that such rule or regulation or  
21 any part thereof may no longer be in the public interest, the  
22 manner in which interested persons may examine the infor-  
23 mation relevant to the Commission's determination, and the  
24 period within which all interested persons may present their  
25 views in writing, with respect to such revocation. As soon as

1 practicable thereafter, the Commission shall by order act  
2 upon such proposal and shall publish such order in the Fed-  
3 eral Register. The order shall include the reasons for the  
4 Commission's action and the date or dates upon which such  
5 revocation shall become effective.

6 (b) The requirements of sections 5, 6, and 7 of this Act  
7 for the promulgation of a sports rule or regulation shall apply  
8 to the promulgation of a material amendment of such a rule  
9 or regulation. The Commission may promulgate an amend-  
10 ment of a sports rule or regulation other than a material  
11 amendment without regard to section 5, 6, or 7, but shall  
12 comply with the procedures set forth in subsections (a)  
13 and (b) of section 6, and shall set forth, in its order pro-  
14 mulgating such amendment, such findings as it may deem  
15 appropriate in explanation thereof. As used in this subsec-  
16 tion, the term "material amendment" means an amendment  
17 that would substantially increase the degree of compliance  
18 required by a rule or regulation.

19 JUDICIAL REVIEW

20 SEC. 8. (a) Any person adversely affected by an order  
21 of the Commission pursuant to section 6, or pursuant to sec-  
22 tion 7, may, at any time after such order is published by the  
23 Commission, file a petition with the United States Court of  
24 Appeals for the circuit in which such person resides or has his  
25 principal place of business for a judicial review of such order.

1 Copies of the petition shall be forthwith transmitted by the  
2 clerk of the court to the Commission or other officer desig-  
3 nated by it for that purpose and to the Attorney General.  
4 The Commission shall transmit to the Attorney General,  
5 who shall file in the court, the record of the proceedings on  
6 which the Commission based its order, as provided in section  
7 2112 of title 28 of the United States Code. Such record shall  
8 include such order of the Commission and, if issued, held, or  
9 obtained in connection therewith, the notice of proceeding  
10 published pursuant to subsection (b) of section 6, or section  
11 7; the transcript or summary of any proceedings and the find-  
12 ings arising therefrom; and any other information, including  
13 comments of interested persons, required to be considered  
14 by the Commission in the promulgation of such order.

15 (b) Upon the filing of the petition under subsection (a)  
16 of this section, the court shall have jurisdiction to review the  
17 order of the Commission in accordance with chapter 7 of  
18 title 5 of the United States Code and to grant appropriate  
19 relief, including interim relief, as provided in such chapter.  
20 The order of the Commission shall be affirmed if supported by  
21 substantial evidence on the record taken as a whole.

22 (c) The judgment of the court affirming or setting  
23 aside, in whole or in part, any order of the Commission  
24 shall be final, subject to review by the Supreme Court  
25 of the United States upon certiorari or certification, as

1 provided in section 1254 of title 28 of the United States  
2 Code.

3 SPORTS ADVISORY COUNCIL

4 SEC. 9. (a) The Commission shall establish a Sports  
5 Advisory Council which it may consult before prescribing  
6 a sports rule or regulation. The Council shall be appointed  
7 by the Commission and shall be composed of eight mem-  
8 bers, each of whom shall be qualified by training and ex-  
9 perience in one or more of the fields within the jurisdic-  
10 tion of the Commission. The Council shall be constituted  
11 as follows:

12 (1) two members shall be officials of professional  
13 sports leagues;

14 (2) two members shall be representatives of pro-  
15 fessional sports team franchises;

16 (3) two members shall be representatives of pro-  
17 fessional athlete organizations; and

18 (4) two members shall be selected from among  
19 amateur sports organizations, sports writers and broad-  
20 casters, and recognized leaders in the field of sports.

21 (b) The Council may propose sports rules and regula-  
22 tions to the Commission for its consideration and may func-  
23 tion through subcommittees of its members. All proceedings  
24 of the Council shall be public, and a record of each proceed-  
25 ing shall be available for public inspection.

1 (c) Members of the Council who are not officers or  
2 employees of the United States shall, while attending meet-  
3 ings or conferences of the Council or while otherwise en-  
4 gaged in the business of the Council, be entitled to receive  
5 compensation at a rate fixed by the Commission, not ex-  
6 ceeding \$100 per diem, including traveltime, and while  
7 away from their homes or regular places of business they  
8 may be allowed travel expenses, including per diem in lieu  
9 of subsistence, as authorized by section 5703 of title 5,  
10 United States Code. Payments under this subsection shall  
11 not render members of the Council officers or employees of  
12 the United States for any purpose.

13 ADDITIONAL POWERS OF THE COMMISSION

14 SEC. 10. (a) The Commission, or any two members  
15 thereof, as authorized by the Commission, may conduct  
16 hearings at its office or otherwise secure data and expres-  
17 sions of opinion pertinent to the jurisdiction of the Com-  
18 mission. The Commission shall publish notice of any pro-  
19 posed hearings in the Federal Register and shall afford a  
20 reasonable opportunity for interested persons to present  
21 relevant testimony and data.

22 (b) The Commission shall also have the power—

23 (1) to require, by special or general orders, pro-  
24 fessional sports teams, leagues, individuals, and other  
25 organizations to submit in writing such reports and

1 answers to questions as the Commission may prescribe;  
2 such submission shall be made within such reasonable  
3 period and under oath or otherwise as the Commission  
4 may determine;

5 (2) to administer oaths;

6 (3) to require by subpoena the attendance and tes-  
7 timony of witnesses and the production of all documen-  
8 tary evidence relating to the execution of its duties;

9 (4) in the case of disobedience to a subpoena or  
10 order issued under this subsection, to invoke the aid of  
11 any district court of the United States in compliance  
12 with such subpoena order;

13 (5) in any proceeding or investigation to order  
14 testimony to be taken by deposition before any person  
15 who is designated by the Commission and has the power  
16 to administer oaths and, in such instances, to compel  
17 testimony and the production of evidence in the same  
18 manner as authorized under paragraphs (3) and (4)  
19 of this subsection; and

20 (6) to pay witnesses the same fees and mileage  
21 as are paid in like circumstances in the courts of the  
22 United States.

23 (c) Any district court within the United States within  
24 the jurisdiction of which any inquiry is carried on may, upon  
25 petition by counsel for the Commission, in case of refusal

1 to obey a subpoena or order of the Commission under subsec-  
2 tion (b) of this section, issue an order requiring compliance  
3 therewith; and any failure to obey the order of the court may  
4 be punished by the court as a contempt thereof.

5 (d) The Commission is authorized to enter into con-  
6 tracts with governmental entities, private organizations, or  
7 individuals for the conduct of activities authorized by this  
8 Act.

9 (e) The Commission is authorized to establish such poli-  
10 cies, criteria, and procedures and to prescribe such rules and  
11 regulations as it deems necessary to administration of this  
12 Act and its functions hereunder. Unless otherwise specified,  
13 the provisions of title 5, United States Code, section 553,  
14 shall apply to such proceeding.

15 COOPERATION WITH FEDERAL AGENCIES

16 SEC. 11. The Commission is authorized to obtain from  
17 any Federal department or agency such statistics, data, pro-  
18 gram reports, and other materials as it may deem necessary  
19 to carry out its functions under this Act. Each such depart-  
20 ment or agency is authorized to cooperate with the Com-  
21 mission and, to the extent permitted by law, to furnish such  
22 materials to it. The Commission and the heads of other de-  
23 partments and agencies engaged in administering programs  
24 related to professional sports shall, to the maximum extent

1 practicable, cooperate and consult in order to insure fully  
2 coordinated efforts.

3 ENFORCEMENT

4 Civil Penalties

5 SEC. 12. (a) Whoever fails to comply with a rule or reg-  
6 ulation issued pursuant to sections 5, 6, and 7, or, in case of  
7 commission of any such act by a team, league, or individual,  
8 the team, league, or individual, and any individual director,  
9 officer, or agent of such team, league, or individual who know-  
10 ingly committed such act, shall be subject to a civil penalty  
11 of not more than \$50,000 for each such act.

12 (b) The Commission may assess and collect any civil  
13 penalty incurred under this Act and, in its discretion, remit,  
14 mitigate, or compromise any penalty prior to referral to the  
15 Attorney General. Subject to the approval by the Attorney  
16 General, the Commission may engage in any proceeding in  
17 court for that purpose. In determining the amount of any  
18 penalty to be assessed hereunder, or the amount agreed upon  
19 in any compromise, consideration shall be given to the appro-  
20 priateness of such penalty in light of the gravity of the viola-  
21 tion and the extent to which the person charged has complied  
22 with the provisions of rules or regulations issued pursuant to  
23 sections 5, 6, and 7, or has otherwise attempted to remedy  
24 the consequences of the said violation.

## Injunctions

1

2 (c) Upon application by the Attorney General, the  
3 district courts of the United States shall have jurisdiction to  
4 enjoin the Commission of acts in violation of any rule or  
5 regulation issued pursuant to sections 5, 6, and 7, and to  
6 compel the taking of any action required by this Act.

7

## INTERPRETATIONS AND SEPARABILITY

8

9 SEC. 13. The provisions of this Act shall be held to be  
10 in addition to and not in substitution for or limitation of the  
11 provisions of any other law. If any provision of this Act or  
12 the application thereof to any person or circumstances is  
13 held invalid, the remainder of the Act and the application  
14 of such provision to any other person or circumstances shall  
15 not be affected thereby.

15

## AUTHORIZATION OF APPROPRIATIONS

16

17 SEC. 14. There are hereby authorized to be appropri-  
18 ated such sums as are necessary for the purpose of carrying  
out the provisions of this Act.

COMPTROLLER GENERAL OF THE UNITED STATES,  
Washington, D.C., June 27, 1972.

HON. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate.

DEAR MR. CHAIRMAN: This is in response to your request of April 26, 1972, for comments on S. 3445, 92d Congress, which, if enacted, would be cited as the "Federal Sports Act of 1972."

Section 4 of S. 3445 prescribes the terms of office and conditions of service for the Commissioners to include the prescription, at subsection 4(c), that "Commissioners shall not engage in any other business, vocation, or employment." There is no provision in the bill, however, which prescribes the pay level of the Commissioners. The committee may wish to consider amendments to be added to bill S. 3445 on an appropriate pay schedule.

S. 3445, at subsection 4(h), also provides for the appointment by the Commission of three individuals who would be exempt from the provisions of law governing competitive appointments. The section does not, however, provide a designated pay level for the exempt individuals and the committee may wish to make such provision.

Sections 6, 7, 8, and 10 appear to be a restatement of the Administrative Procedures Act found at 5 U.S.C. 551-559 and 701-706. The committee may wish to incorporate those provisions by reference.

Section 11 provides that agencies and departments of the Federal Government aid the Commission to the extent permitted by law. It does not indicate if this aid is to be on a reimbursable or nonreimbursable basis. The committee may wish to specify the basis therefor.

On page 3, at line 18, the word "malfeasance" should be "malfeasance."

Sincerely yours,

R. F. KELLER,  
Deputy Comptroller General of the United States.

Senator COOK. Senator Pastore, do you have anything to add?

Senator PASTORE. First of all, I endorse everything the Senator from Kentucky has said. For the life of me, I have never been able to understand why tickets have to be sold in blocks usually to people who have industrial affluence, and then they peddle them out to their customers, and the ordinary citizen who really makes the game possible has to stand in line and go to the bleachers if he is lucky. That goes for the world's series.

You take right here in Washington. You can't buy a ticket to the football game. They are all absorbed by certain people who buy them for the entire season, and that precludes everyone else. Then if the game is played in Washington, you can't see it on television, even though the stadium is packed and people are waiting outside trying to get in.

Now, I think this concept is wrong. I think in the long run this is going to hurt sports generally, and I quite agree with you that if you had a commission to regulate this, in the long run it would be helpful to the game itself.

I think that the public ought to be considered in this, and I know for a fact if you want to go to the world's series, unless you happen to be someone who is quite affluent and has a connection, you can't see the game. You can't buy a ticket for one game.

You have to buy a block of tickets. They go out on invitations and only certain people can buy them. Then John Doe has to stand outside, or sit in the bleachers if he is lucky.

Senator COOK. Thank you, Senator. We were going to have Senator Ervin with us this morning, but he is chairing another committee, and he will testify during the course of these hearings later.

Today we will have Hon. Sam Steiger, Congressman from the State of Arizona; Mr. Phillip Brown, counsel for the NCAA; Mr. Dominick Piledggi, former head of the American Sports Fan Association, and Angelo Coniglio, sports fan from Buffalo, N. Y.

On the 19th, we will have Congressman Jack Kemp, formerly of the Buffalo Bills; Howard Cosell; Mr. Jack Dolph, chairman of the ABA; and Mr. Jack Woolf, attorney from Boston.

Our first witness is Congressman Sam Steiger of Arizona.

#### STATEMENT OF HON. SAM STEIGER, U.S. REPRESENTATIVE FROM ARIZONA

Mr. STEIGER. Thank you, Mr. Chairman. I would like to congratulate you for your concern. I think the concern that you and Senator Pastore and others have of the committee have shown in the face of what can be anticipated—you can expect criticism. While I agree with your concern completely, I don't share your solution, and I do that as much on a visceral feeling as anything else.

It has been my limited experience that anything, any problem the Federal Government addresses itself to of this nature, they only compound, and the wrangling and the resolution will just be escalated.

That is obviously an opinion. What I hope to do this morning for the committee is to bring to you the results of 6 weeks of Congressman Pepper's Crime Committee hearings which have just terminated on the infiltration of organized crime into sports, and perhaps give you an added dimension as to why you need some Federal regulation in the area of professional sports.

Mr. Chairman, you probably as well as anybody else in the Congress are aware that—and I gather by the fact that you have not specified horseracing among the professional sports which the commission would anticipate regulating, although you clearly in the language of your bill do not limit that possibility.

It seems to me we have two distinct divisions in professional sports. One is parimutuel wagering, and the other which is clearly in interstate commerce and clearly a professional sport, now totally unregulated on any kind of a uniform basis.

The other, is the, of course, the professional sports, or the others are those professional sports which enjoy an antitrust exemption and those professional sports which do not enjoy that exemption.

Mr. Chairman, if there is any one conclusion that can be drawn from the 6 weeks of hearings that the House Crime Committee has just completed, it is that there is indeed an organized crime infiltration into professional sports both parimutuel wagering sports and at least in the financing and ownership of some of the baseball and possibly football and hockey teams.

It would seem to me that either in the absence of this bill, or certainly as a significant part of it, that a requirement of the commission or of the Congress that is desperately needed at this point is a full disclosure requirement as to the ownership of a professional team and the financing of the professional teams, the financing of their stadiums, auditoriums, playing fields, et cetera, it becomes apparent, as the chairman has indicated, that the tremendous financial pressures of professional sports require some very fancy footwork today, and full

disclosure of ownership will at the very least inhibit the involvement of those people who would do the sport harm.

It also has become very clear, Mr. Chairman, that while there is undoubtedly illegal gambling or horse racing, it is but a small percentage of the total illegal gambling in this country on an organized basis, particularly with respect to baseball and football.

We had testimony from a great variety of people with varying degrees of expertise, but the minimum volume of the handling of the illegal betting in this country on football, basketball and baseball ranged from \$7 billion annually to \$50 billion annually.

Mr. Chairman, it is clear that the involvement of organized crime in the better end of it is not the pervuew of this particular effort, but to disregard the existence of this illegal gambling and not address yourselves to the undesirability of the involvement of organized crime into the ownership of these teams I think would be something that the committee would not want to do.

You must recognize the significance of the involvement of organized crime at both ends of the candle as it were. If you have got organized crime controlling the betting and organized crime controlling the outcome of the events, you have a very unsatisfactory situation.

Mr. Chairman, I submit that a full disclosure of the ownership is well within the full disclosure requirement of the ownership and financing of professional teams, is well within the purview of the committee. It could well be within the purview of the commission, if that were the desire of the committee, and I would strongly urge, and I can't urge it in terms strong enough.

As far as parimutuel wagering. Mr. Chairman, I would, for the same reasons I have great skepticism about any Federal commission, I would resist strongly a Federal racing commission if that were to be the committee's desire, but there are some very specific things which this committee could promulgate which I think would be of tremendous help to the racing industry, thoroughbred, harness, and dogs.

Mr. Chairman, these are three in number, and they are really very simple, and one, that is become a violation of a Federal statute to tamper now in any way with the outcome of a race or a contest in which parimutuel wagering is involved.

Obviously this would also include Jaialai.

Mr. Chairman, as the law reads now, we have a sports bribery act which apparently is not applicable in many instances involving tampering of the outcomes of races, the drugging of horses, the illegal manipulation of horses by riders and trainers, et cetera.

We had testimony that if there were Federal enforcement officers involved in the enforcement of the law it would be a tremendous inhibition. It is clear that parimutuel wagering in this country is very properly the province of the States in which it is permitted, but unfortunately there is a tremendous variety in both the quality of the statutes and the quality of the enforcement agencies between the States.

What may be illegal in California may not be illegal in Florida, and so forth, and this lack of uniformity has led to sophisticated maneuvering among people who would do harm to the racing industry.

Here, too, Mr. Chairman, I think more significantly, or as significantly as the full disclosure of the ownership of the professional teams,

my second suggestion would be that there be a full disclosure requirement of the ownership of racetracks or any other parimutuel enterprise.

Interestingly enough, I am told by my staff that there is no gambling stamp required, no Federal gambling stamp required of racetracks. I find that interesting, and I am sure it is legal, and I don't know if it is the result of a practice——

Senator PASTORE. May I interrupt you for a question?

Mr. STEIGER. Yes.

Senator PASTORE. Did I understand you to say the commission is not the proper vehicle by which this could be done?

Mr. STEIGER. It is obviously a proper vehicle. I don't think it is the best vehicle.

Senator PASTORE. What would you suggest?

Mr. STEIGER. Are we talking about parimutuel efforts only?

Senator PASTORE. I am talking about this scandalous situation that exists today where it has been said that certain underworld characters are involved in the matter of horse ownership that go from racetrack to racetrack, where names are disguised and people are bribed in order to drug horses, which, of course, is mocking the public.

The big question is, how do you best get at this unless you give this responsibility to an agency in government constituted, I suppose, by public spirited people who have to be appointed who could supervise this?

I think that an arm of the Federal Government would be a lot more able than the State government. In a great many instances while the State may be enthusiastic and willing and anxious to do something about it, it has been almost powerless, because this thing spreads itself over the entire country.

The Senator is absolutely correct. The State agencies are outmanned and outgunned. The only difference the Senator and I have is that the involvement of the Federal Government could be, on the basis of all the things the gentleman mentioned, anything that would affect the outcome of the race, including the concealing of a horse's identification and the ownership would be a Federal violation.

I have discussed this with the new director of the FBI, Mr. Gray, and he felt they had the competence if not the personnel at this time to enforce such a law. Now, my point, Senator, is that, you and I agree that the States clearly need help in this matter.

I don't know that another structure is the answer for the help, or is the most efficient way. It seems to me that the most offensive thing about this is the fixing of the races, the very obvious wholesale fixing of races which apparently is occurring.

Senator Cook. Congressman, let's expand that a little bit. Say you have somebody who has been run off of a track in any State. It does not really make any difference. They catch him in something and they run him off. The only vehicle that the system has right now is the Horseman's Protective Association, which tries to keep him off all other tracks, because if he is thrown off a track in *x* State, he can go to the next State, the next one and the next one.

In many instances he can even do it with the enthusiasm of the track, as the case may be. So what is really wrong is a situation where you have a Federal agency, a Federal commission that has a regulation

that if he is thrown off this track and if there is good cause to throw him off that he should be thrown off every track in the country, and if that track allows him on, that track is subject to a penalty.

Mr. STEIGER. Senator, I can't quarrel with the logic or the facts. As a matter of fact, I spent 2 years involved in this kind of investigation, and there is no reciprocity. You are absolutely right. If a man is declared undesirable in State *x*, there is no requirement on State *x*, and he can operate or run horses or whatever he wants to do.

Senator COOK. And the only organization is the Horseman's Protective Association.

Mr. STEIGER. There is a Thoroughbred Racing Protective Bureau.

Senator COOK. That's it.

Mr. STEIGER. But there are 90 parimutual flat tracks in this country. The organization is the security arm, and there are only 37 member tracks in the Thoroughbred Association. So almost half the tracks in the country don't even have the rather thin benefits of the Thoroughbred Racing Protective Bureau.

The National Association of State Racing Commissioners, which I think at one point naively felt was a logical body to enforce this situation with a commonality of licensing, you see, that would solve that all racetrack personnel should be licensed, but they are not, and the National Association of State Racing Commissioners has been unable to come together on any kind of a pool of information as to who might be desirable and who might be offensive.

Senator COOK. There are also too many members of the racing commissions throughout the United States who have extremely valuable interests in racetracks.

Mr. STEIGER. Not even that so much. Obviously that is a problem, and in your own State it is a very recent problem, but as of yesterday, I believe, the revelation was made public, and I will tell you, Senator, that it is not only the commissioners who might be aware of racing that disturb me now. It is the, too often, in fact more often than not, a racing commissioner represents the amortization of a political debt on the part of an incoming administration.

It is a comfortable way to pay off a loyal supporter of a candidate, and there is little more thought given to his abilities or to his desire, or knowledge, or technique, will, or wit, and while these commissioners may be decent people, they are naive, and as the Senator knows, to be naive in the horse business is to be helpless, because the people who do harm to the horse business are sophisticated in a way—

Senator PASTORE. Is that the fault of the reported authority? He has to be responsible to his people. I don't think we on the national level can do a great deal about that. The fact still remains that if you say the Director of the FBI is perfectly adequate, of course, to understand any investigation that has to do with a violation of Federal law, and no one can challenge that, but you know the FBI rarely comes into anything unless it is referred to it.

That is what we are talking about, some agency that has the know-how that you are talking about, is familiar with the situation that is going on that can make that investigation and then refer it to the FBI and get it cleared up, so that those responsible belong in jail.

Mr. STEIGER. We have no difference in desirability.

Senator COOK. We have to vote, we will be right back.

(Recess.)

Senator COOK. Sorry for the interruption, Sam. You can continue.

Mr. STEIGER. OK, Mr. Chairman.

If I may, I will briefly cite my three recommendations with respect to wagering and the Federal involvement therein.

Senator COOK. May I say that I think your first one was a violation to tamper with the outcome of a race or a game, and the second was full disclosure of ownership of tracks and so forth.

Mr. STEIGER. Yes; including the financing arrangements. My third is a common Federal license for all racetrack personnel, and by "all racetrack personnel," I mean not only those directly involved with the horses on the backside, the jockeys, the trainers, the grooms, but I mean the management personnel of the track itself, the concessionaries and their employees, the ticket sellers and the cashiers.

Senator COOK. Let's stop there just a minute, because let's take Churchill Downs for instance. They will have a median employment during the season, but then on Derby day, they will have to hire literally hundreds of additional employees.

Now, usually many of these employees are students at the University of Louisville—

Mr. STEIGER. You are talking about ushers and that sort of thing?

Senator COOK. Yes; and some of them are maybe even additional sellers who have been doing it for 2 or 3 years while they are in school. Is it going to be necessary that this individual be responsible under your proposal to have a Federal license to work on that occasion?

Maybe it is just weekends, Friday and Saturday.

Mr. STEIGER. Mr. Chairman, I will tell you that that problem had not been raised, and I can see where certainly as regards the Triple Crown and other feature races around the country it could present a problem, and I would suspect that the language might be amended to exempt ushers. But I would tell the chairman that I have become convinced that those who would do harm to racing have reached the point of sophistication that they are going to take advantage of whatever weakness there is in whatever law you finally proscribe, and obviously you have to make a judgment between what is pragmatic and what is really protection. Clearly, the employment of college people or young people as ushers is no threat to any industry, at least in my view.

It is clear that as far as sellers, we had testimony where the footwork between a confederate and a seller, some fancy footwork can result in some wholesale cheating not only of the management and the State, but even as regards the outcome of the race itself, or encourages the tampering with the outcome of the race.

So a willing seller who anticipates the bell to close the parimutuel window in concert with a confederate can do a great deal of harm.

In broad terms, those are the three areas that I think the Federal Government must now become involved in parimutuel wagering.

I would also reiterate that if indeed the commission becomes a reality, on page 7 of your bill in which you list the authority of the commission, I would urge that you add a section E in which you would require, and the heading there on line 4, and the section E would say "for the protection of the sport from the invasion of organized crime

or other undesirable underworld figures in a financing or ownership role of a professional team."

Senator COOK. Of a professional team, or a professional sport?

Mr. STEIGER. Professional sport. We have to phrase it out.

Senator COOK. Yes.

Mr. STEIGER. We understand the intent. But I would point out, Mr. Chairman, with absolutely no intention to reflect on the professional sports involved, that both Mr. Kuhn and Mr. Rozelle have exhibited a great interest, and some areas do business with organized crime, and are undesirable.

This was one of the significant points in the hearings we have just had. Only yesterday it was revealed to me for the first time that this Emprise organization, which I consider suspect, knew that they had two loans to professional baseball teams, one to the Montreal Expos and the other to the Milwaukee Brewers.

Mr. Kuhn sent his security man over and went through my files and did research on this organization, and he asked me what he could do for me. I told him if he found they had an interest in the other teams, I would like to know it.

He advised me Emprise had no other loans that he knew of. Yesterday, I learned that they had a loan to the Detroit Tigers and the Chicago White Sox, which we did not know about, and apparently the professional baseball league did not know about it.

Now it is clear, Mr. Chairman, that even with the best of intentions it is one thing for Pete Rozelle or Bowie Kuhn to police the morals or associations of the players but it is virtually impossible for him to police the morals or associations of the owners because they are employees of the owners.

They are hired by the owners. Mr. Chairman, therein I suspect, lies one of the great weaknesses of this structure. In racing, at least, there is the cosmetic protection of a racing commission for a State, but in professional sports other than racing there is not even that.

There is no protection against the invasion of underworld money and people and in the ownership of professional teams at the State level. There is no protection. So I can't urge too strongly the inclusion if the chairman recognizes the need of some languages in this commission structure that would allow the commission to eliminate that kind of financing and ownership of professional teams.

I would say that would conclude my comments, Mr. Chairman.

Senator COOK. I would like to, if I could, Congressman, discuss some of your later remarks relative to this infusion into baseball and football.

In the last 6 weeks that you have been holding hearings, have you come up with any specific points how this directly affects the fan, obviously to the extent that it affects him in horseracing we know about. But let's talk about the role of the spectator as it applies to baseball, football, and so forth, if you have any of those examples.

Mr. STEIGER. Mr. Chairman, the first 6 weeks of these hearings were concerned ostensibly with racing. There was inevitably some of the witnesses who referred to other sports. This was always at the level of the street, the street level.

This was not at the management level. We had a man who contended that some basketball figures were involved with the same gang-

ster elements that was fixing races, and he was advised that the basketball game was going to be won by a margin of a certain number of points, and his testimony was that it was indeed won by that margin of points.

Obviously, in that instance, the loyal fan is simply being loyal to a situation that does not do him any credit. It is pretty esoteric, but, in other words, the fan is not giving of his money and his loyalty to watch a contest that really is not a contest, which is clearly not only undesirable, but I am sure offends the Chairman as much as it does anybody.

But it does a great deal more than that. I think the real harm, and this did not evolve from any testimony we heard, Mr. Chairman, but to me the harm is an equal harm.

It is not only the disillusionment of the fan, which is a pretty significant thing, but we have become a very cynical society, anyway, and if we spread this cynicism much further, I think we do the fabric of the country much harm.

But the communities where the teams are housed and based have a great identity with the team; and if it becomes common knowledge that there is something wrong with the ownership of the team and the double standard is applied; that is, Joe Namath must give up his saloon because there are undesirable underworld people there, and it is likely that these same people own the team, and Joe is not permitted to own the saloon, or Mr. McLain isn't permitted to gamble, and yet it is possible that the people he is gambling for or with own the team.

That kind of a double standard, the public becomes aware of that. That, in turn, erodes whatever faith they may have now in the community et cetera, and so I think it has a very corrosive effect, perhaps, on people who would not otherwise be visibly affected by Government, sports fans; those of us who are sports fans are kind of unique.

We live in a relatively narrow world, and the sports world is very real to us, and if we lose our faith in that, I suspect it would do harm, and I think the Chairman has touched on this, but we do specific harm that goes beyond the mere outcome of the contest.

Now, of course, as far as the practical aspects of gouging, increasing ticket sales, you see any professional team, of course, has a franchise, in which he can charge all the traffic can bear.

Senator Cook. Let's talk about that for a minute, because we are going to have some testimony, for instance, relative to blackouts of television, and the theory seems to be that you have to protect your stadium.

Now, we just had the 98th running of the Kentucky Derby, so obviously there have been a lot of derbies that have been run when there was no television, and as matter of fact, a whale of a lot of them when there was not even radio.

Television came in, and all of a sudden television wanted to have the derby. There has never been a blackout of Louisville for the Kentucky Derby, and it has never been anything but a sellout. This year there were 134,000 people there.

Mr. STEIGER. The first time it may be an honest count; right?

Senator Cook. That is right. So how can anybody justify how he sells his tickets, months in advance who has every ticket sold, who has the money in the bank, is drawing interest on the sports fans' money, because he tells him he has to buy them all and pay for them all before a certain date or he loses his right to his ticket?

Then when it comes along, every game is already sold out, and you have people clamoring, and you have a waiting list for tickets.

Then when the big game comes up and everybody wants to see it, we have to jeopardize thousands of people's lives by putting them in automobiles and driving them to Baltimore, or Richmond, or Philadelphia, so they can get a motel room and watch their people play a game that they could not see at home when they couldn't get a ticket to it anyway.

Can we as legislators discuss how anybody within a franchised territory can contend that by televising that game in that community, he somehow or other is going to lose the fans in his stadium?

Mr. STEIGER. Mr. Chairman, I not only think that is a spurious position, but I firmly believe it is an abuse of the antitrust exemption which they—and I mean the owners of the team—enjoy. It is exactly the kind of situation that organized crime thrives on. They love a monopoly, they love a franchise, and you have to recognize that they will use an advantage not only to increase ticket sales, not only to keep the heat on the customers, but they will use those blocks of tickets that Senator Pastore referred to, to buy favors that money won't buy.

Because there are people that money won't buy, but they would succumb to that kind of blandishment.

Senator Cook. That applies to the NCAA, also. A State court in Oklahoma issued an injunction against the NCAA that next year they will show the Oklahoma-Texas college football game in certain communities in the State.

Mr. STEIGER. I didn't know that.

Senator Cook. Yes indeed. So it not only applies to that, but let's take the NCAA basketball finals. Every ticket is sold. I have been to many of them. We had them in Louisville until they decided they wanted to have them on campuses. They thought it was so bad that they could not have it in a facility other than on a campus, and yet every ticket is sold to it.

There is not a way in the world you can get a ticket. The biggest percentage of them are sold out of the State, and yet here you are in the community where it is located, and you can't find a ticket, or beg, or borrow, or steal one.

You sell them to the people early, and you will even allow them to put an ad in the newspaper that they will resell the tickets at \$100 a piece, and they don't do anything about that, and yet they black it out in the community where there are thousands of people who could not get inside the place to see it if they wanted to.

Mr. STEIGER. Could I ask the chairman a question? Is this concern of yours over the blackout one of the chief reasons for the Commission?

Senator Cook. No. It is one of the basic arguments we will make during the course of these hearings of the sports fans' right to see a sporting event, that involves his team or his community as such because the franchise holder takes the name of the community in which the individual lives, Chicago, Milwaukee, Washington, or whatever the case may

be. Yet the sports fan is denied the right to buy a ticket because the stadium isn't big enough, and they sell big blocks of tickets to standard facilities throughout the community; and secondly, when the big game comes up, he can't see it anyway because he is blacked out.

Mr. STEIGER. Does the FCC not have the authority to prohibit blackouts?

Senator COOK. I might say to you that Dean Burch has indicated his agency might go along with Public Law 87-331, which removes from the scope of the antitrust laws the National Football League's decision on the blackout of the home games.

Again, a Commission may do this, but again it may not do it.

Mr. STEIGER. And what the Commission begins, it takes away.

Senator COOK. That is right.

Mr. STEIGER. I think the concern is valid. I think you are on the side of the angels on the thing, but in this instance it is not just the gesture kind of position, because I know, unless you are a fan you don't know the degree—I know the outrage that people pour on me when Phoenix, Ariz., is blacked out of a situation in which either the Sons are playing or the local hockey team, and the outrage—these are people who wouldn't be outraged by anything else. So they are entitled to be heard.

Senator COOK. I think it has come to the point of ridiculousness where the enthusiasm of the fan has risen to such a point where the fans travel by the thousands out of town particularly when it comes to playoff games. I might say to you that I think we have another problem that deserves looking into, and that deserves looking into, and that is that if an owner decides that it is not making enough money, then all he does is to extend the season, and it seems like some of these seasons for some of these sports never end, and consequently the next year you find out you are buying tickets, if you want to buy them, so you are guaranteed the right to buy them the next year. Now, you have a few more practice games, and then you have a few more games in the playoff, and you establish a few more divisions so you have a few more seven-game playoffs; and if you want to get tickets to the first game, you have to buy them all.

One of these days, we will be watching football in June and we will be watching basketball in August, I guess.

Mr. STEIGER. I agree, Mr. Chairman, again. My only question is, and I have not researched it, and obviously you have or probably wouldn't have introduced this bill. But couldn't all the problems you have discussed, for example again on page 7, couldn't the procedures for imposing territorial restrictions on broadcast, and I mention that that could be done by the FCC.

Senator COOK. Congressman, you're right, but let me tell you first of all that the FCC really is not an initiator as such, so what you are really saying is that if you do it piecemeal, if you do it by antitrust, if you do it through the FCC, if you do it through someplace else, you have to wait for a cause of action to occur, and that you have to litigate, and we know the consequences of litigation.

We have watched it too many times. We have watched it drag on and on and on, and we have watched more appeals and more appeals and more appeals, and somehow there never seems to be a conclusion.

So you can take each one of these separate little problems, and you can litigate the daylights out of it if you want to.

For instance, a decision of the FCC is appealable. How long can that take? The only point I am making is that if, in fact, the Government has the authority now, and that is what I contend, when you first said that Government intervention is something you can't quite go along with on this.

Well, the Government has the method by which it can intervene now, except its present methods of intervention, antitrust, FCC, are slow and arduous processes that may ultimately get to the same thing. So the only point I am making is that if you put all this together, you make it concise, and you come up with this kind of a Commission.

Then don't you really cut across that long, drawn out process by which the ultimate end may be there, but it may be a long, long, way off?

Mr. STEIGER. Except, Mr. Chairman, that under the terms of your bill, and very properly, the decisions of this Commission are also appealable, so I suspect—I am afraid that is a price we pay for government. The only judgment I see that we have to make, Mr. Chairman, that you have obviously already made is, do we do more harm by creating another Commission, or had we better alert the existing Commissions and make them perhaps assign a professional sports section in each of the applicable Commissions?

Clearly you believe this is the way. I respect your judgment. I have not given it that much thought, as I say. My only concern that is, is that a new Commission means new procedures, new people.

Senator Cook. First of all, what we are doing is what you are saying. We are establishing it in the Department of Commerce, because all of these are involved in interstate commerce.

We are not creating a new agency as such. There should always be a right of appeal in relation to any Federal legislation, but the point is that this Commission can be the initiator and not want for a cause of action to be brought to it.

Mr. STEIGER. As I say, the thing, the problem, is real, and I congratulate you for addressing yourself to it. Thank you.

Senator Cook. Thank you, Congressman, very much. We appreciate your testimony.

Mr. STEIGER. Thank you, sir.

Senator Cook. Our next witness is Mr. Philip B. Brown, counsel for the National Collegiate Athletic Association. It is nice to have you with us, Mr. Brown.

**STATEMENT OF PHILIP B. BROWN, COUNSEL, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION; ACCOMPANIED BY RICHY T. THOMAS, STAFF MEMBER**

Mr. Brown. Senator Cook, members of the committee, my name is Philip B. Brown. I am a member of the Washington law firm of Cox, Langford, & Brown, and Washington counsel to the National Collegiate Athletic Association.

We very much appreciate the opportunity to testify today on S. 3445, especially since this bill proposes to establish a Federal Sports Commission with authority to promulgate rules and regulations affecting four specific areas of authority, all of which are either directly or

indirectly relevant to the welfare of amateur athletics and the amateur athlete in the United States today.

Before discussing these four areas of authority, I would like to comment broadly on the purposes of this bill and other pending sports legislation in the context of the major issues affecting professional and amateur sports today.

Senator Cook, you are right in stating that the professional sports world is in a period of turbulence and that this inevitably affects the amateur sports world as well.

Clearly, some action is necessary to eliminate the abuses, to respond to the needs and desires of the fans, and to strengthen and promote the general public interest in sports.

The question is what action should be taken. To answer that question one must define the elements of the public interest in professional sports and to do that one must first decline the nature of professional sports programs today and the elements of those programs bearing on the public interest.

I would define professional sports today as a segment of the entertainment business in America. It is first and foremost a business and a big one. It is controlled by wealthy business interests and operated by them for their financial advantage just as they would operate any other business.

As an arm of the entertainment business, professional sports compete with other forms of entertainment for the consumer's dollar and reflect many of the attributes—such as the drama of the performance, competition for the star performer, and public adoration of the stars—as exist in the world of the motion picture, the theater and the other performing arts.

Historically, sports have been treated differently than other parts of the entertainment business ever since the Supreme Court ruled that baseball is exempt from the antitrust laws. This legalized monopoly status does not apply to any other entertainment than sports. After 50 years of monopoly practices in baseball, what do we have?

The *Curt Flood* case is merely the latest of a series of challenges of the monopoly practices of the owners of professional sports. The public outcry at the arbitrary shifting of franchises, such as that of the former Washington Senators, with no attention at all to the public interest of the fans or the community involved, is but another example of the failure of monopoly practices to represent the public interest.

Similar examples from other sports enjoying differing degrees of immunity from the antitrust laws can be offered at length. One needs only to read the testimony at the recent hearings by the Senate Antitrust Subcommittee on the professional basketball leagues' merger bill.

The point that comes through as clear as a bell is that virtually no one is satisfied with the present arrangement of the rights and operations of the professional sports. The basketball club owners, for example, are not satisfied because they want still greater monopoly control in the form of a merger of the two leagues into one—similar to that which Congress gave professional football. But it is clear that the basketball merger bill is designed to legalize more pro sports monopoly practices than the single league pooling of television rights.

The professional football players are not satisfied with their present situation. And the professional basketball players are not happy with the prospect of a basketball merger because it would eliminate their bargaining power and subject them to essentially the same contract restraints which apply in other sports. In baseball, the pending *Curt Flood* case may determine whether such restraints will be outlawed; in football, litigation is pending to test the validity of such restraints in the absence of any exemption from the antitrust laws.

The amateur athlete in college is harassed by professional basketball clubs during the playing season and during the academic year in the hope of compelling the NCAA and the Congress to support the merger bill—a hope which, insofar as the NCAA is concerned, has totally failed.

But it is the public interest which has suffered the most. According to the *Washington Post*, Mr. Robert Short was allowed to acquire the Washington franchise with only \$1,000 of his own money, but the public was given no say when he persuaded the league to agree to his moving it to Texas.

Worse yet, many communities are the victims of the use of professional sports monopoly power to require public bond issues to build new stadiums when the revenue from the stadium operation cannot possibly enable a community to pay off the debt.

The impact of this is felt directly on high school athletics as well as other tax supported public programs since the taxpayers' dollars are used each year to subsidize the rich owners' stadia by meeting the bond payments.

Senator COOK. I wonder if we might stop there so I can go over and vote, and I will be right back.

Mr. BROWN. Yes, sir.

Recess.

Senator COOK. Mr. Brown, you may proceed. I guess it is going to be one of those days.

Mr. BROWN. Thank you, Senator Cook.

As a Nation, we are at a turning point in deciding how our laws shall apply to professional sports. We can continue to pass professional league merger bills and otherwise more strongly entrench the monopoly interests presently in control of professional sports to the detriment of the public interest.

Another choice would be to legalize qualified monopolies and regulate them through Government control—essentially the course which I believe is proposed by the bill under discussion here today. A third course, however—and the one which I very strongly endorse—is to treat the sports entertainment business in the same manner subjecting it foursquare to the antitrust laws and by making only such specific exceptions from these laws as are required to protect the legitimate interest of the sport and the public.

Senator COOK. Let's stop here for a minute, because if you in fact contend that is correct, give me your impression of the antitrust laws as they would apply to the NCAA entering into a contract with ABC or NBC for exclusive coverage of particular sporting events, collegiate sporting events during the course of the years, and the right of the NCAA as a single overall organization to make a determination whether a community ought to be blacked out.

Mr. BROWN. My response to that is that the antitrust laws include the rule of reason, and that practices which are restrictive in the best interests of competition come within that rule of reason, and that this would apply whether you are talking professional or amateur.

Senator COOK. Let's add not only to the competition, but to the best interests of the fan. These college football tickets have been going up, just as fast as the professional tickets have been going up.

I noticed a very interesting report in this morning's paper, that said there are a few costs within the university systems that the universities could cut out, and I was delighted to see that, having had three in college last year.

Mr. BROWN. Yes, the Carnegie Commission was telling the colleges to cut their costs 20 percent.

Senator COOK. We are talking about this imposition as a matter of law. Obviously, the NCAA imposes on a college member the requirement that it have a certain sports program. Well, I thought it did. Maybe it doesn't.

Mr. BROWN. The NCAA is the creature of the colleges. The colleges set them up early in this century, and they set it up in order to help regulate problems that existed in sports and it is responsible and responsive to the will of its members.

It is a very open, democratic organization. It has an annual meeting which is so heavily attended—

Senator COOK. I have been to it.

Mr. BROWN. It is a very open organization. Now, it has adopted a television plan in the best interest of all its members. It has to try to watch out for big universities and small colleges alike. The university division and the college division are parts of the structure.

It has to try to promote attendance at all games and not see that just the most impressive game, like Nebraska-Oklahoma, will be doing well and a lot of other games will suffer. As a consequence, the television plan it has promulgated is intended to minimize the damage done to any other concurrently conducted college game, and also high school games, when they permit telecasting of a college game.

Senator COOK. Go right ahead.

Mr. BROWN. I was saying that since 1951 the NCAA has had and has implemented a series of television control plans with certain objectives. The principal objective is to reduce the adverse effects of live television upon football game attendance elsewhere.

Senator COOK. That theory I don't object to. But what about the theory that when you have that big game in a community and the tickets are sold out 6 months in advance that you also automatically black out the community it is in?

Mr. BROWN. We don't. We have sellout exception telecasts. I think the problem you are discussing came up in the context of a Saturday in which there were regional games. Sometimes NCAA telecasts a single game nationwide, and more often they telecast regional games in different parts of the country.

In order to accommodate the problems that arise in the borderline areas where the regions touch each other, it has rules for sellout exception telecasts where there is no appreciable damage done to any other concurrently conducted college game, and they have a television committee with a procedure for granting these exceptions and for

trying to be as fair as they can be in order to protect the little colleges and to protect the gate receipts of all the games that are being played.

Senator Cook. All right, in that contract, what protects NBC or CBS and there has to be some protection in there, that your television committee does not sit down and give them a game between Ohio University and Bowling Green on one Saturday and next Saturday give you a game between Toledo and John Carroll, and next Saturday one between North Dakota State, and so forth.

The network has the authority to demand certain games, don't they, within the contract?

Mr. Brown. Yes, they do, and I am not talking about substituting a game that the network is planning to telecast. I am talking about allowing the game to be telecast in certain areas with the sellout exception rule would apply and no appreciable damage would be done to other games and not allowing it to be done in other areas where the criteria are not met.

Senator Cook. Were the NCAA finals televised in Los Angeles this year?

Mr. Brown. I am not certain, Senator. I would have to check that.

Senator Cook. I have a notion that they were not, and yet I also know that, for instance, the University of Louisville was in it, and as far as their share of tickets, they could have sold many, many, many more tickets to sports enthusiasts in the State of Kentucky to go to Los Angeles to see those games.

So obviously it had to be a sellout.

Mr. Brown. There are sellout exception provisions in both the football and basketball games.

Senator Cook. Do you have the rules and regulations on that?

Mr. Brown. Yes.

Senator Cook. We would like to have them for the record. We won't print them, but we would like to have them for the files, because I would like to see them.

Please go ahead.

Mr. Brown. In addition to trying to minimize the effects of television on other games, these plans are intended to spread as much as possible the television participation among other colleges. For example, in the year that just ended, there were 73 members—excuse me, this is 1971.

There were 73 member institutions that made 188 appearances on live TV during the football season. This is a 1970 report, talking about the 1970 season.

Of that number, 72 appearances were on national series. Now, the money that is given to the colleges from those games is spread out among a great many more colleges than the participating colleges whose teams are playing.

It goes to the colleges that are members of the same area organization, the athletic conference in which the participants are playing. So that when you add up the number of colleges that receive financial benefits from these games, say you have 188 appearances of 73 colleges, you are talking about approximately 225 colleges receiving some benefit of the proceeds of those games.

Senator Cook. Let me pursue the idea that you think this can be done without a commission, but that it ought to be done. Certainly the NCAA at least the colleges, thought they needed a commission, and they established the NCAA.

If you think all this can be done by strict enforcement of the anti-trust laws, let me give you a situation.

What does the NCAA propose to do in the future about situations such as when the Carolina Cougars decide to sign Jim McDaniels during the course of the season, Western Kentucky goes all the way to the national championship, it comes in third, and then all of a sudden they find that a player has been under a professional contract in the NCAA, and the NCAA says let's have the \$89,000 back.

What do you do to the professional team, or what action does the NCAA take, and what are its procedures as a matter of law that you feel ought to be taken?

Mr. BROWN. It is a case that is in court, and the basis is of misrepresentation in not revealing the signing of a professional contract.

Senator Cook. All right. What do you see as the end result of these actions?

Mr. BROWN. I think it all depends on what is done about it. The operation of sports in total contract, that is, for example, if the pro basketball league merger bill is enacted, it is going to greatly strengthen the monopoly power of the organization within that one league and it is going to create specific problems for amateur athletics.

Right now it is a problem of harassment to encourage our going along with having the merger bill enacted.

If that is enacted and if the problems that that creates are not in some way protected from continuing harassment of the athlete—if the bill is enacted as a bare bones bill, for example, without any restrictions on the monopoly practices that have been discussed at great length in those hearings, the way students are recruited, the common draft, the reserve clause and other things, then I think the problems will become more acute and it may very well lead to more litigation.

I ask you to recall that in this instance the litigation in the NCAA is not that the pros signed a college player, but on the fact that there was a failure to disclose the existence of a contract and this was a misrepresentation upon which other parties went ahead.

Senator Cook. All right, but who is the suit against?

Mr. BROWN. It is against the individual athlete and the organization, or the individuals in there who conspired to fail to reveal this signing.

Senator Cook. Who, the professional franchise holder?

Mr. BROWN. I know that it is against a defendant on the pro side as well as the athlete. I would have to give that for the record.

Senator Cook. What remedy does the suit seek?

Mr. BROWN. Damages.

Senator Cook. In what amount?

Mr. BROWN. In amounts necessary to cover the losses suffered by the other parties for the failure to disclose the existence of a contract.

Senator Cook. In other words, you are acting for and on behalf of Western Kentucky University. Will the NCAA see that Western Kentucky becomes whole, that it gets back the money that it earned in the NCAA?

Mr. BROWN. In the McDaniels, if I may, I will sum up a news clipping I have.

Senator COOK. That is not under the antitrust laws now?

Mr. BROWN. Oh, no. This is just a torte case, or a contract case, a case under common law.

Senator COOK. It is not a breach of contract case on the part of the professional team. There is no agreement between the professional facilities in the country and the NCAA.

Mr. BROWN. That is right. In the *McDaniels* case, the NCAA filed a damage suit in the amount of \$285,000 against the American Basketball Association, Jim McDaniels, the Carolina Cougars and the other named defendants.

It was filed in the U.S. District Court in Louisville in April.

Senator COOK. Here is the point I am trying to make. You may think this is the course of action to take, but I am telling you that 12,000 students at Western Kentucky University were disappointed that a situation occurred that could occur again, and the only end result is that maybe you are going to get a judgment in the amount of \$285,000 and maybe you are going to get a judgment in a lesser amount. But you are acting after the fact, not before the fact, and you don't have a commission that says, "If you do this, this will happen." Suppose we put criminal penalties into this bill? Suppose we say that the franchise itself is in jeopardy?

All you are doing is going after a money judgment, and you are proceeding after the fact. In the meantime, the students at North Carolina at Western Kentucky University, the students at Villanova say, "What happened to us, how come we have been disgraced?"

Then they say, "That is all right, they are going to get a money judgment for you." That does not do the students any good.

Mr. BROWN. What criminal sanctions were you referring to?

Senator COOK. I say suppose we put them in this bill.

Mr. BROWN. Against the professional teams?

Senator COOK. Absolutely. This is the point I am getting at. I am saying to you that all your remedies are after the fact. Suppose a franchise gets a phenomenal 7-foot, 8-inch basketball player and pays \$2 million to get him. Suppose they say "That is fine, we will add \$200,000 to the cost and so write it off."

All they have to do is raise the ticket price 50 cents. They can drag it out, and if there is a judgment it won't be \$285,000, and we can write it off, and we have the best basketball player in the country.

We took a chance and lost, but we also are going to win.

Mr. BROWN. I think the sanctions you talk of suggesting are very well worth while considering. I think that any procedure that assists in avoiding after the fact, and enables the parties to prevent some of the things from occurring is highly worth while considering as well.

I don't think we have any disagreement on objectives. I am simply saying that I believe you will accomplish a great deal of the objective if the antitrust laws are clarified so that their applicability is clearly understood.

This is not the case today. For example, in football, we go back to the 1966 bill. It was not clear what the 1966 merger bill was doing. There are references in the legislative history that say it is a bare bones merger.

Senator Cook. It was not clear to the whole Congress until it happened, was it?

Mr. BROWN. That is right. It included a lot else, though, and now that everybody has recognized from 68 years of existence that merger bill some of the other things it did include, like the single draft and the different kinds of restrictive clauses in player contracts, they are asking whether these things should not be looked at specifically when you consider a basketball merger bill.

I am saying that when the merger is applied, if any particular aspects of the operation of those sports as an exception from the anti-trust laws should be made as an exception in order to protect the interests of the fans and the public, then that would be part of this clarification.

As a result of that, I believe you would have much more competition across the board than in going to the point of affecting the price of tickets to the admission to games.

Where you have a history of monopoly which has gone along untouched, as in baseball, and other sports thinking they are entitled to the same thing and maybe getting some of it or not as much as they want, where you have that pattern then I think that any kind of regulation of specific problems is apt to be helpful but perhaps symptomatic rather than sufficiently radical in its treatment of the illnesses we are talking about.

Since sports are a big business, I think that one reorientation of our thinking is to recognize the fact that it is a business and treat it accordingly.

Senator Cook. Here is where I find a great inconsistency in your statement, that we ought to pursue the present course, and we ought to utilize the present legal structure, under antitrust or under tort as the case may be.

The universities and colleges in the United States decided that it was in their best interests because of university and college practices of stealing away good football players, that they would form an organization known as the NCAA.

You impose sanctions on teams, on universities, you impose sanctions on their recruiting and established procedures for recruiting. You established that a school can't take another ballplayer from a school once he signs a letter of intent or once he enters the university.

All we are saying is that we want to establish the same level. We want to buy what you have done. You are saying that we really shouldn't do this, that we should pursue the present laws, and yet you in the college system have found out that this is the way to really pursue it.

You provide that once a letter of intent is signed by a student at one college, another college or university can't touch him. Maybe this commission wants to establish the same rules. We want to follow that procedure.

Now, if you did not have all these rules and regulations, if you entered into a valid agreement with the student that he was going to go to Notre Dame, and Michigan State stole him away, I expect Notre Dame could file a complaint against Michigan State and the player taken, and it could be adjudicated.

But you have decided to cut across that procedure in the NCAA. You have established that the member schools will abide by these rules and regulations. We say in fact that we want to do the same thing on the professional level. That is where we see a great inconsistency in your testimony, because this is the procedure that you pursue in the NCAA.

Mr. BROWN. There is one fundamental difference. The NCAA is a voluntary organization, and that means that members belong to it or not as they wish, but they can belong to it and still not abide by certain of its requirements.

Senator Cook. Come on, maybe it is a voluntary organization, but suppose some of the schools within the voluntary organization decide not to play any games with schools that decide not to belong. Suppose they set that up as a standard? Then how do you get a decent football or basketball schedule? We could say it is a voluntary association and we could say that anybody can drop out anytime they want to. It is fine for a team to decide to drop out of the Big Ten. But how is he going to get eight games on the schedule that will draw a full house for him?

You can call it voluntary if you want to, but the reason it is is that it is absolutely to the best interests of the schools to belong. Isn't that really true?

Mr. BROWN. Yes; except where they have yelled otherwise, as has often happened. Yale didn't like penalties imposed in the *Langer* case, and they decided to ignore the rule. They could not participate in the NCAA basketball championship games if they wanted to.

Senator Cook. Now, isn't that too bad. Yale had a lot of worry that they were going to get to the finals. That really shook them up.

Mr. BROWN. There is a difference between all this and the Federal Government.

The NCAA with its 780 colleges is not a Federal Government. If you are talking about the U.S. Congress establishing a new Federal agency with absolute powers over sports, I would say that that is a very different thing from any existing voluntary organization that I have ever heard of.

It is a transferring to the absolute power of Government the same kind of absolute power that a monopoly that is under restraint of law may exercise.

Senator Cook. That may well be, Mr. Brown, and I won't argue the fact with you. Are you going to argue the fact with me that the whole sports system within the United States, including the college level, is at the same level of participation that it was 10 years ago, or 20 years ago, or 30 years ago? The answer is "No."

Senator Cook. When you buy a season ticket to any university, you don't buy them from the university. You buy them from a separate corporation known as the athletic facility, or whatever the name of the organization may be on the respective campus.

So you have established within the framework of that system private businesses, in effect, within the universities, whereby you buy your tickets, you either get them or you don't get them.

So maybe it is time that instead of saying it is an all together different situation we should admit it is all together different, and let's pull it kicking and screaming into the 20th century, so that they can understand there are rules and regulations that apply, so you can

convince the general public that it is as it was when they used to play at Flatbush, but it really isn't.

Mr. BROWN. I agree with you, and I am not trying to disagree with your point that sports have changed and it is time to bring sports into the 20th century, and we have problems that need to be coped with here.

I think your whole point of beginning, as I said at the outset, is quite right. I think you are to be commended for expressing a concern about these things.

I don't think any of us have the wisdom to be absolutely sure as to what the absolutely best way of coping with these problems is, but I am suggesting that rather than impose the heavy hand of Government in a new Federal agency, three commissioners with very sweeping rulemaking, that I would suggest treating this business at least considerably more like other businesses and more so than it has been treated to date, and see if that does not improve the situation across the board, which I think it would.

Senator Cook. Let me give you the heavy hand of the NCAA, and forget about the heavy hand of the Government for a minute. Let's look at the heavy hand of the NCAA, which has decided to impose an absolute restriction on basketball players on what we call the "Dirt Bowl" in the city of Louisville, whereby the Parks and Recreation Department has set aside a facility whereby people can play basketball during the summertime.

As many as 400 or 500 people on an enjoyable evening come out to watch. Nobody pays anything. The court is there. Everybody participates. You can be a good player or a bad player, so some of the players from the University of Louisville decided they wanted to play in that league in the summertime. Nobody is paying them anything. There isn't anything involved at all. All of a sudden the NCAA says to these players "thou shalt not," because somebody is sponsoring a league, and the sponsor is the Parks and Recreation Department.

Maybe a player from the Kentucky Colonels comes down and plays, and that is not allowed. You have an amateur golfer who almost won the national open as an amateur, and he is on the Wake Forest University Golf Team, and yet he could be in any amateur, he can be in any U.S. open as long as he gets an invitation.

But these kids cannot play basketball because the NCAA has said, "thou shalt not." Now they have decided to get around it, because your ruling says the league cannot be sponsored by anyone.

So the Parks and Recreation authority says they don't sponsor it any more.

But yet the basketball coach at the University of Louisville says, "Don't you dare do it, and I am telling you not to do it, because I don't know when the NCAA is going to step in and say they are going to level sanctions against the University of Louisville."

Yet it provides recreation and enjoyment for people who don't pay a dime, and yet the authority and the power of that find old organization known as the NCAA says, "In basketball, you shall not."

Now you are allowed to participate in tennis, you find tennis players of all the State teams all over the United States participating in the State amateur championships, city championships, all they want to.

But yet somehow or other this is an exception and this is a rule that has been laid down for basketball alone.

How do you explain that?

Mr. BROWN. The NCAA from the past three summers, if not four, has contributed of its own time and money very generously in what is called the national summer youth sports program, which is sponsored by, originally, money that came from OEO and under delegation to the President's Council on Physical Fitness.

Senator Cook. If you got sponsorship by way of funds from OEO, wouldn't that be a sponsorship under your rules and regulations that would prohibit this?

Mr. BROWN. No, as a matter of fact we are trying to expand it to get more colleges into it, to let youngsters have a chance to participate on the facilities of the universities, and have a hot meal, and to have coaching instructions from the coaches in the colleges.

We think these influences they can have brought to bear on them in that environment would be a healthy thing in combating crime and drugs.

Senator Cook. Yet you deny the college basketball player the right to do the same thing?

Mr. BROWN. I don't know what the basketball stated whom you are referring to. I can only state that our rules are an open book and have been since they were written. We are happy to supply them to you. We are happy to supply detailed explanations on any incident which occurs.

Senator Cook. The gentleman to your right, you may join in if you will identify yourself.

Mr. BROWN. That is my associate, Mr. Richy T. Thomas.

Mr. THOMAS. Senator, I was just looking through the NCAA's principles for the conduct of the intercollegiate athletics with regard to amateurs. I am not sure that I have found the provision to which you were referring, and as Mr. Brown has suggested, I think when we are dealing with a specific situation about which we don't know much we can't comment with any great accuracy.

Senator Cook. We are going to give it to you in writing.

Mr. BROWN. We will reply in writing to any question you have asked, and we have not anything that is not available to you.

Mr. THOMAS. For the record, sir, I think we might point out that the rules do provide that a student at least may participate as an individual or as a member of a team against professionals at least, but he may not participate on a team known to him or which reasonably should have been known to him.

So there is no blanket prohibition against playing against a professional at least.

Senator Cook. I must say that it has been an almost uprising in Louisville that somehow or other these sanctions were going to be levied against basketball players, and yet we have college students participating in organized tennis championships, golf championships, and swimming championships, all summer long.

Yet in this instance, the college basketball players at the University of Louisville were absolutely told as a result of a ruling of the NCAA, apparently out of Kansas City, that these boys could not participate in this program. They had to find a way around it. When they found a

way around it, the basketball coach at the university was still so concerned that he might be sanctioned against, that he had to advise his basketball players not to participate.

This is the kind of thing we have.

Mr. BROWN. We will give you a full report on that including checking with that coach specifically.

Senator Cook. Of course, I don't blame his actions. All of a sudden you wake up a year later after a national meeting as you know, and somebody says for the next 2 years the university of X is going to be limited in its recruiting and can't participate in any tournaments or anything else, and it comes like a bolt out of the blue, as you well know.

Mr. BROWN. These enforcement procedures are intended to be fair and enforce equitable rules. That is why they exist.

Senator Cook. I might say to you this instance, Louisville is the only place in the Nation that this rule has been applied. I have to be honest in this with you, and it ought to be looked into.

Go ahead, Mr. Brown.

Mr. Brown. With the approach in mind I have outlined, let me comment on the specific areas of rulemaking authority in S. 3455.

Section 5 of the proposed bill sets forth the following areas as merit-regulation:

(a) The procedures for imposing territorial restrictions on the broadcast of professional sports events on commercial television;

(b) The mechanisms or procedures for transferring amateur athletes into professional sports; and

(c) The sale and/or transfer of professional team franchises;

(d) the form of player contracts (but not the terms of those contracts).

We will discuss these areas in order, beginning with the territorial restrictions on the telecasting of professional sports events.

We believe that some control over the television showing of professional sports events is essential to the continued welfare of high school and college athletes.

Gate receipts—largely from football and basketball games—constitute an important source of support for the entire athletic program of many high schools and colleges. By the standards of the pros the amount of money involved may not appear to be large, but to the schools and colleges concerned it is of great importance.

The conflicting appearance of a professional sports event on home television can have a very damaging effect on attendance at local high school and college games. This impact has been documented on a number of occasions.

Senator Cook. I might digress here and say there may be witnesses here later testifying on behalf of the high school association and junior college associations, that argue that when you take away spectators at \$3 a head, you are talking about a modest amount of money, and it can have a terribly adverse effect on the whole athletic program of that high school for the next year.

Mr. Brown. To an extent, the law already provides a measure of such protection. In 1961, Congress enacted an antitrust exemption permitting professional football, baseball, basketball, and hockey clubs to pool their telecasting rights for the purpose of negotiating package deals with the networks.

Congress included in this legislation, Public Law 87-331, a provision designed to prevent professional football telecasts in conflict with local college or high school games on Friday evenings or on Saturdays during the period between the second weekend in September and the second weekend in December.

Ten years of operation under this provision has shown that the professional football clubs can obviously live with, and prosper under, these limited restrictions.

This experience has also shown, however, that Public Law 87-331, should be strengthened if it is to be fully effective in thwarting the pros' constant and imaginative attempts to find a way to evade its limitations. In view of the recent explosive growth of professional basketball and its ambitions and plans for television coverage, we also believe that the law should be amended to the extent of exempting high school and college basketball, the same sort of protection presently limited to football.

We recommended such amendments in our testimony earlier this year before the Antitrust and Monopoly Subcommittee of the Judiciary Committee.

We are not sure that we know exactly what S. 3445 contemplates in giving the proposed sports commission authority to regulate procedures for imposing territorial restrictions on professional sports telecasts.

In the circumstances, however, we suggest that giving such a commission control over limitations or pro telecasts may weaken the existing protection given colleges and high schools and will introduce a substantial element of confusion into the law. More specifically:

1. In the absence of any expressed standards to be applied by the commission in the exercise of its power, we find the proposed authority ambiguous and open ended. We are especially concerned that the commission will be advised by a council heavily weighted in favor of the professional sports interests and that the commission is not specifically enjoined to conform its regulations to the protective provisions of Public Law 87-331.

Senator Cook. Then in essence what you are saying is that if in fact this proposed bill were to become law, that an addition should be made, wherein the rules and regulations imposed by Public Law 87-331 should be taken into consideration under the rules and regulations of this act.

Mr. BROWN. "Taken into consideration," may not mean what I am saying. Otherwise I agree. I am saying the law is essential for the protection of the college and high school athletic programs. It needs strengthening to achieve even its original purpose.

It is going to need further protection as we get into the new world of cable casting and other forms of television transmission.

Senator Cook. I want to know what your regulations are at your next annual meeting in regard to cable television. That is going to be a beauty to figure out, really.

Mr. BROWN. It is a very complicated situation. But we do need this protection. When I say the pros have been imaginative on this, let me explain that in the second last football season there were a number of games telecast in direct conflict with high school and college games and within a 75-mile radius, and within the time period prescribed by the statute, and there was damage done to college games and to high

school games from these telecasts, and we objected vigorously and we took this matter to the Department of Justice and the Department of Justice talked with the pro football people and then they wrote us a letter, which I am also willing to submit for the record, which indicated that the pros had agreed they would not have any conflicting telecasts at all for the season just ended.

We are very pleased with that, but I infer from the wording that it is a concession for that season and they may or may not feel that they have the right to keep testing the outer limits of the statute by further conflicting telecasts in the future.

I would like to have it made absolutely clear that they cannot do so and have the law amended in minor respects.

Senator Cook. Let me throw a slight curve at this. Suppose you are blacking out a community because you have a high school football game.

Maybe 100 people won't go to that game, but maybe 10,000 people are desirous of watching another game and on television. The point I am making is that I think we have to find a quid pro quo somewhere along the line where you have to take into consideration 10,000 or 15,000 or 20,000 people who want to see a particular game on television, and equate that against a high school which may lose \$400 or \$500 as a result of a game being televised.

Mr. BROWN. The only time period we are talking about is Friday night and Saturday.

Senator Cook. I know. What I am trying to say to you is that again, the institution is sacrosanct and the sports fan is out in left field. We are trying to guarantee a gate for the football game against Slippery Rock, but everybody in the community does not want to go see the football game.

But we say we have the obligation to look after the college. What does this do to the fan?

Again the fan is being left out in the lurch. Isn't that true?

Mr. BROWN. The pros have all day Sunday, and on Monday night, Tuesday, Wednesday and Thursday. The only protection of the high schools and colleges is Friday night and Saturday.

Senator Cook. I think that is fine, and I agree wholeheartedly with you. I just wanted to interject this, because again, I think that we are protecting everybody but the fan, and I can see these institutions do need an element of protection.

I won't argue about that, but suppose next year a school decides it again wants to play on Monday night. We have to have some restriction that if we guarantee this we will see to it that the respective schedules are played within the period that is protected.

Mr. BROWN. We are going to run into this problem on basketball because it seems the times those games are played in the colleges and high schools are on three different days of the week.

Senator Cook. I am going to have to go vote again. This is final passage, so we may have an opportunity to relax from here on out.

Recess.

Senator Cook. Go right ahead, Mr. Brown.

Mr. BROWN. Senator, we were discussing the support provisions of section 5 of your bill, and I was saying that although the bill requires consultation with the FCC, we doubt that this requirement will fully

resolve the jurisdictional questions which are obviously raised. The FCC has already issued proposed regulations implementing existing law on pro TV blackouts.

3. The Commission's authority is apparently limited to restrictions on television broadcasts. In view of the anticipated rapid growth of cable television systems, and the great interest shown by the cable industry in carrying sports events, protection from cable origination or carriage of professional sports events is needed and a necessary adjunct to any restrictions on broadcast television.

We favor continuing to deal with professional sports telecast restrictions in the established context of Public Law 87-331. We believe that with appropriate amendment (such as provision for private enforcement, to extend protection to college and high school basketball, and perhaps to restrict the pros' blackout practices) depending on what is the right answer to that question, this statute will be fully effective and there would be no need for a regulatory commission.

A second area of responsibility of the proposed Federal Sports Commission would be the regulation of the sale and/or transfer of professional team franchises. We have been deeply concerned, along with sports fans throughout the country, by the rules and practices by which the owners of the professional sports teams exercise absolute power over the number of cities which may have teams and the number of teams which may be permitted to occupy each metropolitan area. The owners now have the power to bar entry by new teams into designated territories. As a representative of amateur sports, we are particularly concerned about the coercive financial leverage which these practices give the owners to force municipalities into building and financing super sports structures under terms and conditions which are financially unsound; by that I mean the city and its citizens will be saddled with an annual debt that in no way can be met by rental income or ancillary revenue. The most recent example of the demands pro owners can impose is Abe Pollin's demand last week that the Federal Government, within the next 90 days, make a commitment to construct the \$100 million Eisenhower sports complex in the District of Columbia.

This leverage is not counterbalanced by economic or regulatory limitations on the owner's freedom to abandon the franchise city if this strikes his fancy. RFK stadium did not keep the Senators in Washington, yet Mr. Short and the other owners can prevent another team from playing in Washington.

Senator Cook. As a matter of fact, not a bit of principal has ever been paid on the bond by the stadium, has it?

Mr. Brown. I think that is correct.

Senator Cook. I can only tell you that not a dime of the principal on those bonds has ever been paid, and as a matter of fact they have come to Congress every year for supplemental appropriations to pay the interest.

Mr. Brown. We are concerned about the uncontrolled power to sell or transfer team franchises, not only as sports fans who resent this imposition of the owners' wills on the communities which support the teams, but also because of the direct effect on amateur athletics of community efforts to retain or attract professional teams, particularly the effects on high school and college athletic programs.

The pressure on every city which wishes to be considered as a sports center to build super sports structures places a staggering burden on the city's resources which results in reduced moneys for other programs and the ones hurt quite frequently are secondary education and the extracurricular programs associated with the schools.

The NCAA has already testified in the Senate Antitrust Subcommittee as to a number of examples, as follows. Here, Senator, I have examples which I don't think I need to read.

Senator Cook. We will incorporate them in the record in full, Mr. Brown.

Mr. BROWN. For a time in Philadelphia, secondary sports programs went out the window as a result of the policies of the city, and very belatedly but a satisfactory answer was to put them back in the program. This is a threat all the cities are facing.

Senator Cook. You know, Mr. Brown, when you get into these things and become interested in them your memory starts to work. I can remember very vividly when Charles Finley was going around the country, and he came to Louisville and got everybody there all excited.

We found out that he didn't come to Louisville for any idea of considering Louisville as a home for a baseball franchise. He came to have a city make a commitment so he could then take that commitment and force the communities that he really wanted to go to, to increase their bid.

I remember after we had one of those meetings he was less interested in discussing the actual realization that a team conceivably could go to that community. The only thing he was really interested in was whether one of his lackies would go out and get all the newspapers and see what kind of coverage he could get to show some other community he would like to go to that they had not made him a good enough offer.

That example comes back to me with a great deal of realization that when we really wanted to sit down and talk turkey with him, the turkey was not even out on the plate. His interest was to see what kind of coverage he had gotten out of the local papers that he could peddle on somebody else that he had dropped a bombshell on, community *x*, by going to community *y* and making them think he would move a franchise there.

He had no intention of doing that in the first place, and I think he would probably admit that to you.

Mr. BROWN. Our statement discusses similar examples in Philadelphia, Cincinnati, and Kansas City.

Senator Cook. I am interested in your Kansas City remarks here that the actual cost of the facility is going to be around \$67 million and the rental will only retire \$8½ million of the bonds. That is from an article in the Kansas City Star. That is an instance of a city being pushed pretty hard.

Yet, there will be thousands and thousands of people in Kansas City who, as hard as they try for their entire lifetime, will never be able to get a ticket to see any of the games, unless it is baseball.

Mr. BROWN. My point here is that the national interest and the local interest—but more importantly, the long range interest of youth

is hurt when the cities are staggered with debt service and maintenance on facilities which in no way can be self-sustaining—and which cities are stampeded into building so “our city can be big league.”

Senator Cook. Are you really talking about unlimited leagues?

Mr. BROWN. No; we are talking about the pressure of competitive operation maintaining pretty much the present sizes of somewhat bigger leagues, but you are not allowing the thing to be dictated by the monopoly system.

Senator Cook. Do you think by increasing the baseball leagues and teams that you have the same degree of excellence and professionalism that you used to have when the leagues were smaller?

Mr. BROWN. If you run out of excellence, the fans are not going to come.

Senator Cook. Somehow or other, I don't agree with you. With the expansion of the football teams you sometimes wondered if college teams could meet them any day in the week, and yet they sold their tickets before the season started. At the end they had won two and lost eleven. They may come out on the sports page and say “we are on a rebuilding program.”

So I am not sure that I agree with you that when you have the decrease—

Mr. BROWN. I have been an ardent Redskins fan in Washington, and I think those who feel as I do do so without any element of franchise entering the picture. There can be a multiplicity of reasons for poor performance.

Senator Cook. I also watch, for instance, the situation in baseball where, by reason of the very marginal operations, again, they don't sell their entire stadium out, but to those season ticket holders who buy at the beginning of a season with the team, all of a sudden during the season they see a whole baseball team emasculated. Obviously, there was no consideration given to the fan.

Obviously, there was no consideration given to the holder of season tickets. Somehow or other, you make a contract with the management, and the management expects you to abide by it, but the management makes no contract with the fan.

Mr. BROWN. I understand the problem, but the problems of contracts in sporting go far beyond that one.

Senator Cook. Oh, they do indeed. We will get into that.

Mr. BROWN. Here, again, we are talking about the provisions of the typical sports contract, about the differences between A and Z. If the individual player has absolutely no rights and the team can control him indefinitely, I think that is just an unjustified excessive situation.

On the other hand, if you had it where every player can walk off any club any day in the week and not be bound by reasonable terms of a contract, such as would prevail in any other business, that would not be right, either.

But there is an awfully lot of the ground between those extremes.

Senator Cook. That is right.

Mr. BROWN. Should I read the rest of my statement or sum it up?

Senator Cook. You ought to sum it up, and we will put the statement in the record in full.

Mr. BROWN. The third area proposed for regulation is the mechanisms or procedures for transferring amateur athletes to professional

sports. This is a question of critical interest to the NCAA, as we have witnessed, in the last few years, the breakdown in professional basketball of a system which previously had permitted the athlete a reasonable opportunity to complete his college studies prior to being subject to the temptations of big money.

Recent well-publicized actions by the professional basketball interests include the following: The American Basketball Association instituted a draft of college undergraduates; ABA owners in public statements suggested that ABA clubs had agreements with a number of college players; the New York Mets of the ABA signed a college undergraduate, Jim Chones, in the middle of his junior year at Marquette and while his college team still had about 4 weeks of its regular season left to play; and the NBA announced an expanded "hardship" draft of college undergraduates.

We feel if the merger doesn't go through, we would be willing to take our chances without imposing a 4-year rule. We think the boys in college understand the value of an education.

If not, I question whether we should try to prevent them from being something else. But I feel if you are going to enforce more monopoly rules, then some kind of strengths for protecting the values of education should go hand in hand.

Senator Cook. It is pretty difficult for a guy to weigh another 2 or 3 years in college against a \$1½ million or \$2 million contract. I can also put it another way. If you feel that this is a decision that that player makes and if he makes it, then fine and dandy.

I can only say to you to that I think you do him at least one element of disservice in that if he is worth that much money when he is a beginning junior, amazingly enough, he could be worth a great deal more when he is a graduating senior.

Mr. Brown. This is why pros remember and recognize you have to start somewhere, and normally they start at the end of the college career, and they impose that rule on themselves, so that the colleges after doing all the training of the athlete and he comes to them, to a point in time when they put him to the best use. I agree with that.

Senator Cook. If it becomes competitive, then it is going to be a necessity for the franchise holders to go on and start grabbing for juniors, not with the understanding they are going to become graduating seniors, but with the understanding that they can't wait until then, and they are not going to be interested in the caliber of basketball at that point in time, and maybe the caliber of professional basketball will really decrease. But it will be an unknown decrease if everybody decides they are going to start raiding the freshman class or the sophomore class or the junior class.

It is all a matter of relativity. If you decide that your competition is such that you have to move into the sophomore year and junior year, and everyone else does, then all the stars start playing pro ball at that level and they don't start playing pro ball at the end of the senior year, but the noticeability is not going to be obvious to the fans because it is going to prevail through the entire league.

Mr. Brown. I think it is a risk, but I think the forces of competition apply to minimize that risk. I think there is a limit to how much bad business is voluntarily paid for.

Senator Cook. You will admit, though, that the forces of competition get there, and it is the "firstest with the mostest."

Mr. BROWN. Yes. Our statement, Senator, also discussed, although we feel it is of less direct concern to the NCAA, the player draft system. We think this should be recognized for what it is, the type player procurement system which cuts the recruitment expenses to the bone. Except for the superstar, they are maintained to keep the fans' support.

If I were born in Los Angeles and I played high school basketball in Westwood High and college basketball at UCLA, I would have a hard time understanding why the only place I could play pro basketball was in Buffalo, N.Y.

Here I am pointing out that there are possible, reasonable exceptions that can be put right into a blanket new trust coverage arrangement and which would be necessary in the protection of the public interest, the fans' interest, and the best interests of the sport.

But I think we have paid too little attention to just what those are and heard the pros and cons about them. For example, revenue sharing. Historically, it has been taken for granted that since the practice exists, that anything that goes along with it exists, such as the player draft and the reserve clause in the contract and revenue sharing is all equally OK.

I think these specifics should be given much more close attention, and another which puts limits on the player security are the total dollar ceiling that a club may spend.

A number of alternatives and less restrictive matters have been discussed recently. Subject to a future showing that these matters can in fact be regulated by a Federal Commission, and there again I join Congressman Steiger in saying that your proposal is one way of dealing with these problems, and I am not here for the purpose of trying to combat any proposal that helps solve the problem, but merely to express our views on how it may best be done. We believe the solution of the problem on transition from amateur to professional sports is to severely limit exemptions from the antitrust laws and tie in protections against recruiting, at least so as not to interfere with the undergraduate career of the individual.

If the choice were to boil down to getting no protection on that at all, we would still accept that in order to open up competition, because we trust the prospect of the competitive forces improving the situation sufficiently as compared to what it is now.

The fourth rulemaking area in the bill concerning the form but not the terms of player contracts, the bill speaks of the power to regulate contracts in order to best assure adequate disclosure of the terms of such contracts to the contracting parties.

If what is intended here is a truth-in-lending approach to sports contracts, I question whether that calls for a Sports Commission by itself. However, if the specific contractual clauses such as the reserve clause and the option clause are the concern to which this is addressed, then it would appear that the regulation is limited by the language of the bill which explicitly exempts from the regulations the terms of the professional sports contracts.

I would say that if this is an area that a Commission were to concern itself with, that it would be well advised to consider revising that language to cover the terms.

Senator Cook. Let me say I think that probably that language is a little ambiguous, and I think that we are going to have to clean it up, but the intention of that section is to deal with certain items such as the reserve clause, and, for instance, methods for handling agent's commissions and so forth.

This is what we had in mind. I think you are right, and I think we can enlarge it and clean it up. I must say that I hope that you don't mind if during the course of these hearings, and in the course of our concluding what kind of bill we should ultimately come up with, if our legislative staff bugs your office every once in a while to get some ideas or suggestions.

Mr. BROWN. They are welcome to, Senator. We will be happy to cooperate in any way we can.

Senator Cook. Good.

Mr. BROWN. If the rulemaking authority is deemed necessarily related to player contracts, we would urge it be expanded to permit the regulation of the league bylaws and the rules which contain many of the restrictions resulting in the unwarranted monopoly power of the leagues and owners.

For example, the Rozelle rule of the NFL.

In conclusion, we note again that there are real problems evident in the present conduct of professional sports and their relationship with amateur athletics. S. 3445 has to be focused on several of the most important of them. In our testimony today we have suggested alternative ways of dealing with these problems not involving establishment of the Federal Sports Commission.

The NCAA believes that the most important point to be made is that there is ample evidence that the excessive power of professional sports interests must be controlled in the interests of amateur athletics, individual athletes, and of fans and the general public.

Senator Cook. I want to thank you very much, Mr. Brown. I merely wish to say that I would hope ultimately we are going to cultivate you and the NCAA over to our way of thinking.

I somehow can't feel that even with amendments to the antitrust laws, that the sports participant and the sports fan would have to look forward to a remedy which is well after the fact.

It just seems to me that, for instance, the pursuing of your tort actions in behalf of the NCAA and the member schools that have occurred in the past, does not really answer the question, and I almost believe it begs the issue.

I am not sure that it does any good to the western Kentucky team of 70 to ultimately have a judgment in the name of the NCAA against the franchised team and against the ballplayer.

I think the team of 15 has had a severe mark put against it, and you can't take an eraser and erase that mark by getting a money judgment. I think it has to be prevented beforehand.

I think it has to be done with a degree of strong control and responsibility such as the NCAA itself imposes on its members. Your sanctions are harsh, and I think they should be.

I think they are there to discourage these events from ever happening, and I don't think you are going to discourage them by a money judgment after the fact, if in fact the chance that was taken, the investment that was made, could well be worth the judgment.

Mr. BROWN. Senator, I think lawsuits are after the fact, too, and I don't think they are the ideal solution to this kind of a problem. This bill allows for legal appeals, too.

Senator Cook. Oh, sure; but don't forget there may be legal appeals in here, but all the rules and regulations of the Commission are out for everybody to see. Maybe we need severe criminal penalties in it.

Mr. BROWN. I think this can be accomplished by statute. A statute which is addressed to the substantive problem. For example, the amateur world could never possibly compete with the power of the NFL in stopping them from Friday night or Saturday night football games in direct competition with high school and college games.

We couldn't find enough courts to start enough lawsuits in or pay enough lawyers to handle them, because it would be a monetary impossibility. But the law has gone a long way to solve that problem, and it has been on the books for over 10 years.

That kind of thing is at least worth considering at the same time as you are considering this bill.

Senator Cook. Well, if I thought that this was the ultimate end of the problem, I would agree with you, but I think you are just getting into that problem. I think with the extension of cable television, with the strong desire of more and more communities to participate in professional sports, to get professional teams, to get major league status, that these problems are going to continue.

There is not a major city in the United States that is not growing and not a minor city that is not going to become a major city. So I am wondering, when you are talking about trying to preserve a Friday night and Saturday, if you might not ultimately have nothing but the captivation of television every night in the week, because of the increase in professional sports.

Think of the major cities in the United States today that have none.

Mr. BROWN. Womens Liberation might have something to say if sports gets on television every night in the week. I think the saturation point might be getting closer all the time.

Senator Cook. Maybe we could look forward to more women's events being televised.

Mr. BROWN. Right.

Senator Cook. And maybe some of those \$35,000 and \$50,000 purses that the golfers go after every Friday, Saturday, and Sunday, might be balanced out, instead of the women playing for the \$5,000 purses and the \$6,000 purses. Maybe there will be an equalization along the line.

Mr. BROWN. It is no secret that these and other actions of the pros have been calculated to generate pressure for the passage of merger legislation. The disruptive and damaging effects of these actions on the students concerned and on athletic programs in which they are participants is obvious, and viewed very seriously by the NCAA's members. We believe that by these recent actions the pros have relinquished any remotely tenable claim that they can properly be entrusted with the special privileges and enhanced economic power which they are asking Congress to grant in the merger bill.

A point which bears emphasizing here is that those involved are college and university student-athletes. They are engaged in academic pursuits, and the successful completion of these programs will have

great significance for their entire lives. Due to the actions of the professional leagues, however, these students are subject to pressures from the tight group of club owners—which the proposed legislation would make even tighter—to cut their education short in return for the promise (which may not be real) of great amounts of money under the express or implied threat that delay may cost them their opportunity. We believe that educational interests alone dictate that student-athletes should be protected from pressuring by professional clubs and the so-called “agents,” at least during the academic year, so that they can pursue their undergraduate careers without this kind of harassment. Moreover, the individual students sought by the pros are not the only ones affected by these activities of the basketball leagues. They have also, notably in the *Howard Porter* and *Jim McDaniel*s cases, called into question the standing of entire teams to participate in regular season and tournament play, cheating other members of the team, their schools and the fans, of the fruits of their efforts.

This situation created by the basketball clubs cannot be allowed to continue, and it must be clear to everyone that the solution cannot, and in the interest of the individual athletes and of the schools, should not be entrusted to the pros. As we previously have noted, the proposed Federal Sports Commission would be advised in the formulation of policy dealing with the procedures for the passage of an athlete from amateur to professional status by an advisory council heavily weighted in favor of the representatives of professional sports—a striking example of using the wolf to guard the flock.

To the extent that regulation with respect to this problem is needed, we would again favor an antitrust approach to the problems arising out of the entertainment business aspects of professional sports. If professional sports are to continue to receive favored treatment under the antitrust laws, we believe that specific amendments should be made to the antitrust regulation of professional sports which would incorporate provisions to impose penalties if a professional team or league (or an agent of a team or league) interferes with a student during his sport season, the academic year or his undergraduate career by attempting to have him make a commitment to play professionally.

In connection with the proposed legislation for the basketball merger, we have opposed the bill and have requested that any merger legislation that may nevertheless be enacted specifically prohibit any league or association of teams formed pursuant to the authority of the merger legislation, every member of such a league or association, and their agents, from drafting, entering into an employment contract with or discussing employment with, a bona fide college or high school student during his undergraduate career. The provision requested would further state that this prohibition shall not apply in individual cases where observation of the rule would impose undue economic hardship, as determined by a board which would include representatives of professional sports, The National Collegiate Athletic Association, the National Junior College Athletic Association and the National Federation of State High School Associations. The membership of the board would be selected so as to provide balanced representation of the interests representing the amateur sports programs and the interests representing professional sports. We believe that request is equally germane to the bill before this committee.

If, however, Congress should decide that it will not accord professional sports a privileged status and that it will not legalize the draft and the 4-year rule, then we believe that there will be no need to ask for such protective restrictions.

Moreover, although it is a matter of less direct concern so far as the members of the NCAA are concerned, we believe it is appropriate to note that we do not favor the player draft system of the pros. We believe it is about time that the draft be recognized for what it is—a tight, player procurement system which cuts recruitment expenses to the bone and eliminates the bargaining power of the individual except for the superstar whom the owner must sign in order to maintain fan support.

We are opposed to a monopoly arrangement among clubs in one merged sport which provides for the distribution among the merged clubs of the young talent in that sport in a process that eliminates financial competition between and among clubs for a particular athlete and eliminates freedom of choice by the athlete as to the club with which he will play. If I were born in Los Angeles, played high school basketball at Westwood High School, and college basketball at UCLA, I would have great difficulty in understanding why the only place I could play professional basketball would be Buffalo, N.Y. Talent distribution can be realized in a number of other, more effective ways such as revenue sharing, limits on the number of new players secured each season, or a total dollar ceiling that any one club may spend annually in player salaries, or on salaries for new players. A number of alternative, and less restrictive approaches were suggested in the course of the recent ABA-NBA merger hearings.

Subject to any future showing that these matters can, in fact, effectively be regulated by a Federal commission, we believe that the solution to the problem of the transition from amateur to professional sports is to severely limit exemptions from the antitrust laws for professional sports and to tie into such limitations specific protections against recruiting athletes so as to interfere with the undergraduate academic career of the individual.

The fourth rulemaking area proposed in S. 3445 is regulation of the form, but not the terms, of player contracts. In its present form, the language of the bill leaves a considerable ambiguity with respect to the area to be regulated. The proposed bill speaks, in section 5(d), of power to regulate the form of player contracts "in order to best assure adequate disclosure of the terms of such contracts to the contracting parties." If what is intended here is no more than a sort of "Truth in Lending" for sports contracts, we doubt that the problems are serious enough to merit Federal regulation. If, however, specific contractual clauses, such as the reserve clause or the option clause, are of concern, it would appear that the scope of regulation is unnecessarily limited by the language of the proposed bill which explicitly exempts from regulation the terms of professional sports contracts. While the question does not have direct implications for the NCAA, we have opposed the reserve and option clauses as an unwarranted infringement on the freedom of the professional athlete. However, we do believe those particular problems are susceptible of solution within the context of the antitrust laws, and note that the issue is even now before the Supreme Court in the *Curt Flood* case. If the decision in

that case does not support our view, it may then be appropriate for the Congress to take another look at the matter.

If rulemaking authority related to player contracts is deemed necessary, we urge that it be expanded so as to permit review and regulation of the league bylaws and other rules which contain many of the restrictions resulting in the unwarranted monopoly power of the leagues and the owners.

For example the Rozelle rule of the NFL requiring a club which acquires a player who has played out his option to indemnify the player's former club is as important a restraint on the freedom of players to change employers as the option clause itself.

In conclusion, we note again that there are real problems evident in the present conduct of professional sports and in its relationship with amateur athletics, and that S. 3445 has focused on several of the most important of them. In our testimony today, we have suggested alternative ways of dealing with these problems not involving establishment of a Federal Sports Commission. The NCAA believes, however, that the most important point to be made is that there is ample evidence that the excessive power of the professional sports interests must be controlled in the interest of amateur athletics, of individual athletes, and of the fans and the general public.

Senator Cook. Thank you, Mr. Brown. We will recess until 2 o'clock.

#### AFTERNOON SESSION

Senator Cook. The hearings will come to order.  
Our next witness is Mr. Angelo Coniglio.

#### STATEMENT OF ANGELO CONIGLIO, SPORTS FAN FROM BUFFALO, N.Y.; ACCOMPANIED BY H. LADDIE MONTAGUE, JR., ATTORNEY AT LAW

Mr. CONIGLIO. I would like to thank Mr. Piledggi for letting me go first.

This is my attorney, H. Laddie Montague, Jr.

I would also like to thank the committee for having—

Senator Cook. Mr. Coniglio, would you identify yourself?

Mr. CONIGLIO. I am a fan. People have asked what a fan is.

Senator Cook. You are from where?

Mr. CONIGLIO. Buffalo, N.Y.

A football fan, a hockey fan, and a fan of professional sports in general.

I have no connection whatsoever with any professional sports franchise, other than that I try to enjoy as many games as I can.

I have a written statement. I am sorry I don't have any copies. Maybe the best approach would be just to read this.

I was very interested to read the article that I saw in the New York Times about this committee and the proposed Commission. I believe that the views of a sports fan can help define the scope of such a Commission.

There have been many congressional hearings on sports in recent years, but as far as I know none has asked for the opinions of any ticket buying fans.

League officers, owners, players, and attorneys have been queried, but these gentlemen, since they do not buy tickets, or stand in line for events, cannot know the feelings of the average fan. What is more, in many cases, when the fan tries to make his feelings known, they are either ignored, ridiculed, or ostracized.

I have comments on many fan complaints today. Some are major, some are less important, but they have one thing in common; no one listens to them.

As a season-ticket holder for the Buffalo Bills, I was forced to purchase tickets to exhibition games in order to keep my season tickets.

Senator Cook. How many exhibition games?

Mr. CONIGLIO. It started with one and last year it was three.

Senator Cook. How many are there this year?

Mr. CONIGLIO. Three. Exhibition games, or "preseason" games, as the owners like to call them are generally played with many unexperienced rookies and second-string players while stars sit on the bench. Often they are admittedly not played to win but to assess the ability of these young players. These practice games do not count in the standings which determine playoff participants and the order of selection in the collegiate draft. The average player earns over \$1,000 per regular season game, but less than half that amount for exhibition games. Yet the owners charge regular season prices for these games and in many cases make them mandatory for season-ticket holders.

Senator Cook. May I interrupt you?

Does the Buffalo Bill organization make it mandatory that the preseason games be purchased along with the regular season tickets?

Mr. CONIGLIO. Yes, sir.

Senator Cook. If you do not purchase them, what happens? Do you lose your tickets for the regular season?

Mr. CONIGLIO. That is right. If you don't purchase for these three exhibition games, you cannot purchase a season ticket.

Senator Cook. What are the prices of these tickets?

Mr. CONIGLIO. In Buffalo they range from \$4.50 to \$7 a seat, I believe.

Senator Cook. In other words, you are paying from \$4.50 to \$7 a seat for three games to watch their high-price scrimmages?

Mr. CONIGLIO. I have two children and a wife who are sports fans also. I had four season tickets, and I had \$7 seats, so last year, the last year I held season tickets, that is 3 times 7 is 21, times 4; \$84 that I paid to watch scrimmages.

I am presently a plaintiff in a suit against those teams which have this practice.

I have also been active as a member of the Buffalo Bills Booster Club in attempting to bring to the attention of professional football owners the fact that the structuring of professional football after the recent merger was unpopular in many ways.

Testimony was given before Congress before that merger, but no fan was asked for his opinion, even though the attorney for the NFL stated that the merger was in the best interest of the fan.

We had a representative of the NCAA here today. Mr. Byers of the NCAA at an earlier hearing with, I believe, the Basketball Merger Committee, stated that the NCAA would have been against the NFL-AFL merger if anyone would have asked them.

I would like to paraphrase that, and say there are many fans who would have had definite opinions on the pro football merger if anybody had asked.

In that testimony, Congress was told that if the merger was permitted, no pro football franchise would be moved. Yet in the past 6 years, since the merger was approved, at least three teams have threatened to move.

I hope to make more comments on these and other points, including player salaries, expansion of professional leagues, television policies, concession prices and the ultimate structure and operation of the proposed Federal Sports Commission.

My main point, however, is this: The sports fan is a customer and deserves the same consideration and protection as any other consumer in our society. To this the owners usually say, "We are selling out our games, so we can't be treating the fans so badly after all." And Mr. Brown earlier made a comment similar to this, when you raised the question of expansion and the dilution of the quality of play, he indicated that, well, as long as the fans are continuing to buy the tickets, the leagues will continue to expand.

Pro sports are monopolies. If I want to watch pro football live in Buffalo, I have to watch the Bills. Fans buy tickets to sporting events in spite of mistreatment by the owners, not because they are happy with all the owners' policies, but because they are a captive market.

Furthermore, until now, we have had no avenue of appeal, other than expensive litigation.

On specific points.

Senator Cook. Before you get to the specific points: What is the capacity of the stadium in Buffalo?

Mr. CONIGLIO. I think it is 45,700 or 47,500, somewhere in that vicinity.

Senator Cook. Go ahead.

Mr. CONIGLIO. On exhibition games. Where these games are tied into season tickets, the season-ticket holder must buy from one to four exhibition games in order to keep his season tickets. These practice games can cost him about a hundred dollars a year. These practice games are played starting at the end of July when many families are on vacation and cannot attend. Regular season games are usually played on Sunday afternoons. In Buffalo, practice games are played usually on Friday nights. If you are a night worker in Buffalo and hold a season ticket to the Bills, you must buy three tickets for night games which you can't attend.

As I said before, I don't think any reasonable person would suggest that an exhibition game is the same quality game as a real regular season championship game, yet the prices are the same.

Senator Cook. Mr. Coniglio, have you ever heard in either the Buffalo Times or the Evening News of a coach saying, well, we didn't play this game to win, we were trying to see what our talent was? Have you ever read comments on that?

Mr. CONIGLIO. Many, many times. That is usually the stock excuse after a loss in one of these games; "Well, we don't play to win anyway; this is only an exhibition game; we didn't have our veterans in there; we don't want to wear so and so's knee out early in the pre-season." You read this over and over again.

Senator Cook. They don't want to wear their player's knee out, but they want to wear your pocketbook out. Three exhibition games in Buffalo, 47,000 fans, at \$6 a crack is \$846,000 for three exhibition games, and yet they don't play them to win and they don't play their good talent and they are there really to try their talent out. In other words, it is just about the most expensive scrimmage that anybody can go to.

Mr. CONIGLIO. I agree with that.

Senator Cook. They make it mandatory or you can't get your season tickets?

Mr. CONIGLIO. That is right.

Senator Cook. Continue.

Mr. CONIGLIO. On mergers and expansions: After the American Football League was absorbed by the NFL, many fans were unhappy with the fact that the AFL ceased to exist. The Buffalo Bills Booster Club formed the AFL Identity Committee to promote the restoration of the American Football League as a league.

Through this committee I have heard from hundreds of fans from at least 40 States. Ninety-nine percent of them have indicated they would have preferred the AFL to keep its separate identity after the merger. I have no way of knowing for certain, but I believe that if hundreds of people wrote to me, a fan, then thousands must have written to league and team officials on this matter.

The Bills Booster Club, for example, sent telegrams to every owner at the March 1970 owners' meeting in Honolulu, urging retention of the AFL. The owners' most common response was none at all, but when they did respond, they stated that Congress declared there must be one league.

Public Law 89-800 merely stated that any two pro football leagues could merge if the number of franchises did not decrease.

Senator Cook. The letters didn't tell you how hard they tried to get Congress to do it, did they?

Mr. CONIGLIO. I know how hard they tried.

At any rate, even if the leagues had been merged for financial reasons, there was no reason that two leagues would not be part of one legal entity as in baseball. The loss of identity of the leagues is not the only unpopular aspect of the pro football restructuring however. I am sure there are thousands of Green Bay Packer fans, for example, who would prefer their team to play the Rams, Giants, or Cowboys, rather than the Bills, Oilers, or Broncos. And there are Bills fans who would prefer their team play the Raiders, Chiefs, or Chargers, rather than the Steelers, Saints, or Falcons.

Yet the realignment of pro football dictates that longtime rivalries be given up so that each team can play each of the other 25 teams.

In the AFL in 1960, there were eight teams. Now there are 26 pro football teams. In 1960, each team in the AFL played each of the other teams twice, so there was no question that the division winners were the best teams in their division.

Today each of the 26 teams plays a different schedule, some vastly more difficult than others. The Buffalo Bills will play 10 home games this year. Of the 10 teams they play at home, only two are from the original eight-team AFL.

There are other detrimental aspects of the restructuring of pro football, as far as the fan and fan interest is concerned. Some of these don't have any monetary damages assigned to them. It is common knowledge, for example, that football fans agree that the AFL's two-point conversion is good, yet the owners simply refuse to use it. The Sporting News this past spring conducted a poll and showed that at least 90 percent of the fans in every city which had a major league football franchise preferred the two-point conversion.

Yet the owners simply refuse to install it.

Also, the Super Bowl, which used to be the world championship of pro football, played between the champions of two leagues, is now merely the NFL championship game.

I think the average fan agrees there really have been only four Super Bowls, the first four played between the AFL and the NFL. No matter how trivial the owners thought this matter, I believe the fans, if they had been asked, would have preferred to keep the two-league structure, but modified to have the world championship game and a common draft.

What is so important about the identity of the AFL? Just as fans identify with players or teams, the AFL fans identify with their league. There was no despair so deep as that felt by AFL fans when the Packers beat the Chiefs and Raiders. There was no joy so great as that experienced when Joe Namath destroyed the Colts and Len Dawson decimated the Vikings.

I believe you understand these emotions, sir, and if I may, I will quote from your introduction to this:

I gave my unswerving support and emotion to my favorite players and teams. And I succeeded or failed, lived or died along with them. Obviously it is true that a sports event is only a transitory moment, and we are always faced with the reality of tomorrow.

Senator Cook. I must say, Mr. Coniglio, even when I go back home now in the fall and happen to catch either a football game, or particularly in the winter, a basketball game, because the University of Louisville has had a phenomenal basketball team for many, many years, I wind up going out to Freedom Hall with some of the faculty members or the president of the university, and he is the very first one that expresses his opinion that I should calm down or relax.

Mr. CONIGLIO. I am glad that you are a sports fan. I think you understand the feelings of sports fans. You went on to say, "But sports can give us hope, something to believe in. We can see someone succeed on the athletic field and rededicate ourselves to success in our own fields."

The AFL succeeded in destroying the NFL's best teams after only 8 years of existence, but instead of gaining equality with the AFL, it was eliminated, absorbed by the league which ridiculed it for years. It is embarrassing to AFL fans that the league owners did not have enough pride to want to retain the league's name after the merger. The fans pleaded with the owners, but they were ignored.

Senator Cook. Let me ask you a point right here. The nice thing about the distinction in the leagues prior to the merger was that you always had two teams playing in the Super Bowl that never played each other before during the season.

Mr. CONIGLIO. Exactly.

Senator Cook. Now, they still call it the Super Bowl, but what you have said is it is really the NFL championship and it is very conceivable that two teams could play each other that played each other during the season, and maybe it had been a lackluster game or a lopsided game but still this would be for the entire championship and they would have already played. Maybe they could have played one of these high-priced scrimmages and then played during the regular season and then played in the NFL playoff.

Mr. CONIGLIO. That is right. I think Mr. Rozelle actually put his finger on the problem himself in an interview—I can't quote the time and place, but it was before the first Super Bowl after the merger, in which he said that—he guessed there would be some loss of interest in the Super Bowl, but he thought that with work the Super Bowl would gain the status of the World Series. I think if you talk to any football fan, when the Jets were playing the Colts, or the Chiefs were playing the Vikings, that they would have said this had it all over the World Series. And I think Mr. Rozelle was really admitting they had lost something.

As is, this is intangible, you can't put a dollar sign on it.

Although I think maybe the sport itself will eventually suffer because they don't have the rivalry between these two leagues. My main point is that references were consistently made at the testimony before Congress that this was in the fans' interest but no fan was ever asked to testify. They have reams of statements by sportswriters on what the merger will mean but not one comment by a fan on what the merger meant.

Senator Cook. Did Buffalo lose some of what the fans considered longstanding rivals?

Mr. CONIGLIO. Well, as I said, this year we played two teams from the old AFL, so obviously we lose some of our longstanding rivals.

Another problem there is that there are 26 teams and when there were eight teams, you knew every player on every team by the way he walked. You didn't even have to see his name on his back.

Now there are 26 teams and you don't know the players without a program and somebody is usually reading over your shoulder, "Who was that player? Who made that catch?"

Senator Cook. By the way, what do they charge for that program?

Mr. CONIGLIO. A dollar.

Senator Cook. OK.

Mr. CONIGLIO. I believe some of the aspects of the AFL-NFL merger would also apply to the ABA-NBA merger. I don't claim to represent all fans in regard to the basketball merger. I simply think it is somewhat unwise to study the merger only from the point of view of the players. Both ABA and NBA fans' opinions should be elicited. The subject of league expansion is another of concern to the fans.

When a league expands the fans see less and less of the older and better teams as new teams are added to the league. Yet, the price of the ticket remains the same or goes up. The fans in the expansion city are glad for the opportunity to see a major league sport, but they, too, are asked to pay major league prices to watch a sport which is watered down. I am not suggesting that professional sports leagues not expand, but that they do so in such a manner that the fan gets the major league quality for which he pays.

Senator COOK. Mr. Coniglio, let me ask you, back in the days when everybody clamored to see the Bills, not only on the field, but when they could on television, what was the blackout procedure in Buffalo?

Mr. CONIGLIO. Home games were blacked out in Buffalo. They were carried on Erie and Rochester stations and the exodus that you mentioned took place to Erie and Rochester. Many people could not pick up Erie and Rochester on their home TV's.

Senator COOK. So you went west along the lake or you went east along the expressway to Rochester?

Mr. CONIGLIO. That is right. I believe since 1970, Erie and Rochester no longer carry the Bills games. I don't know whether that is really a policy or whether it is just that the Bills don't have the appeal that they once did.

The question of players salaries is another area which affects the fan. While the owners may put up the initial capital and the players provide the essential service, it is the fan who ultimately provides the salaries for professional athletes, at least, through his purchase of tickets. I picture the usual procedure as something like this. Owner wants to pay the player \$10,000 a year.

The player wants \$200,000 a year. The owner agrees to pay the player \$100,000 a year thinking, "I will make it up by adding a practice game to the season ticket." The season ticketholder thinks, "I have had this seat for 10 years, and if I give it up, I can't get a good location on a game-by-game basis. Also, a new stadium is being built and they are assigning seats on a longevity basis. I don't like being forced to buy this practice game but I have to protect my previous investment." The owner says, "Well, they bought those practice games right up, next year I will add two more."

The player says, "You are getting this extra revenue from practice games, next year I want \$500,000." The fan is caught in the middle.

With regard to player contract jumping, my objection is a moral one.

Players often sign contracts with two competing teams. I feel that a Federal sports commission could influence players to do their bargaining before they sign contracts, and to sign with one team and to honor those contracts.

On moving franchises: I have copies of some testimony that Commissioner Pete Rozelle made before the House Anti-Trust Subcommittee of the Committee on the Judiciary in October of 1966. And he has a preamble to his statement, it says, "The plan for the expanded league is embodying an agreement between the member clubs of the two leagues which was entered into during the first week of June of this year. That agreement has been filed with counsel for this committee. I will outline for you its principal features." There are eight points here.

"No. 1. Every franchise of both leagues will remain in its present location." He goes through the other eight points and also makes some comments about what the pro-football fans want and again no pro-football fans were interviewed.

Then he recaps his points. And he says—"The advantages of this plan to many different interests are clear. Among these I refer to the following. Again, point No. 1, "Professional football operations will be preserved in the 25 cities and 25 stadiums where such operations

are presently being conducted. This alone is a matter of considerable public interest, to local economies, stadium authorities, and consumers.”

“Without the plan, franchise moves and/or franchise failures will occur as a matter, of course, within the next few years.”

Let me repeat—“professional football operations will be preserved in the 25 cities and 25 stadiums where such operations are presently conducted.”

Let me read an article from the New York Daily News, Buffalo, January 12, 1972. I may be wrong on 1972.

Senator Cook. It might be 1971.

Mr. CONIGLIO. It might be 1971. The headline is—“Bills Shuffling out of Buffalo? Buffalo, January 12 (UPI)—The Bills, who found a home here 11 years ago with the renegade AFL, announced today they could no longer live with an outdated stadium and were meeting with Seattle officials about a move to that city.”

Now, I could read the whole article but I think that in itself tells enough about what Commissioner Rozelle thought of his statement to Congress.

Senator Cook. Well, hadn't the New York Giants passed on that same threat to the city of New York when they wanted to go to Jersey?

Mr. CONIGLIO. They have, and I feel this is an area where a Federal sports commission could really exercise some influence. If we had had a Federal sports commission when Ralph Wilson was threatening to move from Buffalo, perhaps the commission could have told the county officials of this statement by Commissioner Rozelle, and put the county officials in a good bargaining position.

What ultimately happened was. Wilson kept threatening to move the team until the county agreed to build the stadium. They had appropriated money for a 60,000-seat stadium. That wasn't enough for Mr. Wilson. He wanted an 80,000-seat stadium and he said he was going to move if they didn't build the stadium and build it virtually to his specifications and have a lease contract to his specifications. The county capitulated.

Now, Congressman Kemp, I understand, is going to be here Monday, and I wish I could be here Monday. Congressman Kemp, after the Washington Senators moved out of Washington, was quoted in the Buffalo newspaper saying that this would never happen in pro football, because Commissioner Rozelle wouldn't have let it happen.

My question is, Where was Congressman Kemp when Ralph Wilson was telling the Erie County Legislature, “Look, if you don't build a stadium the way I want it, I am going to move.”

Nobody stepped forward and said, “Congress was told that no franchise can move.” I tried, but I am a fan, and nobody listens to fans.

Senator Cook. Let me ask you something, because we have discussed this relative to television rights and relative to blackouts: How many years have you had tickets to the Bills?

Mr. CONIGLIO. I had tickets—season tickets from 1963 through 1970.

Senator Cook. And then you gave them up?

Mr. CONIGLIO. That is right.

Senator Cook. Now, would you have given those tickets up if the Bills' games had been televised in Buffalo?

Mr. CONIGLIO. No.

Senator COOK. Can you give me the attitude of the owner who says that if I televise these games, I am not going to sell my whole stadium out?

Mr. CONIGLIO. Let me go back to the time when the Bills were a championship team and so on, and when I was perhaps more of a fan than I am now.

Senator COOK. Don't forget, though: In discussing this, in all fairness to the team, and in all fairness to my own attitude about blackouts, I think the Bills might be a good example to discuss: Let's discuss them in their good times and let's discuss them in their bad. Because I don't think you can always say, "Here is a championship team and they will always be a championship team."

Mr. CONIGLIO. The Buffalo Bills have won, I believe, 12 games in the past 5 years. In that period of time, they have averaged 35,000 fans.

So I don't think you can say that these are the types of fans that would stay home if the game was on television.

Personally, I think that a policy could be announced that not all home games are televised, but sellout games would be televised.

I don't think this would hurt the sport. In fact, it would probably help television sales. People would buy the portable TV's and watch instant replays right at the game.

Senator COOK. Mr. Wilson's demand for an 80,000-seat stadium doesn't seem to extend any quid pro quo to give the city of Buffalo a respectable football team, does it?

Mr. CONIGLIO. Well, he keeps saying we are going to get a respectable football team, but I am not holding my breath.

Senator COOK. Does he think that having won 12 games in 5 years, an 80,000-seat stadium is going to give him a better team?

Mr. CONIGLIO. I think this is a case in point of the type of fans that there are in Buffalo. Also, of course, if he sells 80,000 season tickets and "ties in" three exhibition games per ticket, that could be quite an additional bit of revenue.

Senator COOK. Yes; but come on, now. You say he has a 47,000-seat stadium now, and you said his average attendance is 35,000. So he doesn't sell his full house?

Mr. CONIGLIO. That is right.

Senator COOK. So Buffalo is one of the cities where they do not sell their full house, is that correct?

Mr. CONIGLIO. That is correct. They do have sellouts, though. And I can't document this right now, but even including the poor attendance, I think that Buffalo is second of the eight original American Football League teams in attendance.

Now, the Jets are first. They built the biggest stadium sooner than anybody else. But the Buffalo franchise was the flagship of the AFL for many years, and frankly, I think 35,000 for a team that wins one or two games a year is excellent attendance.

Senator COOK. I think it is remarkable attendance.

Mr. CONIGLIO. I think you asked about ticket prices. Again, people have asked me what a fan is, and I consider myself a fan. My wife is a fan. My children are fans.

Senator COOK. By the way, while you are on the ticket prices: How much have they increased since you first started buying them in 1963?

Mr. CONIGLIO. I believe there has only been one actual price increase. Well, there may have been two.

I really don't remember. The \$7 ticket may have been \$6 and gone to \$6.50 and then gone to \$7. But in 1966 they added one mandatory exhibition game. In 1967, there was one mandatory exhibition game. In 1968 there were two mandatory exhibition games. In 1969 and 1970 there were three mandatory exhibition games.

So additional revenue was picked up by adding exhibition games rather than adding ticket prices.

Senator Cook. Then to really be honest, not having a complete sell-out, if he had had a truly competitive team in the league, then obviously there was a day, or a time back in the 1960's when you couldn't buy a ticket to get in to see a Bills game anywhere?

Mr. CONIGLIO. That is probably true.

Senator Cook. And if he still had that caliber of team, then those three exhibition games would be worth \$846,000?

Mr. CONIGLIO. That is right. They sell now approximately 23,000 zone tickets, I believe. And again, 23,000 for a team that wins one or two games a season is not bad.

Another point: Whether or not you can buy a ticket for the Bills games or whether they are winning or losing or whether they are selling out their stadium, for the past couple of years, ever since they have at least had an idea that a new stadium would be built, they have sent out a typical letter to zone ticket holders.

I will read a portion of the letter to season ticket holders on January 31, 1972, signed by Robert Lusting, vice president and general manager of the Bills:

"Enclosed you will find your Seasons Ticket Renewal Form to assure your sharing in the excitement of the Bills' home games. A season ticket not only assures your seat locations in the action packed 1972 NFL season, but is also a step toward having a priority for excellent seats in the new stadium. Plans call for the stadium to be ready for the 1973 season.

Experience gained in each city that has built a new stadium indicates we can anticipate the increased and improved seating accommodations will result in a sharp increase in season ticket purchasers.

Now, I don't know how you read that, sir, but the way I read it:

You better renew that season ticket, folks, even though we have got a bad team, even though we force you to buy exhibition tickets, and we have got a new stadium, and it is going to be hard to get a seat in that stadium, and you better get them now.

As I say, this is the type of letter that has gone out.

Senator Cook. "Enclosed herein are your season tickets," did you say?

Mr. CONIGLIO. Your season ticket renewal form.

Senator Cook. Doesn't say anything about three scrimmages in there, does it?

Mr. CONIGLIO. No.

The prices for the 10-game schedule will be the same as it has been for the last 2 years; \$70, \$55 and \$40.

The enclosed season ticket form is for all 10 games. In keeping with past procedures the form, with remittance in full or a deposit of \$10 per seat, should be returned in the enclosed envelope prior to April 1, 1972.

Not a word about whether you are buying three exhibition games, or what you are buying. Ten games, that is all they say in this letter, as though they were all the same quality.

Senator COOK. That is interesting. And yet you say without any equivocation that there are three additional tickets that you have to pay the same price for?

Mr. CONIGLIO. The prices they quote are for the 10 games. They are not hiding the fact here that you are buying the 10-game package. But they are not saying a word about the distribution of those 10 games, or the content of those 10 games. In those 10 games there are three exhibition games and three regular season games. They just say, "Enclose your \$70 for 10 games."

Senator COOK. Then in fact, counsel, they do apparently consider that the three scrimmages are part of the season?

Mr. MONTAGUE. I was just going to point out, Senator, that this letter was sent out subsequent to the suit being filed, and they have changed the format since that time so as to not differentiate between regular season and exhibition games. Prior to the suit being filed, they did refer to them as preseason games and regular season games.

Senator COOK. But now they just call it the Buffalo Bills' season, which includes seven games that count and three that don't?

Mr. CONIGLIO. That is right.

Senator COOK. Go ahead. I would like to have that letter for the record, if I might.

Mr. CONIGLIO. OK. I have a copy of it.  
(The letter follows:)

BUFFALO BILLS,  
Buffalo, N.Y., January 31, 1972.

DEAR SEASON TICKET HOLDER: Your Buffalo Bills are eagerly looking forward to the 1972 National Football League season.

I'm sure you agree that we have good reason to feel that way. Many of our young stars now have the much needed experience in professional football and we welcome the return of Lou Saban as head coach who led the Bills to championship seasons in the mid-1960's.

Enclosed you will find your season ticket renewal form to assure your sharing in the excitement of the Bills' home games. A season ticket not only assures your seat locations in the action packed 1972 NFL season, but is also a step toward having a priority for excellent seats in the new stadium. Plans call for the stadium to be ready for the 1973 season.

Experience gained in each city that has built a new stadium indicates we can anticipate the increased and improved seating accommodations will result in a sharp increase in season ticket purchasers.

The prices for the 10-game schedule will be the same as it has been for the last two years; \$70, \$55, and \$40.

The enclosed season ticket form is for all 10 games. In keeping with past procedures, the form, with remittance in full or a deposit of \$10 per seat, should be returned in the enclosed envelope prior to April 1, 1972.

You have been a loyal Bills' fan in the past, and this is greatly appreciated. Please join us as your Bills move toward the top again in 1972.

Sincerely,

ROBERT T. LUSTIG,  
Vice President and General Manager.

Mr. CONIGLIO. I started to mention prices, and I said I am a fan, my wife is a fan, and my two children are fans. I just thought I would quote some of the prices that would cost a family of four to buy season tickets in the Buffalo area.

For the Bills, the average cost would be about \$240 a season. For the Buffalo Sabres hockey team and the Buffalo Braves basketball team, the average total cost would be about \$800. So all I am trying to point out is that the fan is a consumer, or he does spend money.

As far as concessions go, one example is in Buffalo auditorium: a draft beer costs 85 cents.

Now, I have heard about organized crime in sports.

Senator COOK. How much?

Mr. CONIGLIO. Eighty-five cents for a draft beer.

I have heard about organized crime in sports. I don't know if that is organized crime, but I think selling a beer for 85 cents is a crime.

Senator COOK. They would really do well if they had their own brewery, wouldn't they?

Mr. CONIGLIO. If a fan complains about any of these prices, he is branded a malcontent. Many people feel that since going to sports events is a luxury, if a fan does not like a team's policy, he should simply stop going to games. But a television set, for example, is a luxury, too, yet if I have a complaint, the manufacturer of the TV doesn't say, "Well, don't buy our TV's." There are two reasons why he doesn't. First, he is in competition with other TV makers. He wants me and my friends and my relatives to buy his brand.

Secondly, if the manufacturer did make a faulty product, there are numerous consumer protection agencies and services to which the consumer could appeal.

Neither of these forces is in effect in pro sports. If I don't like the Bills' season ticket policies, I can't go see another pro football team in Buffalo, and I can't appeal to anyone for consideration of my complaint.

What is more, if I do complain, I am considered a disloyal fan and a troublemaker, and I have had some painful experience in that.

Senator COOK. Why don't you give us some examples?

Mr. CONIGLIO. Well, there is a television program in Buffalo called "Let's Talk Sports," and, at one time at least, the format of the show was to ask the fans to write in comments on sports; and if the letter was deemed appropriate, the panel would call him on the telephone and discuss the problem with them.

The panel happened to mention the subject of exhibition games, and generally conceded that exhibition games weren't so bad after all, tying them in to regular season tickets.

Well, since three of the people on the panel worked for the Buffalo Bills' broadcasts, I thought that perhaps they weren't completely objective in their analysis of the exhibition games, and I wrote and told them so. They then called me and invited me onto the show.

I say "on the show," but I was on the telephone. They were in the studio. And I called and for 20 minutes was subjected to almost nothing but insults from this group of sportscasters, calling me a troublemaker, saying that I was going to drive the Bills out of Buffalo, drive the Bills out, and that I wanted my cake and I wanted to eat it, too, and that I was disloyal, I wasn't a fan, and if I didn't like the policy, I should just give up my ticket.

I tried to point out that I didn't think that was a valid out for me, that either way I lost. If I kept going to the games, I had to buy something I didn't want. If I gave up the tickets, I couldn't hold on to my seat. I had to give up priority in the new stadium. I had to give up a sport that I had followed for 10 years.

But their answers were simply that I was a troublemaker and that I should leave Ralph Wilson alone.

Senator COOK. Well, I am just going to lay it out cold. Do you contend—you better check with your lawyer before you answer this—that there may well be in existence a degree of collusion between the sportscasters in Buffalo and the Bills in regard to this issue of pre-season games?

Mr. MONTAGUE. Senator, I think the transcript of that program will speak for itself. We would be happy to supply you with a copy of it.

Senator COOK. I would like to have it. I really would.

Mr. MONTAGUE. It is very interesting.

Senator COOK. What interests me really and truly, and I think this ought to be brought to the attention of the FTC—

Mr. CONIGLIO. Senator, I have had contact with the FTC.

Senator COOK. I won't write.

Mr. CONIGLIO. I have written to my Congressman, who at the time was Max McCarthy, about this question of exhibition tickets. He contacted the FTC, and subsequently they sent him a letter, and he sent me a copy saying that this—this was back in, I believe, 1970.

He said that—the letter said, and I believe at that time the Commissioner was Mr. Weinberger, said that the FTC was considering this problem, was preparing a report on the problem, and that the report would be ready soon.

Subsequent to that, after Mr. McCarthy was out of office, he sent me another copy of a letter from the FTC, stating that it was determined that they had higher priorities than this and that the report was not going to be forthcoming.

I then wrote to my new Congressman, Congressman Kemp, as a matter of fact, suggesting that some type of sports legislation be thought of, some kind of fan protection agency be structured. Mr. Kemp wrote me back that he didn't think that was in the public interest.

Senator COOK. Well, I must say to you, I don't think it is in the public interest to quote in a letter those prices for the 10-game schedule. I don't think there is a sports fan in existence or anybody else that would read a 10-game schedule and say that that was in fact an official schedule and that somehow or other you are watching 10 official scheduled home games and that those 10 games did in fact count.

I think the fact, which I have read myself, that after some of these scrimmages, the coaches said we were out here to try out our talent, we really weren't here to win, these are practice games, then I think this shoots it right in the head that these are in fact any part of any schedule.

Mr. CONIGLIO. I do, too, sir.

Senator COOK. And if the three sportscasters thought that you wanted your cake and wanted to eat it, too, I can only tell you that the Buffalo Bills, if they had had a sellout house for those three nonscheduled games, had a pretty good cake, if they had had a sold-out house for three games and would have received \$846,000 for it.

Mr. MONTAGUE. Senator, would it be all right to give you some statistics, which I think are fairly revealing?

Senator COOK. Yes, please do.

Mr. MONTAGUE. Correct me if I am wrong. I think in 1964 and 1965, the Bills were the champions.

Mr. CONIGLIO. That is right, of the American Football League.

Mr. MONTAGUE. We did a little study, and in instances where they played the same team at home for an exhibition game and for a regular season game, and in 1964 they played Kansas City at home in an exhibition game and drew 16,000, and they played them during the regular season and drew 28,000—this is prior to the tie-in of the exhibition and regular season tickets—that same year they played Boston and drew 11,000 in the exhibition and over 40,000 during the regular season.

In 1965, they played Houston in an exhibition home game and drew almost 15,000. During the regular season they drew almost 45,000. They played the New York Jets in an exhibition game in 1966 and drew 11,000, and during the regular season at home they drew 45,000.

The next year—

Senator COOK. Well, now, let me ask you something. Those figures are very interesting, but they become far more interesting if in fact it was mandatory that the preseason game tickets, be bought in order to get the regular season games.

Mr. MONTAGUE. I am going to give you the next year, which is the year they first became mandatory.

Senator COOK. All right.

Mr. MONTAGUE. They played one preseason game, and that was with Denver. That year, for that exhibition game, 30,000, the largest they had drawn before was 16,000, and for the regular reason game they drew 40,000.

Senator COOK. That means that 10,000 people bought tickets who for one reason or another could not attend.

Mr. CONIGLIO. That is correct.

Mr. MONTAGUE. That is correct.

Well, no. Their season tickets during that year were probably in the range of 22,000 or 23,000.

Senator COOK. I see, I see. All right.

Well, let me ask you: Were tickets to Buffalo games, even during the years when they were contenders, available at the stadium on the day of the game?

Mr. CONIGLIO. Well, I was a season ticket holder at that time. I really can't say.

Mr. MONTAGUE. They were, yes.

Mr. CONIGLIO. They didn't sell out every game. That is for sure.

Mr. MONTAGUE. They never sold more than 22,000 or 23,000 season tickets; but even if you look at the layout of the Buffalo Memorial Stadium, you will see that there aren't that many de luxe good seats, so that those season tickets pretty well took away from the general public all the desirable seats.

Senator COOK. All right.

By the way, if beer costs 85 cents, how much was a hot dog?

Mr. CONIGLIO. I believe a hot dog was 50 cents. I am not too sharp on the prices because I don't buy anything when I go there. But I think a hot dog is 50 cents. A little glass bigger than that, a 6-ounce glass of cola, is a quarter. If you go with your whole family, if you are going to eat there, you might as well forget it.

On this sports program, I pointed out that a fan in Philadelphia had filed a complaint against the Philadelphia Eagles because the Eagles were about to institute an exhibition game practice. And shortly after he filed a complaint, the Eagles backed down and said they

would not have this practice. There were a couple of things about that episode that disturbed me.

One was that to my knowledge the fact that the Eagles backed down was never reported in the Buffalo newspapers until perhaps 4 or 5 months after it happened. It just bothers me that here in a city where there are 23,000 season ticket holders were being forced to buy three exhibition games, that the news media wouldn't think it was important enough to say that a fan in another city had gained some relief. That is another thing that the Federal Sports Commission could help in.

At any rate, a couple of weeks later on the same program, one of the panelists stated that wasn't true; that the Eagles did include exhibition games in their season ticket package. Coincidentally, the very next day I was in Philadelphia, and it was in August, and an exhibition football game was coming up, and both the Bulletin and the Inquirer had articles that said that the Eagles had sold 50,000 season tickets, but only 30,000 tickets to the upcoming game.

I called the Eagles' office and asked whether their season ticket policy included exhibition games and was told no, it did not. When I got back to Buffalo, I called the panelist in question and indicated that I had found this out in Philadelphia. He said, "Well, the public relations man for the Eagles told me they do, and they are not afraid of you"; that "They do include these things; what do you want me to believe, the Philadelphia Inquirer or the PR man?" He refused to correct himself. He refused even to make a phone call to Philadelphia to find out if I was right or he was right.

Again, that may seem trivial. But since I am a fan, and since I can't damage this guy, I feel he doesn't care whether he presents the truth to the public or not.

This has happened in many cases in the experience that I have had with treatment from the media.

Senator COOK. Well, I don't know how trivial he thinks it is. What station is this in Buffalo?

Mr. CONIGLIO. WBEN-TV. As a matter of fact, I wrote a letter to the producer of that program and indicated that this had happened and asked for a retraction of some kind and got not response whatsoever from the producer.

Senator COOK. Well, who is the sportscaster that you have reference to?

Mr. CONIGLIO. Stan Barron.

Senator COOK. Well, I don't know how trivial Mr. Barron thinks it is, but it may cost 23,000 ticketholders \$414,000.

Mr. CONIGLIO. But it doesn't cost Stan Barron anything because he gets into the games for nothing, sir.

Senator COOK. Including the preseason games?

Mr. CONIGLIO. Exhibition games. The owners call them preseason games.

Senator COOK. Oh. I see.

Mr. CONIGLIO. There was a recent comment by Mr. Robert Wolfe, who is a prominent attorney—

Senator COOK. Mr. Wolfe will be here on Monday, by the way.

Mr. CONIGLIO. Mr. Wolfe suggested that perhaps the players in pro football should pay a portion of the commissioner's salary, and that

they should have a say in the selection of the commissioner. In actuality, whether the commissioner's salary passes through the owners' hands or the players' hands, it is the fans who pay the commissioner. Don't they have a right to be heard?

Some of Mr. Wolfe's ideas were very good. The idea on the option clause and so on, and I don't think he did this intentionally, but it is just so common for people to completely ignore the fan.

The commissioner should be the commissioner of the league, the players and the fans, and I am not implying that they have a half a million football fans hold an election for the commissioner every football season, but certainly the commissioner should be more responsive to the fans.

Another matter that concerns a lot of fans is the practice of undisclosed draft choices. I don't know if you are familiar with this term or not, but many teams have the practice of trading players for "undisclosed draft choices." This means a player, for example, can be traded to another team, and the fans are not told what or who the player was traded for. They may not find out for years. Why shouldn't this information be public knowledge? What happens is a team will trade "Joe Swartz" for the Washington Redskins undisclosed draft choices for 1974 and 1975. And I believe what this is, is a means for the teams to sort of slip out of the onus of trading this player, because by 1974 or 1975 the fans have sort of forgotten what happened, and if the two players that they get are the 17th and 18th round draft choices, and turn out to be duds, they will never complain about it. But if today I made the trade and I tell the fans, I traded this man for the 17th and 18th round draft choices, the fan can make a decision on whether the trade was good or not. And I don't see any reason why this information shouldn't be made public.

Senator Cook. As a matter of fact, this is just what occurred, is it not?

Mr. CONIGLIO. As a matter of fact, they just got into a big boggle about it because they don't make them public.

And evidently the league office didn't know what they were, because George Allen traded the same draft choice to more than one team, and if they had made it public, a sharp fan would have picked it up, but the league office didn't pick it up.

Senator Cook. Let me bring you up to date. It seems to me yesterday the Washington Redskins acquired a guard by the name of Nelson from the Buffalo Bills for an undisclosed draft choice.

Mr. CONIGLIO. Well, I believe it. I think it was Wilson, John Wilson.

Senator Cook. Yes, Wilson.

Mr. CONIGLIO. Television policy. I gave my ideas on the blackout, but the terms that are spelled out as far as what the fans would be interested in also mentioned inequitable arrangements relating to the broadcast of professional sports events.

I am sure that referred to the blackout.

But there is another inequity in the broadcasting of pro football games. Regardless of what the present structure of pro football is, there are presently 16 former NFL teams and 10 former AFL teams.

About 30 percent of the games played in a given season are between ex-AFL teams, exclusively. Yet, out of a 50-game schedule, 18 were

between ex-AFL and NFL teams, 27 between ex-NFL teams, exclusively, and only five were between ex-AFL teams, exclusively.

In 2 years of Monday night football, not one game has been televised between two ex-AFL teams, and, in fact, while 14 of the 16 ex-NFL teams have appeared on Monday nights, 5 of the 10 ex-AFL teams have yet to appear.

Using the 10 to 16 ratio of teams, it is reasonable to assume that 40 percent of the pro football fans in the country are fans of ex-AFL teams. These fans are being afforded less opportunity to see their favorite teams on television.

To whom does a fan make a complaint on matters like this?

The owners, when asked, say that after the first year things will even out, but last year, nothing was significantly changed. In order to make up this inequity, this year, about half the games televised would have to be between ex-AFL teams.

The networks, when asked, simply ignore the fan.

Again, you can't show any monetary damage here, but there are millions of fans out there who want to see more AFL football, and it is not being shown to them.

You write to the networks and get no response, and as I say, you write to the owners and get a runaround.

I have a letter here from—

Senator Cook. By the way, we would like those statistics, and we would like a copy of this record as soon as we can get it, so that we might ask Mr. Cosell when he appears on Monday.

Mr. CONIGLIO. I have written to Mr. Cosell, written to ABC about this, too, with no response.

This is from Mr. Bain Chadsey, a gentleman I don't know, except that I have this letter.

By the way, I got some of those statistics from this letter, but I checked them out and they are accurate. This is from the Pro Football Weekly.

Unfortunately, I don't have the exact issue.

Dear Editor: I have done some research on this year's upcoming TV football schedule for the three networks, and I'm sure former AFL loyalists as well as fairminded fans will be interested in the results, which seem to confirm that there is very little respect for traditional AFL teams and a colossal miscalculation on the number of AFL fans.

Of 50 preseason and regular season games to be aired nationally by the three networks, exclusive of regional commitments, 27 are exclusively between old NFL teams, while only five are between old AFL teams (Kansas City-Oakland twice), and the remaining 18 are interleague games.

Pittsburgh, Baltimore, and Cleveland are not counted as AFL teams, although they are now grouped with the latter, because to do so would miss the whole essence and spirit behind the traditional AFL-NFL rivalry. These figures were compiled from the August 7 issue of TV Guide and from Sports Quarterly Pro Football 1971.

I certainly hope that many readers will share my indignation and let the networks know emphatically that there are millions of people who would like at least equal exposure for former AFL teams.

Bain Chadsey, White Plains, N.Y.

Again, there is nothing a fan can do about this, absolutely nothing, because the owner says "we merged, you are still buying tickets, you must be happy," but the fans aren't happy.

I tried again and again to have the owners conduct a poll to determine whether the fans really wanted the AFL to become a part in name of the NFL. They won't do it.

Senator COOK. Let me ask you: What activities, if any, have the Bills management conducted in the area of public relations for the fans?

Mr. CONIGLIO. As I said, I am a member of the Buffalo Bills Booster Club. That club was formed in 1961, I believe, and with some help from the Buffalo Bills, the Buffalo Bills for the past couple of years have provided a "Family Day" sponsored by the Booster Club but open really to anybody who wanted to go out at training camp.

I was a season ticket holder for the Buffalo Bills for, I believe, 5 years, before they gave me a team decal. I really can't tell you much about their public relations activities.

I was certainly a fan. I happen to feel that, for example, if Ralph Wilson had gone to Seattle with the same public relations that he had in Buffalo, they would have drawn less than 35,000 people.

Senator COOK. Is Mr. Wilson a resident of Buffalo?

Mr. CONIGLIO. No, he is not. He is a resident of Grosse Pointe, Mich.

My final points are on the structure of the proposed Federal Sports Commission, and I have them further back in my notes.

First of all, I would like to suggest that, if possible, hearings such as this one should try to schedule more fans to get their views.

Senator COOK. Do you think it would be effective, Mr. Coniglio, if this committee were to take one or two of these hearings to—

Mr. CONIGLIO. I know what you are going to say; yes.

Senator COOK (continuing). To a National Football League city?

Mr. CONIGLIO. Let me read my suggestion on the structure of the Commission, and let me then say I think this also applies to the hearings themselves.

The proposed Sports Advisory Council should have 10 members, as follows:

Two league representatives, two player representatives, and I don't think—if you have two league representatives, I don't think you need two team representatives, because they are in the same boat.

Senator COOK. Well, now, remember, while you are doing this, that this Commission that we are talking about is not aimed just at football.

Mr. CONIGLIO. I recognize that.

Senator COOK. OK.

Mr. CONIGLIO. Two amateur athletic organization representatives, two members of the press or radio, TV, and two ticket-buying fans, and I mean two ticket-buying fans, not two owners of a thousand-block tickets.

I also feel that including members of the press can be helpful, but the Commission should be careful in their selection. An unwise selection can result in two more votes for the owners. Many in the sports media tend to plan their reports to please the management of sports teams, and many are not concerned with the fans' problems.

Writers, for example, think the fans' objections to mandatory practice games are unfounded. Of course, most writers do not buy tickets to the game.

William Wallace, in this month's issue of a football newspaper, *Pro Football Weekly*, says,

"The fans are happy with the status quo and the legislators know it."

And I would just like to know how many fans Mr. Wallace has interviewed.

I don't mean to imply that there are no fairminded writers, however, and two outspoken journalists would certainly be a good addition to the Sports Commission.

I also feel that the Commission should not exclude women from membership. Many women are quite knowledgeable in sports, and they are insulted by their presumed ignorance in such matters.

In fact, my wife is one of these women. She would have been insulted today, for example, when the comment was made that there would be more divorce proceedings if there was all that television and sports. She is the type who would watch as much sports as I do.

And I think there are many women who feel that way. Not everybody complains when their husbands sit down in front of the television set.

As for the operating procedure of the Commission, I suggest that the United States be divided in six geographical sports regions, and that the Commission alternate its meetings. The Commission should publish the time and place of these meetings and ask for fan comments and complaints to be submitted to the region, say, 2 months before the meeting in that region. The Commission could then review these comments, select the most valid, and invite the fans who made them to the regional meeting. Perhaps this region should have an "ombudsfan" who could screen the fans' comments before transmitting them to the Commission.

The Commission should also exert influence on all to recognize that sports fans are consumers and should be given consideration by these agencies, and in answer to your question, yes.

I don't know what the proceedings are in hearings like this, but I think it would be most valuable to, if not go to every league city, to rotate the hearings, to try to visit many cities, and give as many fans as possible the opportunity to come and give you their views.

And they may all completely disagree with me, but at least, you will have the views of a fan who buys a ticket and pays his money, and before this, this has never been done anywhere.

That is the end of my statement.

Senator Cook. Mr. Coniglio, I thank you very, very much.

You have made a great contribution to this record believe it or not. You really have.

I want to make sure that you get all of the things into the record that you read from, because they should be part of the record.

Mr. CONIGLIO. As I said, it is just handwritten, but I will return home and have it typewritten and send it in.

Senator Cook. I am not worried about that.

I mean the letters that you read from, and if you—

Mr. CONIGLIO. By the way, that quote, by Commissioner Rozelle, excuse me, was from the hearings before the Antitrust Subcommittee, Subcommittee No. 5, of the Committee on the Judiciary, House of Representatives, 89th Congress, Second Session, on S. 3817.

Is that enough?

Senator Cook. Yes; it is.

Also, I would like to have, if I could, if the Staff could Verifax that article out of the Buffalo Evening News, relative to the threat to move out of the city. We would like that into the record.

Also, could we have the transcript of that television, or that radio show?

Mr. MONTAGUE. Yes; certainly.

Senator COOK. That is fine.

Mr. CONIGLIO. I would like to thank you once again for having me here, and I would also like to point out that Mr. Piledggi, who is following me, has been working at the same school for 20 years, and today was to be his testimonial day, and he canceled that to come here, and that shows his interest in the sports fans of America.

Senator COOK. He knows we appreciate it very, very much.

Mr. CONIGLIO. Thank you.

Senator COOK. Mr. Piledggi.

(Recess.)

Senator COOK. All right. We will come back to order.

Mr. Piledggi, will you identify yourself, please, sir.

#### STATEMENT OF DOMINICK PILEGGI, FORMER HEAD OF AMERICAN SPORTS FAN ASSOCIATION

Mr. PILEGGI. I am Dominick Piledggi, as of today, assistant principal of Landsdown High School, founder and president of Sports Fans of America, Inc.

I wish to thank Senator Cook and the members of his committee for the opportunity to come before you and express my views as a sports fan.

I distributed cards to Mr. Yarmouth, and I think the card pretty much tells the story of what prompted me to found Sports Fans of America.

This is a design created by me, which shows a sports fan in the middle shackled by chains, and if you will note, there are three stars, one beside each arm and one over the head.

The chains indicate management on one side, players associations and players on the other, and really, the true star is the fan, because without him, neither of these other commodities would exist, and it is within that point that I would like to direct my comments to the committee, since Mr. Coniglio did such a good job in the other areas.

(The illustration follows:)



Mr. PILEGGI. The objective, very briefly, was to establish a national clearinghouse, so the fans would have some place to go with their concerns.

Players have a player association, the owners have Pete Rozelle, but the fans have no one. Consumers have Ralph Nader, Betty Furness,

people of that type, but the sports fans, representing a large consumer group, really have no one to which to turn.

Sports Fans of America has approximately 2,000 members in some 48 to 50 States. We have basically the same concerns expressed by Mr. Coniglio, and without going into these concerns in detail, just to reiterate some of the points that he raised, this constant threat of moving, for example, the threat of the Colts moving to Tampa was not brought out.

But we have been subjected to this because season ticketholders in Baltimore did not support the sale of the preseason game or exhibition game, as you call it, was not supported. I, as a season ticketholder chose not to buy preseason tickets.

Senator COOK. You had no option.

Mr. PILEDGGI. Yes. However, there is no doubt in my mind, since I saw the article by Mr. Coniglio, a 1-inch square article, indicating that he was going to bring suit to enjoin the NFL from the season ticket exhibition tie-in, that the Colts reconsidered making preseason games mandatory.

I called this to the attention of John Steadman of the Baltimore News American, and he in turn wrote an article relative to this, and I am not sure of the series of events, but I think I am safe to assume that this might have some effect on the Colts deciding to make this purchase optional.

However, they seemed to indicate otherwise.

Senator COOK. Do you have any idea how many tickets they do sell to their preseason games and how many preseason games they have?

Mr. PILEDGGI. I really don't have those statistics. There was another gentleman who was supposed to be with me today, he was to provide that information, but he is not available.

Senator COOK. You can get it for us?

Mr. PILEDGGI. I will certainly do that. Some of the statistics that I need to substantiate this, I will get, and I will see that the Commission gets them.<sup>1</sup>

Mr. CONIGLIO. If Dom doesn't mind, I know some of those statistics.

Senator COOK. Yes.

Mr. CONIGLIO. The Baltimore Colts have sold out almost every regular season game for the past 10 years. Last year, I believe they averaged no better than 16,000 for three exhibition games.

Senator COOK. All right.

Mr. PILEDGGI. I am really surprised it was that high.

Mr. CONIGLIO. I think that is the best they did. They had a 13,000 game.

Mr. PILEDGGI. It was bad enough that this year they will play—I believe—only one exhibition game in Baltimore, and the remainder will be played on a traveling circuit, so to speak. I think one of those is in Tampa.

I have a note here making reference to the same bill that Mr. Coniglio did, that if indeed this policy did exist and these agreements were made to the Congress, why this was not picked up, but I am glad to hear that the same thing with the undisclosed draft choices (the George Allen-Redskin case), this is a problem that would not exist had there been a commission such as this, and perhaps maybe a hard-core paying fan as a member.

<sup>1</sup> See page 287.

To reiterate some of the other statements made by Mr. Coniglio, the high price of concessions. This was one of the prime concerns of the Washington area, when Mr. Short was here with the Redskins, and in Baltimore at Memorial Stadium.

In seeking answers to this question, I find out that when the St. Louis Browns came to Baltimore as the Baltimore Orioles that to raise capital, there was a 15-year contract, and I would have to check the exact length of time on that contract, but it was an unusually long period of time, 12 to 15 years with a 5-year option to renew. This places a vendor in an enviable position of no competition, serving a product and giving service that is less than satisfactory and has been so for many years.

When you consult the Orioles about this, for example, or the Colts, whoever is in the stadium at that particular time, the answer is the concession is not theirs, but yet they draw a percentage of the net sales.

So it would be in the best interest of fans if there was more than one concessionaire in any given stadium so that you had some spirit of competition to give the fan a break and to improve the service.

But this was the type of contract that was negotiated, and I think that this would probably be conducive to the kind of situation that exists in sports where you have a concession group making loans to professional sports teams.

If they would divest themselves of this type of interest and maybe have it as a local community concessionaire. I think that this would, I think, reduce the possibility of that type of collusion.

Senator Cook. Mr. Piledggi, now, in all fairness, if a local caterer were going to pick that contract up, I have a notion that that would probably be part of a larger corporation who ultimately could be in the same position to make a loan, even maybe in a better position, to make available its own bank contacts to a team.

Mr. PILEDGGI. When I mentioned that, Senator Cook, the only thought I had in mind is I don't think that a concessionaire of that size would have the capital to make the kind of loans we are talking about here today.

Senator Cook. Maybe not, but they could help a team guarantee them. There are many ways this can be done. I think the only reason that we find ourselves in the situation we find in the house where the major concessionaire is a national organization, it is located in many facilities, and it has become, in fact, an integral part of this sports scene, and their name has become synonymous, I think, with the whole sports field, whether it be football, baseball, or racetrack facilities. As a matter of fact, that organization has become as much a household word within the realm of that end of the sports field as the sports themselves and the teams themselves.

I think this is where it comes into effect. I have a notion that even many of these loans that are made, that this major company may be the vehicle for the loan, but I have a notion that they may have to go out and borrow the money themselves.

Mr. PILEDGGI. Mr. Coniglio covered the exhibition season ticket tie-ins.

Senator Cook. But these things should be disclosed, this is what you are saying, and the community and the fan ought to know about it.

Mr. PILEDGGI. I think a prime example, for example in Baltimore now, the Baltimore Bays are making an attempt to bring back soc-

cer, and they are going about it more as the Green Bay Packers did, a community owned type of thing, at least, this is their goal. There is no doubt in my mind, say, if the Bullets now move to the Largo area, that there is talk of an ABA team coming into Baltimore basically on the same premise that it might be a community owned project.

I would like to reiterate again that with these exhibition season ticket tie-ins that you are paying to see a sport that is supposedly professional caliber, but what you are seeing actually is a tryout; amateur sports, professional prices. Season ticket prices, I think, need to be regulated a little bit, for example, my Baltimore Bullet ticket, I have to pay for it in August, and I buy the 18-game plan, I believe it is, and I get 18 tickets, and they throw in a couple of extra tickets as a part of the plan, but basically what you get is the same seat at each game.

During the regular season, maybe for one of the tickets that you hold, one of the games you hold a ticket for, they will have promotional activities where, for example, you go into a service station, you can buy one ticket, and at the door, for that ticket, you will get a second ticket. If you attempt to do that with one of your season tickets for that particular game, they won't honor that ticket as an extra ticket, and here you bought it earlier in August and can't get the same privilege as an individual who is buying a separate ticket.

I think they can do more for the season ticketholder, since he is giving the working capital way in advance. I am paying for a game I see in April—for which I paid in August—but I don't get the two-for-one benefit, for example.

Senator COOK. You are also paying for a game in April that you don't see until December.

Mr. PILEDGGI. That is true.

Senator COOK. Do we have that letter from the Buffalo Bills? Did you turn it over to the reporter?

I will ask you if you know: In Baltimore, you say you have to order your tickets and pay for them prior to what date?

Mr. PILEDGGI. I am not exactly sure of the date, but the basketball season starts in October, and usually you get your request for your season tickets much earlier than that. I believe it is in June, I have already gotten mine for the forthcoming year.

Senator COOK. Football now?

Mr. PILEDGGI. With football, you pay a \$5 deposit by April 15, and you must pay the balance as of June 5, and I am sure of that date because I paid the \$5 deposit—I have had a season ticket for a goodly number of years, and this year—

Senator COOK. In other words, all the season ticket money is in by June the 5th?

Mr. PILEDGGI. Or shortly thereafter. I am sure there are some exceptions.

Senator COOK. Now, in the Buffalo situation, do you have to pay \$10 per seat prior to April the 1st?

Mr. CONIGLIO. Yes.

Senator COOK. When do you pay the balance?

Mr. CONIGLIO. By May the 15th.

Senator COOK. By the 15th of May. That means 23,000 times 10 games.

Mr. CONIGLIO. That is right, there are many points like this that could be brought up, but I have noticed that, too, and you have to pay it all by May 15, and the team has that working capital for all that time. And I might also say that sometimes those letters go out before the schedule even comes out.

Mr. PILEDGGI. That is true. You are paying for something you are not exactly sure that you are getting.

For example, using basketball as an example, when they started the all-star game between the ABA and the NBA, if you recall, last year they advertised—I am trying to think of Lew Alcindor's changed name, and it just escapes me at the moment—Kareem Jabar. They had advertised he would not be present.

Senator COOK. Let's not have hearings on that subject, though.

Mr. PILEDGGI. On what subject?

Senator COOK. Trying to identify players.

Mr. PILEDGGI. But in any event, the fans were led to believe that they would see truly the all stars of both leagues, and as it turned out, if you look at the lineups, it was anything but. And I think this is the kind of things that fans are getting a little tired of. I think if they contract to have that type of event, they should fulfill the contractual obligations. The players are free to come and go as they please. For example, I showed up at the civic center this year expecting to see Earl Monroe and Archie Clark in uniform, only to be told that they would not appear. And I have never sat through such an agonizing appearance, to see a team go out on the floor without two of its first string starters and try to play basketball.

So contractual obligations are things that have to be looked into and regulated to some extent, I think.

Salaries, bonuses, ticket prices, I think regulation is needed.

One of the statements primarily that is used by professional sports is the amount of money that they lose each year. I question this to some degree because of the fact that there probably are a goodly number of individuals who have professional sports teams that are engaged in other activities and as a result use for tax loss purposes the losses suffered from professional sports as such. So I think it is not really quite a true picture.

I was amazed to learn in an article that professional football players are amortized over periods of years for income tax purposes.

In the case of the Philadelphia Eagles, they paid no taxes, I believe, from 1964 to 1968. They have extended their amortization period from 5 to 10 years for the purpose of having an income tax deduction over a longer period of time. I have a copy of that article with me, if you care to read that.

Senator COOK. But, now, let's talk about that, because I don't want to sound like I am totally antimanagement in the ownership of teams.

You have objections to amortizing football players and basketball players, and yet the football player and the basketball player amortizes himself.

In his negotiation with management, he says, look, I only have so many more years, and that is it, and I don't know what I am going to do after these years, so I want all this kind of deal, I want deferred

income, I want my contract to last over a longer period of time than I am playing.

So, really and truly, he amortizes himself as such. And I went through these statistics in an article that Senator Erwin wrote, and Senator Edwin raised this question of peonage, that you were actually taking humans and you were amortizing them.

Well, I get the feeling now that the athlete himself is in the same business of amortization. He sets a period of time that he thinks he can play, whether it be 5 years or 10 years, or whatever it is, and he really negotiates his contract based on what he thinks his live experience in the sport is going to be.

He will ask for deferred income over and beyond the period that he thinks he is really going to be eligible.

So. I can't, quite frankly, get excited about blaming management for amortizing the high cost of players, when in fact the going rate for the player is based on his own life expectancy in the field, and therefore to an extent his own degree of amortization.

Mr. PILEDGGI. I agree with that wholeheartedly. However, the point in question that I am raising is the fact that through this policy, and gain, I have no objection to any policy, but I think most people look at fans as unconcerned individuals, not necessarily too literate or bright, and these things are beyond their comprehension.

I think that if more of these things are known, perhaps maybe from a public relations aspect—for example, in the discussion with the public relations official from a professional team the other day, I was saying the fact that one professional team did a better job of public relations than the other. This gentleman's reply to me was that they give 1,100 tickets per game to ghetto children.

I said, why don't you publicize this. He says, well, we don't believe in that kind of publication.

Now, to me, if this is the type of public relations officials that professional teams have, it would appear to me that is part of the problem, since supposedly they have a product to sell.

And to reiterate what Mr. Coniglio said, with professional sports, if I want to see football, I have to go to see the Colts.

If I want to buy an automobile, and I want to buy a Buick, or whatever the car may be, I have my choice of dealers. The prices may be the same, and I have to evaluate service.

So, I think the fan deserves a better break knowledgewise as to what professional sports are doing, and I think this is where the commission can serve the purpose.

I have nothing against amortizing the athlete over that period of time.

Well, without getting into bonuses and that type of thing, I think that is enough along that line.

The double standard was mentioned earlier today, and as an educator I am concerned about double standards. I think athletes like anything else must make value judgments. They have to consider certain alternatives.

I think that part of the attitude and philosophy that permeates professional sports today is reflected in an article that appeared in a magazine called *Inside Basketball*, written by Jeff Peetree, who was an NBA co-rookie of the year in 1971.

An article by Jeff Peetree, on page 4, of your September 29 issues of Inside Basketball, entitled "I Stand Against the Merger."

I would like to quote from this article:

Basically what I say on this page is an attempt by a group of businessmen to circumvent some of the most basic principles guaranteed the people by the constitution.

In another sense it is a microcosm about what the entire economic structure of the United States is rapidly becoming. Rather than free enterprise in competition, we are becoming a nation of great interlocking corporations. There can be no doubt that the small businessman in America is being threatened, driven to consolidation out of necessity by corporate monopolies.

Rather than to discuss this article piece by piece, I shall concentrate on the above quotes, since this line of thinking permeates the entire article.

And I might say, I think it permeates the thoughts of many of the professional athletes, and perhaps even professional sport itself.

If Mr. Peetree is referring to owners when he speaks of great interlocking corporations, when he makes reference to businessmen circumventing some of the most basic privileges guaranteed to the people by the constitution, what does he think the NBA Players Association represents in the eyes of sports fans of America?

In the entire article that he wrote, he did not have reference to the word fan once. And my point is this: If he is talking about small businesses, which he equates the basketball player as such, what does he consider me to be as the head of a family with a modest income trying to stretch a buck to go to professional sports, for example.

They never once take into consideration what the fan does for him. It is always what can the league and the fans do for me.

This is one of the reasons why I started Sports Fans of America without getting into the contractual obligations or any of the other points.

But, I think that the important thing about this is this is a rookie, 1 year in the league, and the type of thinking that prevails.

What has Sports Fans of America done?

As I said, it serves as a national clearinghouse for fan concerns.

We have found that regardless of where the complaint comes from, that basically, when you start to list them, regardless of what professional sports you are talking about, or what area you are talking about, the concerns are basically the same.

Senator COOK. Do you have some of those complaints?

Mr. PILEDGGI. I don't have them with me, but I can—basically they come in this category.

Senator COOK. Can you give us some examples?

Mr. PILEDGGI. Ticket prices, the season exhibition tie-ins, some of the problems with the Super Bowl tickets, particularly in the Baltimore area, parking facilities. Offhand, these were the major ones.

I might point out the contractual obligation again. There is a lot of concern about how a guy can sign a contract to play with one particular team, jump the contract and go to play with another team.

As I was mentioning to Angelo before, when a player is a star with a particular team, and he jumps to another team, I think it hurts the prestige of the team, because in effect, what they are doing is losing a fan, so to speak.

And these are primarily the big concerns. The ticket prices, season ticket exhibition tie-ins, concessions, parking facilities, the constant threat of moving a franchise, and in general, the total disregard for any fan concern.

Why should a fan, for example, from Florida not be able to get satisfaction for a Super Bowl ticket. Why would we have to contact an organization such as mine to get the satisfaction. Why should he have to make long distance telephone calls, for example, at fan's expense, to get answers which I think owners rightfully owe to the fan.

This is the kind of thing that I am talking about. If Angelo and I could accomplish what we have accomplished with just two individuals with a nominal membership—this is why I am so gratified to see the Federal Government step into this kind of thing.

As a matter of fact, I contacted Virginia Knauer, special assistant to President Nixon on consumer affairs, relative to the fact that here is a large consumer group, and if Ralph Nader can do for consumers what he did, why can't we get a consumer group to do for sports fans the same type of thing?

At her suggestion, I contacted Roy Pope of the Trade Commission, and I have a copy of that letter here.

Now, States attorney, I believe Roy Quinn from Boston, made known his decision that he thought the season ticket exhibition tie-ins were not legal, and I called that to the attention of Mr. Pope, and in a reply, he said to me that States' attorneys are—I am not exactly sure of the wording—but were not necessarily experts in the law.

But, in pursuing the matter further, I contacted attorney Carl Hevener of the Federal Trade Commission, and I got a reply from him.

And it says:

In your telegram you refer to an opinion of the Attorney General of Massachusetts, to the effect that the tying of tickets for regular season games to the sale of tickets for exhibition games is illegal under the Federal antitrust laws. I am certain that you realize the informal opinion of a State official is not an expert opinion on a question of Federal law, and that his expression is in no way binding upon the Commission.

I never inferred that when I wrote to him.

The Commission staff previously has had occasion to consider the problem of professional football game tickets in depth. It was determined, on the basis of all the facts available, that the Commission would not be warranted at this time in undertaking corrective action against the club owners in connection with their practice of requiring season ticket holders for regular games also to purchase the same seats for preseason exhibition games.

With regard to the special legislation affording an exemption under the anti-trust laws for the merger of the American Football League and the National Football League, congressional enactment of this law is binding upon the anti-trust enforcement agencies. We have no power to override, modify, or repeal the act which granted such trust exemption.

And in another correspondence, I had asked—

Senator Cook. Well, now, we would like a copy of that letter, because frankly, this is the very basis why you can't depend on the existing structure to get accomplished what should be accomplished.

I don't think there is any question about it.

You asked for some type of relief.

I think it doesn't take a very intelligent individual to know that an opinion of the attorney general of any State is advisory only, and yet I would also suggest that the opinion of the gentleman from the FTC is advisory only.

Yes; this is the very thing we are talking about, and this is the very reason we need something.

(The letter follows:)

FEDERAL TRADE COMMISSION,  
BUREAU OF COMPETITION,  
Washington, D.C., October 22, 1971.

Mr. DOMINICK E. PILEDGGI,  
President, Sports Fans of America, Inc.,  
Catonsville Branch, Baltimore, Md.

DEAR MR. PILEDGGI: This is with reference to your telegram of September 23, 1971, and previous correspondence from Mr. Cecil E. Johnson concerning alleged unfair acts or practices by the club owners of the AFL and NFL.

The original letter to the Commission suggested that we give consideration to formation of an agency for the protection of sports fans. The reply dated September 7, 1971, advised Mr. Johnson that the Commission does not have authority or power to establish such an agency, and indicated that the subject is properly one for legislative action. We did, however, invite submission of any issue of alleged unfair activities within the jurisdiction of the Commission.

In your telegram you refer to an opinion of the Attorney General of Massachusetts, to the effect that the tying of tickets for regular season games to the sale of tickets for exhibition games is illegal under Federal antitrust laws. I am certain that you realize the informal opinion of a State official is not an expert opinion on a question of Federal law, and that his expression is in no way binding upon the Commission.

The Commission staff previously has had occasion to consider the problem of professional football game tickets in depth. It was determined, on the basis of all the facts available, that the Commission would not be warranted at this time in undertaking corrective action against the club owners in connection with their practice of requiring season ticket holders for regular games also to purchase the same seats for pre-season exhibition games.

With regard to the special legislation affording an exemption under the anti-trust laws for the merger of the American Football League and the National Football League, Congressional enactment of this law is binding upon the anti-trust enforcement agencies. We have no power to override, modify or repeal the Act which granted such exemption. Your request for review of the special anti-trust exemption is one which ought more properly be addressed to the members of Congress.

Very truly yours,

CARL D. HEVENER, *Attorney.*

Mr. CONIGLIO. I might interject that after the attorney general made that known, the Boston team stopped the practice of tying in the tickets.

Senator Cook. Do you really feel that one of the basic reasons that the season ticketholder in Baltimore, today, is under the threat that the team could move, is because the fans have not been receptive to the pre-season games, and bought the tickets, like they feel like they might be able to sell them someplace else?

Mr. PILEDGGI. I think, if I were to contact the local newspapers and had the ability to research their files, I could find quotes in there where it was stated that because of the failure of the Baltimore Colts' season-ticket holders to support the exhibition games, they are operating in the red; and the alternative again is a threat, to raise the price of the individual tickets, or support the exhibition games, or else we will have to move.<sup>1</sup>

Senator Cook. In other words, they are admitting that the pre-season games have come to be, and are an integral part of their season, and yet they also say they are not playing them to win, they are playing them to test the players.

They do not play their good players on many occasions. They admit they do not play them because they do not want to get them hurt

<sup>1</sup> See p. 287.

in preseason games, and yet, for all intents and purposes, they are saying if you do not support them, we may have to consider moving?

Mr. PILEDGGI. That is true.

Senator COOK. Well then, what will the next step be, if it is not done, for the NFL to get together as a group, and decide to start their season in August, so these preseason games would then count?

Mr. PILEDGGI. That would be one alternative. I do not say fans would buy it, but it is an alternative.

As I say, in any speaking engagement, I am not antimanagement, and I am not antiplayer, but I do happen to be 100-percent profan.

When I bring up salaries and bonuses, and some of the other things that we talk about, if you look at the petitions, for example, that professional athletes want, I think it is time for them to realize that they are like any other business; they have an owner, they have management, they, as athletes, are really what anyone else is—labor.

They manufacture a product. They are a laborer, and we as fans, are a consumer. And, I think if we look at their business practices, and look at the salaries they are paying—and I am not saying you should not pay a man what he is worth. I think a man should get what he can get. But I think when the owners make the decision to pay this price, they cannot just ask a fan blindly to support his decision to pay that particular figure.

And, I think at this time, we have no choice in the matter. We either go along with it, or we do not see professional sports, at least not in our towns. I think this is part of the problem. In this same letter, I suggested in the original letter to the Commission, that we give consideration to the formation of an agency for the protection of sports' fans.

The reply, dated September 7, 1971, advised Mr. Johnson that the Commission does not have authority or power to establish such an agency and indicated that the subject was probably one for legislative action. We did, however, invite submission of any issue of alleged, unfair activities within the jurisdiction of the Commission.

Well, it was my hope when I wrote these people, being a novice at this particular thing, that if they needed legislation, that they would have channeled this report to the appropriate Government body, which evidently they had not done, because the date of this letter is October 22, 1971.

Senator COOK. Well, I want you to know they try to the best of their ability to institute quite a bit of legislation down at the FTC.

Mr. PILEDGGI. I do not know whether this is in order at this time, but here are other advantages which I saw for sports fans of America. I thought the fan had been taken advantage of for so long that this would have been an opportunity for fans to benefit from an exclusive organization, such as the one that I attempted to form.

I say, attempted to form, because since I was invited to this committee about 6 months ago, because of the amount of time that it took, and in part the apathy of the fans in general, they like to complain, but when it comes to the financial support of an organization, such as this one—which is nonprofit; nobody drew a salary.

I am here today at my own expense—and I took a day of personal leave. I just could not continue to do that.

But I had looked into this, and I just wonder how many sports fans there are, who are uninsurable, either because of age, infirmities, that kind of thing. I checked it out with an insurance carrier, and had provisions that if we were able to get a certain number of individuals, they would cover the body as a blanket.

I think this is one of the advantages of an organization such as this. And there were many others of this type without going into specific details.

I would like to make a few comments relative to the bill as written, and I realize that it is subject to change, and at this time, it is only of a temporary nature.

Although I am in basic agreement with bill S. 3445, I feel the composition of the advisory council should be changed so as to include in the composition, sports fans whose livelihood is not directly tied to professional, or amateur sports.

I also question the inclusion of two officials from each of the professional sports leagues, and the professional athletes' organizations.

If it is the purpose of this Commission Advisory Council to truly represent fan concerns, then a goodly portion of the Council should be composed of individuals who think like fans and know the concerns of fans, and whose views will not be influenced by financial factors other than those necessary to provide reasonable profits to the owners and the salaries to the participants.

In closing, I think it is time that sports look upon itself as exactly what it is, business, comprised of owners who market a product, produced by athletes, and purchased and supported solely by fans, the consumers.

Senator Cook. Thank you, Mr. Piledggi.

What is the system on the blackouts in the Baltimore area?

MR. PILEDGGI. They do not televise any home games at all, with one exception. There was a game between—at the close of the season, I think it was next to the last game. It was televised out of Washington. I cannot think of exactly what it was. And for the first time, in a good time, they did not have a capacity crowd.

As you know, prior to the completion of the baseball season, they seat somewhere in the order of 52,000 fans. When baseball is over, they get an additional 4,500 to 8,000 odd seats. It is somewhere in that vicinity.

Personally, I have no objection to blackouts, as such, with this one provision. They tried with boxing to have closed circuit boxing, no fans, just for television audiences. I think that sports would lose somewhat of its appeal without a live audience, and therefore, I think the fan who funds the sport by paying for his ticket in advance should get some type of remuneration, even if it is a reduced ticket price, since an individual is apt to turn a TV set on, if there is a sports program to watch.

There are two types of fans. The fan that likes the live participation, and the one that views it on television. I would have no objection to a blackout, or to the televising of a home game if it were a sellout, and the announcement was made in advance, because I am a firm believer, if you are going to make a value judgment, you should know all alternatives.

So, if I have the knowledge beforehand, that this game is going to be televised, I have the option of going to the stadium and

witnessing it, or staying home and watching it, then I think that is perfectly all right.

But, to arbitrarily say, after the ticket has been purchased, that the game is going to be televised, I do not think this would be fair to the fan who may have chosen to view it at home.

Senator COOK. Then you do feel that the management, as such, has a valid argument in relation to blackouts?

Mr. PILEDGGI. With the provision that I mentioned.

Senator COOK. I am wondering, really and truly, and this is the reason I asked you before, Mr. Piledggi.

Do you have some letters from fans that would be typical letters of some of the complaints, that you might give to us before we close this record?

Mr. PILEDGGI. I do not have them with me, but I can gladly send it to you.

Senator COOK. Well, that is what I am saying, if you could supply them?

For instance, I received a comment not too long ago from a gentleman who had tickets to the Redskins games, and frankly, he gave them up, because he was right down behind homeplate. I do not say this in any deference to the sportswriters, or other individuals who participate, but he said, frankly, that he saw very few touchdown plays, because right where he was sitting, every time a team got down in his neck of the woods to score, there was either a newspaper photographer, or somebody else standing right in front of him, and frankly, he did not see anything.

Mr. PILEDGGI. This is particularly true in Baltimore, where even with the benches the way they are located, it is rather difficult for some people to see them. We do get that type of complaint. Another complaint we get, again, we also get complaints about fans.

The stadium sells alcoholic beverages, and you have people who get inebriated and cannot control themselves. One of the things we advocate is a code of ethics for fans. Just because a man—my wife will not go to a Baltimore Colt game because of one unfortunate experience where foul language was used, and actually had a beer spilled right over her, and this type of thing.

We also advocate a code of ethics for the athletes. We think they have an obligation. I am in education, and I see the admiration that the youth of America have for athletes. If he can do it, I can do it, that kind of thing.

I think it is time that professional sports take a good, hard look at these things, other than the almighty buck. These are some of the things that we have done.

Senator COOK. I must say that there is definitely more than a ripple of support for a creation of a Federal commission, and I think we found that out today, because somehow or other, there has been a long time application of economics to professional sports, which has alienated players from the owners, and I might say the fans from both.

And I think this becomes more and more apparent every day.

For instance, how much public relations are you aware of that any of the professional teams in Baltimore carry on between their own organization and their fans?

Mr. PILEDGGI. I think they do a fair amount. Some of the teams more so than others. The Orioles have a group called the Oriole Advocates, and this is a group of adults that supervise individuals at ball-games that get in either free, or at reduced ticket prices. They have all kinds of gimmicks. Bat-days, ball-days, this type of thing. The Bullets have an advisory board, and they in turn, do some promoting.

Some of the professional athletes are very good about going up and speaking to groups, without being paid. The Colts have some public relations, but again, they kind of antagonize some people with the kind of threats that I spoke of about earlier, but by and large, I do not think they do as good a job of public relations as they can.

For example, I was shocked when I tried to get a baseball for my nephew. I had obtained one free. I happen to be a friend of the business partner of Brooks Robinson, and I got an autographed baseball. I tried to get one, secondly for my nephew, and I was informed that for \$15, I could purchase an autographed ball.

This is good public relations?

Senator Cook. You live in this area, in the Baltimore-Washington area. Have you any comments about Mr. Short's operations, with the Senators, and the treatment of fans in relation thereto?

Mr. PILEDGGI. Yes. I don't have the statistics with me. I hope I have a copy of a letter that a gentleman sent me from the Washington area.

We had a goodly membership in the Washington-Virginia area, maybe somewhere in the neighborhood of 100 to 150 people. And he had given the gradation of ticket price increases that had occurred in the area since Mr. Short was here, and also he mentions in the letter the prices of concessions et cetera.

But it is my opinion from what I have read and from what fans have told me, that this man was the epitome of the absence of public relations as far as the hard core fan was concerned.

Senator Cook. You listened to the testimony of Mr. Brown this morning of the NCAA. What do you think of the basic theory that what you do is wait until the horse is out of the barn and then file a lawsuit? Do you think that is in any way a satisfactory remedy as far as the sports fan is concerned who loses half of a ball team that he is enthused about; or let's say, in college ranks, when a professional team decides to take away a sophomore, or a junior in college, and then all of a sudden the team forfeits all of its games and loses money that it may have earned, what is your feeling about the theory that all you do is use the antitrust laws and file a lawsuit or file a tort action?

Mr. PILEDGGI. I don't think that is the answer. That is like waiting for somebody to do something wrong and then attempting to correct it.

I certainly think it would be more in order that if through such a Commission, such as the one proposed here today, that guidelines could be established so that an individual knows that if I do *A*, *B* is going to happen.

I think it would act as a deterrent. But I don't think the financial remuneration, as you said earlier, is in any way going to wipe that record clean.

I know personally I couldn't live with that kind of a double standard.

Senator Cook. Well, don't you think that the sport and the fan suffers as a result of this litigation?

Mr. PILEDGGI. Definitely. Definitely.

It must have been a tragic experience, because I like to think of any athletic contest, particularly one that is a team sport, that that is exactly what it is. You are what you are because there are four other guys on the court in the case of basketball, and eight in baseball.

And I think as such you owe something to these people, and for someone who wantonly plays a game knowing that they are in violation of a contractual right and that the efforts put forth by these other people is forethought, if what you have done is disruptive, and indeed, that is what has happened.

I just wonder how these other four basketball players felt when this issue was brought to light.

When we begin to tempt the individuals with the kind of salaries that they are tempted with—I think that there are some individuals who can overcome this type of temptation, and there are others who cannot.

Mr. CONIGLIO. Senator, if I might interject on this same subject?

I think this litigation is unfortunate, but for example, in my case, this was the only course open to me, and it is on the subject of public relations—I happen to think if the Buffalo Bills made their exhibition games optional, and perhaps made the game a dollar less than the regular season game, that they would make more money than they do now.

And I think they could even find out how much money they could make if they would simply try to find out how the fans felt about those games. But they refuse to do it.

They could take a poll of their season-ticket holders and say, "Would you come to games if they were optional and a dollar less?" They could take public polls and see what the ideas of the fans were.

Mr. PILEGGI. Another pointed question would be this very same thing. They are very great at sending out a bill months in advance.

In the case of the Colts, they knew well in advance they were in the playoffs. Once you enter the playoffs, there is always a speculation you will go all the way.

At the time they send me my statement asking me whether or not I wanted to purchase my tickets, and it is kind of ridiculous now that I think of it for a fan in Washington or the Eastern Shore or Harrisburg who holds a Baltimore season ticket, that is quite a distance to drive, he had to come to Baltimore and pick up his season ticket in person, and the day in particular was very cold and rainy.

They didn't make provisions for mailing them. You had to go there in person, stand in line to pick up the ticket.

The point in question is, when they sent the bills in advance, why couldn't they put—why couldn't they ask me if I would like the option of buying a ticket to the Super Bowl?

The answer that I got when I pursued that matter was, and I think I have copies of all of this, or at least I hope I do, the answer that I got at that particular time was that on the basis of the past ticket purchases, they assumed that it would be similar to this time.

As a matter of fact, I had to go through a good deal of effort to find out what happened to the option to exercise the purchase of, I believe, 25,000 tickets.

One of the things that Sports Fans of America did was publish a little newsletter in which we gave fans the best information that we could get.

I have nothing against the free press; but when you have an individual who attends a game for which he does not pay for a ticket, and he is put in a pressroom where the beverages are free et cetera, I think maybe there might be some intangible pressure placed on the individual who writes a story that maybe is not totally untrue, but maybe not quite as sharp as it ought to be for fear he may be banned from a locker room or failure to give future interviews, because I know the problems I have had trying to get my views presented.

And I think that these are points that ought to be looked into. This ticket thing that I am talking about with the Super Bowl in particular was a sore spot with many fans.

Senator Cook. Why don't you enlarge on the situation for the Super Bowl tickets, where season ticket holders had to drive to Baltimore.

Mr. PILEDGGI. At the time they sold their tickets, if I recall correctly—

Senator Cook. They probably sent them to the press and to the sportswriters, I suspect.

Mr. PILEDGGI. I wouldn't doubt it one bit. But I know I had to go down there, and I had to stand in line, and I had to have the check to pay for the amount of the ticket; and I was very fortunate, my name began with "P," and I got in a very short line and got out of there in a hurry.

There were many people down there, it was cold and rainy and there were fans who had to come from distant places to pick up their season tickets; and my question was, why couldn't they have done this through the mail?

Senator Cook. You know, it is amazing to me that, for instance, there is almost a universal law in the United States that, let's say, banking institutions, have to put an ad in the paper during a certain period of the year to show the financial status of their bank, their assets, and their liabilities, their earnings.

It seems to me here we sit with a community that entertains a franchise. Somebody owns the franchise and they have an absolute monopoly. There is not another football team that can come into Baltimore; there is not another baseball team that can come into Baltimore.

If you want baseball, that is where you go; football, that is where you go; if you want basketball, that is where you go.

With all the great effort on the part of the press to secure disclosure from everybody, and I am talking about from anybody that is in business, and anybody that is in politics. They want everything including your income tax return. I wonder why they have never even thought of requiring a financial statement from the Orioles or from the Colts.

What is wrong with that? What is wrong with showing assets and liabilities? What is wrong with having to show how much money is collected on or before the 1st day of April or the 15th day of May?

What is wrong with showing where they deposit, and whether they file it, or whether they invest it in time deposits, and how much money they earn on the fan's money?

I recall very vividly, Mr. Piledggi, that Senator Tunney from California not too long ago had an amendment to a consumer bill that said

that nobody should have to pay for anything until they receive it. And, that is, receive the goods or the services.

And yet, here, we have literally millions of people in the United States who are compelled to pay for them, or they can't have them, on or before the 1st of April, on or before the 15th of May, and nobody in the sports world who writes or intends to write about the sport ever says, "How much money do you guys collect? How much money do you put in the bank? What do you earn on the sports fans' money between that time and the day you open up your season?" I think that is rather remarkable.

Mr. PILEDGGI. I agree with you. And one of the things that—

Senator Cook. Because really, they are just like a utility. They are sitting in the community, and they are the only one there.

Now, a utility has to do it. And under the law, if you want a more detailed account of their assets and liabilities, you can write to the company, and they have to send it to you.

Mr. PILEDGGI. One of the questions that I would have, and I don't know about this, probably an accountant could answer it for me, but since they have this money in their possession long enough to represent a quarterly term, banks do post interest at every 3 months, and I was wondering whether or not these funds are held in escrow, or are they in an account that draws interest. This has been a question that has been raised by some fans.

Senator Cook. Let me tell you, I doubt very seriously that any major league club just puts that in the bank in a checking account and doesn't draw any interest on it. Because if you will take the number of season tickets times 10 games, times an average of \$6 a ticket, you are not talking about peanuts. And if they were to do absolutely nothing but put it in the bank and draw no interest on it, then I must tell you they ought to be accused of poor management, extremely poor management.

Mr. PILEDGGI. This is the point I was trying to raise earlier, and perhaps I did a poor job of it. I am not against the player and the amount of money that he gets, but I think if we look at professional sports for what it is, a business, that if they are losing money, they are quick to say fans don't support us.

Now, Baltimore has had winners, but yet they are having trouble drawing people. Now, evidently it is not just a winner that entices people. One of the questions that I have often raised, and perhaps I am not asking the right people, but I question whether or not if you have a 50,000-seat-capacity stadium, for example, the advantages of having 15,000 people on there in a given night, say at \$3.50 a crack if we are talking about baseball, or some lesser amount, depending upon your choice of seats, versus selling the entire stadium out at \$2 a head.

I just don't know what the relationship is there.

Senator Cook. I don't think it is going to be what you think it is.

I think you have the hard-core fan, and I think you have 15,000 of them, and I think he is going to go if it is \$3.50, and I don't think you are going to sell 50,000 if you go to \$2, I really don't.

Mr. PILEDGGI. Well, some of the things they will leave are the types of newsletters which we send to members where they have opinion polls, and they get an opportunity to express opinions relative to concerns

in sports, whatever it is, regardless of the nature of the question, and that is one of the points that was raised.

Senator COOK. Mr. Coniglio, let me ask you something: When does the first practice season start with the Bills?

Mr. CONIGLIO. By the way, in your discussion with Mr. Brown this morning, or I guess it was Representative Steiger, he joked about when does the football season start. The football season starts in about 6 days. The Coaches' All-America Football Game of College Players. Practice generally starts around the 1st of July.

Mr. PILEDGGI. The 1st of July.

Senator COOK. When do the players go under their contracts?

Mr. PILEDGGI. They can't go to camp unless they are signed.

Mr. CONIGLIO. They earn their season salaries starting with the first regular season game, and that is the point I tried to make. They are paid, I believe, a maximum of \$350 for an exhibition game. Here is a guy that is making \$50,000 a year, and he is getting \$350 for that exhibition game.

Mr. PILEDGGI. Which raises a point: If it is a professional contest, why don't they pay the athlete the salary he draws in the comparable season game. They pay him \$350.

Senator COOK. Do they also extend him all the benefits that are under his contract, such as workmen's comp, injury, health insurance, and so on? Is he covered by all of those?

Mr. CONIGLIO. I don't know if he is or not. For example, if a player sustained a debilitating injury in an exhibition game and it meant that he was through with football, for example, and let's say he had 4 years of football left, then he probably wouldn't be eligible for player funds.

Senator COOK. That raises another interesting point. If, in fact, he is hurt during an exhibition game, is he the one that violates his contract when it comes to the first game because he can't play?

Mr. CONIGLIO. Well, I don't know what the details are there.

Mr. PILEDGGI. I don't either.

Mr. CONIGLIO. I think I don't know because they aren't made public. That is why I don't know. With regard to the question of profits, another point that I forgot to make earlier was that the NFL, for example, constantly says that they have a very small profit margin, but their annual league meetings are held—in the past 3 years, they have been in Honolulu, Palm Springs, and Honolulu again, and I am sure those are classified as business expenses. Now, if that public utility you were talking about had its annual meetings in Honolulu, I think there would be a public outcry about it.

Senator COOK. Oh, take it easy. The American Bar Association had its last national convention in London, and the one before that, they had on a steamship out in the ocean.

Mr. CONIGLIO. But they are not complaining about a low profit margin, are they?

Senator COOK. No, they are not.

Let me give you an example relative to raising the issue of what kind of an investment is made with these funds that are taken way in advance of the start of the season.

Twenty-three thousand season-ticket holders in Buffalo means that by the first of—what was that date?

Mr. CONIGLIO. May 15.

Senator Cook. By May 15, the Buffalo Bills have \$1,380,000 in the bank.

Now, it would be very interesting to know what kind of an investment they make with those funds. After all, they are a sole and exclusive monopoly, a sole and exclusive franchise in the area which they are located. I have no objection to making investments. Suppose, as a matter of fact, your friend, Mr. Wilson, in Buffalo, decides he wants to put the \$1,380,000 in another business venture, and all of a sudden, when it comes August, he is broke, and he hasn't enough money to put on a season. What happens? I think this is something that the management themselves ought to be willing to tell the public.

Mr. CONIGLIO. There is another interesting point about the operations in Buffalo.

We were involved in quite a stadium issue. At one point, our county legislature had appropriated \$50 million for a domed stadium. And Mr. Wilson continually stated that he would not—that he did not want to play in a domed stadium, and that he preferred an open-air stadium.

Well, he got an open-air stadium, as I said, after threatening to move his franchise.

This past season, they sent letters out to season-ticket holders telling them that there were going to be 29 exclusive suites in the new stadium, enclosed with air conditioning and even television, and if the fan was interested enough, he called up and found out that for \$60,000, he could have a 5-year lease on these 25 seats per suite, and my point there is that if you are rich enough, you have your domed stadium in Buffalo, but if you are an average fan, you sit out in the snow, and on aluminum benches, by the way.

Senator Cook. Now, hold it. I don't have any objection to that. Now, seriously, I think you are going just a little bit too far.

I am not sure they are going to sell very many of those suites if they have won five ballgames in 12 years.

Mr. CONIGLIO. They have sold 27, as a matter of fact.

Senator Cook. Oh, have they, really? That is good.

Mr. PILEDGGI. I would be interested to know how many season tickets are controlled by industry where they buy large blocks, where it is an income-tax deduction.

Senator Cook. Well, again, I have to say to you, that as long as Internal Revenue says this is a valid deduction—

Mr. PILEDGGI. I am not arguing that point.

Senator Cook. My point is, maybe management has to depend on that as a source of revenue. You can't fuss about that. I have a notion that this is probably one of the main reasons, for instance, that baseball in many communities is still in existence, and I have a feeling that many corporations buy tickets that probably many nights they don't use. They feel a public-spirited attitude that baseball ought to stay in a particular town or that football ought to stay, but the management of a respective sports team is always threatening the fans that they are going to move, and this is the thing that bothers me.

Secondly, it seems to me—we are getting down to the point that in many communities demands are made, and threats are made, either build us a new stadium or we are going to move, that the city goes into extreme debt. There is no question about the fact that RFK Stadium

has been here 10, 12 years, itself. A dime has never been paid on the principal, and requests have to be made to Congress for the balance to pay the interest on the bonds.

It is very interesting that the new facility in Kansas City, where the owners threatened "either you give it to us or we must move," that \$67 million bonded indebtedness, and that the facility itself is only going to pay off about \$8.6 million of those bonds.

Now, what you are really saying is that the community is going into debt for no other reason than the satisfaction of the sports fan, but yet the management doesn't feel that degree of satisfaction. For them, it is a demand, and if they don't get it, they are going.

Mr. CONIGLIO. That is right. And as a sports fan, I can see the non-sports-fans' view of that, too. And I am not saying that it is not an asset to a community to have a sports team and to have a good facility, but certainly the people who aren't sports fans have a right to object when a community spends millions of dollars, for example, in Buffalo, for an 80,000-seat open-air football-only stadium. We don't have a baseball team in Buffalo. For years we have had hopes to bring—

Senator COOK. When did you lose the Bisons?

Mr. CONIGLIO. We lost the Bisons 2 years ago, and it was the first time in 97 consecutive years that we have been without professional baseball. I doubt whether we could attract a major league baseball franchise now because we have got an open-air stadium, you know, an oblong stadium built for football, a stadium that will be used for 10 sports events a year. You know, I am not saying I won't enjoy seeing a game in that stadium, but perhaps the wishes of the other people could be considered.

Senator COOK. The University of Buffalo playing a football team in the—

Mr. CONIGLIO. They lost their football team, though. We lost our minor league baseball team and our college football team the same year.

Mr. PILEDGGI. Look at Baltimore City, the problem that they have, as far as balancing budgets are concerned, and they are contemplating building a \$257 million complex to be supported by bonds.

Senator COOK. For the record, when you were talking about the five players on a basketball team and one jumps to another league, did you have a specific example in mind?

Mr. PILEDGGI. I had reference to the NCAA tournament where an individual was under contract to a major league team and it was subsequently discovered after the playoffs, and they had to forfeit something in the order of \$78,000.

Senator COOK. This has happened to Western Kentucky, Villanova, and North Carolina.

Mr. PILEDGGI. The contractual obligations. This is my point, that if a player can do this and get away with it, there would be no limit as to what they can't do. I am a firm believer. Again, let them make a good, decent salary, but if they go a contract—for example, Denny McLain—

Senator COOK. You are saying the player. All I am saying to you is that I hope you have something to say about the professional system that convinces the player to go ahead and do this thing. Here you are

talking about a college senior, and here you are talking about the owners of a major league franchise. They come to them and say how would you like a contract for a million and a half dollars on a deferred basis, so on and so forth, and I think you ought to talk to both subjects and the moral attitudes of both parties.

Mr. PILEDGGI. You can't talk about the issue without starting at some point. This is why I used the word "player" first. The player has the talent. He attracts management. Management makes the offer.

Now, if management prior to making the offer knew that if I tamper with this individual, these are the consequences, that would be it, but it seems this is not the case. There are court injunctions that are obtained so that an individual can continue to play. The latest example being in the case of golf. There is nobody putting a gun in that athlete's back saying you sign this or else. I think it is the tempting offer that they shouldn't be permitted to make in the first place. But then again do you deny an individual the right to sign such a contract? I don't know what the answer is. The only thing that I find fault with is the fact that he is selling himself to a major league team at the expense of the individual who is not so inclined to sign, maybe not as good, but as a team effort, and in signing a professional contract there is no way he could ever repay the irreparable damage done to these other individuals who have experienced a great deal of satisfaction solely from winning a contest.

Senator COOK. Let me read you a quote from an article written by Senator Ervin in Sport magazine, and I will ask you to comment on it. He says "The position of the owners asking Congress to permit restrictions to be placed upon the athlete strikes me as a bizarre exercise in logic. It amounts to a confession." And here is his interpretation of that confession, and I would like you to comment on it.

"We are reckless bunch of fools who can't restrain ourselves from destructive extravagance in the"—

(Reading document.)

Now, what is your comment on that, his analysis?

Mr. CONIGLIO. I would say the cost regrettably falls on myself and Dominick Piledggi.

Senator COOK. Your only reaction to that is that it falls on the fans.

Mr. CONIGLIO. I don't know whether that is my only reaction, but it does fall on the fans.

Senator COOK. That is a very good point.

Mr. PILEDGGI. I would agree with that. There is another question that comes to mind when you mention Ervin's name. I had a call from Senator McKenny's office, when there was some legislation pending, but his question was relative to blackouts, and I don't know why this slipped my mind when you were asking me earlier, but he needed an immediate answer, something like within 48 hours.

I send a newsletter out that is hand-stamped to 2,000 people. I have computerized labels, but it still takes a lot of time.

So to get him an answer in that period of time was out of the question. A local radio station—and again, I am not sure of the name, but I am sure of the program.

It is called "Tonight's Big Question." I called the broadcasting company and talked to the program company and I asked him would it be

in order for him to put this on the air and ask what the fans' views in Baltimore would be relative to the televising of the home games. And his answer to me at that time was he didn't think this was significantly interesting to the public.

Now, there are three professional teams, and a minor league hockey team. I could not get him to ask this question. And yet I thought this was certainly within the public interest, and I told him he would be rendering a great service to Senator Stuart McKenney and sports fans in particular, since there were a large number of them in the area.

But here is an example of the kind of cooperation you get when you really need it.

Senator Cook. Well, I thank you very much, Mr. Piledggi.

You have made a fine contribution to this record.

I am wondering if it might be possible as a matter of fact, if this committee thought that it is feasible, because with a mailing list of 2,000 people, who have shown a great interest as sports fans, in what you are attempting to do, that if this committee felt that a survey was necessary of the attitude of sports fans, if your mailing list might be available to conduct such a survey?

Mr. PILEDGGI. One of the things I would like to leave with you—and I think I brought copies with me. If not, I will see that you get them. And that is a copy of the newsletters that we did publish where the fan reaction is indicated.

Senator Cook. This might be interesting, because if these are in fact 2,000 people from all over the United States, who are vitally interested in sports as a whole, I think that this could well be better than hearing a Gallup poll, because at least we would be submitting questions to 2,000 people who have exercised the option to contact you and say they want to belong to an organization of sports fans.

Mr. CONIGLIO. I have a list of about 250 names that I could make available also.

Senator Cook. Well, I think that this list that you are talking about, Mr. Piledggi, might be valuable—at least, we know that they have contacted you, at least we know that newsletters have been written, and it might be an interesting project.

Mr. PILEDGGI. I will be glad to make the list available.

Senator Cook. I might say to both of you: Anything that you feel is relevant that you may not have discussed today, or in going over the letters that have been sent to you by fans, this record will be open for some time, and if you feel that it would in any way help us, I would appreciate it if you would submit it for the record so we can make it a part thereof.

All right. These hearings will be in recess until 10 o'clock Monday morning.

(Whereupon, at 4:30 p.m., the hearing was recessed, to reconvene at 10 a.m., Monday, June 19, 1972.)

## FEDERAL SPORTS ACT OF 1972

MONDAY, JUNE 19, 1972

U.S. SENATE,  
COMMITTEE ON COMMERCE,  
*Washington, D.C.*

The committee met at 10:10 a.m. in room 5110, New Senate Office Building, Senator Marlow W. Cook, presiding.

Present: Senators Cook and Cannon.

Senator Cook. The hearing will come to order. Our first distinguished witness this morning is Mr. Howard Cosell, who came in from Paris yesterday, I understand, and I am delighted that there were enough airplanes flying that he could make it down here.

Mr. Cosell, without any introduction, except our great thanks for your appearance, you may proceed.

### STATEMENT OF HOWARD COSELL, SPORTS COMMENTATOR, AMERICAN BROADCASTING CO.

MR. COSELL. My thanks, Senator Cook, for your very warm reception here. Second, it was kind of a miracle that I got back from Paris where I had gone in search of another Marcel Cerdan, but failed to find him, or Edith Piaf for that matter.

I think perhaps I should establish my credentials, such as they are, for testimony before this distinguished committee. Since 1956, I have been a sports commentator on a daily basis for the American Broadcasting Co. radio network, and for most of the years intervening since 1956 I have served in a similar capacity for the American Broadcasting Co. television network.

During those 16 years, I have covered virtually all of the sports spectrum, the major professional sports, some that are viewed as not so major but which are very, very important in our sports spectrum, such as tennis and golf, which is fast becoming a very important sport, and I have also covered the great amateur spectacles such as the Olympiad at Mexico City.

So I feel I have some background and some experience deserving of attention in this area.

Now, with regard to your proposed bill which would create a three-man Federal Sports Commission buttressed by an eight-man advisory council, I have read with some considerable interest and heard with some considerable interest many of the statements that usually attach to this kind of proposal to the effect that we would be creating another Federal bureaucracy, to the effect that there would be maladministration, to the effect that one could not count upon the caliber of the appointees that might be named by the President.

Indeed, I have read with great interest just yesterday the current issue of Sports Illustrated which begins in its sportscard section "Thoughts on This Proposed Bill," what wrongs there are, they say, let the sports people put their respective houses in order.

There is something to be said, I think, Senator, for all this, but I have lived a contemporary lifetime on the sports beat and I have come to the conclusion that at the very least in principle the kind of bill that you have proposed before the Senate of the United States and that Congressman Teague has put before the House, is deserving of attention and, in some form or other the basic principles thereof, for the benefit of the public, is deserving of passage.

I should like to caution, however, that not all professional major sports are of the same ilk, nor do they have the same problems. Through a long history, and most curiously, major league baseball has been carefully exempt in all regards from the applicability of the Federal antitrust laws.

This is true, for instance, of professional football, although professional football did get two specific exemptions, one with regards to television policy and the other a last minute rider to a differently nutured bill that freed the merger of the AFL and the NFL.

Nor is there any, for that matter, Federal supervision of boxing. One must assume, therefore, and especially in the face of the record of the NFL, which is being besieged by antitrust suits again and again and again, one must assume therefore that one must look carefully in consideration of the kind of bill you are proposing, one must look carefully at the differing natures of the different sports, and one must seek out areas where there is a unanimity of problems that must be met by way of Federal authority for the protection of the public, if one assumes that the public interest has been defied by certain areas of the overall sports establishment.

It is my conviction that the public interest has been, again, and again and again. This is why I favor some bill in some form similar to that which you proposed.

Let me illustrate specifically in the case of major league baseball: In the contemporaneous era back in the late 1950's, the Brooklyn Dodgers removed their franchise from Brooklyn to Los Angeles, taking with them the then New York Giants.

As a matter of documented record, the Brooklyn Dodgers were the only team in the National League to have drawn a million or more people, which was the then existing yardstick for reasonable profit at the very least.

The only team to have drawn a million or more people for every one of the 13 years prior to the move, and there being no exposition of what the Brooklyn Dodgers meant to the national scene, most people agreed then as a matter of judicial notice that the Dodgers, or baseball, was the national pastime and certainly the Dodgers were a colorful team that everybody seemingly all over the world cared about.

The jokes and movies during World War II were about the Dodgers. When Greta Garbo and Melvin Douglas made a movie, there were jokes in there about the Dodgers. They left the most deserving public, the most supporting public that there was. They left because the owner was getting a land deal in Los Angeles, Calif.

In a strange way, it is utterly ironical that the man he took with him and the franchise, the Giants, are now in such trouble to have had to sell the Mr. Giant of our time, Willie Mays, back to the very city from which they emigrated, to unload the big contract and all of the rest, because the Giants are not drawing in San Francisco. That is just a parenthetical irony.

But O'Malley went with his Dodgers and screamed that he was free enterprise, like Macys and Gimbels, and at the same time his position before the great national legislature was unchanging. They were not really free enterprise. They were a unique business, tinged by the public interest.

Like the phone company, or power companies, you can buy their argument. If they are free enterprise, by all means let them move, but by all means grant them no antitrust exemptions. Don't defy the public interest.

Or take it the other way: Yes, sports is sufficiently important in this Nation, Senator, it is so necessary an entertainment vehicle that it is tinged with and affected by the public interest. Ergo, regularly, through some form of Federal authority for the protection of the public that they are seeking to desert.

But don't let major league baseball be the only operation in the United States of America to have a free ride both ways.

The beginning was with the then Brooklyn Dodgers as they evacuated the Nation's greatest city, taking another team with them, but it was only the beginning.

Next came the Milwaukee Braves. They had gone there from Boston and a reasonable case might have been made for their evacuation from Boston. When O'Malley left Brooklyn, he said, "I must do this." Leonard Kopet of the New York Times sits in this room, and I said hello to him as I came in, and he remembers how O'Malley, because he has lived on the sports beat as long as I have, said "I must go to Los Angeles to compete with the Braves."

The Braves set attendance records in a great new publicly built stadium, and then certain things happened. The efficiency of their product began to decline, and certain management decisions affected fan reaction.

The attendance started to decline. This started in any business. The grosses are not the same year in and year out. Nobody gives any business a guarantee that they will be the same. But Lou Perrini, the owner, sold out to a young group employing borrowed money from out of State and very shortly the Milwaukee Braves were the Atlanta Braves and the great stadium is still empty.

In my opinion, that is another defiance of the public interest. Then, we went through the era of Charles O. Finley and the Kansas City Athletics and the threat to move to Louisville and finally the removal to Oakland, and now seeking to escape the Oakland lease to move elsewhere.

What of these cities, what of these cities that undertake community efforts to help an owned business operation in matters in which other owned business operations are not helped, and then we have the invasion of the great city of the Pacific Northwest, Seattle.

In and out, within a year. To Seattle I have been. Talk to the good citizens, talk to the municipal leaders, ask them about what happened.

Ask them whether or not the man who began the Seattle franchise which was accorded to him by the American League owners after presumably due consideration, ask whether or not he emerged with a major capital gain, and what Seattle was left with.

Now, here, in the National Capital, where just a little less than 2 years ago our President, now Vice President, and many of the President's Cabinet, regaled major league baseball as the selfless national pastime at a massive dinner at which I was in attendance, and subsequently a very nice cocktail party at the White House the following day, the all star game to be played here.

The National Capital, just to symbolize that baseball is the national pastime. Less than 2 years ago. The franchise was entrusted to an owner with apparently sufficient funds, a franchise playing in another of the great new stadia built at public cost, no matter how you slice it, in this city, a franchise which documentally in 48 years had not produced a winner, not since 1933.

Out they go from the great National Capital, and in they go to Arlington, Tex.

I suggest that this kind of continuing defiance of the public interest cannot any longer be remedied by a commission. There has been no disposition on the part of any such commissioner to so remedy it.

It cannot, or will it be remedied by the owners who operate at their own whim and fancy, and have indicated every disposition to do so. I suggest, too, that it results in its own way in a diminution of the dignity of the Senate and the Congress of the United States as politically elected officials in the State of Georgia grabbed for Milwaukee while the politically elected officials of Wisconsin decry that which is going on.

I suggest that the only answer to the problem of carpetbagging in the major professional sports level, because this is a problem that can be very germane to all sports and therefore probably within the purview of the kind of act you have proposed. I suggest that the only way is through the creation of the kind of Commission that you have recommended, or something similar thereto.

So that would be one area properly within the purview of the Commission, franchise removal. How would the Commission handle this? Very simply. Somebody wanting to remove would submit a petition to the Commission with all of the reasons therefore.

Consent would not be unreasonably withheld, but they would have to establish an affirmative case for such removal being in the public interest. We have seen recently two franchise removals in professional basketball, Cincinnati to Kansas City and Omaha, and before that a San Diego franchise in the National Basketball Association which was getting reasonable public support, to Houston.

There is also germane, it seems to me, to the National Football League where there probably has been better leadership than in any other sport because of the nature of the commissioner, but where, it seems to me, the commissioner will be facing a problem in the very near future.

This relates to the franchise of the New York Football Giants. It is a matter of documentation that in the greatest city in this country the New York Football Giants have not had an empty seat for the last 15

years. Indeed, possession of a Giant season ticket is relative to a badge of honor.

If one like myself above and beyond his press pass wants to bring people to a Giant game, the only way I can get them is by calling friends, one of whom is now retired, like Joey Morrison, in the hope they will have an extra ticket.

So the football Giants have had an unparalleled prosperity notwithstanding the fact that in 9 of the last 10 years documentarily they have presented a continuity of gridiron futility.

In plain words, they have been lousy.

Still, they have had that unending public support. They have not stopped there. Football Giants at the time the Congress freed the American Football League-National Football League merger from the antitrust laws, had committed to them by a majority vote of the American Football League owners \$10 million in gratuities for "territorial rights."

Now the National Football League has a rule that says territorial rights include the surrounding 75 mile area. I can assure you that in terms of intent and spirit of that move by the American Football League, they did not contemplate spending \$10 million for the rights to East Rutherford, N.J.

I can so assure you, too, that I don't know of any other business in the land where you pay \$10 million because your man owned a better store across the river in the name of free enterprise, risked over \$400,000 for a gimpy legged kid from Beaver Falls, Pa., and produced a national championship within a 5 year period and had to wind up paying part of that \$10 million for the privilege.

So you have all of these moneys flowing into the Giants franchise and suddenly we are told in another of those State conflicts in politics that the Giants are moot, and it is within the 75 mile range.

I suggest Commissioner Rosell has a problem of the public interest here. I have read in the New York papers with regard to this removal, and never a single reason being given for it that would be valid because of the unparalleled prosperity of the Giant organization and the gratuitous \$10 million payment, I have read that we are a megalopolis and that nobody will be indisposed.

Senator, you are in Government and I am an attorney who practiced law for 10 years and was a member of the editorial board of my law review, and I know something about government. The megalopolis factor can exist to a degree in terms of transportation, but what happens to all of those State tax moneys and city tax moneys that that franchise has been providing?

Above and beyond that, what happens to the season-ticket holders in terms of transportation from Long Island and Brooklyn?

Above and beyond that, what happens to the employees currently working at Yankee Stadium, and why aren't the Yankees seeking removal? But above and beyond that, Senator, and this is where sports invades every avenue of the human life today, the economics, the politics, the sociology, and the law, we have no greater crisis in this country domestically, and you hardly need me to advise you of this, than the crisis of the great urban areas.

You know as well as I that should the great cities of this Nation die, the Nation will die with it, and it cannot be and it must not be.

You know they will not tear down those great buildings in New York. You know we have the great harbor. You know we are the world center of shipping, transportation, finance, fashions, communications, medicine, law, you name it, and so you know, Senator, that the answer to the problem of the great cities is not in evacuation, but in renewal, and now that General Electric or if Pepsi-Cola moves out, which they do, and that has happened and will happen with some others, but not most, you know that nobody knows about it, not in this country really, in the broad public sense or in the world.

But such is the nature of a sports franchise that if it moves out with the tremendous profits that it has already shown, and the \$10 million gratuitous payment, you know very well, Senator, that you're giving public notice to the notion, transcendental to the importance of sports, that the greatest city in this country is unlivable, which it is not.

I suggest that Alvin Pete Rozelle will himself face the single germane problem to all sports, the problem of removal, and I would hope that somehow, some way, he will keep his own house in order and not live by the 75-mile literal rule regardless of spirit or interest.

That is the first area. But it is not limited to that. You had a representative of the NCAA apparently here before you last Friday.

That is the information I was given. I am not familiar with the testimony. But I do know about a situation in these United States that should not have been allowed to occur and your kind of Commission could have stopped it. There was a youngster named Jack Randall, and one named Andy Hill, and another named Azar, and one in Pennsylvania and still another in a midwestern college. These young men happened to have been of the Jewish faith. It was part of their lifetime dreams, and I have interviewed them, to play to represent their country in one of the most respected of international competitions, the Macabee games, they were told by the NCAA, "No, no, you can't go." Why? The universities were all for it. It has happened in all of the years past.

Why? The swimmers and the track and field men were going as always. Why? Because the NCAA and the AAU are locked in a power jurisdictional struggle that the public does not know about, or care about, and yet it can adversely affect the interests of the very young men whose interests those two bodies are supposed to be promoting.

So the AAU certified the basketball competition before the NCAA did, and the NCAA said, "No, no, you can't go."

Yale University with its matchless pride and tradition, through its president, Kingman Brewster, said to Jack, "You can go, you go anyway," and he went, and Yale was penalized by the NCAA.

The other lads did not go. How can this kind of situation go unobserved? How can it go unobserved, as it virtually did in most of the sports pages and most of the airwaves in our land?

Such a situation that deprives any young person of this property rights and due deserves correction, and I have seen no way in view of the meanderthal attitudes of the NCAA that that is going to get correction.

Certainly through all the years they have had sufficient opportunities, and how many years it is now we have had this unending power struggle between the two great amateur bodies?

Yes, sir, another area for your bill. There are other areas, too. Let's take a look at that lovely, pure sport, boxing with all of its soiled history.

Here we have politically appointed boxing commissioners for the States all over the land, and suddenly we have the spectacle of the heavyweight champion fighting on super bowl level against a college kid, Terry Daniels, and then in Omaha, Nebr., a matter of weeks ago, the 31st rated heavyweight, and it was akin to going back to Shelby, Mont. in 1923 and the rape of that city for a Jack Dempsey fight under the aegis of a fellow named Kerns, now deceased, where they got \$100,000 in silver dollars in advance, carried out the fight against a man named Gibbons and quickly absconded with the funds.

That is the way I felt about Omaha, Nebr.

Now, the local politicians are going to continue to license fights like these, like a fight between Mohammed Ali and Buster Mathis, who had not fought in 2 years, was licensed in Houston.

I think it is time the public was protected against itself in matters like these, and I find this an appropriate area for a Federal Sports Commission.

I do not agree with your proposal regarding individual player contracts, and the free agency draft. I don't personally think that that is an appropriate area for Federal supervision. I feel the answers there are lodged in one of three courses: A, the judiciary, and at this very moment it is entirely possible that the Supreme Court has issued its opinion in the famous *Curt Flood* case relative to the reserve clause which in effect binds one player to one team forever.

Now either the judiciary, to handle such matters when they are tested as the reserve clause and 1-year option clause and so on, and the free agency draft, on the legislature, the national legislature, or as is quite possible, as might be in that Supreme Court opinion only on the *Flood* case when it comes out, or in labor law, as the Yale Law Journal of November 1971 pointed out in a scholastic treatise, we do have major league associations now in three predominant sports, and once you have that and you are negotiating, for all terms except for the individual players salary, it is all together possible and even perhaps logical that the approach should be to obviate the reserve clause, the 1-year option clause, or whatever, through collective bargaining, the parties, the management, and the players associations.

One weakness to that argument, it seems to me, is, with regard to labor law, that all those minor league players have no representation as a union or as an association, nor the youngsters who have been drafted at ages 17 and 18 in what we call the free agent draft.

That seems to me to be the one weakness in that area. Even then, it seems to me the more appropriate recourse would be in the judiciary and in the national legislature.

But is there reason for your bill? Yes, for the reasons I have stated, and because through all of the years while the appointed guardians of the sports establishment say "Let them clean their own houses," there has been no indication to do so.

Finally, the television blackouts. I am in telecasting, and I agree with my company. We are against television blackouts. I think it is clear that CATV should be subjected to the very same blackout policies that we, the networks are.

However, that is a digression.

I do think that the National Football League must look at its television blackout policy at Super Bowl game time. I do think that is a matter for the Federal Government to be concerned with.

I also think, and I revert back to a brilliant and perhaps landmark column by James Reston, the distinguished political columnist, and in fact world scene columnist of the New York Times, when he was writing about the then forthcoming Ali-Frazier fight, and talking about the national and international interest in that fight, he suggested that this event had reached a point where it was more properly within the domain of use than merely just another sports affair, and he suggested that in such a case it seemed logical to him that the people of this country should have a chance to see that fight at prices within the average person's pocketbook, which was not the case, you will recollect, for the last fight.

I think certainly that this area, plus the superbowl blackout area would be within the proper and reasonable and even in the light of current day circumstances necessary domain of the kind of commission you have proposed, with that commission, of course, acting in concert with the FCC, so that there be no overlap of authority, no impairment of the other bodies already existing.

So, overall, Senator, it is my privilege to appear before this distinguished group and to speak out as I see it in favor, generally speaking, of the principle of the Federal Sports Commission, and I for myself will not buy the argument "Let them put their own houses in order."

They have evidenced a massive absence of desire through all of the years that I have been on the sports beat to do so.

Thank you very much, sir.

Senator Cook. Thank you very much, Mr. Cosell. I appreciate your addition to this record, believe me.

Let's get back to the Giants for just a minute. What authority does Mr. Rozelle possess in regard to the situation in New York, if in fact all of the owners get together and make a decision that the Giants may move from New York?

Can he be overruled?

Mr. COSELL. I don't think Commissioner Rozelle has the authority to upset the owner's vote. The only manner in which Commissioner Rozelle can be of great value here, it seems to me is to utter publicly and establish publicly his view of such a situation, for the good of the NFL, for the good of professional football, so that ultimately the NFL will not be tarnished the way major league baseball has now become publicly tarnished because of its carpetbagging practices.

There is a great writeup in the New Yorker magazine by Roger Angel. He has written a book called "The Summer Game" which is pieces of the New Yorker. He depicts baseball the way he knows it and the way it has been in all the years.

But even he in that book is sickened by the practices of the baseball establishment over recent years. This is where I think the challenge is to Commissioner Rosell, to give the public posture of the NFL as distinct from that which the baseball people have already done, and I think he can do it, and I think he will find that many of the owners will go along with him.

Senator Cook. Let me tell you one of the problems I think we find, Mr. Cosell, and I don't think there is any question about it. Nobody ever criticized Bob Short until he decided to emasculate the Senators and move them out of Washington.

Until that occurred, I couldn't find any particular sportswriter fussing about Short. I did not read any articles in the paper about the situations with that franchise.

Mr. COSELL. Sir, I don't think you can apply this to my broadcasts throughout the years. What you are talking about is sports journalism, not just in print, but in broadcast. I think we could talk for hours about that. I have my own feelings and convictions about it, and I am not telling you that I possess a monopoly on integrity or brains or anything else, I can only tell you that within my own heart and mind through all the years, I have spoken out on these matters, ever since O'Malley evacuated the great city, and I think you are right.

One of the problems is that through all of the years this is the heart, as I wrote, although it was edited out in an article I wrote for the Times a year and a half ago—through all of the years sports journalism has treated with sport as a kind of tripartite legend, a privileged sanctuary from real life, a looking glass world, a Camelot.

Fortunately, Jerry Eisenberg of the Newhouse Press has written what is a great book entitled "How Many Miles to Camelot?" It doesn't exist, it isn't anywhere, not even in sports, and I traveled more than half a million miles in search of it, but getting back to sports journalism, this is what we have lived with, in broadcast even more than in print, because we have had some daring and challenging and bold sports writers.

What we have had is this curious legend that every athlete is a noble and shining example of young manhood, that every contest is inherently pure, and that every owner is a selflessly dedicated public servant concerned only with the public interest and welfare.

Now this has been one of the base problems in the whole of the sports spectrum, this kind of journalism, carefully propagated, and that is why you have not had anybody talking or writing about Bob Short until the evacuation came.

Senator Cook. They have been talking about him ever since, I must tell you.

Mr. COSELL. Yes; but that is too late.

Senator Cook. That is right.

Mr. COSELL. That is why franchise removal is an appropriate area under due process for the kind of commission you propose, and that is why we need it, because we are not going to stop these things.

Commissioner Kuhn is a very fine man personally. He will be appearing before you on June 23.

Ask him about these franchise removals, which you will, and why none of them was estopped.

Senator Cook. Let's discuss the aspect of public interest, because I think this is very significant. When you talk about a sports franchise being in the nature of a utility, in fact a monopoly, I think it is most interesting.

Part of the testimony of Mr. Brown from the NCAA was that several cities and communities have had their backs put to the wall by the respective franchise holders who say they want new facilities and more

seats. So the big complex is being built in Kansas City, at a total bond issue cost to the citizens of that community of \$67 million. The rentals that the respective parties who are going to use the complex during the term of the bond issue, will reduce that bond issue by only \$8½ million.

Now the balance of it is going to be paid by the community.

Mr. COSELL. By the taxpayers. That is an old dodge. Municipal funding, presumably to cost the taxpayers nothing, that is what we used in New York at Shea Stadium, that is what we will be using in the great Jersey complex which has been built primarily for a race track, but that is another issue.

That is an old dodge. The citizens, the taxpayers, wind up paying for the maintenance, continuing maintenance through all the years of a municipally funded stadium.

You know that, Senator.

Senator COOK. The best example I can give you is that RFK Stadium has never been able to pay a dime of its principal. The District of Columbia has never had sufficient funds to pay the interest, and has always come to the Congress for part of the interest cost on that facility.

It has now been in utilization for 10 or 12 years, and an investment for a sports facility that has not paid a dime on its principal in 10 or 12 years has to be a very good investment, believe me.

The point I am trying to make is that we received one of the letters that goes to the football fans of the Buffalo Bills soliciting season ticket sales, and one of the things that encouraged them to continue to buy their tickets is that they would be on a top priority list in the new facility in Buffalo that will seat 80,000 people.

They sell approximately 23,000 season tickets in Buffalo. You talked about the Giants over the last 10 years. The Bills, I think, have won 12 games in the last 5 years, and yet they themselves use their own sports fans to get themselves into a long-bonded indebtedness to build a new sports facility, so they can continue to sell their season tickets.

I might ask you a question about the Buffalo situation that is interesting to me.

It is required in Buffalo that you buy—at the same price as regular season tickets—tickets to all of the preseason games. There are three of them now, and you cannot buy regular season tickets unless you buy the tickets to the three respective preseason games. For this the Buffalo Bills, if they sell 23,000 season tickets, bring in approximately \$470,000.

Mr. COSELL. I oppose tie-in sales. I think perhaps the finest owner I know in professional sports, certainly the most generous to his players, concerned, indeed, with their occupational futures, is Carroll Rosenbloom of the Baltimore Colts.

He tried tie-in sales, and he was wrong. Rosenbloom got up and said, "You are right, and I was wrong."

Senator COOK. Hadn't he in fact started a little movement with his fans to say "We might wind up in Tampa"?

Mr. COSELL. That argument can be made, but that argument will not withstand close scrutiny if one truly knows the Baltimore situation and if one knows Carroll Rosenbloom. He is doing that because he feels he has been victimized by a series of designed vilifications by a certain

writer for so many years that it has gotten under his skin. It is an immensely personal and emotional thing.

Senator COOK. You don't think the fans in Baltimore have anything to worry about?

Mr. COSELL. They are not going to lose their franchise.

There is no way. By the way, I am an expert in being pilloried and vilified by a certain writer for a long span of years, aren't I, Larry?

Senator COOK. What do you think of the major league franchises that require you to buy preseason tickets? In fact, they say "enclosed is the 10-game schedule."

Mr. COSELL. Tie-in sales are a part of an attitude that too many sports establishments take in this country, and that is that they are something apart from real life, that they can do no wrong.

It is bigger than just the issue of tie-in sales. The attitude is that there is municipal obligation to provide a great stadium, to suffer bad product. Now, Senator, if you and I go out to buy clothes for ourselves and our families, we go where we find the product that most suits us.

We are not going to settle for inferior goods at the same price. We are just not. That is the way it is in the United States of America in the free enterprise system.

Then go to a drugstore at the corner. You are going to go where you get the best buy for the money. That is competition. Why should it be uniquely different in the sports establishment, in the sports operation?

Sonny Berklund proved he could get a title in 5 years.

The New York Mets proved they could win a world championship in 7 years. Let these people produce product and not rely on the public. I don't mean every team can win every year, but I do mean that the public is entitled to a representative product over a span of years and that it is not a municipal obligation to support a product that is unworthy.

Yet they carried with them the implicit expectation of the great bequests from the public, year in and year out. When I say that, I don't mean everybody. There is a man running the Yankees right now who is a contemporary man, part of his time.

I don't want to overgeneralize. He has a lousy product right now. He has to make it good quickly or else. His attendance is going to the dogs. But that is no different from any other business in America, and they should have to live the same way if they proclaim themselves to be free enterprise.

Now, always you find that most of these problems are indigenous mainly to baseball. The problems of basketball, professional basketball, are something else again.

They are subject to the antitrust laws, their merger is at least temporarily deferred, their attempted merger, they are in chaos because of the war between the two leagues.

They invade the colleges, the college ranks, which is reprehensible to many in this country. There, I think it is a plague on all houses, because I find in spite of the umbrella of the NCAA, the college recruits professionalizing young men at the most tender of ages, before he gets out of high school, I find it reprehensible.

A boy getting out of high school with a sixth grade reading level would be a scholarship student at the University of Iowa.

This is not going to be solved by portentous announcement by the NCAA. But that is a different problem from what we are talking about. What I tried to convey here today, Senator Cook, is those areas where the sports establishment has not cleaned its own house, has refused to, which would properly be germane to all sports for supervision by the kind of Federal sports commission that you propose that I have now concluded that it is a desirable thing.

Senator Cook. Let me say, I have waived a great deal on black-outs, and I realize the significance and the necessity of them in many instances. But let's get your idea of the superbowl.

The only analogy I can cite to the superbowl is that I guess I have had tickets to the Kentucky Derby now for 10 or 15 years or longer.

I wouldn't dawn on me to stay in my home in Louisville and watch the derby on television, although it has been broadcast in Louisville every year it has been on television. It was broadcast back in the days of radio, back in the days of Clem McCarthy, and nobody thought you had to take it off the air or off television within a 75-mile radius of Louisville, because it was going to hurt the derby.

Aren't you saying that the superbowl falls into that same category of a national event, and the ticket holders are not representatives of the city where the sport is being exhibited?

Mr. COSELL. I agree with what you say. I think the television policy of the National Football League has been an understandable one and an acceptable one. It has enabled the National Football League to develop to the degree it has.

It has been extremely well conducted by Pete Rozelle, it really has, and he deserved all the credit he has gotten, for the administration of that league, and Lord knows, I work in the American Broadcasting Co. and don't have to curry favor with the distinguished commissioner, who sometimes views himself as the closest thing on earth next to God.

But he has done a good job, and I think their television policy throughout the years has been justified. I think the time has come to scrutinize the blackout policy in the superbowl game, along the lines you have suggested.

Senator Cook. When a team really becomes a contender, and when that occurs it does not occur the first day of the season, or the first day of spring training. All of a sudden here is a real contender, and you get down to the line, you are in the last two or three games of the season, and all of a sudden the game is being played in your home city.

And you can't see it. We have to reorient our priorities about these things, because it may sound trite, but we endanger thousands of people's lives who drive to Baltimore or Richmond to get a motel room to see a ball game. Under those circumstances late in the season, there ought to be a policy whereby the bar can be let down, and you don't have to be blacked out.

There isn't any reason for the high degree of sanctity within this great monopoly, that we should endanger thousands of people's lives to protect a 75-mile limit, when we have a real contender in a community, where we have used the community, used the fan there, used the facilities of the community and the borrowing power of the community to build facilities, and then say drive a hundred miles or drive further to see a game.

As a matter of fact out in California—

Mr. COSELL. May I ask you this, Senator? Supposing the National Football League, and I certainly don't speak for them, were to say,

We go along with you, Senator Cook, and we would buy that on a 3-year trial basis, or a 5-year trial basis and then if it were established that we could not fill our parks because of that, would you do it contingently so that they could change back?

That is their worry.

Senator COOK. That is what I think the commission would do, and I think the commission would be receptive to the financial considerations of the franchise holder. Otherwise, they would be reviewing whether that franchise ought to be removed or not.

Mr. COSELL. The whole idea was predicated not upon the greatness of the product itself, but upon the television policy which had home games blacked out, and it worked.

Baseball on the other hand, gave away its product free, and that was one of the several factors involved in the decline of baseball—not all of the factors, but it was a factor.

So football has been well administered, very well administered, and I think you have to give careful attention to that, and if there were a change in the blackout structure, you would have to be prepared to go back to what they have established.

Senator COOK. I know Senator Cannon appreciates all the fans that can't see San Francisco play, but they have to go across mountains 8,000 feet high, either to Reno or Lake Tahoe.

Mr. COSELL. Always to witness the ultimate defeat. San Francisco has never won a National League ball championship. Am I right, Senator?

Senator COOK. Let's get to another point.

Some of the witnesses on our first day of hearings said that because a franchise is in the position of a monopoly—and by the way, this was mentioned in regard to horse racing by Congressman Steiger—that there ought to be a full discourse of ownership of the franchise, the ownership of the facilities, even the ownership of the concessions at the facilities.

Now, what do you think of this?

Mr. COSELL. I certainly don't see any objection to it. I think it is probably desirable. The commissioners are concerned with the utter purity of their sport. Any kind of loss of public faith or threats of loss of public faith is most deleterious to their sports prosperity.

So I think it is probably desirable.

Senator COOK. By the way, we are not wedded to this specific language. When you talk about contracts, we are studying this in a very, very broad sense, and there is no question about the fact that there will be serious debate on this part of the bill. You have given us three meritorious suggestions, either through the judiciary or legislative action, and I assume what you mean by that is exclusive legislative action and not empowering a commission to have broad responsibility over it.

Mr. COSELL. I mean if the reserve clause, for instance, is not obviated by the Supreme Court and the National Legislature, but the Supreme Court rendered an obiter dictum that the clause is not necessary to the welfare of the conduct of baseball, that the proper remedy is largely label or law, which is a conceivable opinion that the Court may be

handing down, maybe this very day, and the legislature then would want to say, "Look, the parties are never going to get together over the bargaining table. Let us take a hand."

You, Senator Cook, proposing a bill to obviate after due hearings and all the rest, proposing a bill to obviate the reserve clause in its present form legislatively, but with a modified one, after taking testimony and so on, that that would be a recourse.

But individual contracts of payment, I would never want to see you get into that.

Senator COOK. What would you see as the end result to baseball if the Supreme Court were to rule it illegal?

Mr. COSELL. That the reserve clause was illegal?

I think the parties would quickly get together and decide upon a suitable modification that would be appropriate to the protection of both parties' interest and the balance and creditor structure of the game.

I think one of great fallacies has been that this particular clause is sacrosanct. I think it belongs to another age and another time.

Senator COOK. It has been here a long time.

Senator Cannon?

Senator CANNON. Thank you, Mr. Chairman.

I am very happy to see you here, Mr. Cosell. I don't have any questions. I am very happy to note that we finally have our communications system working in the room here.

I am glad to have you here with us.

Mr. COSELL. Thank you very much, sir. I wish you bluebirds with John Brody in the spring.

Senator COOK. This was brought up by one of the witnesses last week, because he felt that when the AFL and the NFL merged, the AFL fan was rather forgotten, and to prove his point, he mentioned that, on national television last year, including Monday night games, Saturday afternoon games, Sunday games, and so forth, there were no games between two original AFL teams.

There were 39 games between NFL teams, and 13 games between NFL and AFL teams.

These are of the original teams in the respective leagues.

Mr. COSELL. You mean in the three schedules, both Sunday afternoon networks and Monday nights, last year.

Those figures, frankly, surprise me. I wasn't aware of that.

Senator COOK. What I am wondering is how it is determined what the schedule will be on television?

Mr. COSELL. It is determined by the office of the commissioner of the National Football League. We have no voice whatsoever, and I am glad to be in Washington and tell the people this, because of the mail we have got. We have no real voice whatsoever in the selection of the schedule. This year we have two Washington Monday night games.

Senator COOK. I would like to get those figures to you, and as a matter of fact, we will point them out more pointedly to Mr. Rozelle when he testifies. This is one of the basic arguments of AFL fans. They stuck with the AFL, and concluded that the AFL was going to win in the superbowl. They were downgraded royally when the superbowl first started, that the AFL really never could do it,

and when that gentleman from New York decided to take on the Baltimore Colts, it occurred and then it occurred again. The point they try to make is that they felt that being loyal supporters of the AFL, they have been done in by reason of the schedule that has been perfected for showing on television.

Mr. COSELL. They might have a point. However, I suspect that Commissioner Rozelle will will be very ready on that subject.

I will tell you this: Speaking for myself, and not for ABC, we were very happy with the schedule of the first 2 years, and as you know, the success of Monday night football has been extraordinary.

We have no say whatsoever in that schedule, and I will say that the commissioner this year has given us 22 of the 26 teams in the National Football League. The only teams that we will not be seeing in this year, Senator, are, as I quickly run down the schedule, Pittsburgh, which we have each of the 2 prior years, Cincinnati, which we have never had, and Denver, which we have never had.

Those are the only teams we will not be having. We will be showing for the first time the Patriots, which is an AFL team, and the New Orleans Saints, which is an NFL team, and all of the other teams.

Senator Cook. Let me bring up one other point that we discussed with the representative of the NCAA, and he was rather opposed to the bill because he thought, again, it was establishing something within the framework of government.

It was rather inconsistent, it seemed to me, because that is what the NCAA tries to do. I got the argument that "a team does not have to belong." Well, it does have to belong.

One of the problems we would like to discuss as far as recruiting is concerned, and we will do more of it with Mr. Dolph and other representatives of basketball, the events that have led to suits now pending by the NCAA against a league and against a player like Jim McDaniels of Western Kentucky University.

Mr. COSELL. Or the case with the Chicago Bulls.

Senator COOK. That is right.

I take Western Kentucky University, which I thought had a phenomenal ballclub. What happens to the other players when they have reached the final four—and it is too bad they did not get into the finals—and when it is all over they find they have lost it all. They find they must forfeit a number of games and pay back to the NCAA some \$65,000. Yet their only recourse is a tort action, a civil action after the fact.

Now, there is no way that anybody can tell me that this satisfies the student body, that this satisfies the NCAA, that this satisfies the sport. It does not help any of these schools to have a lawsuit pending 2 years or 3 years after their team basically has been ridden right out of the situation, ridden out of the championship of its league, ridden out of the satisfaction of having produced a remarkable ballclub.

Even if you are fourth, you are one of the top teams in the United States.

So it seems to me a commission would see to it that there were very severe penalties, that there was in fact a severe penalty that a franchise holder would have to pay if we went out and picked up a junior in December or in January and signed him to a contract.

How do you feel about this?

Mr. COSELL. I think you are quite right that the student body is not satisfied, that the remaining men on the team feel like derelicts in the fact of those circumstances. But you have to get down, it seems to me, Senator, to the roots of the matter.

Where is the NCAA supervision? Where is the real supervision over big-time college recruitment? If representatives of 200 colleges and universities or 300 descend upon a little town in Pennsylvania, each offering blandishments and emoluments probably in defiance of the NCAA organization, for a young man, and if the young man goes to North Carolina for a week and then is at the University of Maryland, which is allowed to advertise for basketball players to come to their university, you have a kind of continuing corruption from the roots right up.

So the kind of thing that happened with Jim McDaniels and Howard Porter involves the whole system, not just themselves, and their own morality or the absence thereof.

The answer to your question is therefore a very cloudy one. It embraces a whole system, and it seems to me you have to direct your attention to that system rather than to look for one specific answer, what would you do about Jim McDaniels and really in the full sweep of life, although what Jim McDaniels did was obviously and desperately wrong, is he to be blamed?

What is his background? What is his education really? What are his mental processes and abilities, and if corrupted at the very beginning by the blandishments offered to him, is he not to be expected based upon his level in life to succumb to the next higher blandishment?

These are the questions you must philosophically consider, it seems to me, as an educated man and as a member of the most important legislative body in the world.

Good Lord, Senator, when a youngster in the Bedford-Stuyvesant ghetto goes to Boys High, a troubled youngster, black, shows no educational aptitude, graduates at the 6th grade reading level, as was the case with Connie Hawkins, and winds up at a Big Ten university, how much is this youngster to be blamed?

These are questions that somebody in America some day is really going to get to in a philosophical consideration of the whole role of sports in the American society.

This is another thing you don't get often enough over the airwaves, and in sports journalism in print, considerations like these, because they go to the heart of our country, because they go to the heart of our national character.

Now, I believe in sports. I grew up with sports, I am a sports nut, but I like to think that based upon my education and background and what I have seen in my search for Camelot, that I have got a sense of values, a perspective on what the role of sports is in the society, and I understand that you would want Western Kentucky to be No. 1 in a silly poll voted on in most cases by writers who have never even seen the teams play for which they are voting.

Senator Cook. This was year before last. I wanted Louisville to be No. 1 last year.

Mr. COSELL. With Jim Price, the great guard who wound up with Los Angeles.

But I really think it is more important not to destroy our moral fiber by a system that has this in it. But that system is not a matter for

this commission, college recruitment is not. That is a matter for the NCAA to clean their own house about.

What has been their supervision that things like the McDaniels case and the Cater case could happen?

There are all kinds of rumors floated about, I know, by the New York sporting press, about how long before the retroactive action was sought by the NCAA—what have they been doing?

Senator Cook. Mr. Cosell, let's wind it up by saying you really feel in your own mind that sports has become such an important, integral part of the American system that the respective sports can no longer legislate and orient for themselves, that in the public interest it now has become at least logical that some form of commission be established with representatives of the respective sports and representatives of the fans, that will in essence set forth rules and regulations for the operation of these facilities?

Mr. COSELL. Generally, yes, sir, with one exception, a Federal sports commission in certain areas, and with specific recognition that all sports do not have the same problems, that only major league baseball has the total exemption and total freedom as of now, and that in certain areas where problems are germane to all sports, yes, I would be for a Federal sports commission as you depict.

Senator Cook. Therefore, you also say that if in fact the Congress is not willing to grant that same exemption to the National Basketball Association and the American Basketball Association that has been extended to another, that they really ought to take it away from another or give it to all?

Should basketball be penalized if baseball is going to be given a free ride? That is what I am saying.

Mr. COSELL. No, but I thought you were alluding to the National Football League merger.

Senator Cook. Well, let's allude to it, too. The Super Bowl is now the NFL championship. Where as when you had the Super Bowl you had two teams that had not played each other in the year, today you can have an NFL championship that can include two teams that could have played each other twice during the season.

Mr. COSELL. My answer to you is that you are right. I am for the football merger and I am against the basketball merger.

Senator Cook. What happens if the American Basketball Association cannot sustain itself?

Mr. COSELL. I guess it is like any other business in the United States. Some will go out of business and some will be absorbed by the National Basketball Association. I don't know of a single person in the country, and I read where Harley Glickman, the owner of the Portland Trail Blazers, said, "I am tired of being asked to make millionaires of these kids to play basketball."

Nobody told Harley Glickman to open a basketball store. If he opens that store, he opens it at his own risk, and I know Ned Doyle is a man whom I advised not to open a store called the Miami Floridians.

Jack Dolph who is a good friend of mine, the Commissioner of the ABA here today, talked to Ned, and Ned apparently went along with Jack. But he had his own free choice. He talked to me and I said, "Stay out of the thing. I don't think it is a workable proposition."

Jack knows that if he is standing in this room he knows that, and now Doyle is out of business.

Well, that is his baby, his bag. He wanted at an advanced age to have some of the glamour surrounding a sports franchise. It didn't work. That is the way it is in the United States of America.

If you can't produce a product of excellence, merchandise it, market it, promote it, in a manner acceptable to the American public, you go out of business.

What would be the tragedy? What is your charge or mine to protect all of these franchises forever, when especially in baseball they have manifested a readiness to deport us whim or fancy, after years of support?

No, sir, I don't buy it. I oppose the merger, I oppose the football merger and I am not going to change.

Senator Cook. One thing that bothers me when we are talking about player contracts is that I am not sure I know of any other business anywhere in the United States, under the aegis of the flag of free enterprise, which when it makes a contract for something for a substantial sum of money and with bonuses, includes a brandnew automobile every year, and subsidies for his family.

This is the part of the contract process that is rather onerous to me. Somehow or other that is not just a solid, sound business approach that I can see.

MR. COSELL. It is onerous to me, too, Senator Cook, but look at it the way it has come about. It has come about because the American Basketball Association illustrated it.

It happened with the advent of the American Football League. They opened a store. They had every right to do that in a free society. Once they did that and said, "Hey, look, fellows, we are going after you unless you take us in," which the other established ones were not prepared to do, and did not have to "we are going after you," then it is a voluntary assumption of economic risk, and so my provocation, national economic provocation, you have ensuing the kind of situation you depict.

We had it with the growth of the American Football League, with perhaps a stronger, better ownership than is existent in the American Basketball Association, which I happen to think has had excellent commissioner leadership from Jack Dolph.

But the American Football League made it stick. Why? Because they had a man who understood. You know the real catalyst was the most unwitting catalyst in the history of the human society, David A. "Sonny" Wertlund. Part of the great irony of sports, and to show the crass materialism of sports, is this, that Wertlund is now actively operating with Governor Cahill of Jersey on the New Jersey sports authority and thus in close concert with the man whose greatest adversary he once was, the owner of the New York Giants.

Now you come full circle in the irony of sports. Wertlund made the AFL stick by getting a television contract. He made them stick by giving them presentability with Namath, and then the victory on January 12, 1969 was in a very real sense his victory and that brought parity to the American Football League on January 17th the following year the Kansas City Chiefs finished it off and the legend of invincibility carefully propagated through all the years was punctured forever more. But they did it competitively.

Senator COOK. I may say to you it is very interesting, because when Mr. Rozelle testified on the merger bill in the House, he testified that if the merger were to take place, he could guarantee the Congress of the United States that there would be no franchise movements of any team.

Mr. COSELL. You must understand the commissioner's position. He did not lie. He told you the truth, and he hardly needs my defense. You will discover for yourself that he is an extremely bright guy. But the 75-mile rule is within the rules and regulations and constitution of the NFL, and that is what he has to live by, unless there is an upsurge by other owners.

That is why I regard the Giant situation as a public challenge to Pete. I am concerned, very honestly, because I love professional football and I am proud to be a part of it and proud to be a part of Monday night television, and I have grown fond of "Dandy" Don Meredith that he is part of my humorous life.

I don't want to see the National Football League tarnished in any way. I consider this for the good of the league, and let that be estopped, and I consider it a strike for the Giants to evacuation to the Jersey Meadows.

Senator COOK. Thank you very much, Mr. Cosell. We appreciate your being here more than you know.

Mr. COSELL. Thank you, sir.

Thank you, Senator.

Senator COOK. Our next witness is Mr. Jack Dolph, commissioner of the American Basketball Association.

#### STATEMENT OF JACK DOLPH, COMMISSIONER, AMERICAN BASKETBALL ASSOCIATION

Mr. DOLPH. Good morning, Senator.

Senator COOK. Mr. Dolph, that is a rough act to follow.

Mr. DOLPH. I apologize in advance for my pallid prose.

Senator COOK. Why don't we recess 2 or 3 minutes until everybody gets organized in the room?

[Recess.]

Senator COOK. All right, we will come to order, if everybody will take his seat.

Mr. Dolph, you may proceed. We are delighted to have you here, and frankly, you do us a great honor to come.

Mr. DOLPH. Thank you very much, Mr. Chairman.

Mr. Chairman, as I started to say, I apologize for what will be my pallid prose compared to the previous witness.

Senator COOK. You can discuss some of the remarks that were made by Mr. Cosell first and then read your statement, or you can read your statement and then do it, because I think you are entitled to that degree of latitude.

Mr. DOLPH. Thank you, sir.

It is a hard act to follow, and I am sure we will get into some of the points in our discussion. I will go ahead and read my prepared statement.

Mr. Chairman, I am Jack Dolph, commissioner of the American Basketball Association. I welcome this committee's investigation of

professional sports and feel the entire sports world would be better off for it no matter what the final results.

The American Basketball Association continues to wage a gallant fight for survival. Its immediate problem, and, indeed, the immediate problem of professional basketball is merger. We have just concluded our annual meeting at which we were forced to fold up two franchises, Florida and Pittsburgh.

That action, of course, represents a tremendous loss to the owners of those franchises. It will also ultimately result in the loss of player jobs. But the biggest losers when something like this happens are the fans.

Loyal fans are frustrated by the realization that, in some cases, nothing they can do will forestall collapse. We are hopeful that we can save the Memphis club. The fans in Memphis saved the club once before by putting forth a valiant fund-raising effort.

Our difficulties are many. The clubs in the ABA, since their inception in 1967 and excluding last season, have had aggregate cash losses of approximately \$20 million. These losses do not include any depreciation of player contracts you have heard so much about. These losses are those of men who, had they considered their investments in basketball simply on the basis of good business sense, would have abandoned the sport long ago.

Mr. Chairman, our immediate concern is the survival of the nine clubs remaining in the ABA. We have spent a fortune and undergone untold frustration in our effort to merge. Some people feel the bidding war is a good thing. The truth is that it is destroying professional basketball and disrupting college basketball.

Let me give you an example. One ABA club signed an untried rookie to a 5-year, no-cut contract, valued at \$900,000. In addition, the contract provided that the player receive a \$50,000 bonus, three Cadillacs over a 5-year period, and \$2,000 per year housing allowance.

The player's mother was also hired to work in the club's public relations department for an annual salary of \$10,000. There are numerous other equally staggering examples of clubs saddling themselves with costly contracts.

Why? Because under today's bidding war, each club must sign the best talent available with little regard for the cost, the source, or the future impact of the contractual obligation. Unless they stay alive today by maintaining their competitive playing ability, there can be no tomorrow.

In a bidding war, no team dares temper its current bids out of consideration for its future financial well-being.

Every Member of Congress and every member of the public, as well as every professional basketball player, again is well aware that bidding war pressures have tempted college players and clubs alike to disregard rules designed to protect college athletes.

Merger, with its one unified and common draft, would end the bidding war which threatens the destruction of professional basketball and the destruction of collegiate athletic programs. To bring about merger, S. 2373 must be enacted now.

In my opinion, S. 3445 does not lend itself to an early resolution of the bidding war crisis. It addresses itself to longer range considerations. I am very much concerned that, in the absence of merger, profes-

sional basketball as we know it today can not survive long enough for the controls which S. 3445 would authorize to become operative.

I regret that, because of my involvement in our immediate problems, I have not had the opportunity to focus in detail on the merits of a Federal Sports Commission.

Let me first say, as a general observation, that the major difficulties involving professional basketball which I have already discussed are engendered by the bidding war and with a merger, can be expected to disappear.

As to other matters, I believe these hearings can serve a useful purpose in compiling a record which can be of great value to this committee and to the public in coming to conclusions regarding the need for and the tasks that might be appropriately assigned to a Federal Sports Commission.

Among the problems which I believe it might be useful to explore in these hearings are the determination of precise jurisdictional boundaries between the areas assigned to the proposed Commission and those assigned to antitrust laws.

Another area concerns the extent to which collective bargaining under the framework of our present labor relations laws should be relied on to determine player-club working and contractual relations. In this connection, I am not sure of the extent to which section 5(d) was intended to supersede present procedures.

A third area of inquiry is whether present antitrust laws are inadequate in the area of professional sports franchising.

Finally, I am not certain that I understand the intended operation of section 5(a) which refers to the "procedures" for imposing territorial restrictions on the telecasting of professional sports events.

There can be no question, Mr. Chairman, of the tremendous attraction professional sports offers to the public nor of the obligation imposed upon all who participate therein—owners, players, officials, and league representatives—to satisfy the interests of the public.

Whether Federal oversight is the best means of assuring that the public interest is met and that professional league sports are maintained in a sound condition, presents a question which merits this committee's most careful consideration.

Mr. Chairman, that is the end of my written statement. I have a number of notes on various subjects which have been brought up in the hearings, and I think it would be appropriate if you would agree that I can list these and some comments I have.

Senator Cook. Yes, please proceed to do so.

Mr. DOLPH. All right. I am not making recommendations to the committee, Senator Cook. I bring up areas of consideration. The television blackouts. I think it is very important that the committee make an extensive study of this policy, but I can state that it is my opinion that the sellout blackout does not, as everyone knows, affect that particular game.

I call to your attention the very possibility that over a long period of time, a level of expectancy on the part of the ticket buyer that a game will be telecast may well reduce the interest in purchasing tickets.

I bring to your attention the consideration for the fan who has purchased tickets and then the blackout is lifted and then he, whether he

wants to or not, has bought the tickets and could have seen it on television. In this regard, I would suggest to you, sir, in your reference to the Kentucky Derby, that I don't think there is a comparable interest in attending the race and watching it on television.

In the television, it is an hour show for a 2-minute race.

Senator Cook. But those races are an hour apart on Derby Day, and it is a long day.

Mr. DOLPH. I know it is, and I know you well know.

Also on the same subject, I would ask the committee consider the success of what is known in the NFL as the Bert Bell policy of the blackouts of home games and the way it is built, to the great benefit of the fans and supporters. I would suggest by comparison that a study be made to show the decline of boxing from a lack of a similar well articulated and administrated policy.

Another area that I believe should be brought to the attention of the committee and certainly will be is amateur athletics. The amateur athlete may or may not be an amateur depending on what standards you apply, but I can tell you that amateur athletics is not amateur. It is very big business, with television revenues and gate receipts.

I think any exploration of professional sports should treat the possibility that amateur sports is also big business.

A third area that I think you obviously will get into is the collective bargaining role in professional sports. As we have just learned. Mr. Chairman, the Supreme Court has upheld the lower court decision on *Curt Flood*, and perhaps this means, and I don't interpret supreme courts, I am not a lawyer, although a few more years in this job and I might be able to pass my bar exam, perhaps this means a reaffirmation of the traditional collective bargaining system as we know it, which is a position both basketball leagues have taken in the hearings before the Senate Judiciary Committee.

I question, sir, in a fourth area, out of experience the assurance of competent and experienced men taking the political appointments. We have had examples of political appointments in sports in the past that have not been qualified people, and I would certainly propose this as a problem that should be considered in your deliberations.

I also would like to raise a final point, and that is the exploration of franchise moves and removals. I do not have an opinion on that. But my question to the committee is, "Does Federal supervision of franchise territorial rights, franchise moves and removals, invade what I think may be a private right?"

I don't know. Perhaps this is most properly a matter for the judicial system of the country rather than the legislative.

Senator Cook. Well, Mr. Dolph, in relation to your last point, let's discuss that a little bit, because if a major power company located in a city wants to get an increase in its rates, it goes to the FPC.

It has a monopoly in the community and provides services; and if it does not get the rate increase, it can't say, "We are going to shut down all the generators and move to Hoboken."

It doesn't have the right to do it. Here we have without any question, in the establishment of a franchise, the establishment within the framework of that league, a monopoly in the area.

I doubt seriously if the ABA moved in Cincinnati that it would allow a competitive ABA team across the river in northern Kentucky.

So, I agree that there is merit to what you say; but because you are establishing a monopoly, because you are establishing an exclusive franchise to the exclusion of everything else, maybe we have to look at it in a different way, and maybe we give in fact a right that transgresses the so-called private right.

Then let me give you other examples, a major franchise that moves into a community and says, "We will be perfectly willing to come, but there has to be a new facility."

If the community does not wish to buy the facility, the franchise holder won't live. But let's take the franchise holder who badgers the community to death, who wants a new facility and gets it, and the community makes a fantastic investment. Ultimately the team does not generate funds sufficient to pay off the indebtedness that is being imposed on the public in that community.

So therefore, I think we go beyond the private realm, I think we go to the public interest, and I think in relation to the public interest we should say, "It is nice of you to say that you are entitled to that private right, but the public, the municipality, the fan who has voted to incur this tremendous expense, has gone beyond your right to have the sole and exclusive right of a private possession; namely, the franchise."

Now would you address yourself to these problems? Because I think they are real. I don't think there is any question about it.

Mr. DOLPH. Well, I think, Mr. Chairman, that both the community voting on these funds and the owner opposing that sort of financing do so with an absolute clear knowledge of the possibility that that team may eventually fold without support or move.

I have overriding logic on your side to the extent that I agree, too, there can be no tie-in ticket sales. I disagree with that form of ticket selling, but I do believe that it is questionable, at least in my mind, as to whether a Federal authority or any authority short of the judicial system can say whether a man be allowed to stay or must stay in a community and lose money.

Senator Cook. All right, he should not have to stay in a community if he loses money. But I don't think anybody in New York can demand of the Giants that they can see their balance sheet. The Giants don't have to do that.

Yet, they request of a community a new facility. They request of a community that it do certain things. Then it threatens their removal if they don't get it. You are saying the public that votes for these things must automatically presuppose that the franchise won't stay there forever, and that is fine, but why should he lose the franchise in his community if he voted to expend tremendous public sums, the franchise is not losing money, but it feels like it ought to make more?

It seems to me that if what you are saying is true, then the leagues themselves should have no objection to a disclosure of their financial statement, should have no objection to a disclosure of their assets and liabilities, that this would be not only in their interests, but in the public interest.

If he is not making a logical return on his money, then he obviously has a right to make these complaints. But we have no way to judge in the public mind whether in fact these complaints are fair or not fair.

Let me give you an example, again the Buffalo Bills. Here they have been selling 23,000 season tickets, and they are threatening the people of Buffalo that if the community does not build them an 80,000-seat stadium, they are not going to stay.

It isn't the municipality's fault that they have not sold 80,000 season tickets, but the community is going into debt to build that facility because they have been frightened to death, and the community is going to have to pay off that debt, and the Bills are still going to sell 23,000 season tickets, and what does the community do?

It pays off the debt. It says, "Well, it is logical for the community to have a major sport, it is a status symbol, they have convinced us it is, we have to go along, but we are losing our fancy in the meantime."

Now, what do we do about the orientation of priorities within the community? I mean, this is something I think we really ought to look at, and I think it is something that they ought to cooperate with us on.

Mr. DOLPH. I oppose the capricious move of franchise, there is no such thing as the capricious folding of a franchise. But I oppose personally and professionally the capricious moving of franchises with no supportive means.

I think I indicated this is one of the great areas that this committee can and must study, and I hope come up with a resolution to the problem existing in that area of support.

Senator Cook. Let me get down to one of the points that Senator Ervin made, and I apparently am one of the few individuals who disagreed.

Mr. DOLPH. I hope you are not in a minority.

Senator Cook. I am not talking about the merger bill as such, but in relationship to the hearings, he found a great distaste in writing off players. Well, as a matter of fact, players wish to write themselves off, don't they?

Mr. DOLPH. They certainly do, sir.

Senator Cook. They want a contract; they want deferred income. They realize the significance that they have so many years in a particular sport, so they ask for deferred income over a long period of time, many times over a period of years which they will not even be operative in the sport.

Therefore, they realize the consequences of how they are going to write themselves off, and they take advantage of the fact by asking for deferred payments and bonuses, for their parents to be hired, for automobiles to be given to them. So what in the world is wrong with the teams trying to make a profit and stay in a particular area, and maintain a franchise?

Mr. DOLPH. That is a right all taxpayers have, including employers, and it is a statutory limit to that writeoff, and an advantage given to all individuals in the country, and I don't see how it can be deemed objectionable when owners of teams do it.

It is not the difference between profit and loss, as has been said in another committee room. You cannot make a loss into a profit by depreciation, sir.

Senator Cook. Would you explain to me and for this record the situation as it presently exists with the NBA-ABA all-star game played after last season, and the legal action that resulted?

Mr. DOLPH. I cannot explain it fully, sir, because the action that the NBA took and stated they were going to fine the players that participated in the game, I was not privy with that action, nor did I discuss it with Mr. Kennedy.

Our league sanctions the game. Each team warned its individual players that they could be in violation of their contract should they have injury during a game. That was protecting the individual team's investments in the players, which as you well know, is considerable, particularly with those players.

Our league felt that it was in the entire best interests of its league and in its relationship to the players to support this game.

Senator Cook. Relative to your comments on 5(b), we were only reaching out, frankly, in this bill, and it is certainly subject to change and obviously will be changed, but we were really reaching out for some basic form from which to work, not the negotiations that the teams took with their respective players.

It is not our right to intervene, or anybody else's right to intervene, but it seems to me that you have gotten yourselves in between the respective leagues, as your president put it so aptly, regardless of the future consequences you need the ball player and you have to go get him, and there is no such thing as "the price is right."

The only thing that is right is if you win. The only price that is wrong is if you lose. It seems to me what we are really saying, Mr. Dolph, is that the teams themselves, the managements of the teams, have gotten themselves in a horrible situation, regardless of financial consequences.

When a player absolutely must be acquired, from the standpoint of economics this makes the whole situation and the league itself pretty shaky and pretty tenuous to begin with.

Mr. DOLPH. There is no question about tenuousness of the situation.

Senator Cook. It is like running yourself into bankruptcy with a winner.

Mr. DOLPH. That is true, sir, but as we have testified on the merger bill, and I refer back to the AFL-NFL war with the signs under the goalpost. For every one of those, there were months of work and promises. Everyone knows that.

Yes, the situation now requires a team in professional basketball to acquire the services of a player to assure that he can cope with survival in his franchise. Without that, he is not going to survive, merger or no merger.

But without the merger the teams will not make the investment, because if they do they will fail. They cannot continue to do it forever.

Senator Cook. Let me ask you, if S. 2373 is not enacted by the Congress, what do you look to be the future of those franchises within the ABA that still have a semblance of hope and desire to maintain basketball teams?

Mr. DOLPH. We have a very viable franchise in Louisville, the Kentucky Colonels, one of the best franchises playing and operating in basketball.

Without the passage of the merger legislation, I see then no way that the Kentucky Colonels can individually merge with the NBA. We are precluded from doing so by the player suit, in the New York Federal District Court, and unless through collective bargaining a

resolution of the differences between the players and management is resolved, I think that the ABA will have to fold.

Senator Cook. Well, if the ABA in fact folds, the status of that suit becomes very tenuous, obviously, and it would seem to me that those major communities that are left could certainly petition the NBA for an expansion of their league and the acquisition of a franchise.

I just doubt very seriously that the consequences of that suit in the Federal District Court in New York would have any real legal effect, if in fact the league folded.

Mr. DOLPH. Not being an attorney, sir, I am not really qualified to state that, but I would ask you in the event that cause of action were taken, whether the Justice Department would state that this was a way around the merger and there was a merger that had to be reviewed by the courts anyway.

Senator Cook. That may well occur, but it would seem to me with at least evidence in the record of Senator Ervin's subcommittee, that the logic of being invited to come into the NBA could not even take place until the demise of the ABA.

Mr. DOLPH. Well, we are gambling, you and I now.

Senator Cook. Remember this, now. You can't fold that league unless the majority of the franchise owners in the league make that decision, and I doubt that a majority of the teams now in the nine team composition would be accepted into the NBA.

Mr. DOLPH. That is quite possible. I was going to say that we are gambling, you and I, with the longevity or perhaps existence at all of major markets in this country that should have basketball, millions of fans that won't have basketball if those franchises are folded.

In my opinion, with the action that the league took in its annual meeting, the ABA is a viable number and quantity of teams, to make sense to the NBA, and frankly, the Congress, but very frankly, I agree with Senator Ervin to this extent, that those teams will exist in the future, because as in any other business good management will be the proof of that.

But the fact remains that the existing basketball franchises and the markets they represent don't really have a chance without some form of merger.

Senator Cook. How do you view a full disclosure of owners and a full disclosure of a balance sheet, a full disclosure of concessionaires, ownership of facilities and so on?

Do you have any objection to that?

Mr. DOLPH. No, sir, I don't, and I think at least basketball has proved that they don't, because they made what I think is a full disclosure to the Judiciary Committee.

If it is in the public interest, and that is what this committee is exploring, I don't think it can adversely affect the ownership in basketball, unless, of course, it invades the private right of an individual to expose his tax returns.

We did object to that.

Senator Cook. Well, I can see that there is ample ground for you to object to it, and I see no reason why one should have to go that much into detail, very frankly.

But you said "If it is in the public interest. "What is your evaluation of professional sports today in relation to the fan, in relation to the

respective communities they are involved in, in relation to the investment that has to be made not only in the team but in the facilities?

Do you think it has gotten to the point where it may well be in the public interest, or are you in doubt about this?

Mr. DOLPH. I am now in doubt about it as far as the Federal Commission is concerned, sir. I will state categorically that if sports does not clean its own house, a very popular phrase, that it is going to be cleaned for it, and this may be what is happening now.

I do not feel that the most beneficial eventual result necessarily is the Federal supervision that is being proposed in this bill, but as I stated earlier, I have not come here with a total bin of that.

I think that I will be following the testimony of these hearings very carefully and will be developing my own opinion about it.

Senator Cook. Getting to the other side of this attitude, what I somehow or other get a kick out of is all the articles I have read since the introduction of this bill. They seem to think that somehow or other I am a politician who is up for reelection, and I want to pick on the sports field, and I want a great deal of publicity because I am after the field of sports.

First of all I am not up for reelection. That is sometime off, and that is one's decision, just as it is for the franchise. You can either run or you don't have to run, but at least you tell the public whether you are or not.

So this does not quite bother me that in a political year the sports field ought to be looked into.

I just happen to believe that by reason of the whole upheaval within the sports field itself, by reason of the fact that the Supreme Court has now said, "Look after your own problems and solve your own problems," I can foresee how management is going to solve the problem on the reserve clause. The management is going to take the position that "we have won again" and the management is going to wait until it occurs again and see if it can win.

If you solve a problem, you don't worry about solving that problem again until you are hit in the head with it. It amazes me that, having asked major sports to get their house in order so many times, that somehow or other the Supreme Court would think they are asking them for the first time.

That is what really bothers me.

Mr. DOLPH. Mr. Chairman, it seems to me that what the court is saying is that the collective bargaining process is the proper form by which to solve some of these problems. I don't think—you say you know how the owner is going to react.

I do, too. They are going to say they have won again. But I want to remind you in a collective bargaining process, the players, as the baseball players demonstrated, have rights to certain actions, coercive actions themselves, and I think those are the proper tools, weapons, if you will, of collective bargaining.

Should the reserve clause not be obviated, and should a negotiation be unsuccessful between the owners and the player, the players know then what they can do.

They can stop work. They can strike, and I think that again is a proper and transitional American right and that is the right they have in these negotiations. It is an ultimate weapon, obviously, be-

cause while the American Basketball Association would probably lose less money if it were struck, sports cannot operate without the ball-players, and that is the ultimate weapon.

You have associations in all leagues now run by very qualified men, as we know in basketball, Mr. Roy Fletcher, that have these alternatives available to them. I think there are alternatives available in every industry and I don't hesitate to call sports an industry.

Senator Cook. One thing that brought us to introduction of this bill is that I don't see the value of solving problems piece by piece when you know the major problems to begin with. Let me give you examples of what I am talking about when I say piecemeal. The judiciary is going into it, and on a piecemeal basis it becomes more difficult to solve your problems rather than easier to solve them.

A State court in Oklahoma has ruled there can't be a blackout of the Oklahoma-Texas football game next year in certain areas of Oklahoma. The State court has decided to take this thing on and they have enjoined them from doing it next time.

In Washington, the District of Columbia Superior Court ruled that it was going to be up to the court to decide who got season tickets to the Washington Redskins. Chairman Burch has addressed himself to cable television. All of these things are being done piecemeal. They are a little bit here, there, and every place else.

So you can see that the institution itself is under attack, and it seems to me that rather than to wait for all the attacks to become unified to the extent that you are out from under the privileges that have been extended to some sports in the past, that you ought to come up with something to resolve these things before you have court battles.

It is a matter of saying, "Well, let's wait until the last door is closed and the last horse is out of the barn and we will have to face it then."

Mr. DOLPH. I have two points on that. I believe the bill you introduced itself describes review by the judiciary, so perhaps we would be getting one piecemeal situation replaced with another.

Senator Cook. Maybe that is an easier way than for the ABA to review a decision of yours and decide you are no longer going to be commissioner. Let's be honest about it. Mr. Rozelle may be a fine commissioner, but I have a notion the NFL can get rid of him tomorrow if they want to.

Mr. DOLPH. There is no question, sir. I think the nature of the commission system must be explored.

Senator Cook. The commission would be composed of people that I would hope would have a decided expertise in this field, rather than a judge who makes a decision about the ABA who has never been to a basketball game and could care less.

As a matter of fact, the moment he moved into his home and saw the hoop up over the garage, he took it down.

At least you make a judgment within the framework of the job you have, based on your expertise in the field, and I am afraid that quite frankly, honestly, and I have been a lawyer for many, many years and a judge before I came here. I have to say to you in all fairness that most decisions are based not on an expertise in the sport. In fact most judges have none at all, and a decision can be very onerous in relation to the actual operation of that particular sport or that particular league.

MR. DOLPH. I respect your point tremendously, sir, having appeared before and been involved with many judges who did not know what they were talking about as far as our industry was concerned, and I suggest to you that my personal belief is that less government is better than more, and the concern I have with "amateurs" running our business, the business of sports.

My personal belief is that the very finest thing that has come out of these committee hearings and your proposed legislation, and I welcome it, is that sports will know that nobody is kidding around any more, and that they should clean their house.

Senator Cook. Mr. Dolph, I have listened to this many, many times, and everybody has said they hate the intervention of the Federal Government into this field.

Well, who was it that created the Sherman Antitrust Act?

It was the Congress of the United States. Who is it that sets up the basis by which one brings a cause of action?

Unless it is the common law, it is statutory authority that has been established by the government at the State level or government at the Federal level. So if you are saying that you are not having government intervention, who is it that intervenes as far as the labor regulations are concerned?

It is laws that have been passed by the Congress of the United States. So the intervention is here. The intervention has been established for many, many years. It is a matter of whether you want to bring that intervention to the point of concluding these problems before they get onerous, or saying, "all right, let's go through a court action of 3 or 4 years, let's spend a whale of a lot of money, let's put the whole thing in jeopardy to see whether we are right or wrong."

So I can only say to you that if you think your government is not there, it is already there. It is already there by the establishment of its statutory authority.

Whether it be of a minor or major nature. Now, certainly you think it is there. Certainly you have to think that there is a recourse from the government, or you would not be pleading to have S. 2373 passed.

I mean the point I am trying to make to you, the reason you want S. 2373 is that there is a position that is established by the law based on the Sherman Antitrust Act that it shall not occur, and therefore you are trying to obviate a statutory authority created by government to get around it.

So I can only say to you, "Think about the argument that government should not interfere and think about it in relation to all of the things that you have to comply with day in and day out in relation to our league that government has already imposed, and maybe it is better to have a commission that can sit down with a few experts in the respective fields of sports to say that this is how the situation ought to be solved and here are the recommendations." That is my point.

Mr. Dolph. Mr. Chairman, you are eloquent on that point, and I agree with you. I did not say government should not interfere, it should, and perhaps that is a situation which you will find in these hearings.

Senator Cook. Again I point out to you, Mr. Dolph, you are saying in effect that if government does not interfere, the ABA is going to fold.

Mr. DOLPH. That is correct.

Senator COOK. Therefore it seems to me that in the intervention of this Government, we ought to look at the overall picture and that ought to be some semblance of an establishment that can see to it that these things do not occur, that there is a viability of franchises, not to the extent that the public is going to support them, but to insure the respect of the public toward the franchises. I think you have done quite a remarkable job and you ought to be congratulated for it. Unfortunately, you are a child that has been crawling and may not have an opportunity to walk.

Mr. DOLPH. That is the entire point, that the legislation you propose may not come in time to save our league.

Senator COOK. Maybe in essence what you are really saying is that we are already too late, and that we should have come up with this thing 2 years ago or 4 years ago so that maybe if it had been established, you would not be having the problems you are having today.

Mr. DOLPH. I can't believe we can decide that it is too late for the fans we have generated in the communities that have proven to be viable, and if I should use the word "pleading," all right, it is "pleading."

I strongly suggest to you, sir, that in the deliberations that if you find it is necessary in the legislation you have proposed, I very wholeheartedly support it, but the history of sports legislation is such, as you well know, the myriad pieces of legislation that are proposed in both Houses, how long the action has taken and what it has been, and I present for your consideration that, if there will be any basketball leagues left, there will be fewer teams in it, if the merger legislation is not passed, because it will be a length of time to get action on your legislation.

Senator COOK. Very seldom does the Congress receive credit or get an award for solving problems before they exist. The legislative body is in some ways a reactionary body.

Mr. Dolph, thank you very much.

Mr. DOLPH. It is a great pleasure to be here, sir.

Senator COOK. Our next witness is Mr. Woolf.

It is my understanding that you represent many people in the sports field, Mr. Woolf.

#### STATEMENT OF BOB WOOLF, ATTORNEY, BOSTON, MASS.

Mr. WOOLF. Yes, Senator. I would like to say I am delighted to be here, and I know that for any American who comes to Washington, just the city itself, is a great thrill. To be appearing here under these circumstances is an added privilege.

I have my wife and family here, and we are just delighted to be here. I would just like to say that I am, to give you something of my background, a sports attorney from Boston. I was born in Portland, Maine, and I have been practicing law for some 18 years, and I became involved in this field around 7 years ago when a gentleman named Earl Wilson, who was a pitcher with the Boston Red Sox and had just finished pitching a no-hitter, asked me certain things relative to endorsements and things of that nature, and then he referred Reggie Smith and George Scott and others, and then from there it went over into

basketball with Sam Jones, John Havlicek, Larry Siegfried, and others, and eventually practically all the Boston Celtics.

From there I became involved in football with the Boston Patriots and a number of the prominent players. Then I went into hockey with people like Ted Green, Derek Sanderson, Gerry Cheevers, and a number of other players. As these players started to be traded to other teams, they referred others.

At the present juncture I have negotiated over 400 professional contracts for athletes and now represent over 200 professional athletes in their contract negotiations and in other business activities.

It might be of some interest, Senator, how this whole thing happened and why there is such a thing as a sports attorney. You being an attorney yourself might be interested to know that it is a new and developing area of the law that really never existed before, and a lot of people have asked me why there is such a thing. I think basically what happened is that there has been a change in the whole economics of sports and a number of opportunities have become available in sports for athletes. Some 7 years ago, if a young man was making \$10 or \$12 or \$15 thousand, that was a considerable amount of money.

But as things exist today, I know that just in basketball alone we have some 54 players making over \$100,000 a year. We have a large number of players making over \$200,000 a year and we have several players making over \$300,000 a year.

So the whole economics of sports started to change and I think you will agree that we are in a golden era of sports and I think the number of franchises and their proliferation with the subsequent television outlets have made far more money available to the athletes through the proceeds from attendance figures and the sale of television rights and attendant advertising opportunities.

As the economics changed in this direction, allowing more money to become available to an athlete, he consequently started seeking professional help. The tax ramifications alone would suggest that he do so, I would think.

In addition to that, the competitive bidding that came to exist between the new leagues in football and basketball started to really spiral these salaries, and the players started to realize this fact. So, we are at a point now where any first round draft choice in basketball, coming out of college, knows he is going to be making over \$100,000 a year immediately.

Because negotiating a contract is an unfamiliar area to athletes, more and more they started seeking professional help. In addition to that, I think what also has changed is that the advertising media have discovered that athletes ring with a greater degree of sincerity in doing commercials and product endorsements than do movie stars. There are no more movie stars as we know them, and the athlete has really taken the place of the movie star.

We no longer have movie stars like Spencer Tracy and Robert Taylor. That adulation formerly held for movie stars has been transferred to the athletes. The possibilities of financial remuneration in the endorsement field and in commercials areas have been also transferred, and thus the athlete is able to do radio and TV commercials, and also have his own TV and radio shows.

He can make a substantial amount of money in product endorsements. He can make a substantial amount of money in personal appearances, which must be considered strongly. Prior to his retirement Bill Russell knew he could make at least 100 personal appearances at a minimum of \$1,000 per appearance. His fame allowed him to make \$100,000 without even playing basketball.

In addition to that, all of a sudden the athlete is now writing autobiographies, and he is engaged in many commercial transactions which were never available to him before. So more and more the athletes throughout the country are now seeking professional help because these are all unfamiliar areas to him and obtaining this assistance is justified and necessary.

Recently, I have lectured in a number of law schools throughout the country inviting attorneys to enter into this new area of the law because of the great need for it and for the great need for responsible representation in the field.

As I got into this field and I saw what was happening, I also started to see many changes in professional sports. I would like to say that I agree with you, Senator, with reference to your bill where you stated you felt that sports were sacred and that they have a special part in the community. I myself, like everyone else, am very much a sports fan.

I myself would like to think that there is decency and fairness in sports. I think sports is a very specialized industry.

After all, I don't think we have more than 3,000 professional athletes. I have never heard of such a small industry creating such extraordinary havoc and national interest.

I have watched a lot of things happening in sports that I find extremely distasteful. It is almost somewhat like the industrial revolution. When I entered the field it seemed the owners were on one side and they had everything going for them. Then a transition started to develop for the athlete, and it has actually gone the other way, now sometimes the athlete is very much out of line and has added strength that perhaps he shouldn't possess.

But I would like to address myself to the problems that I have observed and enumerate them. There are certain obvious things—such as the constitutional problems, the reserve “clause” and the “option clause” and others which I would like to remark on later.

Then there are other problems. For example, the common draft, whereby a college player is drafted and is really not free to negotiate with any team but he must negotiate with the team selecting him, is worthy of discussion. I am aware of the problem of franchise jumping, where teams leave one city for another without reward to the fan.

There is no loyalty within the citizenry. I am aware of the problems of influence which TV has on sports. It actually controls certain rules of sports, which is absolutely amazing.

Senator Cook. You want to have that happen to you in January, and you have to stop all that so they can take time out to have the commercial. That is when the sports fan really is put through it, the guy who has failed to bundle up to the extent he should have, or failed to have that degree of substance that he should have taken to the stadium with him.

Mr. WOOLF. I agree with you. Also, I find the strikes in sports to be very distasteful. I don't think it should ever come to that point. I

think it has been proven that it has been harmful, especially in the baseball situation, and I think the fans have found it extremely distasteful.

I see the problems with the existing wars going on between ABA and the NBA. I see the problems going on—

Senator COOK. Can I say something, Mr. Woolf? As you go through these points would you give us some specific examples, rather than move on to the next subject?

If you are talking about the change that is taking place, give us an instance that you have noticed.

Mr. WOOLF. I will, sir.

I would like to verify these obvious problems, as the Senator knows, and alert you to the now existing war between the NHL and the World Hockey Association. I am very closely involved and am watching what is happening there, and again I find it extremely distasteful.

I am aware of the possible gambling problems that have been involved in professional athletics. I am concerned with the trading problem, where a person can be treated like a chattel or a piece of property.

I know the first time I really ran across that was with Ken Harelson, who gave his heart and soul to his team and worked within the Boston community, loved the community, and did everything to promote the community and then without even the slightest notification, to find that he is now a member of the Cleveland Indians, something which comes as a tremendous shock. Being traded is something which every ballplayer realizes could happen to him, but does not really believe that it will happen.

There has to be a better way of trading a person or handling a situation like that. I am aware of the problems that are involved with the various pension plans that now exist, and I am also concerned with the problems of the original gentlemen that started the leagues, the ballplayers who originally put in all the effort and are now receiving nothing from the pension plans, and nobody seems to be concerned about them, the oldtimers who should be receiving something.

I don't feel they are properly screening the people that are involved in the ownership of professional athletic teams, as far as the quality of the people and the integrity of the people. The foregoing problems in sports have come up on many occasions and I know everybody is concerned with those problems. However, the major problem that I am concerned with, and, I actually have revised my thinking on your proposed bill, Senator, by what happened today in the Supreme Court with the justices upholding the reserve clause. I just did not believe that was going to happen. There is no question I am really very enthusiastic about your proposal now because I feel that there is no other way that we can face these problems, that apparently sports are not cleaning house themselves and there is a need for some regulatory board.

I have gone on record as saying there ought to be a regulatory board, and now I am far more enthusiastic about it. But I would like to address myself to the problem which I am very concerned about. Because all of the things I mentioned previously can be worked out in committees and by negotiation and things of that nature.

What I am worried about is the increase of moral decay in sports and the lessening of the moral fiber in this country. That is really what concerns me.

I am alarmed as to what has happened in sports because of avarice and greed. The integrity of really fine individuals has been lowered and lessened, and to watch it in all instances is very, very disheartening.

I myself believe very strongly in the sanctity of contracts. I honor a contract, and I feel if you make a commitment you should abide by that commitment and even with all the players I represent, I don't have a written contract with them. I don't want a written contract.

I am an attorney and proud to be so. If somebody wanted me to represent them, fine, if not, I wouldn't want to represent them. So I am a firm believer in a contract, whether it be written or oral.

What I see happening today bothers some. The professional teams going to players and trying to entice them first to leave college. Enter pro ball and to break a commitment that they previously made to the college—after all a college says to the player, "If you come to college and play, we will give you a college education," and not only that, "if you don't play, we will still give you a college education," and there is a legitimate contractual agreement there.

I would think any person who left college and broke his commitment has had to suffer a loss of his character if he left to go into professional sports. However, the pro teams still try to get an athlete to break his contract, or to jump leagues and entice them with offers of enormous amounts of money and other inducements, which I find extremely disagreeable.

I find the system wrong. There has got to be something wrong with the system in college athletics when we take a coach who may be a person of very high caliber, a person of great integrity, a national figure, force him to travel throughout America and go into some young man's home and beg him to come to his college.

There has got to be something wrong with it. There has to be something wrong when the priority is not on participating, but only on winning. I see these fine coaches going out there, and unfortunately their whole program is only so good as their recruiting.

I don't think that is what sports was supposed to be all about. I don't think it should be that if you are a winner that is all that counts in sports. There has to be something wrong in a system where you have amateur athletes who are sacrificing and doing so much for this country and receiving nothing in return.

For instance, my very close friend, John Thomas, the famous Olympic high jumper. It broke my heart to see that young man sacrifice all he did for his Government. To hold 2 or 3 jobs just in order to be able to participate and compete for his country. He was poor as a church mouse, and nobody ever did anything for him, and even to this day nobody has come forward to help him.

The Government has never done anything for him. He made all these sacrifices in vain. Yet I see how other countries offer subsidies and other aids to encourage people on amateur levels.

I deplore what I see what is happening in sports because of money. There doesn't seem to be any such thing as team loyalty any more. I watch this and I become very disturbed about it.

I feel that when I have appeared before the league commissioners on various player problems, they have not faced the problem directly.

I know when I appeared before a board, headed by Commissioner Clarence Campbell, representing Ted Green, who was struck on the head by a hockey player and almost lost his life in a stick-swinging contest, that my plea was unheeded. When I said that I considered this extremely severe and certainly there should be a great penalty if you take a stick and hit a fellow over the head, they all agreed with me and said, "Yes, if that happens again, there will be a 3-day suspension." A 3-day suspension for almost killing a man? I could not quite grasp this. I feel they want this within their sport.

I watch what is happening in Boston, a hockey town. Their attitude toward hockey. How when I negotiate a contract—the manager will now say to me, "How good of a fighter is he?" And I am wondering what does that have to do with the sport?

They allow fighting to remain in the sport, and they actually encourage it within the sport. So I go into Boston, which has a great number of hockey fanatics and watch the kids playing street hockey and these little kids as part of their game when something goes wrong, they fight. This is what they see the Bruins do. This is what they think is part of the game.

I look at that, and I say there has to be something wrong there, because this is what has been encouraged by the sport itself and allowed by the commissioners, et cetera, and nobody says anything about it, and I find it distasteful to watch that.

With all these distasteful observations you really don't have a board to go to complain. You don't have anyone who is going to legislate on it or really rule on it objectively. Another thing that I feel very strongly about is concerning the commission in each sport. I feel a commissioner should be paid, if he is to be a true commissioner, by both the players and by the owners, and that the expenses of their office should be shared equally, so then they could be entirely objective and truly a commissioner of the sport.

As it exists now it would seem that they are really just spokesmen for the owners, except in the case of Pete Rozelle, the football commissioner, who has been an unusually fine commissioner. However, I can only say that unfortunately you can't always find someone of his caliber.

I get confused in many instances, too, by what happens in sports. I get confused and wonder to whom do you speak when you know there is a Phase II going on in sports and throughout the country they say you can only receive 5.5 percent increase in wages. I read in all the newspapers and I know the fans must be confused when they read that Hank Aaron signed for \$200,000, and that one player signs for another hundred thousand and that the President of the United States says "Give Vida Blue a big raise because he deserves it," and yet we are telling the country that we will only have a 5.5 increase.

Where is one to go to? It would be nice to have a board to be able to get a ruling to know exactly what is happening in those cases.

I have new ideas on taxes relative to athletes, but I get frustrated because I know that the procedure would be too cumbersome, because

I feel very strongly there should be certain tax benefits available to professional athletes who have a limited amount of years, to play, and certainly those are the years that are probably the greatest as far as their financial earnings, and he should be allowed to perhaps either have some type of tax benefit for the depreciation of his body or something of that nature which would allow him to benefit by this, because it presents a great problem to them.

Senator Cook. Hasn't he solved this by deferred income?

Mr. Woolf. Not really, Senator, no, because you have to remember that we also have the problem of whether the principal will be any good or not. You know, leave some of the deferred income with a weak franchise could possibly precipitate trouble.

Senator Cook. I wish you would explain that to me, because I was going to ask you. Having negotiated some of these contracts, how do you, in your negotiations with management for a player, how do you consider the sanctity of the franchise or the longevity of the franchise?

Mr. Woolf. In many, many cases, you are taking a very great chance. That is why, as strange as it may seem, I am for the merger of the ABA and NBA. You see, I feel that I would much rather have a franchise strong so that a number of athletes have an opportunity to play, rather than have certain individuals making extraordinary amounts of money to the detriment of other athletes or other franchises.

So, of course, you are taking a risk with the franchise if you are leaving a substantial amount of money with them.

I know when I first started doing this, we had more opportunities available to us. Restricted stock arrangements, and security trusts, but gradually Internal Revenue took away some of the possibilities, and we are left with deferred compensation.

It is not as attractive as it once was, because of the present ruling this year where you pay only 50 percent in taxes at most.

It may be more advisable to take the money as it exists now, but when I leave the money there, and I have left an awfully lot of money with the Boston Celtics on behalf of a number of players, I am concerned about the franchise, whether it is viable.

There is no way we are able to protect that principle, because it would be constructive receipt if we did it initially, and therefore I am trying to base it on the integrity of the franchise and of the league itself and the commissioner and everyone else involved.

Senator Cook. You are saying if it is set aside in a year in which it is really not earned but is subject to be paid out in a later date that it is considered as income in the year in which it was set aside?

Mr. Woolf. That is right, so that could be very dangerous, and you are taking a big chance on the principle being paid as compensation.

One thing that I would like to get into the record if I could. I know that the Supreme Court has upheld the reserve clause, and I feel very strongly that they really didn't face the issue, and that it is going to take a legislative body such as that which is being proposed in this bill to really face the issue, and I know that most recently I had proposed a plan which would be somewhat of a compromise with reference to the reserve clause. May I just say that the reserve clause, of course, as everyone knows, states that once a player becomes the property of a professional team he belongs to that team for the rest of his life.

No player likes to live under those circumstances. I know that makes them feel that somehow they are either a slave or a piece of property to that team, and they would like to know sometime in their careers they could go and freely negotiate with other teams.

So because of my experiences, I have spoken to many, many athletes, and I have spoken to many, many managers and general managers and owners of teams as to a possible compromise.

I have come up with a plan which I don't say is perfect, but hopefully it would be at least opening the door to some discussion, and I know that the players have said they could live with this, and the owners say they can, but publically they can't say that.

Basically, what it is, instead of having the plan as it is now, I am suggesting that a player, once he becomes a professional, would be the property of that team for a period of 5 years. Now, they still could trade him or sell him or do anything they want, and he doesn't have to sign a 5-year contract, he could sign a 1-year, 3-year, or whatever he wants to do.

But he would be their property for 5 years. I support the 5-year period because I felt that it is a two-way street. Management makes an investment and they are entitled to a profit, and they are paying a large bonus for a player, and certainly the player owes it to the team to regain that investment, and this 5-year period provides the repayment.

I also feel the 5-period gives the team a chance to set up a rapport between the team and the player so that he would want to stay. It would also give a 5-year period for the player to establish himself within the community. I am hopeful that all players would like to stay with their team.

When you get to a position where, after 5 years no rapport has been set up, then I don't think any ever will be, and the player wants to leave, I would suggest that what we have is a common pool of players who at this juncture feel they would like to leave their team. At that time I would hold what I called the veteran's draft, and it would be made up of all players put in the pool, and it would be run the same way as the college draft is run now, with the last-place team picking first.

By this draft, the wealthy teams would not have the opportunity to get all the talent, because they would be the last teams picking. In addition to that, I feel that a greater parity would be established throughout the league, and over the years I think it would be fair to everyone throughout, and in addition to that, there would be no possibility of tampering as possibly now exists with someone saying, "Why don't you show discontent and come with our team," or something of that nature?

I suggest with this veteran draft, a team would be given 30 days to make a selection, and if they were not able to sign the player within the 30 days, then they would go into the secondary phase of that draft and follow with the same format, so that the player would have another team to negotiate with.

They also would be given 30 days to speak with that player; and if they were not able to sign him, then it would go into the third phase of the draft, which would be 30 days later, and then he would have a further team to negotiate with, so that at this juncture he has four

teams in the year to negotiate with, and the last team is the one he would have to make some type of agreement with, even if it was only 1 year.

Once a fellow becomes eligible for the veteran draft, he could enter it again every year. I realize that this is a compromise, but it is a much better situation than we now have existing. I know there is going to be some modification, and I know in my heart it will come shortly but nobody is doing anything but just talking about it.

I look favorably on your bill, because I think it is a natural step to get things started.

Senator Cook. Well, you have me curious now. Let's take some of the players who you represent that have become superstars within the framework of their sports. Say they are in the \$100,000 category. How much more money can they earn with the various speaking engagements and endorsements? Can you give us an example?

Mr. Woolf. Yes, I represent Jim Plunkett; in fact, he lives with me in my home. He will make on the outside as much as he is making for playing football. So there are substantial amounts of money available. He has to be a superstar. It doesn't really go to the average player. In fact, I represent Walter Patulski, who was the first draft pick in the Nation this year; and Sherman White, who was the second draft pick in the Nation this year; and I have been fighting the cause of the football linemen of America because I felt they were not being compensated properly within the structure of football.

They pay the quarterbacks most and then the fullbacks and then the wide receivers and then the defensive players, and then lastly, the linemen, and I think he should be paid as an athlete, not for the position he plays.

The lineman takes a terrible beating, but he doesn't get writeups or endorsements or personal appearances. So I feel it is bad enough that he doesn't get these things and in addition still not receive the proper money for playing.

Senator Cook. Let's be very honest about it, Mr. Woolf. You don't really feel the management of the team itself should take up the slack in the negotiation of a contract that an offensive lineman has because of Saturday afternoon television or Sunday afternoon television or Monday night?

Are you really saying that management should pick up that slack for a lineman who is outstanding?

Mr. Woolf. No, I say an athlete should be paid for his efficiency as an athlete, not for the position he plays or the publicity he receives. I think he is as important to the team as any player but the quarterback. I will have to differentiate with respect to the quarterback.

But I feel the lineman is important. I think the very fact that the most valuable player in the National Football League last year was Alan Page, who was a defensive lineman, speaks for itself. So I think he should be compensated for being a superstar.

Senator Cook. I still would like to get back to this situation, of the contract as such. Let's take the position that Frank Howard finds himself in now. Here is my son, a Little Leaguer who, the first time he met the President of the United States, asked him if he knew Frank Howard, and this is the attitude of many young people in the sports field.

Now, what happens to a man like Mr. Howard, who is now sitting on the bench? He is such an expensive man that they are not playing

him, but rather are hoping somebody picks up his contract. If they don't pick it up for his current salary they will pick it up for part of it, and the team that presently has him is that much off the hook.

Mr. WOOLF. I think that is a mistake of overnegotiating a contract. Sometimes you have negotiated a contract which is really not in the best interests of the player. I know I don't feel that you are supposed to get the maximum compensation for the athlete to the detriment of the team or the sport itself.

Sometimes you can overprice an athlete, and there are many of these retirements you hear about that are really just a case that they don't want to go on with the athlete, because he has outpriced himself.

Senator COOK. You said that one of the problems was the antagonism and the animosity that now exists between management and the players. Would you somehow or other address yourself to the fan?

Mr. WOOLF. Senator, could I just say this, and I meant to say this before. Everything that we are reading about is extraordinary. It only takes a few bad players to create a bad atmosphere to make the public think that they are perhaps avaricious. It only takes a few bad agents or representatives to create a very bad atmosphere, and it only takes a few bad owners to create a bad atmosphere.

I would like to very much say that these problems that are created, are created by very small minorities. For the most part, I find professional athletes to be very, very fair. He wants to receive a fair market value. I don't remember ever having one come to me, and say, "Give me something I don't deserve."

I also have found management to be extremely fair. In most instances, that is. A lot of them have strange peculiarities as to what may be fair or not fair, but in their own hearts, they think they are being fair.

I take an attitude that a team and a player are like a family, and that I am an outsider, and I feel there is no way the team can be a championship club unless they work together as a close group, and I don't want to do anything while representing this player to detract from their family relationship in any way.

I feel I am an outsider, and I hope when I represent a player, the team is looking upon me as someone who is trying to help someone in their family, much in the same way as a family doctor.

So, I try to be concerned with both sides, and I am concerned with the fan also. I am concerned with the high prices of the tickets, because he is actually paying the tariff, and I realize that.

Senator COOK. Let me pose a question to you, and then I am going to the floor to vote. In relation to the avarice you talked about when you were interviewed by George Sullivan, have we gotten to the point—and think about this—where because of that degree of avarice on the part of both the players and management, the guy who is really lost in this whole thing is the fan, and he is the guy who is really paying the fare?

Now, I will go vote, and I will be back.

(Recess.)

Senator COOK. Go right ahead, Mr. Woolf.

Mr. WOOLF. Would you please repeat the question?

Senator COOK. In essence, what I am really saying is, what role does the fan play in all this, that you see?

Mr. WOOLF. Well—

Senator Cook. We are going to digress quite a bit, but take the Buffalo Bills' situation. Obviously, it is either a desire to increase one's net profit for the year, or the cost of the team has become exorbitant in relation to player contracts, that at least in the Bills' case, they now sell you tickets for a 10-game schedule.

It is only a seven-game schedule, and there are three preseason games. They don't play their No. 1 players. They try out plays; and yet for the benefit of the coffers, the Buffalo Bills are ahead some \$470,000 in ticket sales alone. What does that do to the fan reaction?

Mr. WOOLF. I differ in my opinion. My heart goes out to the Buffalo Bills. I just finished negotiating with them for Walter Patulski, who is their first pick, and I understand their situation.

I believe a team is entitled to a profit, for they have taken the initial risks, they have made the initial investment, and they take all the losses. I meant to put this in the record. Also, if I may, I believe in the sanctity of a contract and have refused players who wanted to renegotiate their contract for a good year, because I have never had an athlete come to me and say, "You know, I had a bad year, and I think I will return some of the money." That has never happened.

I try to look on both sides; and in the case of the Buffalo Bills, nobody seems to have sympathy with a team when they have been losing money year after year, and no one came forward to reimburse them. To now say to a team, "You can't sell your tickets this way" seems to be somewhat unfair to me. It seems to be a matter of private enterprise.

Senator Cook. All right, Mr. Woolf, but is there, or is there not, a schedule, and do you consider three preseason games as part of a team's schedule?

Mr. WOOLF. No, I don't, but what is wrong with a team saying that if you want to come to see our games, then I suggest that you come to see the exhibition games also?

Senator Cook. I don't mind your saying that you suggest they come. I just have some degree of objection to demanding that you come or you can't have the season tickets.

Mr. WOOLF. If you start going through the financial structures of the teams, you find that the exhibition games are the differences between being in the black and being in the red.

Senator Cook. Are you saying, then, that the league should consider extending their schedule?

Mr. WOOLF. Not necessarily.

Senator Cook. Do you think it would be all right if Churchill Downs decided they were not making enough money on the derby and told you, you had to buy tickets to the early morning workouts, and say have you to buy these tickets or you can't come to the derby?

Mr. WOOLF. That would appear unfair to me. I am just trying to say that they are also, of course, taking the risk because someone would have to buy the exhibition tickets that they might not buy the season tickets. It is purely a business venture, and again, if you can look at this from their point of view and realize that they sustain chances of loss year after year, and as of now they only have 23,000 season tickets sold, so that that is really not enough to cover the games they have.

I don't find that offensive myself. However, that does not mean that I am right.

Senator Cook. Would your same attitude prevail if the New York Giants, who have not failed to sell every seat in the place for the past

15 years, were to make an additional demand that you come to three preseason games?

Mr. WOOLF. I might have somewhat of a different attitude if it was sustained over a long period of time; yes. I might have a different attitude. But my heart would still go out to the one who has been sustaining losses.

Senator COOK. Do you know of any other sport—I am trying to think of any other one—in which that could be done? It could be done in baseball, but they seldom play games other than scheduled ones until they get home. So that would be rather impractical.

But do you feel that there is nothing wrong with it?

Mr. WOOLF. I guess I do.

Senator COOK. The staff raised one point which I really didn't stop you on during your discourse, because I didn't want to give you the opportunity to lose your trend of thought. But you were talking about loyalty of a management to a community and loyalty of a player to a team.

The thing that bothers me is that I am afraid we are jeopardizing the loyalty of the fan in many of these instances.

Mr. WOOLF. Sometimes we make a mistake. Take the posture that the fan will take anything, that no matter what they do the fan will go for it.

Senator COOK. Do you think that is their attitude?

Mr. WOOLF. In many instances, no; I would not say overall. A club is like an individual, some people are generous, some are kind, some are selfish and everyone is a little different.

I know in Boston, of course, we have such hockey fever, and I think they are making a mistake. We have the Boston Bruins, and I don't think they are as considerate of the fans as they should be. They are always sold out, but eventually things may change. In many instances there is unfairness to the fan. There is no question about it.

Senator COOK. Don't you think management's attitude is "we will wait until that time comes and see what we can do about it then?"

Mr. WOOLF. Yes; in many instances. But I think that most teams are very concerned about the fan and with the public relations of the team. They are very concerned with anything that may be adverse to the team.

But they also try to do this within the free enterprise system and also try to realize a profit within their industry.

Senator COOK. Let's take the ABA in relation to what you have just said. The ABA apparently faces a situation where every team in the league is losing money, because primarily they are plagued with the contract costs and they are plagued with their acquisitions costs.

Now do you think that as a result of this you can say this business of the player and the management always being very concerned about his fan is in fact a true statement?

Mr. WOOLF. Perhaps not, but I would say that first of all they are in an industry and they are trying to make a profit or trying to stay alive, and second, the consideration is the fan.

It is hard to make the fan your first consideration if you are losing money and you are not doing well. I realize what you are trying to say, Senator, that sports owe something to the fan, and there is no doubt about it.

But we are in a strange industry, and there are only about 3,000 professional athletes, and yet there are millions of fans watching this one industry.

There is no question in my mind that there is something owed to the fan. There is no question about that. But to the detriment of the team where they can't make a living. I don't agree with that, not to the point where they can't be viable, I can't agree with that.

Senator Cook. Let's be fair about it. If we did not have the interests of these millions of fans, you wouldn't have 200 clients.

Mr. Woolf. That is right.

Senator Cook. The only point I am trying to make and trying to put in perspective is that the interest of the fan has been overlooked. The fan can pay it and forget about it, and if you have to raise prices, raise prices. You say there are a number of over \$200,000 a year contracts.

How many over \$200,000 a year or \$300,000 a year contracts can the franchise stand?

Mr. Woolf. I am not saying it is right. In fact, I don't think it is right. I don't think it should be that way.

Senator Cook. Are you saying that it is of such a nature that it is tied in with a very strong and a very sincere public interest to the extent that the commission may well solve many of these problems?

Mr. Woolf. Would you repeat that again? I think the commission would significantly help solve a tremendous amount of the problems and would also be extremely helpful to the fan, because the fan really does not have a voice.

He has the threat of not buying a ticket, but he does not have a voice, and if there were a Federal regulatory board as being proposed here, I think the fan would have a voice, and I think that is very important.

Senator Cook. Thank you, Mr. Woolf, very much. We appreciate your being here. We will be in recess until 10 o'clock Friday morning.

(Whereupon, at 1:10 p.m. the committee recessed, to reconvene at 10 a.m., Friday, June 23, 1972.)

## FEDERAL SPORTS ACT OF 1972

FRIDAY, JUNE 23, 1972

U.S. SENATE,  
COMMITTEE ON COMMERCE,  
*Washington, D.C.*

The committee met, pursuant to adjournment, at 10 a.m., in room 5110, New Senate Office Building, Hon. Marlow W. Cook, presiding.

Present: Senators Magnuson, chairman of the committee, Hartke, Cannon, Cotton, Pearson, Cook, and Weicker.

Senator Cook. We will bring our hearings to order this morning, and our first witness will be Mr. Pete Rozelle, the commissioner of the National Football League.

I might suggest that Senator Ervin said he would be here right after our first rollcall, which will be very shortly, so if Mr. Rozelle will come forward we will get started, and may I say we may have to excuse ourselves for a minute and then we will be right back.

Mr. Rozelle, we are delighted to have you here.

### STATEMENT OF PETE ROZELLE, COMMISSIONER, NATIONAL FOOTBALL LEAGUE; ACCOMPANIED BY HAMILTON CAROTHERS, COUNSEL

Mr. ROZELLE. Thank you, Mr. Chairman. I appreciate the opportunity to appear before you. I have with me Mr. Hamilton Carothers, my counsel. If I may, I will read a brief statement.

Senator Cook. You may proceed.

Mr. ROZELLE. I think I understand the sentiments which have encouraged you, Mr. Chairman, to believe that a Federal agency dealing with professional sports is desirable. The National Football League wishes there were fewer disputes and less controversy in professional sports. We look forward to a time when the sports pages will be devoted more to athletic achievements and team play and less to strikes, litigation developments, contract negotiations, and the business aspects of sports.

But I don't believe that a Federal sports commission is the answer—for a great many reasons. In my view, proposals such as S. 3445 are based on a number of premises which are not supported by the facts.

In the first place, it is simply not true that professional sports are big business. The reality is that professional sports are, in economic terms, very small business indeed. There has not, for example, been a year in the history of pro football when the gross income of all 26 NFL clubs in the aggregate amounted to the gross income of a department store like Woodward and Lothrop's here in Washington.

I don't want to overdo this point—and I know it is not the total answer to the concept of a Federal sports commission—but it is quite

likely that professional football, one of the more successful professional sports, ranks somewhere behind the shoelace industry in economic terms.

This at least raises the question whether the creation and staffing of an agency to deal with professional sports represents a sound expenditure of taxpayers money. The Federal Communications Commission, for example, has an annual budget of about \$32 million and the Federal Power Commission spends about \$22 million annually.

Second, it is a mistake to consider professional sports, simply because they are professional sports, as having any essential elements in common. In terms of their needs, their income sources, their contract requirements, and their business practices, one professional sport bears about as much relationship to another as the movie business does to the television business.

In all of their fundamental aspects, they differ from one another as much as a hockey puck or a baseball does from a football. It would simply not be possible to establish rules which could be applied fairly and reasonably to sports in general.

And anyone who tried to deal authoritatively with the particular and individual problems of each sport would have to have the knowledge of the Almighty, the judgment of Solomon, and the vision of Joan of Arc. I don't find these qualities available in anybody—not even in Howard Cosell.

Senator Cook. He almost said that he found them in you, I might say.

Mr. ROZELLE. He has on a number of occasions, Mr. Chairman.

Third, I cannot accept the premise that professional sports are today inadequately regulated. Indeed, I have concluded that professional football is the most oversupervised, overexamined, and overregulated business in America today.

The National Football League and its member clubs currently operate under the Federal antitrust laws, the National Labor Relations Act, the Federal Trade Commission Act, the Equal Employment Opportunity Act, the Federal Communications Act, the Federal securities laws, the rules and regulations of the Price Commission and of the Pay Board, and under a number of Federal acts dealing with professional sports in particular.

Each member club is also subject to the standard array of laws applicable to the local business, such as the laws of workmen's compensation, local safety and health codes, and local tax laws.

In the 12 years I have been commissioner, the Antitrust Division has conducted detailed investigations of NFL affairs on eight separate occasions—once in court, once through an 18-month grand jury proceeding, once pursuant to a civil investigative demand, and on five occasions through informal requests for documents.

The NFL's television practices have twice been investigated by the FCC. Member club endorsement and licensing practices have twice been investigated by the FTC.

The league's tax practices have been exhaustively reviewed by the IRS on two different occasions and the Equal Employment Opportunity Commission has made a half-dozen investigations of league and member club employment practices.

The league and its member clubs have been involved in four separate proceedings before the National Labor Relations Board. I have per-

sonally participated in as many as 20 different appearances before congressional committees over this period which have examined substantially every phase of NFL affairs.

Six different congressional committees have taken or are about to take testimony on various aspects of NFL operations during the current session of Congress. Professional football may well be the most regulated and supervised business in America today.

I am personally persuaded that most if not all of the so-called problems and issues which arise in professional sports would be more expeditiously and more amicably resolved to the interests of all concerned, including fans, players, and owners alike, if there were not this continuing resort to outside influence as a method of obtaining support for particular positions.

It should also be noted that S. 3445 is not intended to be a substitute for these confusing and often conflicting patterns of supervision and regulation. The bill would expressly preserve the application of all present laws and regulations as well as any future laws which Congress may choose to enact.

Thus NFL players and owners would still have their collective bargaining rights under the supervision of the National Labor Relations Board, the courts would still continue to apply the antitrust laws to one phase or another of sports affairs, and all other Federal and State regulatory requirements would still have to be met. The Federal sports commission would just be another layer of regulation on top of the court, agency, and congressional decisions which seem to emerge almost weekly in the field of sports.

Lastly, I think it misguided to conclude that a Federal sports agency will somehow make whatever problems exist in professional sports simply go away. For one thing, many of the so-called issues of NFL operations are, in my view, based more on popular misunderstandings than on analysis and knowledge of the facts.

I don't hesitate to include within that comment the current criticism of the NFL's so-called blackout practices. We have had on many occasions the experiences of finding that third parties, when they had the opportunity to become fully acquainted with the facts, were willing to acknowledge that a supposed remedy for a particular problem was totally impracticable or that there was not anything realistic about which to complain.

We even had the experience of being sued in court only to have the litigant discover in his trial preparation that the facts were not as had been represented to him.

In major part, this may be due to the fact that everyone believes he understands about professional sports but very few people actually do. This may explain why many sports critics often are inconsistent in their criticisms and objectives.

Some of the most vociferous critics of the Washington Senators' move from Washington, for example, would heartily endorse regulatory principles which would require Bob Short to remain in Washington while they would equally endorse regulatory principles which would permit any or all of his players to leave the team and move to Texas.

In brief, I do not believe that the problem of reconciling the interests of fans, stadium authorities, players, owners, TV viewers, networks,

and amateur athletes is going to be effectively resolved by waving the magic wand of Federal supervision.

If a sport cannot accomplish this itself, through a fair accommodation of the interests of each, the sport itself will bear the penalty.

Senator COOK. Thank you, Mr. Rozelle. We will excuse ourselves and go over to vote. We will be right back. Then, if you don't mind, we will hear from Senator Ervin and then we will call you back.

Mr. ROZELLE. Fine.

(Whereupon, a brief recess was taken.)

Senator COOK. The committee will come to order, and we will now hear from Senator Ervin, who has been involved in the problems of the NBA and the ABA for quite sometime. We are delighted to have you here this morning, Senator.

#### STATEMENT OF HON. SAM ERVIN, JR., U.S. SENATOR FROM NORTH CAROLINA

Senator ERVIN. Thank you.

A professional football player and baseball player are bound, like no other American, to their owners for life. The basketball owners want a slice of the same pie. I believe that the major controversies in sports today that should be appropriately considered by Congress arise from these simple facts.

Last year during the Antitrust Subcommittee's hearings on the basketball merger legislation and early this year in an article in Sports Magazine. I mentioned that I thought serious consideration should be given to a Federal sports commission bill if the basketball owners succeeded in persuading Congress to give them full monopoly powers over their sport, including lifetime monopoly control over their employees or players.

I used the Federal sports commission concept to illustrate the broad monopoly powers which Congress confers upon the sports industry when it exempts them from the antitrust laws, and I meant it only to serve as a warning to the owners of professional athletic teams that if they didn't give their employees or players the same rights to contract as other Americans then maybe they should be treated as other recipients of federally granted monopoly powers.

In other words, perhaps professional sports teams should be treated as other public utilities and have their profits regulated, their ticket prices set, and their ability to move to another town determined by a Federal bureaucracy in Washington.

In no way should my warning to the owners be construed as promoting a Federal sports commission bill as being beneficial to sports. To the contrary, I believe it could stagnate professional sports and institutionalize many of the barbarian player-management practices which now exist throughout the sports system.

After much reflection, I just don't have much faith that a Federal bureaucracy will protect the rights of the players.

Even if I were not opposed to the concept of a Federal sports commission, I would have to oppose S. 3445 as it is presently written. The main issues which prompted my fight against the football merger bill in 1965 and more recently the basketball merger could be left untouched by this bill.

These issues are, of course, the reserve clause, the option clause, and the common draft. As I read subsection 5 (c) and (d) of S. 3445, these anachronistic assaults on an individual's freedom to contract could become part of our law forever.

Subsection 5(d) gives the Commission the right to regulate the form of player contracts. Thus, a Federal sports commission could perpetuate rule 3 of the major league baseball rules which states in part:

\* \* \* contracts between all clubs and their players in the Major Leagues shall be in a single form which shall be prescribed by the Major League Executive Council. No club shall make a contract different from the uniform contract or a contract containing a non-reserve clause, except with the written approval of the Commissioner.

In order that everyone understand exactly what a reserve clause means to an individual, I would like to read into the record part of Justice Marshall's dissent in the *Curt Flood* case. In an eloquent description of the reserve clause he said:

"He had no notice", speaking of Curt Flood, "that the Cardinals were contemplating a trade, no opportunity to indicate the teams which he would prefer playing and no desire to go to Philadelphia. After receiving formal notification of the trade, petitioner wrote to the Commissioner of Baseball protesting that he was not 'a piece of property to be bought and sold irrespective of my wishes' and urging that he had the right to consider offers from other teams than the Phillies. He requested that the Commissioner inform all of the major league teams that he was available for the 1970 season. His request was denied, and petitioner was informed that he had no choice but to play for Philadelphia or not to play at all. "To non-athletes it might appear that petitioner was virtually enslaved to the owners of major league baseball clubs who bartered among themselves for his services. But, athletes know that it was not servitude that bound petitioner to the club owners; it was the reserve system. The essence of that system is that a player is bound to the club with which he first signs a contract for the rest of his playing days. He cannot escape from the club except by retiring, and he cannot prevent the club from assigning his contract to any other club.

Mr. Chairman, I think it is atrocious that this servitude is going on in 20th century America and any sports legislation that passes Congress should abolish it. Despite its implications for baseball, the *Curt Flood* case does stand for the proposition that in other sports, the reserve clause would be found illegal.

There is no question that there are many problems facing professional sports today. However, all businesses have problems and in order to determine the need for a Federal Sports Commission, I believe it would be helpful to examine the declaration of purpose as contained in section 2 at the beginning of S. 3445.

This declaration really provides the alleged basis for Federal action and a Federal Sports Commission and should be looked at very closely for it itemizes many of the problems which people feel, rightly or wrongly, are affecting present day professional sports.

The Congress hereby declares that the public has a right to a stable, financially sound professional sports system, that unstable conditions now exist within professional sports, including the arbitrary sale and transfer of team franchises, the pirating of professional athletes by the various teams and leagues, inequitable arrangements relating to the broadcast of professional sports events on commercial television, inefficient and disruptive mechanisms for bringing amateur athletes into professional sports, and uncertain conditions concerning the forms and provisions of player contracts.

Let's consider these statements one at a time:

1. "Congress hereby declares that the public has a right to a stable, financially sound professional sports system."

In the first place, I do not believe that the public has a right to a stable sports system any more than we have a right to a stable motion picture industry or a stable aerospace industry. But even more than that, I am not sure that sports would really benefit from certain types of stability.

In other words, if stability has been paramount there would have been no American Basketball League with its new rules, and no American Football League. The emergence of these leagues upset the status quo, rekindled the old issue of a player's right to bargain with more than one team, and brought professional sports to millions of additional Americans.

Also, I do not believe the public has a right to a "financially sound professional sports system" if they don't support teams. I just do not believe that the U.S. Government should be in the business of propping up failing businesses which is the issue that would ultimately confront the Sports Commission in some cases.

I opposed the Government's guarantees to Lockheed Aircraft and the subsidies for SST. I believe that in our economic system an ill-managed business or one which people are not willing to pay for should face the possibility of failure, if it can reap the benefit of success.

If a city does not support a team, does it have a right to that team? I don't believe it does. We have had experts from the Brookings Institute testify at the antitrust hearings that several of the weak teams in the ABA were not drawing as much as first run movies. There is no way that a Federal Sports Commission would help this situation.

How would the Government guarantee the public's right to a financially sound professional sports system? Would franchises be allowed to move? Would ticket prices be raised if the people didn't show or would there be Federal financial subsidies? We don't know, but I believe it would be in the better interest of sports to leave these problems to the marketplace.

I quote the second reason advanced for the bill:

2. "What unstable conditions now exist within professional sports."

Professional sports are now undergoing growing pains of the tremendous growth in the number of fans attending games and the impact of television. In the field of labor management relations, the sports industry is actually being brought kicking and screaming into the 20th century.

As I have said on numerous occasions, there are no other group of employees in the United States that are bound to one employer as professional athletes. This has to change and until it does, there will exist in sports a degree of tension between players and owners, and I believe this tension should exist until the last vestiges of this slavery are removed.

More than the reality of chaos, I believe that an illusion of chaos now exists in sports, particularly in basketball. In many cases, this illusion has been contrived to force Congress to pass merger legislation and confer monopolistic powers on the owners of sports teams.

For example, last week Jack Dolph, the former commissioner of the ABA, told your committee that "in the absence of a merger, professional basketball as we know it cannot survive." Yet, 3 days before Dolph's testimony, the New York Times quoted Bill Daniels, the president of the league, as saying "We (the ABA) will be a stronger league in 1972."

And 2 days before his testimony Jack Dolph was quoted in the New York Times on June 14 as saying that the ABA "will be strong enough (next year) to compete with the National Basketball Association. We will be going with our varsity."

Also, if things are so bad in basketball, why have eight owners of basketball teams acquired, for large sums, hockey franchises in the absence of a merger in that sport, and I would interpolate in my written statement, why are these teams being sold, the franchises being sold, for constantly increasing prices?

The Antitrust Subcommittee has been told repeatedly by the basketball leagues that most of the teams were losing money, and in order to save the sport, the merger had to be consummated. Yet, when we had two economists from the Brookings Institute, Dr. Roger Noll and Dr. Ben Okner, examine the financial records of these clubs which were supplied to us they concluded:

The data simply do not support the view that most of the teams in the ABA and many of the teams in the NBA will soon fold if something is not done soon to put a brake on "rapid acceleration" of player salaries.

. . . the results do not reveal a financial disaster in pro basketball. A few teams have had a few very bad years, especially the weaker ABA teams. But most teams in recent years have performed well enough to be viable long-term enterprises, even in the ABA.

I would interpolate in my written statement here that it appears from testimony offered before the Antitrust Subcommittee of the Senate Committee on the Judiciary that the only way you can pass upon the validity of this claim that the basketball teams are losing money is to have the owners produce not only the income tax returns of the clubs, but also their individual income tax returns, because in most cases they are allowed under the tax laws to deduct them on the individual income tax returns.

Furthermore, the owners own franchises for concessions, which are organized by separate corporations. In some cases they own the stadiums in which the teams are played under separate corporations.

Yet when I called upon these owners to produce their income tax returns, which are the only real evidence of the truth of their claim that they are losing money, they threw up their hands in horror as if I had laid foul hands on the Ark of the Covenant, and they have refused to this day to produce their income tax returns.

They wouldn't even let their own accountant who was testifying for them, Dr. Robert Nathan, have copies of the income tax returns. They just picked out certain figures and gave them to the committee.

I think when a group of men come before Congress and ask Congress to put athletes into economic bondage to them on the pretext they are losing money, they should be required before Congress acts to produce the best evidence, which would either prove or disprove that claim.

3. "Unstable conditions now exist within professional sports, including the arbitrary sale and transfer of team franchises \* \* \*."

I think this raises a very legitimate question: If a professional athlete can bargain with only one team under reserve- and option-clause conditions, why should an owner be allowed to move or sell his team with complete impunity?

However, I believe that the only reason to prevent a team owner from selling or transferring his team is the owner's refusal to allow an athlete to sell or to transfer his services when his contract has expired.

If the owners would agree to allow professional athletes to become true free agents when their contracts expire, they certainly should be allowed to maximize their profits by moving or selling their team.

Actually, I think there has been very little "arbitrary" sale or transfer of franchises among the various sports leagues. Usually, these moves are made for good economic reasons—attendance has dropped off at home or there is the promise of greater attendance somewhere else.

In either instance, a move is made with the expectation that more people will come out to enjoy the sport and increase the profit of the business.

It seems to me that most of these moves are in the public interest, because even though you are taking a team from one city, you are giving it to another. Which city deserves the team most? I have more faith in the economic marketplace deciding this issue than a sports commissioner.

What does bother me is the ease with which team owners cloak themselves with the national interest to get merger legislation and special privileges to place players in bondage and then shift to their free enterprise hat when they want to change cities. They should realize they can't have it both ways.

4. "Unstable conditions now exist within professional sports \* \* \* including the pirating of professional athletes by the various teams and leagues."

If "pirating of professional athletes" means the signing of a member of the American Basketball Association by a member of the National Basketball Association after the player's contract with the ABA team runs out, then pirating is as American as apple pie.

However, I feel sure the bill is referring to the recent large-scale breaking of contracts by basketball players to secure a better deal in another league. I agree that it is damaging to sports to allow this to continue, but it is damaging to any business system to allow individuals to break contracts with impunity. Our court system exists to enforce contracts.

I believe the contract breaking to jump leagues will stop for two reasons. First, there is every indication that the bidding war for players in the two basketball leagues came about because of attempts to force a merger by the ABA and attempts to kill the ABA by the NBA.

The Antitrust Subcommittee heard testimony from two or the most outstanding sports economists in this country who testified that resolving the merger issue, that is, by either allowing it or killing it, would cause the extreme bidding and frantic attempts to acquire players to cease.

The economists said that once the merger issue is resolved, salaries will drop and stabilize and the constant temptation to break a contract will expire.

Second, the case of Billy Cunningham of the Philadelphia Warriors, who has just been required by the Federal court to honor his contract with the Carolina Cougars, illustrates that the courts are going to enforce valid contracts and players are not going to be allowed to break legitimate long-term contracts every time they get a better offer.

Actually, individual contractual matters in basketball, as in other businesses, should be determined by the court. We don't have a Federal

movie commissioner settling contractual matters between studios and the stars and it shouldn't be the case in sports. Athletes should honor their contracts but the enforcement vehicle is the courts.

5. "Unstable conditions now exist within professional sports \* \* \* including \* \* \* inefficient and disruptive mechanisms for bringing amateur athletes into professional sports."

Actually, the common draft in the monopolies of football and baseball work very efficiently to bring amateur athletes into professional sports.

It is only in basketball that professional teams have raided colleges and are signing students before they graduate and this is a direct result of no merger legislation. While football and baseball do draft students efficiently and do leave them alone until they graduate, I believe that combinations which divide up talent in this way without any agreement on the part of the individual violate very basic human rights.

I assume the bill's declaration means that lack of a binding common draft in basketball is inefficient and disruptive, but I much prefer it that way. That is, if a student has the talent, it should be his decision as to whether he signs with a team.

We don't allow the movie companies to combine and agree to keep some latter day Shirley Temple from signing a movie contract until she finishes college and has acted in some campus theater group.

Perhaps the most celebrated signing of a college student this year was the signing of Jim Chones of Marquette University by the New York Nets, for \$1.5 million. In our last day of hearings, the Antitrust Subcommittee had a representative of Marquette testify about the problems which would result from the signing of players like Chones.

Also, we heard college coaches tell us how these signings would disrupt college basketball. Other coaches testified, however, that such signings would not disrupt college sports as only the superstars would be sought by the professional teams. To answer these charges, I read into the record a piece from the New York Times on this very poor, very talented young man's contract signing.

It seems that Chones' father was dead and he was supporting his family. He had been offered a contract previously and had turned it down. In the article, Chones said :

Ever since I turned down the offer last year, I thought suppose I break my leg? Who will take care of me, and who will take care of my family? Growing up, the worst thing was seeing my father always trying but never making it. We were bankrupt five or six times. We had to spray our house for roaches, sweeping them up in a pile. When the college recruiters came, the stink from the dead rats in the hollow walls embarrassed me.

So Jim Chones signed up, and I cannot imagine anyone wanting to deny him or other talented youngsters that right even though it might be a little disruptive or inefficient.

In recognition of the opportunities which might be presented to a talented youngster, the Atlantic Coast Conference has recently established an advisory group to assist any player that might be approached by a professional team.

The advice which the conference gives includes legal advice on contractual matters, tax assistance, and investment counseling. I believe this action by the ACC is forward looking and represents the most

decent attitude I have heard of regarding a college's moral responsibility to guide its students.

The efficient and nondisruptive distribution in football and baseball of college sports talent into professional teams is one of those things which is wrong with the system. Football's and baseball's common draft denies a student with a short-lived talent his right to participate in the All-American dream where anyone can make it if he is talented. This common draft should not be protected by merger legislation in the case of basketball and the protections which extend to football and baseball should be revoked.

Now I digress a moment to point out this provision of section 5(c): "The Commission shall have authority to promulgate rules or other regulations which relate to the mechanisms or procedures for transferring amateur athletes into professional sports."

There is nothing in the world but an authorization for the Commission to establish for all sports a common draft. Now we have a common draft in the baseball field, and to a more limited extent in football.

Under this common draft system, these owners of the clubs, the athletic clubs in the league, sit down at a table and emulate the example of the Roman soldiers who were guarding the cross, when they divided the garments of Christ among themselves.

They sit around the table and divide among themselves every amateur athlete in the United States that has any outstanding athletic skills with respect to the sport in the particular league.

They enter into an agreement that each of these amateurs shall receive one offer of one contract from only one club and that if he refuses to accept that offer that none of the other owners of any of the other clubs will make him any offer, and that therefore he will be excluded from that athletic sport.

When I called attention of basketball owners who were seeking to establish such a common draft that people were denied the liberty who possessed the skill to play in the only sport in they possess skill, they said, "Well, they can go to Europe if they want freedom."

I thought that we ought to amend the Star Spangled Banner by striking out the words that boast and say our country is the "land of the free."

I want to comment on the sixth reason given in the establishment of a Federal Commission on Sports.

6. "That unstable conditions now exist within professional sports, including \* \* \* uncertain conditions concerning the forms and provisions of player contracts."

This of course concerns the reserve clause and its football equivalent, the Rozelle rule. As I have said on other occasions the common draft and the reserve clause in sports are comparable to the newspaper industry deciding that a college journalism graduate would either work for the newspaper in Anchorage, Alaska, at the salary offered or not work at all.

Thereafter, the journalist would have to continue to bargain with only the Anchorage Gazette even though his contract had run out and he had won the Nobel Prize for literature.

If the Anchorage Gazette decided to trade him to the Nome, Alaska, newspaper, he would have to go to Nome and deal with them or not practice his profession. No matter how you cut it, this is unfair.

I feel that any legislation that is voted on by Congress, merger bills or Federal Sports Commission bills, should exclude an amendment which states that there shall be no restrictions whatsoever on a player's right to contract for his services when his contract expires, and no restrictions whatsoever on an amateur's freedom to contract with any professional club he chooses.

This means no Rozelle rule and no reserve clause and no common draft. Actually, Congress should amend the present law this year to get rid of these matters in football and baseball without waiting for the basketball merger bill. I believe it would solve many of sports' problems.

Basketball is surviving with this sort of arrangement, and I feel, from the financial data I have seen, is surviving fairly well. Football experienced its greatest growth in teams when it operated this way and I hope the chairman will consider placing an amendment of this sort in his sports bill.

I would like to say one final word to the owners of professional sports teams: If restrictions on a player's right to contract continue and a sports commission bill does become law, a Commission won't just limit its decision to Astroturf.

I have seen enough Federal agencies in action to know that the Commission road will lead, inexorably, to the regulation of ticket prices and profits.

There is just one thing and I am through. A short time ago the Supreme Court in the case of *United States v. Atopka Associates, Inc.*, a decision handed down this year and which is quoted in the dissenting opinion in the *Flood* case by Justice Marshall, had this very significant and true statement:

Antitrust laws in general and the Sherman Act in particular are the Magna Carta of free enterprise. They are as important to the preservation of economic freedom, and our free enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms.

Now these provisions of section 5 of the bill that I have alluded to would give this Commission the right to destroy the free enterprise system as far as athletic sports are concerned, because it would give them the power to deny to the athletes the right of freedom of contract, and in so doing it would destroy the free enterprise system insofar as its application to sports are concerned.

I think that with all due respect to the authors of the bill, I think the bill is inconsistent with the Preamble of the Constitution of the United States which states that George Washington and his contemporaries in the Convention of 1787 ordained and established that instrument to preserve the blessings of liberty for themselves and their posterity.

These efforts to deny it, to place athletes under economic bondage to owners of clubs are a denial of basic freedom, and there is no reason why an athlete should not have the same right to sell his skill to the highest bidder for cash on the market as a lawyer or a doctor, or any professional human has.

I thank the committee for their patience in hearing me.

Senator Cook. Thank you, very much, Senator. Contrary to your criticism of S. 3445, which anybody in the legislative field should take in the manner in which it is intended, what your prepared text does

state very effectively is that there are a lot of problems in the professional sports field today.

As a matter of fact, your last remark about the Constitution of the United States and the freedom to contract, that has already been destroyed in the professional field, has it not?

Senator ERVIN. It has been destroyed in the *Curt Flood* case.

Senator COOK. Rather than dwell on some of the points you have made in here, what do you suggest? What do you suggest either that the sports do themselves in their respective fields, or what do you suggest, if Congress take any action, what action it take?

Senator ERVIN. These professional sports are owned largely by millionaires and very wealthy corporations. I suggest they do like other Americans who engage in commercial businesses. There should be no doubt that these professional leagues are commercial businesses, and that they should have the free enterprise system, and that they play their players wherever their skills command, and that after the player has fulfilled his contract, his written contract with them, that that player be made free just like all other Americans to go to any other team for the highest price he can obtain.

Senator COOK. Let me ask you: You said if a city doesn't support a team, does it have a right to that team. Let me ask the opposite. If a city absolutely supports a team, does it have to stand a chance of losing that team?

Senator ERVIN. As long as we have the free enterprise system I think it does.

Senator COOK. As long as they have the privilege of blackout, and an exclusive franchise in the community, should the New York Giants, who have had a sellout season for years, have the right to move?

Senator ERVIN. I think they have as much right to move that team as the Senator from North Carolina would have to move to Kentucky.

Senator COOK. The city of Kansas City assumed a \$67 million bond issue, because it said it had to have certain facilities for the benefit of sports. With all the activities the sports will be generating in that community, the best those sports can contribute toward a \$67 million bond issue, assumed and passed and the cost factor and the tax factor assumed by the people, the best the facility can generate is \$8.5 million.

Do you think that team should summarily pick up and leave Kansas City? Is that what you call part of the free enterprise system?

Senator ERVIN. Yes, it is. Otherwise, we tie the team just like the reserve clause now ties the player to the team, just like in ancient Russia they used to tie the serf to the land.

I think everybody has the right to move.

Senator COOK. What about the debt?

Senator ERVIN. The city ought to exercise a little more wisdom in writing its contract with the team.

A friend of mine said he saw a little girl about 7 years old weeping as if her heart would break. He stopped and asked her why. She said, "I might grow up and marry and have a little girl like myself, and the little girl might die."

Senator COOK. Senator, that is the very point. The very point is that the owners of those respective franchises said to the people of Kansas City, "We want these new facilities and we want you to build them, or we are not going to stay," and they built them and they still have the option to leave.

So are you saying they operate within the free enterprise system?

Senator ERVIN. They have not left. He exercises his free enterprise right to remain.

Senator COOK. He exercises his right to threaten the citizens of the community every other day.

Senator ERVIN. They have not left yet. If we are going to invoke slavery to keep anybody from operating in the free enterprise system, we are going to have a different country under God.

Senator COOK. Nobody complained about the reserve clause until just a few years ago.

Senator ERVIN. They did not have it until 1965.

Senator COOK. When you say they have not left yet, that is like depending on Congress to build an ark for the people over in Alexandria.

Senator ERVIN. We never do act until the condition arises, and sometimes we are very slow to act then.

Senator COOK. That is correct.

Senator ERVIN. But I would not want to establish a Federal Commission that would want to tell Congress when it had to act.

Senator COOK. I would hope that we in our wisdom would not do that.

Senator ERVIN. I hope so, too.

Senator COOK. Let's talk about the situation where a franchise is moved because the fans do not support the team, and therefore they go because it is financially more lucrative where they are going, and there will be more spectators where they are going.

Let's take Mr. O'Malley moving the Brooklyn Dodgers to California, because of a real estate deal he had. Would you really say he walked out of Brooklyn because he was going out to California to have more fans and a bigger stadium or going because of his own personal benefit?

Senator ERVIN. I have never known a man to do something consciously for his own economic disadvantage. I think—that probably the reason he moved, I don't know that particular case, but I know a lot of young people living in a small town have better economic opportunities in the cities, and they go to the cities.

I wouldn't pass a law saying they have to stay in a small town to keep them from taking advantage of economic opportunities.

If, under this bill, that is exactly what will happen to athletes, not only during the time they are tying up a contract that the team is required to employ them, but even after they have served out their contract and the time has expired.

Senator COOK. His was the only team in the major leagues that had drawn over a million people for 15 straight years, and yet he decided to move out.

Senator ERVIN. I think that would have been a new site for a new team to move in.

Senator COOK. I might say to you, this is a very interesting point. This is very interesting point, Senator.

Senator ERVIN. Somebody has handed me a slip of paper. It says when this man moves from Brooklyn to Los Angeles, his attendance increased 100 percent.

Senator COOK. Look at it now, Senator. As a matter of fact, to the detriment of the sports fans on the west coast, he just sold one of his best ballplayers.

Senator ERVIN. He probably sold him because he can make more money. The way they work, they buy a club and they amortize the player contracts, allocate about 75 percent of the purchase price to the player contracts and amortize those in a period of 3 or 4 or 5 years under our tax laws, and therefore recover 75 percent of their investment, and then they hold the club a little while and they sell it, sometimes, and they get a big profit on capital gains, subject only to the capital gains tax, and then they get other inducements to move.

Senator COOK. Are you saying we are looking forward to that franchise being sold out there, then?

Senator ERVIN. I don't know. I am not in the market for a franchise. I never have amassed enough money like the owners of these athletic clubs have to be able to buy clubs, or a franchise.

I am still for the free enterprise system, even though I have not prospered like they have.

Senator COOK. I am, too, Senator. What you are really saying is that we ought to cut across S. 3445 and take all the exemptions away from all sports at all levels so that we don't have that problem now and in the future.

Senator ERVIN. The argument for putting these restrictions on the right of freedom to contract by players, binding them to teams, is exactly the same argument that people in my part of the country used to use in former generations to justify slavery.

Senator COOK. I might say to you that there are some people who disagree with you. Mr. Rozelle just testified that there is so little profit in football, that it is quite likely that professional football, one of the more successful professional sports, ranks behind the shoelace industry in economic terms.

Do you think if it is that bad off—

Senator ERVIN. Mr. Rozelle may have studied football more, but I think football is pretty prosperous, and it is prosperous of something other teams are not willing to do, and that is they divide the gate receipts between the home team and the visiting team. I believe on a 60 to 40 basis, whereas under the terms of the proposed basketball merger, the home team gets everything and the visiting team gets nothing.

Senator COOK. You say in your statement you make comparison between sports figures and people in the movies.

Well, the only thing that I disagree with you on about that, Senator, is that when a movie is made, you as an individual have a right to go to see that movie in one given community maybe at 10 different theaters, and you can see it at any particular time they are running it.

So you have a hundred opportunities in that day, or 200 opportunities in that day, to see the same thing. But you can't compare that to the fact that you can see one football game or one baseball game, and there it is.

Somehow or other they don't have reruns on football games and reruns on basketball games or baseball games at 11:30 or 12 o'clock at night.

So I think there is a difference. There have been reruns on television. I see them constantly. As a matter of fact, I think the moving picture theaters are on the decline. We used to have them in little towns

like I live in, and they are all gone, because television has taken that, too, and people see all these sports on television, and sports gets a lot of money out of television.

Did you in your hearings get figures, for instance, how much the ABA made off television?

Senator ERVIN. Under the merger agreement, they wouldn't get anything for 2 years.

Senator COOK. How much are they getting now? Did Mr. Dolph tell you?

Senator ERVIN. The NBA was getting a pretty considerable sum.

Senator COOK. Is \$300,000 a team—

Senator ERVIN. The merger agreement there on basketball, it was sort of like the Bible, in one way, it was going to take away from those that have not and give to those who have because the ABA was going to keep the television time for 3 years and the weaker teams had to pay \$250,000 to the bigger teams to be allowed to merge. So they took away from those that have not and gave to those that have.

Senator COOK. What are your legislative recommendations, Senator?

Senator ERVIN. My legislative recommendations is to have the same kind of a system in sports that you had when Ty Cobb was playing for the Detroit Tigers, and Babe Ruth was playing, have a free enterprise system, without a Federal Commission to put down the form of contracts and without a Federal Commission that would have power to continue these iniquitous reserve clauses and the common draft.

If a free enterprise system is sufficient to make America a great country as it has made it, economically, if it is good enough for everything else, it is good enough for athletic sports; and if any industry, or any sport, cannot exist without reducing the employees of that sport to a condition of economic bondage, it would be better for America for that sport to go out of existence, because at least we would still have our liberty.

Senator COOK. Would it be your idea then, if a bill similar to this, or one that would be marked up in this particular area, that you would submit amendments on the floor that if any establishment as you set forth in the article you wrote in Sport magazine, that if a merger of the NBA and ABA took place, that a Federal Sports Commission would be necessary. I am sure I am correct in that; I am sure that is what you said.

Senator ERVIN. I suggest that if Congress gave them monopolistic powers to the owners of leagues, whereby they could rob every person in the United States possessing athletic skills, of their freedom to contract and their right to be free men, that the owners of those clubs that demanded those kinds of things could expect to have the Government step in and have the Government regulate everything, including them.

Senator COOK. You said, "Should Congress in a lapse from its traditional wisdom grant a merger to the ABA and the NBA along with the reserve clause and player draft, I think serious consideration should be given to a Federal bill to supervise professional sports," and so forth.

It would set prices, regulate business practices, protect the employees, and so forth. Now, Senator, if in fact these conditions exist today—

Senator ERVIN. This is a great big "if" there. I said if Congress would lapse from its traditional wisdom. I am going to do all I can to keep Congress from lapsing from its traditional wisdom.

Senator COOK. Senator, let me make this particular point. If it is onerous for this to occur between the NBA and the ABA, isn't it in your mind onerous if it has occurred in any other sport, and therefore why would it be necessary to have a Commission if the NBA and the ABA merge if we have already had congressional mergers and if that onerous situation already exists in any facet of the sports world?

Senator ERVIN. I would say to the Senator from Kentucky, if the Congress should lapse from its traditional wisdom and forsake its devotion to the free enterprise system and try to convert athletic sports into something like power companies, which are given monopolistic powers to sell all the power in a certain locality and other people are excluded from it, and such powers as the railroads have, and such powers as the airlines have, I think you would have to go to regulations, because we have no monopolistic power granted anywhere in the States that is not regulated by the Federal Government.

But I am opposed to monopolistic power that gives people control over the activities of human beings and puts human beings under subjection to these millionaires that own these things and these big corporations that own these as playthings.

Senator COOK. Senator, this already exists. Why is it imperative to have a Commission if the ABA and the NBA merge but not when the situation also exists in other sports?

Senator ERVIN. The Supreme Court of the United States about five times, being confronted by Justice Holmes' old opinion that baseball was a sport and not a business and therefore was not subject to the antitrust laws, and before they had the expansion of the interpretation of the ICC and said that these are merely local exhibitions.

The Supreme Court has invited Congress four or five times to do something about it. Now fortunately, there were three of the judges that had enough devotion to the free enterprise system to take the position that the Supreme Court ought not to expect Congress to correct the Supreme Court's mistakes, and the Supreme Court ought to correct its mistakes themselves.

Senator COOK. Senator Cannon?

Senator CANNON. Thank you, Senator. You will excuse my arguing with the chairman.

Senator COOK. We do this quite frequently.

Senator ERVIN. My constituents might retire me today, and I might have to go back as a lawyer and I want to keep in practice.

Senator COOK. As you know, we argue, and we are frequently on the same side.

Senator ERVIN. And I would always rather have you on my side rather than against you. Thank you, Senator.

Senator COOK. Mr. Rozelle?

#### FURTHER STATEMENT OF PETE ROZELLE, COMMISSIONER, NATIONAL FOOTBALL LEAGUE

Senator COOK. Mr. Rozelle, now you find out you have a lot of problems, and this may not be an answer.

Let me make some comments on your statement. First of all, I don't know, obviously, and I probably won't find out, what the respective value and what the respective income of the 26 NFL clubs are, but I would suggest that the gross income of Woodie's last year was somewhere around \$160 million, and I think in the minds of the business world, a gross income of \$160 million really is not too bad.

But I would suggest to you that in that gross of \$160 million at Woodward and Lothrop's, they probably don't have as high a salary level as the NFL has.

So if we could make a judgment on the gross income of Woodie's in relation to the same salary level, we might be able to make a better judgment as to whether \$150 to \$160 million a year would constitute a good gross profit or wouldn't constitute a good gross profit.

I would also say that in your making a comparison that the Federal Communications Commission has an annual budget of \$32 million, I would suggest that that \$32 million of the FCC applies itself to probably better than 400 to 500 television stations in the United States, and probably somewhere in the vicinity of 3,500 to 4,000 radio stations in the country, and I can't see an analogy to 26 football teams.

In the FPC, which spends \$32 million annually, I guess the gross income of the power industry in the United States would be up in the billions of dollars. So I won't foresee than any activity that the Federal Government would take relative to an agency for the sports field would come anywhere near that kind of a budget.

I think the things that bother me, Mr. Rozelle, are some of the things that were brought out during the course of our hearings prior to this time, and some of the things that Senator Ervin talked about today.

For instance, I asked counsel for the NFL the other day for a list of teams that require their fans to buy tickets to exhibition games in order to get tickets to the regular season.<sup>1</sup> I don't know that we have received that information. I know, for instance, two of the NFL clubs that do. Detroit is one and Buffalo is another one.

How does the league justify, for instance, that in order to secure season tickets to the Buffalo Bills, that the sports fan is required to buy three tickets, at roughly an average of \$6 a piece, which represents close to half a million dollars to the Buffalo Bills, to participate as a fan, to what exhibition games that are not played to win?

They are played to utilize rookies, they do not play stars, and activities of those games are reflected in articles and newspapers afterward where coaches say, "Well, we did not play to win, we did not play this game to win. We were experimenting."

Why should a fan be subject to experimentation in order to get season tickets?

Mr. ROZELLE. I take exception to some of your premises, but I will answer your basic question. The league does not justify, Mr. Chairman, because the league is not involved in standardizing prices or ticket policies of individual clubs.

If the Commissioner's office were involved in such a practice, I am sure there would be considerable criticism and perhaps action taken both within and outside the Government.

I am familiar, however, with the reasons that some 12 or 13 clubs sell their preseason games and the regular season games in a

<sup>1</sup> See p. 286 for Mr. Rozelle's answer.

single package. One of the basic reasons would be these new stadiums that have been discussed during the course of this hearing. They needed more utilization of the stadium, more rental income, to help amortize these stadiums.

On some occasions that has been a strong factor, almost an obligation on the part of the club at the time the new stadium was committed by the city. In other words, the cities get additional rental, and they want to be assured of having as much money as they can.

Senator Cook. Let me interject at this point: There is not a new stadium in Buffalo yet. They haven't even voted on it yet, I don't believe, and there is not a new stadium in Detroit. I don't know about the other cities you have reference to, but in the meantime I am quite sure the management of the facility, the civic stadium in Buffalo, is not setting aside any of that income for the purpose of looking forward to paying off the debt of a new stadium that will be built in the future.

Mr. ROZELLE. Mr. Chairman, I was attempting to summarize reasons. I think what I stated was that that was one of the reasons why this has been a practice.

If I may continue, another reason is simply the case of economics and rising costs. Years ago, you would find most preseason games played in nonleague cities. They would be played in the South, in various parts of the country outside the league cities. Considerable travel was involved, and economically it was unsound, and so many clubs who are operating on a vary narrow profit margin or in the red realize that they could generate more preseason income by playing at home. They would have travel costs, and they would be sounder financially, which is obviously the second reason that some clubs went to this plan.

We have, as I said earlier, about 12 or 13 teams that include the preseason games with its regular season, about half the league.

Senator Cook. What do you consider to be the schedule of a national football league team, and I put "schedule" in quotes? The reason I ask that is because in the letter sent out by the management of the Buffalo team, which do not sell out their stadium, they sell approximately 23,000 season tickets a year. Maybe one of the reasons is that they have won 12 ball games in the last 5 years. But they say, "Enclosed is your application for a 10-game schedule."

Do you consider that within the definition of the word "schedule" as you would consider that phrase to include—suppose next year it is 11 or 12, and yet only seven games of that schedule are games that actually determine whether that team wins or loses in its respective division. Do you consider that part of the schedule?

Mr. ROZELLE. There are three components to the schedule: The preseason, the regular season, and the postseason games. As I explained earlier, our office does not get involved in the individual ticket policies of teams. If it did, we would have considerable difficulty, both within the Government and outside the Government.

But when you ask me what the schedule is, there are the three components that I have expressed to you.

Senator Cook. Do you think, just as a matter of principle, that it would be logical for a team to break its schedule down into, say, a 10-game schedule of three preseason games and the regular season?

Mr. ROZELLE. That is up to the club.

Senator COOK. In other words, you don't have an opinion of it yourself?

Mr. ROZELLE. No, I don't.

Mr. CAROTHERS. I might point out that there are tickets available for every game of the Buffalo Bills in every price classification in every section. No one is required to buy and preseason game.

Senator COOK. I think it is nice to take the example of Buffalo, because that is the only one I have, but will you give me as counsel for the NFL teams of the 12 that are totally sold out, which teams require their fans to buy preseason game tickets in order to get their regular season tickets, so that the tickets are not available in all classes and not available in all price ranges as you stated? Because I think this is the crux of it.

I think we both used a rather bad example with Buffalo. But shortly after Mr. Rozelle testified before the House on the merger of the NFL and the AFL, he said no franchises would be removed. Within 90 days, the owner of the Buffalo Bills was in the Courier Express in Buffalo threatening that they would move unless an 80,000-seat stadium were built.

Some of the other 12, whose tickets are all sold out, whose tickets are not available, where a fan has no option of whether to go to a game or not if he wants tickets, and he is still required to buy the tickets to the respective preseason games, which are nothing but high-priced scrimmages.

Mr. CAROTHERS. It is conceivable there is a team that fits that description, but I doubt it.

Senator COOK. I can give you one, the New York Giants, who have one exhibition game.

Mr. CAROTHERS. There are several cities where there are guaranteed sellouts, and there are 12 teams, I believe, that do group their preseason with the regular season; and setting those two together, it might be that there might be a team or two that fits your description.

Senator COOK. You don't think for the benefit of the league, and for the benefit of the sports fans, that that ought to be something that should come under the consideration of the Commissioner or the football league?

Mr. CAROTHERS. One team had a practice of grouping in the preseason games. It abandoned the practice. Sixty-four people out of 47,000 withdrew from the program of the full preseason schedule. Sixty-four, given the privilege—

Senator COOK. What team was this?

Mr. CAROTHERS. Atlanta. I am just saying that as a suggestion that the dimensions of this problem are not what they are commonly thought to be.

Senator COOK. The dimensions of the problem, sir, is that sports is a big business, contrary to the fact that it is somewhere near the shoelace industry. It is a business which requires—as a matter of fact, the absolute and complete participation of the fan, and if it weren't for the fan, there wouldn't be a league. Consequently, under these circumstances, the fact that 64 sought that option is maybe to the credit of the 64, except the 64 lost their season tickets. The others felt it was in-

cumbent upon them to buy those preseason tickets whether they liked it or whether they didn't like it, because it was the only way they would get season tickets.

Mr. ROZELLE. That is not accurate, Mr. Chairman.

Senator COOK. What is accurate?

Mr. ROZELLE. I think what Mr. Carothers stated was that the Atlanta Falcons made the preseason optional, and only 64 did not voluntarily pick up the preseason. The balance retained their seats for the season.

Senator COOK. I would like to read the letters they sent out to their fans, because I think this is important. Again I go back to the Buffalo letter that said if you maintain your season tickets, that you then would receive preference in the new stadium, then that is a subtle way of saying that if you don't buy them, you might be in the end zone when it comes to the new stadium.

Mr. CAROTHERS. I understand the problem, sir, but Mr. Coniglio himself stated on his deposition that he always purchased all Buffalo preseason games before they adopted this practice. Mr. Coniglio stated that he even attended preseason road games.

Senator COOK. I don't want to get into an argument between you and Mr. Coniglio, because that is a matter you will resolve in the Federal Courts in due course. I am saying it seems to me rather odd. I don't quite see the baseball business, for instance, having preseason games at home and requiring that the holder of season tickets buy those particular games, and I am just wondering if in fact this becomes a standard practice—for instance, I can foresee that if Mr. Coniglio loses his suit, and I think you can, too, that every team in the league will do the same thing.

I suggest that if that occurs Mr. Rozelle might well consider lengthening the season, because then I think it would be in fact fair to the fan rather than unfair to the fan.

Let's talk about the New York Giants situation, because your good friend, Mr. Cosell, talked about it at length. Why don't you discuss it with us, discuss the ramifications of the necessity or the lack of necessity for a franchise, as well as a business, to assume its responsibilities in the community to assume some degree of responsibility to its fans, some responsibility toward its employees. Is it right to summarily move, when it has had some 15 years of sellouts in the community in which it is located.

Mr. ROZELLE. Fine. I have talked with Mr. Mara and I have discussed with him the reasons for moving, and they were similar to the reasons of the Dallas Cowboys for leaving the city of Dallas, the Boston Patriots for moving from Boston, for the Detroit Lions contemplating moving out of the city of Detroit to the suburbs.

Basically, it is the fact that in your large cities today, you have little land available, and you also have considerable cost in that land, and this has forced us in some areas—forced the teams—to move out of the city proper.

In the case of the Giants, the Giants' new stadium in New Jersey will be 6.9 miles from Times Square, Manhattan. The present site of the Giant games in Yankee Stadium is 6.6 miles from Times Square. In other words, they are moving across the river. They are crossing a political boundary. The same fans buying tickets and attending Giant games in Yankee Stadium will renew those tickets and watch games in

New Jersey. Some will have a shorter distance to drive, and others will have a longer distance. Those same fans will watch the Giant road games on the New York television station, as they do now.

Mr. Mara told me that when this was a very volatile issue in New York City last fall, that they tabulated every letter and every phone call that came in from people wishing to comment on the contemplated move of the Giants to New Jersey, and it was the combination of phone calls and mail which indicated a 30 to 1 approval on the part of the fans for moving the stadium to New Jersey.

Senator Cook. Do you know how many letters or telephone calls?

Mr. ROZELLE. I have that. There were 2,226 either letters or phone calls supporting it. There were 68 opposing it. In the immediate New York area, Manhattan and the Bronx, there were 276 letters and phone calls supporting it, 23 opposing it, about a 12 to 1 ratio.

A basic Giant reason was the fact that they were very dubious that critical city funds would actually be forthcoming to accomplish what the city was talking about doing to a very old stadium, Yankee Stadium, to accommodate both a baseball tenant and a football tenant. They questioned whether the money would be forthcoming to refurbish the stadium.

Those are the basic reasons that the Giants indicated that they were going into their new home in Jersey.

Senator Cook. There is a very important point, and you have raised a very important point, because you said it was incumbent upon the community to do something, to expend funds. Do you find this is consistent in what we find in most of industry?

Mr. ROZELLE. I don't believe I said it was incumbent.

Senator Cook. Well, I am sure if the city of New York had come forward with taxpayers' funds to renovate Yankee Stadium, they would consider staying, wouldn't they?

Mr. ROZELLE. The Yankees said they would if funds were forthcoming. I am sure the Giants would have, too.

Senator Cook. Do you have any idea how much we are talking about?

Mr. ROZELLE. The city felt it would be \$24 million. A number of people felt that figure was low.

Senator Cook. Do you think you can find a parallel in any other industry in the United States where a General Electric or General Motors wants to renovate its facilities in the community and ask the community to put up \$24 million to put up a better plant?

Mr. ROZELLE. I am aware of none. However, many communities see strong indirect benefits flowing from the stadium over and apart from the direct amortization of the costs. I spoke to one of your colleagues in Congress last evening, and he told me how much the city of Cincinnati had benefitted indirectly through money pouring into the city by the events held in the stadium. People travel distances, buying gas for baseball and football games, restaurants, hotels, the entire atmosphere in Cincinnati, he advised me, had been greatly improved.

So he said that many community leaders today find that there are benefits way over the direct amortization that accrues to the stadium from a tenant's rental.

Senator Cook. I can't disagree with that. Let's take the situation in Cincinnati. I have been to that stadium, and it is beautiful. It was done

as an overall project on the river, which I am sure you are aware of. It was done as part of an urban renewal situation. But even though the community committed itself, and even though the community is in debt for a long, long time to come in relation to that facility, there is no guarantee that either the Cincinnati Reds or the Bengals will stay there.

Mr. ROZELLE. I think there is a legal guarantee. It is called a lease.

Senator COOK. How long is the lease for?

Mr. ROZELLE. I think it is 30 years. I know they do not put up stadiums today without getting firm commitments, and that goes for Kansas City as well.

Senator COOK. Are you saying that the lease of the clubs to the facility in many instances is as long as the bonded indebtedness on the facility?

Mr. ROZELLE. The ones I have heard of run 30 years. I don't know how long the bonded indebtedness runs. I know many leases are that long.

Senator COOK. I am delighted to hear that.

Mr. ROZELLE. I know in the case of Kansas City, the owner of the team put money in the stadium and obligated the team to stay there for 30 years.

Senator COOK. It is my understanding that that bonded indebtedness was some \$67 million, and during the course of that lease the sports facility itself will pay off somewhere in the vicinity of \$8.5 million of that. That is based on the present capabilities to draw of those respective facilities.

Mr. ROZELLE. I don't have the figures on that.

Senator COOK. I am not saying that to have a major league team in that community, regardless of what they may be, is wrong, or wrong for the community. After all, I can recall my days in Louisville, when we had meetings with Charlie Finley, who had no other purpose, I think, than to scare somebody else into thinking he might come to Louisville, and I don't think there is any question about it.

I am wondering whether the community can justify, for the benefit of an industry, for even thinking that the side effects in the city of Kansas City would make up that difference. It might make up a great deal of it.

Mr. ROZELLE. I don't know, Mr. Chairman. I do know that I visited Durham, Senator Ervin's area, recently, and I saw a tremendous area being developed for big business, apparently the city or county had put money into developing this as a business area. The community felt that it would benefit them. On these stadiums, the people in almost every case, except where football itself is concerned, have voted. They can vote on General Motors, too. They apparently approved the plant development I saw in North Carolina. If they wanted General Motors, they could vote as they did for the stadium.

Senator COOK. May I say to you, Mr. Rozelle, we have had for many years what are called industrial revenue bonds, and those bonds, I must confess, have been really a very small part of the overall cost of an industry moving into a community.

The only thing you are really saying to me is one of the main reasons that this is so completely acceptable by a community is because of the fan and because of the nostalgia, and the position that major league sports has in the eyes of the American individual.

I think this is one of the basic concepts under which it is done. After all, I know communities compete all over the United States to get major corporations but I don't think they compete anywhere nearly as strongly and as enthusiastically as they do to get a major league sports team.

Mr. ROZELLE. I think that may be true. I am pointing out the community made the decision that they wanted such a stadium, for whatever emotional or practical reasons. I think you should probably hear from community leaders. I can't speak for them. But a vote was taken. The taxpayers' money was not used without a vote.

Senator COOK. Just to prove to you that I am not talking out of both sides of my mouth, I would probably campaign in my own community to get a major league franchise there. I am not trying to say we are on the opposite side of the fence, because we are not. What I am questioning is how much consideration is really given to the fan by the owner of the franchise? I am not sure I am convinced there is a great deal.

Mr. ROZELLE. I would like to speak briefly on that. We have always been cognizant of the fans. I think the commissioner has to be taking into account the interests of fans, owners, and players, both present players, past players, and future players. I think that all has to be taken into account.

We had, at considerable cost, an extensive survey made of the football fans of this country. We asked them a great number of key questions about television practices, about the draft, and I would like to offer this to you for you to consider as a possible exhibit. Insofar as the owners of National Football League teams are concerned, I would like to further point out that they make certain sacrifices.

Much has been made about the cost of franchises when they are purchased. I think many figures are exaggerated that I see in the press, incidentally. However, the owner of a franchise cannot make a public stock issue out of it. It must be individually held, it must not be used as a tax gimmick, and we do not want to lose control of the calibre of ownership by having a franchise sold to a corporation which in time could change its business activities, could be absorbed by another corporation, and have some element of suspicion cast upon one of its assets, the football franchise.

I am merely saying that the wishes of the fans are taken into account and if they are not, the fans are certainly heard from.

Senator COOK. Let me read from some of the testimony that has already been given relative to the fans.

Through this committee, I have heard from hundreds of fans from at least 40 States. Ninety-nine percent of them have indicated they would have preferred the AFL to keep its separate identity after the merger. I have no way of knowing for certain, but I believe that if hundreds of people wrote to me, a fan, then thousands must have written to league teams and officials on this very same matter.

Were the fans taken into consideration with regard to the merger?

Mr. ROZELLE. Most of our mail on this subject came from the individual who, I assume, was the author of that statement, from Buffalo. The fans were taken into consideration. It was a very simple matter. The AFL wanted to have a full merger. They felt it was an economic necessity for them to have games with the more established NFL teams,

and they insisted it be a true merger. I think the fans have gotten their money's worth since the merger.

Senator COOK. How is your television schedule determined, Mr. Rozelle?

Mr. ROZELLE. After completion, or as a matter of fact during the development of our schedule, certain games are assigned to television: for example, the Monday night games. We have to allocate one game for each of 13 weeks for Monday night television. We have to be certain it is in an area where it will not be too cold on Monday night and so forth.

Then, in addition——

Senator COOK. By the way, speaking of being too cold, I have been to some games which have been abruptly stopped so that we can have those messages on television, and the fan sits there shivering and shaking. Is it public record how much money the league receives from the respective television networks you do business with, for the privilege of televising games?

Mr. ROZELLE. No.

Senator COOK. It is not public knowledge?

Mr. ROZELLE. It is not.

Senator COOK. I would ask you, but I would assume you would say that is private information.

Mr. ROZELLE. I would say I would consult with my counsel.

Senator COOK. Go ahead, Senator Hartke.

Senator HARTKE. I will ask that question. How much does the league receive from the networks?

Mr. ROZELLE. The 26 NFL teams share the network money equally. In other words, Green Bay, Denver, and San Diego would get the same amount as a New York team. Each of the clubs will get in the area of \$1.5 million for their television rights.

Senator HARTKE. That means you get about \$40 million, right?

Mr. ROZELLE. Right in the area. That excludes the money for post-season games, which is earmarked for the player benefit funds.

Senator HARTKE. Does that include any games which are not regularly scheduled games during the season?

Mr. ROZELLE. That includes two or three preseason games that each of them carry, and it also includes the divisional playoff games.

Senator HARTKE. What proportion of that does that represent to the gross income?

Mr. CAROTHERS. We do not have financial statements of the member clubs. It would be necessary to make a study to find out. We estimate the total gross revenue of the National Football League, all 26 clubs in the aggregate, to be in the neighborhood of about \$140 million.

Senator HARTKE. Does that include the \$40 million from the television rights?

Mr. CAROTHERS. Yes.

Senator HARTKE. In other words, they have \$100 million above that. I am doing arithmetic from figures you are giving me.

How much of that is represented by gate receipts?

Mr. ROZELLE. Virtually all of it.

Senator HARTKE. You do not get any concession rights?

Mr. ROZELLE. Only very few teams in football have any concession rights, and those are nominal. The stadiums or the prime tenants retain

those rights. Concessions are not a significant factor in professional football.

Senator HARTKE. In the \$100 million, is there any other promotional income that is received?

Mr. ROZELLE. Limited income from radio contracts, which are not a tremendous economic factor today. The clubs also have some income from National Football League Properties, which is a company owned by the 26 clubs, and which merchandises and promotes licensing of club names. However, the 26 clubs are in the process of establishing a National Football League Charities Foundation. The charity will be administered by top people in the country and there will be a variety of uses for it including taking care of indigent old-time football players who are not included in the present day pension fund.

Senator HARTKE. How old do you have to be to be an old-time player? As an old athlete myself, I think it is a young retirement age. I am talking about the retirement age.

Mr. ROZELLE. It is down to 45 now.

Senator COOK. Senator Magnuson?

The CHAIRMAN. Mr. Chairman, I have to leave, and I couldn't be here earlier, and I am involved in some appropriation matters and I wanted to ask a couple of questions and then I will leave.

Is there a rule or an understanding with the owners of the team as to the type of ownership of a new team, or a change of franchise?

I know that they would consider the financing, the character of the people and that sort of thing, but the makeup, is there still the prevalent idea among the present owners that there would be one person who would own 51 percent?

Mr. ROZELLE. Yes, that is a very strong policy. It is not in our constitution, but we found when you don't have that, you might have close friends going into a franchise, each with 20 percent, and soon problems develop over coaching changes, player personnel, and you have internal disputes that would hurt the entire league. So we do strongly press for one individual having at least 51 percent.

The CHAIRMAN. Then my second question would take it down the line, and I think, Mr. Chairman, the witness knows what my interest is in this matter.

If there were to be an expansion of the league in which there would be new franchises available, whatever they may be, two or four or whatever, and you couldn't find a person with enough money to put up the 51 percent, but you could get the total amount of money necessary as a community enterprise, what is the league's position, or have they even discussed that as of now?

Mr. ROZELLE. We haven't, because we don't see it as a major problem. New franchises have never been sold for enormous sums by the National Football League. Whereas the Philadelphia Eagles were sold for some \$16 million 3 or 4 years ago, the expansion franchises for new teams cost about \$8.5 million, the Atlanta's, New Orleans', Cincinnati's, and so forth, because the owners realize that you can't start off with a franchise in the hole financially and make it successful. So in a new franchise, we would not visualize that as being a major problem.

The CHAIRMAN. I understand that, but it seems to me that if there is going to be an expansion or some changes, you are going to have to consider a community operation. I suppose, shares of stock, could

be sold, rather than trying to find one person who could put up \$4 million or \$5 million. It may not be easy. Because pro football is becoming a community enterprise in many communities.

The sports writers, even with a rumor that a team is going to be moved, get the whole community involved, not only the owner, but everybody. I would hope that you could keep that in mind.

Now, my town had the unfortunate experience of acquiring a major league baseball franchise, and there was absentee ownership. We liked it, but it lasted only 1 year, because he didn't want to go any further for personal reasons. The community was ready and willing to do something.

They put together a number of top people, but there wasn't one with 51 percent, or 25 percent, or 10 percent, and the baseball people here today, turned it down, although the money was there to keep the team.

But because they didn't have the major stockholder, it didn't pan out, and, of course, then the community became angry.

Mr. ROZELLE. I think the best way to answer that question is that if it became a serious economic problem, we feel strongly about having local ownership or a strong local flavor in the franchise. If it came down to it, we would certainly compromise on the 51 percent ownership requirement before we would permit a sale to a corporation on a public stock offering.

Senator COOK. You have no idea what the attitude of baseball is?

Mr. ROZELLE. No, sir.

The CHAIRMAN. I can tell you what their attitude was.

Because you run into this situation, the community gets used to a major baseball or hockey or football franchise, and they want to keep it that way. When there is 51 percent ownership, it may be that that fellow wants to keep the team, but he may because he has other interests, run into some financial trouble. You would have a solid base if you had it as a community enterprise. There wouldn't be any financial problems. The stock may not be worth too much, but no one is going to sell it, because they want to keep it, and this is where the criticism enters. It wasn't that the fellow who owned the team, wanted to do certain things, but everybody around him does, so he has to do it or sell to the highest bidder. Football is not in that position here in the city of Washington but baseball had an example of that.

I don't know all the details. I am not passing on it.

When you get the community involved, small shareholders, put them all together, you are going to have a solid financial base for any professional team. I will tell you that. Everyone will buy a season ticket, too, if they have a little stock in it.

Senator COOK. Senator, we have a rollcall, and it is now 12 o'clock. I wonder if we could ask Mr. Rozelle to come back and we will resume these hearings at 1:30. Would that be agreeable?

The CHAIRMAN. Yes.

Senator COOK. We will recess until 1:30.

#### AFTERNOON SESSION

Senator COOK. Mr. Rozelle, if you will come forward. I guess my colleagues only stayed for the first half.

Before we left, and just prior to Senator Hartke's question, Mr. Rozelle, we were discussing the television package of the league, and

I had some figures to show you that were submitted last week by an ardent AFL fan, showing that during the course of the year there were no AFL versus AFL. There were 39 NFL versus NFL, and 13 NFL versus AFL. Now, I have no way to substantiate these figures except that they were put into the record.

Mr. ROZELLE. I don't know what it would pertain to, because as an example, we have had a very strong rivalry between Oakland and Kansas City in the American Football Conference. We nationally telecast those games, and there are others. I would have to see what the witness referred to specifically.

Senator COOK. We have had other figures submitted to us, and we will submit them to your office if you wouldn't mind making comments on them.

Mr. ROZELLE. Fine.

Senator COOK. In the course of discussing the contract between the respective networks and the league, what does this figure cover? I would assume, unless I am wrong and we ought to set the record straight, there is a game on Sunday, there is a game on Monday, and then ultimately there will be games on Saturday and then you will have Sunday and then you will have Monday.

Let's take the Washington Redskins. All of their "away" games are televised back to Washington, and those do not constitute your Sunday games or your Monday games or your Friday night games. Are they included in this package, or are they separate. That is, does the local team negotiate a contract with whoever the sponsor of those games are that are televised back home?

Mr. ROZELLE. They are part of the total package sold to the networks. The networks televise some games nationally. They are obligated to bring all the road games of every team back to the home city.

Senator COOK. Are you aware of whether other sports operate on this basis? For instance, does it occur in this way in baseball?

Mr. ROZELLE. Baseball is different. They also sell local rights in addition to the Game-of-the-Week plan they have with the network.

Senator COOK. There is one other thing that I would like to bring up with you, and I would like you to expand on it. From the part of the country that I come from, we very seldom go out to Churchill Downs to just watch the Derby, and during the course of the afternoon we walk up probably to the sellers' windows far more than we walk up to the cashier's. In the present situation as it exists in the discussions in New York, what do you as Commissioner feel about New York's position relative to gambling in the football industry?

Mr. ROZELLE. All of the sports commissioners are deeply concerned about this, because we feel it would change the character of our games. In football, with the point spread involved, it would lend itself to tremendous suspicion. If they are going to legalize gambling on sports events, I would assume they would supervise these sports events as they do in horse racing, at Churchill Downs, for example, through the State commissions. But at that point they are confronted with a problem, do they give urine analyses to athletes, do they set athletes down for bad performance? You are talking about a tremendous supervisory problem, and we do not feel it would eliminate book-makers. We feel the bookmaker has an edge in that it is tax-free

money. Also, you can get credit through your friendly bookmaker. So we don't feel this would make a great inroad on organized crime any more than the repeal of prohibition did.

Senator COOK. What is Mr. Samuels' idea about it?

Mr. ROZELLE. He feels it would generate a great deal of money for New York and I agree with him. But we don't want to see that done at the expense of our sport. We feel there would be great suspicion cast. For example, if you had the Washington Redskins favored to win a game by 10 points and they were leading by 7 points with just a minute left to play, and let's say they want to sit on the ball, stall it out, so they win the game, fine, but they wouldn't meet the point spread. In sitting on the ball, they would perhaps have their fans booing them. This is the kind of situation we see.

Senator COOK. You would be able to point out every fan in the stands who had made a bet on his team.

Mr. ROZELLE. You certainly would.

Senator COOK. It just seems to me first of all, that there is a distinction in, the parimutuel system.

In horseracing one is betting that a horse will win or lose. In football we have point spreads, and if you were to interject the point system as it exists in football betting, into wagering on horseraces, then you would have to say at the parimutuel window that you not only bet on Riva Ridge, but you would have to bet how many lengths Riva Ridge was going to win by.

Mr. ROZELLE. That is correct. Everyone in professional football is not allowed to gamble on the sport. If you had legalized gambling, it would be impossible for us to supervise this.

I would appreciate submitting this for your consideration as an exhibit. It does give our position on the problem of legalized gambling on team sports.

(The document follows:)

THE NATIONAL FOOTBALL LEAGUE,  
410 Park Ave., New York, N.Y.

#### POSITION ON LEGALIZED SPORTS GAMBLING

The National Football League is opposed to practically every aspect of the current proposals for the legalization of gambling on professional team sports.

The League believes legalized gambling on professional sports will dramatically change the character of the fan interests in these sports. No longer will sports fans identify their interests with the success or failure of their favorite teams but with the effect of their team's performance on the winning or losing of bets.

Legalized gambling will greatly multiply the security problems confronting all professional sports.

The League believes that the proposals are misleadingly characterized. The proposals do not involve the simple "legalization" of sports gambling but the active governmental promotion and encouragement of such gambling by advertisement and solicitation. Ultimately the trend, as has already fully developed in horse racing, will be towards government licensing and active government intervention in the operations of professional sports.

Legalized gambling on professional sports will not bring about the public benefits commonly ascribed to such proposals by proponents. Such gambling will not have any appreciable effect on the social welfare and revenue problems of cities and states or on the elimination of organized crime or police corruption.

*1. Question. Why will the character of the sports fans' interest change?*

Answer. We feel the basic appeal of our sport to the fan is the thrill of watching evenly-matched teams in weekly competition, the continuing excitement of the season-long championship race and the identification of the fan with the success of the home team or his favorite team.

Legalized sports gambling would change the way a fan looks at a game, the way he looks at the coach and the player and, eventually, it would change the character of the game itself.

Suspicious would be created whenever something happened that determined the outcome of a game or even threatened the outcome. We believe the man or woman in the stands no longer would be a football fan in the truest sense but rather a gambler interested solely in cashing a bet. Instead of rooting for his home team to win, his basic interest would be in winning his bet by a certain number of points sufficient to beat the "spread".

You could have a stadium with 80,000 fans vocally supporting the visiting team's rally and applauding the home team's misfortune.

*2. Question. What do you mean by point-spread betting and what is wrong with it?*

Answer. The point-spread betting system was introduced by gamblers in an attempt to equalize the chances of two teams. A betting line is established in early week to set up a handicap system for a game by penalizing the better team a given number of points. Instead of betting on a team to win, a bettor must bet on a team to win by a specific number of points.

If a similar system were used in the Kentucky Derby, it would have been necessary for Riva Ridge to win by a specified margin (4 lengths, for example) in order to cash a bet.

When operated by bookmakers, the bettor is asked to give or take a specified number of points and also must lay 11 to 10 or put up \$11 (instead of \$10) to win a \$10 bet.

If this system were applied to all sports games the net result would be a new fan with a built-in cynical approach. If his team wins—but not by enough points—he would be critical of the motives of all involved, including the game strategy. Such constant criticism would be bound to reflect on the integrity of the sport.

Let's take an example. Suppose the Jets were 5-point favorites over the Bills in a game played at Shea Stadium. Many of the home fans have bet on the Jets.

Late in the fourth quarter of the game the Jets lead 14-10. The Jets have the ball on the Bills 30 with 20 seconds to go. Should the Jets try a field goal to win by 7 but risk giving the Bills another chance? Or play it safe to be certain of victory by 4?

The Jets decide to play it safe and run out the clock, winning 14-10. The fans who have bet on the Jets to win by 5 points are losers. Although the victory may have enabled the Jets to clinch the division championship. Shea Stadium resounds with the boos of disgruntled bettors.

*3. Question. If the point-spread system is wrong, why not bet on fixed odds?*

Answer. Both the point-spread system and the fixed odds operation would be impractical if confined to single games. Each would make it necessary for a Legislature to give a sports betting authority permission to set up a bookmaking system.

Any bookmaking system, legal or illegal, must be prepared to lose money as well as win money.

The Off-Track Betting system, now in operation in New York for horse racing only, cannot lose money on any given race because it skims off 17 per cent of all money bet before any payoff is figured. No matter how much the bettor wins, the OTB gets its 17 per cent off the top.

Illegal bookmakers have certain hedges to minimize risks, not available to any governmental body. An illegal bookmaker may limit the amount of money he will accept in any bet or on any game. An illegal bookmaker who fears he is over-extended with bets on a certain game can "lay off" to a central organization. A governmental bookmaking operation would not be able to refuse bets or "lay off" bets.

Imagine the reaction if \$1 million were bet and won (lost by the governmental bookmaking agency) on one game.

Any parimutuel system attempting to make odds on a single game would produce insignificant payoffs, driving both the \$2 bettor and the heavy gambler to the illegal bookmakers who provide credit and rebates as well as tax-free status.

*4. Question. There has been talk of Pool Card betting. What is meant by Pool Card betting? If a fan merely picked a combination of winners to gain a payoff, how could an individual player be accused of determining an outcome?*

Answer. Pool Card betting is a system in which a bettor attempts to pick the results of a combination of games for varying odds. If a bettor correctly picks

the results of four games he is paid off at a lower rate than if he successfully picks all 10 games on the Pool Card. The Card operator attempts to handicap each game by listing varying point spreads. The government would have to establish its own point spreads in legal sports gambling.

We oppose Pool Card betting for many of the same reasons that we oppose any type of legal sports gambling. We feel this again would be a case of misusing a sport not designed for betting as a vehicle in a government-sponsored gambling operation. We feel the easy availability of Pool Cards in government-promoted gambling would dilute the overwhelming fan interest in the home team and substitute a gambling-oriented philosophy.

The Pool Card system, encouraged and actively promoted by the government, would result in increased gambling in the lower income group where a "pie in the sky" payoff at exotic odds would have overwhelming appeal. In addition to stimulating gambling in these areas it would spread gambling among juveniles.

By encouraging more gambling with the lure of substantial payoffs for a small investment, a climate of suspicion would result. In the NFL, where as many as 10 games have been decided by less than seven points on a given Sunday, the climate of suspicion attendant to one game could be magnified tenfold by Pool Card betting.

Although it would appear to be more difficult for an individual to influence the result of a Pool Card operation, the danger still would exist. Experience in European soccer Pool Card betting, where the ability to select tie games is a key, discloses scandals involving manipulations by players or club personnel to make certain games end in ties.

Just as fixing one horse does not guarantee a fixed horse race, fixing one game would not guarantee a fixed betting pool. But it would greatly simplify the efforts of the gambler to know that a certain horse—or a certain heavily favored team or key player—was not trying to win. Manipulations of this type have resulted in scandals involving superfecta and other exotic betting lures at race tracks where knowing crooked gamblers have been able to eliminate several horses and then link all the other horses in various combinations.

It is conceivable that a betting coup could be arranged by influencing the results of certain key games, especially by a gambler who concentrated on attempting to pick the results of a small number of games in a pool.

*5. Question. Everybody gambles, so why not make it legal?*

Answer. We do not agree with that premise as applied to all sports. We believe the vast majority of people do not gamble. They may take part in the office pool or back their team with a dollar bet with a friend. But there is a vast difference between that kind of betting and legal sports gambling.

We are very much aware of the existence of illegal gambling on team sports by a certain element. We do not live in any "Alice in Wonderland" dream world. Because we are aware of sports gambling we employ extensive security forces to enforce our own traditional rules against gambling. We have neither the authority nor the responsibility to act against illegal gambling by non-League personnel but we do exercise thorough supervision of our own people.

We feel government-sponsored gambling, catering to a bet-oriented fan, would intensify all the problems inherent in gambling. By giving official approval to gambling, the government would encourage loitering in stadia by people seeking inside information and influence and, eventually, trying to fix the results. We believe the inescapable consequence would be the destruction of public confidence in our sport.

It is reasonable to expect that legalization of sports betting would increase many times both the amount of money wagered and the number of people betting. A survey of British betting habits, made by the New York State Assembly, showed a 400 per cent increase in betting after legalization in 1960.

An increase in sports gambling would, of course, increase the number of people seeking special information and trying to influence the outcome of games through contacts with players or club and League personnel.

The Commissioner has unrestricted authority to fine, suspend or bar for life any person connected with the League or any member club who has bet on a game or failed to report any offer to control the outcome of the game.

Once the stigma of crime and danger of arrest had been removed, the extension of sports betting to the general public from the relatively limited percentage of people who now gamble with illegal bookmakers, would greatly magnify the security problems of sports. A betting pool with millions of dollars at stake would

increase the likelihood that an athlete or club employee might risk his comfortable salary and excellent pension and health benefits.

Every association of a club or League employee would have to be under constant surveillance. Every financial move, every shift of strategy by a coach would be open to the cynical second guess.

At the present time, a bookmaker demands identification from a gambler. This has a deterrent effect on persons connected with sports because they realize sports security forces have sources of information in all fields. With every corner store a betting parlor, the problems of such supervision would be multiplied many times.

To summarize, we believe legalized betting would assist such persons in evading the rules against gambling which we think are so necessary to the maintenance of integrity in our sport.

*6. Question. What is wrong with a player betting on a game, as long as he bets on his own team to win?*

A. We believe any form of gambling on sports, legal or illegal, poses a threat to the integrity of the game. This, of course, is particularly true in the cases of the players. Recognizing this obvious danger, let us assume a player does bet on his own team to win.

The point-spread system of betting, under which a handicap is arranged for the better team, makes it possible for a team to win the game but lose the bet if it does not win by a given number of points. The college basketball scandals of years ago provided numerous examples of the dangers of a player "shaving points" to help a gambler win his bet while his team still won the game.

Whether a player is betting in person, through a member of his family, or through a friend, it is likely the knowledge of the bet would become general information in a short time in an era of permissive, government-promoted gambling.

Suppose it becomes known that a player is betting on his team to win. Those with inside knowledge also bet on the team to win. The team does win. So far, so good.

On the following week, the player does not bet. The team loses. The player, who may have been completely innocent of any wrongdoing, is involved in a key play that decides the number of points by which the game is won. Immediately, the finger of suspicion is pointed in his direction.

For example, during the 1971 NFL regular season a veteran quarterback elected to run an end sweep requiring a pitchout to the running back on the last play of the game from his opponents' five-yard line. It was a good call, caught the other team by surprise and resulted in a touchdown, which changed the final score but not the outcome. However, it was a risky call in that the accepted practice is to control the ball in such a situation and let the clock run out while calling a routine, low-risk play. The quarterback, both in print and in letters to the NFL office, was accused of attempting to make sure his team went over the point spread.

We simply cannot afford to let suspicion undermine the integrity of our sport which has grown to its present stature over a period of 50 years without resorting to gambling or utilizing gambling as an incentive.

*7. Question. What is the difference between betting on a game and betting on a horse race?*

Answer. Gambling is not an inherent part of team sports as it has been in horse racing. The ancient Romans bet on horse races and chariot races. Horse racing has been inextricably involved with betting and could not survive without it.

As a result of this identification with gambling, the horse racing business has been forced to accept strict governmental control of most of its activities.

In racing, a State Commission sets dates and sites of meetings, licenses trainers, owners, jockeys and drivers. It hands down suspensions, assesses fines and takes a generous slice of the betting action. This tight supervision has become necessary to guard against drugging, fixing of races and false identification of horses.

Any similar governmental obligation to control team sports would involve far-reaching changes in their present structure of operations and place a costly and staggering burden to not only oversee sporting events in its own state but also presumably everywhere a sporting event is held, if legalized bets are accepted on that event.

8. *Question. If New York State can legalize horse race gambling with Off-Track Betting, why not all sports?*

Answer. There is a vast difference between the extension of horse race betting, which has been legal at race tracks for many years, to off-track betting parlors and the legalization of an entirely different type of gambling.

Betting on other sports events has been illegal traditionally. Any effort to legalize all sports wagering represents a distinct departure and should be recognized as a new form of promoted gambling with obvious inherent problems.

Approval by the states does not mean mere "legalization" of gambling but active governmental promotion and encouragement of such gambling on a wide scale.

9. *Question. How can you oppose legal sports betting when it would add so many dollars to aid the ghetto areas, social welfare programs and education?*

Answer. We are in sympathy with efforts to raise money to ease the tax burden and to increase educational facilities and opportunities and to better run the big cities. But the answer is not misusing a sport not designed for betting.

We disagree with the premise that gambling revenue will make any appreciable contribution toward solving our tax problems. Betting on horse racing has been legal in New York State for over 30 years, yet there is constant pressure for additional tax revenue from the same source through extended racing seasons, Sunday racing and various types of exotic special wagers.

The new Off-Track Betting system in New York City is struggling to pay for itself in the face of charges that it is draining state tax revenue from other sources by causing decreasing attendance and lower betting handle at the race tracks.

Practically every study made of legalized gambling has shown that the great bulk of gambling is done by people in the lower income strata. This has resulted in an unhealthy and unproductive shift of wealth away from the low-income bettor or, at best, a redistribution of wealth among the lower income groups. The lure of "pie in the sky" bets through perfectas, superfectas, daily doubles, etc. with the promise of a huge payoff for a minimum bet is the most popular form of betting.

A survey of British betting habits under legalized gambling, conducted by the New York State Assembly, confirms a decline in family resources, a sharp increase in default of debts owed small shopkeepers, an increased proportion of family income diverted to gambling and early indoctrination of juveniles to gambling habits.

We believe that a legalized gambling program in which the governmental agency would "rob Peter to pay Paul" is not the answer to the need for revenue to aid ghetto areas, social welfare and education.

10. *Question. Sports betting is legal in some nations of Western Europe as well as England. Have sports in these countries been free of bribery and betting scandals?*

Answer. Let us clarify the types of gambling permitted in Europe. In Great Britain, prior to 1960, both cash and credit betting prevailed generally. Credit bookmaking was legal. Cash betting was illegal and was conducted largely through street runners in an undercover operation.

The passage of the Betting and Gaming Act of 1960 legalized practically all types of sports betting in England through licensed bookmakers who pay a fee to the state. Both cash and credit bookmaking are legal.

A large amount of the betting in Europe is based on football (soccer) pools, betting cards that promise a huge payoff for a minimum fee if the bettor can select the winners and ties for an entire weekend program of games. Because many soccer games end in ties, the winner of the pool must select all of the tie games as well as the winners.

A recent survey showed a marked increase in incidents involving bribery and gambling scandals in Great Britain since 1960 when the Betting and Gaming Act was adopted. There were two major football (soccer) scandals prior to 1960. Since 1960 there have been at least eight major teams and 15 players involved. Ten of the players either confessed or were found guilty of bribery in court. As a result, 10 players have been suspended by the Football Association and several others have been fined and sentenced to jail terms by criminal courts. Several outstanding international players were included.

Two major scandals have been uncovered in Italy. Four players were suspended indefinitely and one club was demoted to a minor league after one incident. In 1969 another Italian team was dropped to a lower division of the league for trying to bribe a player of an opposition club.

In the fall of 1971, two German soccer clubs were banished from the league and 13 players were suspended for life as a result of scandals involving fixed games. The players included two stars of the German national team that competes in the World Cup competition.

Even Iron Curtain countries have not been exempt from the fix. In 1960 a Czechoslovakian court convicted 80 Czechs for influencing the result of sports pools through fraudulent speculation. Among the players and athletes involved were 30 soccer players, 13 wrestlers, two table tennis players, a "bicycle ball" player, a coach and others.

11. Question. The repeal of Prohibition reputedly wiped out many criminal elements. Why wouldn't legal sports betting strike a vital blow at organized crime?

Answer. According to legal authorities, organized crime still is alive and flourishing in many areas. It appears that the repeal of Prohibition merely shifted the emphasis of organized crime into other areas.

When you speak of organized crime, we assume you are speaking of the bookmaker who operates beyond the law in gambling activity. The success of this illegal business is based on two major factors—(1) credit betting and (2) tax free status for the bettor.

Many bookies will "carry" a heavy-betting client for weeks or even months if they know the client has the resources to make good his losses. If he does not make good his losses, the criminals have means of enforcement that a governmental agency could not use. In addition to offering credit, it often is the reported practice of illegal bookmakers to rebate a percentage of losses, 10 to 15 percent, to maintain the account of a regular customer.

Bookie winnings are paid in cash and, because they are not reported to any governmental agency, are illegally tax free. Any suggestion that legalized gambling winnings should be made tax free would not be acceptable to hard-working, tax-paying Americans with no inclination to gamble regularly.

Most responsible law enforcement agencies do not feel that bookmakers controlled by organized crime would be seriously threatened by legalized sports gambling.

In Rome, where legal betting is available at the tracks, at off-track betting facilities and through a weekly horse racing lottery, fiscal experts estimate there is a total of \$500 million bet illegally each year, more than double the amount wagered at the track, off track and in the lottery. Illegal bookmakers operate close to the legal betting windows, accepting oral bets.

12. Question. Don't you think legal sports betting would eliminate police corruption?

Answer. We heard the same argument when Prohibition was repealed. If an enforcement officer can be corrupted by gambling, the same officer can be corrupted by the drug trade, prostitution or bank robbers. The mere legalization of sports gambling would not solve police corruption. It would shift law enforcement problems into another crime area.

Rather than eliminating police corruption, any wide-spread legal gambling program would require vastly enlarged security forces—with accompanying corruption risks—far beyond those with which we are familiar.

The answer to eliminating police corruption, of course, is honest administration by capable, alert and knowledgeable public officials.

Senator Cook. It would be very interesting to have it, Mr. Rozelle, because the first witness at these hearings was Congressman Steiger from Arizona, and he talked about the hearings that have been going on at length in the House relative to the sport of horse racing, and one of the things that he testified to at that time was that he felt that if we could do no more, that we should have statutory authority to secure financial statements of major sports facilities, assets, and liabilities. He would like a statement of ownership. He thinks that would be appropriate, a disclosure of ownership, and also a disclosure of who owned the facilities and who controlled the concessions.

Do you find that that would cause any great hardship on, for instance, the NFL?

Mr. ROZELLE. None whatsoever.

Senator COOK. I am delighted to hear that, because I don't think any of us are talking about the fact that, for instance, as Senator Ervin was talking about this morning, when you secure and you demand everybody's tax returns. Very frankly, I am a Member of the U.S. Senate, and I don't disclose my tax return because if the law says I should, then I will, but unfortunately, I know with my colleagues that would be leading the way in a one-man show.

I just feel that we should have a disclosure of assets and liabilities, an indication of the strength of a franchise. I don't know that you have had any weak franchises, underfinanced franchises. I think it is fair to say that this has occurred in the field of baseball.

But at least I think the general public should have a logical understanding. Let me give you a good reason why, frankly.

For instance, I think it is a standard rule in most of the teams in your league that your applications for tickets go out very early in the year, most of the money for all these tickets is due and payable, for most of them, the first of June, and the team has a substantial sum of money.

To this extent, the fan really has no idea—he is told there is going to be a schedule that fall. As a matter of fact, he doesn't even know what the schedule is at that stage of the game.

Mr. ROZELLE. He would know, I think, by April, normally.

Senator COOK. With some of them your money is due by the 15th of April.

Mr. ROZELLE. That is correct.

Senator COOK. So what I am saying to you is that he has made his investment with the understanding that the team is going to be there, and I think the team should accept his payment with the understanding that it is going to be there, and I think the public is entitled to it.

Mr. ROZELLE. The league would certainly guarantee that.

Senator COOK. The reason I brought this up in the first place is, I reminisced, Senator Magnuson, when our colleague from California, Senator Tunney, introduced an amendment to one of the consumer bills we considered, that no sum could be paid or exacted from a consumer until the service had been rendered or the product had been received.

Under the circumstances, if that had gone through, it would mean conceivably, if it were construed the way I read it, that you couldn't sell tickets until the first game of the season. So with the understanding in mind that there are some people who have this idea, I think at least a financial disclosure that would indicate the stability of the team would not be out of the question would in some instances be better for the league itself.

Mr. ROZELLE. I would agree with you. There was such a financial survey taken about 2 years ago. It was at the time the owners and players association in football were negotiating for a contract. At that time, the players and owners jointly selected and paid a large accounting firm to review the statements of all 26 clubs in an attempt to get them in synch with respect to certain expense items, and averages were developed and reviewed by the owners and players for the 1969 and 1968 seasons. Nothing has been done since then.

Senator COOK. From the testimony you gave this morning and the statistics you gave on mail and telephone calls that had been received in regard to the New Giants, I concluded in my own mind that

in your mind you have come to the conclusion that there is no way under the present circumstances and the present set-up that the New York Giants are going to stay in Yankee Stadium.

Mr. ROZELLE. The Giants have signed a commitment to go to the new stadium in New Jersey if it is built, that has been approved by the league. So unless the stadium fails to be built, the Giants are committed to go to New Jersey by contract.

Senator COOK. By the way, with the understanding that everybody in New York City doesn't live in Times Square, and I think we can take judicial notice of the fact that all citizens of New York do not live in Times Square, and I am sure with the maintenance of the fact that the Giants will extend their 75-mile blackout coverage to New York City, that although you don't think there will be a hardship, I must say to you that you can get to Yankee Stadium by subway. You can't get to Jersey by subway.

Mr. ROZELLE. That is correct.

Senator COOK. With the understanding that there will certainly be a loss of revenue to the city of New York, there will probably be some job losses in New York. I am just wondering whether the league, when it makes these determinations, does in fact, or should in fact, take into consideration the impact that it does have on a community.

Mr. ROZELLE. I think it does. I do not feel it is going to be a major change in the financial situation. I think the people going to the games in New Jersey will be spending money in New York for restaurants, gasoline, and that sort of thing. I think just for the city to staff the police protection at Yankee Stadium might cost more than the city gets from the Giants. I think that is an exaggeration, but I know the city has to put a great deal of money into that. I think the Giants paid \$200,000 in taxes to New York, the city and the State last year, and the city, of course, was contemplating spending many millions of dollars on refurbishing Yankee Stadium.

Senator COOK. Do you see any probability, if the Giants are to leave, that the Yankees may be the next to leave?

Mr. ROZELLE. I think it would be a much bigger problem for the city if the Yankees left, because of the number of events they would have.

Senator COOK. If you take seven or eight ball games with a sold-out house, you can spread that out over a lot of baseball games, and, you know, you are not just talking about the fact that you play eight games in Yankee Stadium. The Yankees would love to have eight sell-outs, and you could take those eight games and you could spread them out over a lot of weekday games at Yankee Stadium in the baseball season.

Mr. ROZELLE. Yes; I think you could, but with eight sellouts, the Giants attract 500,000 people to games. The Yankees do still draw quite a few more than that.

Senator COOK. My last remark concerns your Harris poll, your second question on statements of pro football, the statement was made, "Pro football has become more of a business for money than a sport," and I would suggest that 64 percent agreed and 27 percent disagreed and 9 percent were not sure. So at least in these discussions we are on the right track.

Mr. ROZELLE. I anticipated that answer. You can see that we weren't seeking just praise for our sport.

Senator COOK. No; you weren't, you just plain out asked it.

Mr. ROZELLE. I hope we can get back to concentrating on what is happening on the field, not off the field.

Senator COOK. Do you have any further questions, Senator Magnuson?

The CHAIRMAN. No questions.

Senator COOK. Senator Pearson?

Senator PEARSON. No questions.

Mr. CAROTHERS. Could we add a short memorandum for the record on the question of blackouts, which has been raised on a number of occasions before these hearings?

Senator COOK. Yes.

(The document follows:)

#### TV "BLACKOUTS" AND THE NATIONAL FOOTBALL LEAGUE

No phase of National Football League operations appears to be more misunderstood than the League's so-called "blackout" practice. Much of the current comment suggests that it is misunderstood both as a legal proposition and as a matter of business practice.

The practice is nothing more than the practice of not televising locally the same games being played locally.

*The Legalities.*—Although statements to the contrary are common, the practice did not originate with the 1961 Congressional Act (Public Law 87-331). Nor did it acquire its legal justification under that Act. The practice has been followed by the member clubs of the League since the earliest days of television.

During the 1940's and 1950's, each NFL member club individually negotiated its own television arrangements with television interests. In 1950, one member club, acting under a guarantee of gate attendance by a TV sponsor, undertook to telecast its home games within its home territory. The decline in the club's stadium attendance (despite a championship season) was so marked that the sponsor bore a severe financial penalty. No NFL club has followed the practice of televising its home games into its home territory since.

No known principle of law requires them to do otherwise. The two clubs participating in a local football game have no more obligation to make their own entertainment event available on free home television in the area where the game is being played than do the producers of any other form of entertainment. The producers of motion pictures do not; those responsible for performances at the Kennedy Center, at the Washington Coliseum, and at the National Theater do not. The practice is wholly without antitrust implications, since it has nothing to do with competition among the member clubs of the League.

In 1951, the Department of Justice instigated a thorough court review of the NFL's television practices (see *U.S. v. N.F.L. et al.*, 116 F. Supp. 319 (1953)). Throughout this litigation, neither the Court nor the Department of Justice ever questioned the right of the member clubs of the NFL not to offer locally the same NFL games being played locally.<sup>1</sup> Indeed the Court's decree specifically provided that the clubs participating in any game could agree "that such game shall or shall not be broadcast or telecast" and on "the terms and conditions under which the rights to broadcast or telecast such games shall be sold."

In 1961, Congress enacted Public Law 87-331. This legislation was in no way directed at any phase of the National Football League's traditional "blackout" policy. The legislation had been requested by the League because it felt that team balance within the League required that each member club have equal access to television facilities and derive approximately equal revenue from tele-

<sup>1</sup>As might be expected, the Court and the Department were concerned solely with anti-competitive agreements among the member clubs. The Court and the Department directed their attention solely to agreements among the member clubs not to telecast *outside* games into another member club's home territory (a) when the home team was playing a game at home, and (b) when the home team was playing away but bringing its own game back on local television into its home territory. On these issues, the Court concluded that the first prohibition was entirely reasonable because of the potential impact that *outside* game telecasts might have on the home team's gate attendance but that the prohibition against outside games being brought into a member club's home territory when it was not playing a game at home was unreasonable, since the effect of such prohibition was simply to limit home territory television competition among the member clubs of the League.

vision. Legislation was required for the simple reason that the earlier Court decree assumed that the NFL member clubs would continue to sell their television rights individually.<sup>2</sup> In enacting Public Law 87-331, Congress wanted to insure that the new joint sale authority granted to the NFL was not employed by the NFL member clubs to bring about a general reduction in their home TV programming or the transferal of their games from standard broadcast facilities to pay-TV facilities. Congress therefore added the present Section 2 of the 1961 Act. That section was intended to do nothing more than to restate the League's already established blackout rights and to confirm the member clubs' traditional practice.

Some five years after the enactment of this legislation, the NFL member clubs agreed voluntarily to waive their legally established rights with respect to *outside* game telecasts being brought into another member club's home territory when the home team was playing at home. The clubs recognized that this "modified lift" policy would have some impact on gate attendance among the weaker teams of the League. It was felt, however, that the popularity of NFL football had risen to a level where a partial relaxation of the NFL's former "blackout" policy was feasible and that home territory fans of professional football, including those who could not obtain access to tickets for the games of their home team, should be given the privilege of viewing other NFL games on Sunday. Accordingly, under the League's present practice, home territory fans today regularly have access to two other NFL telecasts when a home team is playing its game at home and to three NFL telecasts when the home team is playing away and bringing its own home game back on television into its home territory.

The "issue" therefore is not a "blackout" issue at all. The issue is simply *which* NFL game is to be televised in *which* area on what occasions. For Congress to intervene to tell the producer of a form of television entertainment when and how its programing is to be presented would, to say the least be unprecedented.

*The Business Aspects of the Practice.*—The practice is neither arbitrary nor the product of greed. It derives from the conviction, shared by all member clubs, that television is a useful adjunct to stadium attendance but that it should not be permitted to become a substitute. The heart of professional football still rests with the fan at the stadium. Professional football is determined not to follow the path of professional boxing—with contests being staged in small and half-empty arenas before vast television audiences.

Generalities about percentages of League-wide stadium capacity on any particular Sunday have no practical significance. Only a handful of NFL clubs are assured of stadium sellouts in advance of the season.<sup>3</sup> Most do so only rarely or do so only with respect to particular games. Many clubs achieve sellouts on an individual game basis only at the last minute through ticket sales occurring right up to the moment of kick-off. Others offer last-minute standing room where conditions permit and the demand is exceptional.

If any NFL club were to televise its home games locally, it would have to do so on the basis of a pre-determined and publicly announced policy. Good faith with its ticket-buying fans requires this. It would be the height of bad faith to solicit ticket sales and thereafter announce to the public that the game would be offered on free home TV.

If a team announced in advance a policy of televising its home games locally whenever a sellout had been achieved, the effect on ticket sales would be wholly unpredictable. Holdbacks on ticket purchases would be the order of the day, as fans attempted to predict sellout possibilities, team standing, and even weather conditions on a seasonal basis or on a game-by-game basis. Season tickets would be sharply reduced in value, as every fan would know in advance of the season that he would either be able to obtain tickets to each game on a last-minute basis or be able to view the game in the comfort of his own home.

Few clubs would want to experiment with the dramatic impact that guessing games of this character could have on gate attendance. Nor would knowledgeable

<sup>2</sup> At that time, other sports leagues including the then American Football League, the National Hockey League, and the National Collegiate Athletic Association, were already selling the television rights of their members jointly to networks.

<sup>3</sup> It is an error to assume that ticket sale conditions in Washington, D.C., are characteristic of the League at large. In most NFL cities, ticket sales increase or decrease from game to game and from season to season based on the anticipated performance of the home team, the drawing power of the visiting team, weather conditions, or other local factors. In 1970, for example, sellouts were not even achieved for all the divisional play-off games (played in home towns of one of the participating teams). One NFL Super Bowl game was not even sold out—largely because of speculation as to the possibility of a local telecast of the game.

stadium authorities, almost all of whom have their rental income based on a percentage of gate receipts.

The suggestion that local telecasts of home games would actually benefit the member clubs financially is a rather remarkable one. It proceeds on the assumption that the member clubs either do not understand their own business or that they are, for no rational reason, stubbornly resisting the opportunity to advance their own financial interests.

But the opposition of the member clubs to local telecasts of their home games is not limited to the potential effect on ticket sales. It is also based on the clubs' desire to preserve professional football principally as a stadium spectator sport. The clubs do not want adverse weather conditions or poor standing of the local team during the latter part of the season to result in home games being played in half-empty stadiums even where sellouts have been achieved. How many Redskins fans might have made the last-minute decision not to attend the Redskins home opener with the Houston Oilers (played during and after twelve hours of steady rain) if the game had been available on local home television? Can any opponent of the League's present policy actually say? And what of the circumstances in other League cities offering a less dramatic return of the home club to its home city?

Lastly—a factor quite ignored by those pressing for mandatory home telecasts of home games—any enforced revision of the NFL's present practices would totally disrupt all phases of professional football's television planning and programming. Indeed it would be questionable whether the League could rationally conduct contract negotiations with any network on such a basis.

With the expansion of the NFL to 26 teams, it no longer became feasible for the NFL clubs to limit their Sunday afternoon games to the broadcast facilities of one network. Moreover the use of a single network would have sharply curtailed the volume of professional football home telecasts previously offered to the public. Accordingly, the League now makes use of two networks on each Sunday during the NFL regular season with one network telecasting the games of the teams in the National Conference and the other network telecasting the games of the teams in the American Conference.

As an illustration, when the Redskins are playing at home, a local NBC affiliate regularly offers a directly competitive American Conference game on television and a second nationwide telecast of another NFL game usually follows (on either CBS or NBC depending on the West Coast home game schedules, time differentials, and other factors). Each network also has the obligation to carry each road game of each of its own Conference teams back to the home city of the away team on a regional basis, regardless of time factors or other conflicts.

If both networks had the obligation to vary these patterns on the basis of last-minute ticket sale factors, total confusion would be produced among the networks, their local broadcasting affiliates, their network and station advertisers, and the corporation supply the network cable facilities. Even the local TV listings would be unreliable guides. An additional game telecast would be injected into each home territory broadcast picture on the basis of factors wholly unrelated to television. This enforced third telecast would be carried on a different network and on a different broadcasting station in substitution for or in direct conflict with other game telecasts already scheduled. No television sponsor, no network, and no local broadcasting station would know in advance what cable facilities were required, what broadcast time could be offered for sale to sponsors, what the television competition for such broadcast would be, or what market coverage or audience ratings could be anticipated. Reproduction of these circumstances in twelve of the country's major metropolitan TV markets on each Sunday would transform the purchase and sale of NFL television time into an exercise in speculation.

These are among the many reasons why the NFL's present practice—which is not a "blackout" practice at all—is entirely reasonable. Even outsiders with knowledge of the facts have come to accept the full propriety of this NFL member club policy.

Senator Cook. And let me say this Senator has come around a little bit. I would like to set the record straight, and I think Mr. Rozelle might want to comment on it.

The only thing that I am really discussing in regard to blackouts, I understand the significance of them and I understand the significance

to the respective franchise holders, and there is no question about that in my mind. What I have in mind for instance is the situation as it evolves around the Super Bowl.

Now, nobody ever thought that the people in Louisville shouldn't see a Kentucky Derby. You have your Super Bowls in Miami or New Orleans. I have no idea how many tickets you sell in that community to that stadium. But I assume that we can almost, except for your first Super Bowl, say every one has been a sellout?

Mr. ROZELLE. Yes; the first one was held in Los Angeles after many years of publicized competition, and there were 30,000 unsold seats.

Senator COOK. Were there any extenuating circumstances to that, though?

Mr. ROZELLE. Yes; there was litigation leading right up to the game and the possibility through that litigation of the blackout being lifted, and the people anticipated the possibility of the blackout being lifted. Whenever that occurs, you have a serious problem.

As an example, the Baltimore Colts had 51 successive sellout games in Baltimore, and yet a year ago last fall there were two postseason playoff games, divisional championship and one for the American Conference Championship in Baltimore. Since they were playoff games, they were televised from Baltimore to Washington and the signal came back into Baltimore. After having 51 sellouts, the Colts in one game had about 5,000 unsold seats and in another game 11,000.

In Cleveland last year, for their divisional playoff game in Cleveland against Baltimore, there was considerable pressure, including from congressional sources, indicating that it was a cinch for the game to be sold out, so why not televise it locally.

We didn't, and we had typically cold weather in Cleveland, and we had 5,000 unsold tickets.

The Super Bowl is different from other games, however. That is a game my office handles, and I feel an obligation to the players for it, because that is a major source of the income tagged for the benefit plan.

The further fear is that even if we could televise it locally, it might start the precedent of people then suggesting, "Let's televise the conference playoffs and divisional playoffs." We don't want to become a studio show.

The CHAIRMAN. You are talking about the Super Bowls now. He and I went to the All Star Game. That is a different thing altogether; isn't it?

Mr. ROZELLE. Yes.

The CHAIRMAN. That goes to—somebody puts that on. Wasn't it a paper or someone?

Mr. ROZELLE. The two papers in Los Angeles were the sponsors of it in the past.

The CHAIRMAN. And profits go to charities?

Mr. ROZELLE. Yes.

The CHAIRMAN. I will confess that the only time I tried to get tickets to a game in Louisville was one that was being played in California.

Thank you very much.

Mr. ROZELLE. Thank you.

Senator COOK. Mr. Bowie Kuhn, commissioner of baseball.

We are delighted to have you here, sir.

## STATEMENT OF BOWIE KUHN, COMMISSIONER OF BASEBALL

Mr. KUHN. Thank you, Mr. Chairman. I did not prepare and submit a statement under the pressure of time and a few other things, but I do have some opening observations I would like to make, Senator, if I may.

The CHAIRMAN. I wonder, Senator Cook, if Mr. Kuhn would allow me to ask a couple of questions. I have to catch an airplane to go to Seattle.

Mr. KUHN. Yes.

The CHAIRMAN. You were here when I asked a question of Mr. Rozelle regarding the ownership of teams. Is it the practice of the owners in baseball to have, or to require, the same type of ownership, that is, 51 percent or more with one person?

Mr. KUHN. No, it has not been, but we are faced, of course, with similar problems to those faced by other sports, so that it has been our general practice to insist that there be a person designated as the spokesman for whatever ownership may exist. The ownership may be more diverse under those circumstances, obviously, but we usually insist on having one spokesman so that a team may promptly make decisions.

The CHAIRMAN. Do you have any teams in the league that do not have a 51-percent owner?

Mr. KUHN. Yes.

The CHAIRMAN. Which ones?

Mr. KUHN. I think there would be several. Offhand, the Atlanta Braves come to mind.

The CHAIRMAN. But most of them do have that kind of ownership?

Mr. KUHN. Yes; most of them do. In the case of the Atlanta Braves, the stock is in a voting trust, so that there is a controlling interest in the voting trust.

The CHAIRMAN. You know what I was concerned with, was when the team was going to move out of Seattle because the majority owner didn't feel like he wanted to continue—those were his personal reasons—but the point I tried to make with Mr. Rozelle, sometimes when you adhere to that rule, which they said they did, you usually get hold of a person who has more interests financially than just the team, and once his financial condition becomes unstable, he has to go out and sell the team or do what he can. I was completely appalled by the fact. I know that you don't make the rules for the owners, you work for them. Isn't that correct?

Mr. KUHN. Yes; I think there is doubt that is precisely the right way to put it, Senator.

The CHAIRMAN. They are your bosses.

Mr. KUHN. No, sir; they are not.

The CHAIRMAN. All right, we won't argue that, but anyway they make their own decisions, is what I am trying to get at. They make their own decisions as to movements of teams. Isn't that correct?

Mr. KUHN. Subject to the review of the commissioner, yes.

The CHAIRMAN. Well, I don't know when the commissioner has ever denied one; has he?

Mr. KUHN. Seattle. I think because I heard the questioning on Seattle, it might be well to go back into that.

The CHAIRMAN. I want to lay this basis. We in Seattle gathered a group of people, a community effort, with very prominent people, I

think it was headed by Mr. Carlson, now president of United Airlines.

We went to San Francisco where the owners were meeting and offered a good price for the team, at least the owners thought so, but there was some question as to whether or not there was too much of a spread of local ownership.

Wasn't that correct?

Mr. KUHN. I think there were very limited questions on that. I would like to address myself to that subject if I may.

The CHAIRMAN. The point I am trying to make is that I think football and baseball have become a part of the community, other teams have, too, and the community should have something to say about the question of moving or not moving. Staying with other owners or some restrictions if they are going to put up the money, that would be a solid effort. Normally my experience, from what I have read and what I know, and I have talked with you about this many, many times, and with my good neighbor, Mr. Porter here, very often where there is a 51-percent ownership, the fellow just picks up and says "I am going" and other people in the leagues who are owners, also with 51 percent are in the majority, and they say, "Well, we don't want to deny him the right because some day we may want to do the same thing."

This is what the big complaint is all about, the denial of people in a community who really want a baseball or a football team and really want to put up their money but they can't find an angel to put up the 51 percent. There ought to be some way that a community could get together, maybe a stock sale, I don't know, and everybody has a share of the action.

Then you would find a pretty solid footing for any kind of a professional team.

Mr. KUHN. Senator, we do not preclude the possibility of community ownership, nor did we in Seattle.

The CHAIRMAN. That was denied in San Francisco.

Mr. KUHN. I don't agree with you.

The CHAIRMAN. The team moved.

Mr. KUHN. For a different reason.

The CHAIRMAN. For what reason did it move?

Mr. KUHN. There was going to be a transfer of the ownership to the group that was headed by Mr. Carlson, a man for whom I have great respect. That transfer had to be approved by three-quarters of the members of the American League. In fact, eight members of the league were willing to approve that transfer to the Carlson community group. There was no inherent prohibition about such a community ownership as was presented by the Carlson group. I think those that voted against it had reservations about the desirability of a community ownership.

I was not altogether happy with the fact that the Carlson group, which I thought was an outstanding group, had not been able to get the necessary nine votes. I did very hard work trying to find a buyer for the franchise in Seattle. We talked to all the prominent people and companies we could think of trying to find a buyer.

Only one came forward, the Carlson group.

The CHAIRMAN. Yes.

Mr. KUHN. So I said after the meeting to the American League that so far as I was concerned I would disapprove any transfer of the franchise so long as that Carlson offer was outstanding.

I then asked the American League to call a meeting, I went to work with members of the American League, got the necessary votes to approve it. I then went to Mr. Carlson and said that they were going to have a meeting in Chicago, as I recollect, and asked him if he would come to the meeting and put his offer back on the table.

He said unfortunately the group no longer felt they could put their offer back on the table, and therefore there was no buyer for the franchise in Seattle.

This was an unfortunate thing as far as I was concerned. But we made a very sincere effort, Senator, to try to preserve it.

The CHAIRMAN. I am not criticizing you in your job as commissioner. What I am trying to get at here is that there seems to be an implied rejection and the people felt the same way. A community group would get together a great number of purchasers, and they would have a spokesman possibly a board of directors or something like that, hoping the owners both in professional football and professional baseball would accept a community package.

What they want is to have someone own 51 percent, and that has been the practice. That is what I think is bad.

Mr. KUHN. There is no implied rejection of that in baseball.

The CHAIRMAN. Mr. Rozelle says there is nothing in their constitution that so stipulates, but it has been the practice. I don't want to go into the versions of what happened in San Francisco. They are entirely different than what some of them told me.

This was not any implication of you. It was some of the owners who they were dealing with at that meeting who seemed to have made up their mind that a community group would come in and take over. I think part of the problem in some of these things—Washington is probably a good example—is when you have absentee ownership—let's put it this way.

Community ownership, local ownership, is better than absentee ownership for any team.

Mr. KUHN. I would agree.

The CHAIRMAN. Sometimes you can't find one who has that much money, and you have to pool your efforts. I hope neither league will close the door on the fact that a community may want to get together and pool their resources for a professional team, whether it be football, baseball, or anything else.

This has been the practice.

Now anyone can sit here 'til doomsday and tell me that there is no rule on that, and that we did not do this, and we did not do that. The fact remains that that has been the history and the practice. If someone owns over 50 percent of the team he can move it when he wants to, and he does.

And Seattle and Washington were two good examples.

Mr. KUHN. Senator, I really feel I must address myself to that. You can't move a team in baseball unless you have accomplished several things. One is that you must have the approval of nine members of your league.

That has not been easy to get. It has happened in some instances, yes, but there have been any number of instances, I would believe, over the years where a move was contemplated and there was careful sampling around the league to see if the votes were there, and they

were usually found not to be there, and usually moves envisioned by a single man such as you envision did not occur.

But the existence of the three-quarters rule is a protective provision and it has prevented the move of franchises and the right of the commissioner to take action where he thinks it is needed is further protection.

I have never been happy over the Seattle move, although I am not certain there was an answer. It was on the order of the bankruptcy court in Seattle, not on the order of the American League.

The CHAIRMAN. I know that got into it, and that was part of it, but I am trying to get down to the basic point that it seems to me that professional teams, football and baseball, ought to encourage community ownership and not one man or one person owning over 50 percent. Because there are literally scores, and you know the history of baseball better than anybody in this room, there are scores of people willing to invest money to buy the team. The single owner has a good thing, but he is engaged in all kinds of other enterprises and sometimes the empire has fiscal problems, and away goes the team to the highest bidder.

If you had community ownership, everybody had a little piece of it, that would not happen.

They could even be assessed, a great group of individuals in the community, keep it alive and keep it there. It would not happen and you would scotch all the rumors about someone going to sell and moving the franchise.

There seems to be a reluctance on the part of the owners of professional teams to want a community enterprise involved. They would rather have, I guess for their own convenience, one fellow they can deal with, or one fellow who can make a decision and move it or sell it, or whatever.

Mr. KUHN. They would have to have that in a community enterprise as well.

The CHAIRMAN. I don't think that baseball any more, or football, or any of these other teams have ceased to represent communities. I think they have become part of the community, and they are obligated to the community more and more as the years go by.

Mr. KUHN. Senator, I will deal in my remarks today with characteristics of baseball which I think distinguish it from any other sport. You simply can't compare it with other sports, they are as different as night and day.

Senator COOK. While you are going through those points, I wish you would address yourself to the size of the minor league today as opposed to 10 or 20 years ago.

The CHAIRMAN. You will excuse me, Mr. Chairman. I have to catch a plane, but I wanted to ask those questions.

Senator COOK. Thank you, Senator, and you may proceed, Mr. Kuhn.

Mr. KUHN. First off, I would like to thank you for your hospitality in permitting me to attend, and I would like to tell you how much I appreciate the interest that this whole proceeding indicates in professional sports and in baseball.

I have studied the bill with considerable interest, and I do have some observations that I would like to address to it fairly specifically

I am going to tell you that my conclusion is that a Federal Sports Commission is not a necessarily desirable thing as far as baseball is concerned, and I would extend that comment so far as I can observe to other professional sports.

I think we do have sufficient regulations at the present time of baseball by various governmental agencies and by laws that exist and by force of practical events.

Certainly the NLRB, the Department of Justice, the FTC, the FCC, the Congress, and the courts have in various ways been involved in the affairs of baseball, and I think they have provided regulations where regulations were necessary or desirable.

I heard Commissioner Rozelle suggest that football may be the most investigated sport. I would suggest that baseball has been investigated more than football, and it may be a dubious honor, but I think it is one we have.

I think, also, that we have in sports very competent professional administrators, faced with problems, yes, but they are competent professional administrators who know how to deal with problems that arise in professional sports.

I am very proud that the quality of men we had in professional baseball like Joe Cronin, and Chuck Feeney and men like Hank Peters who is the president of the so-called National Association.

I have great respect for Commissioners Rozelle and Kennedy. They are men who had devoted their lives to professional sports and who I think do a fine job in handling the problems of the sports as well as in trying the very best they can to concern themselves with the public interest.

I myself have felt very strongly that the representation of the public interest was part of a commissioner's job, and while I have been faced with some very difficult problems, in the 3-plus years that I have been commissioner, I do not feel that I have failed to reflect the interests of the public in carrying out the administration of my office, and I would say this both with respect to franchise moves, and in that connection I would like to refer back to what I said to Senator Magnuson.

The public interest was not ignored in Seattle. We in baseball, and I in particular as commissioner, made every move that we could think to make to preserve baseball in Seattle. The club finally went into bankruptcy and the move was a product and order of the bankruptcy court.

To carry out my obligations with respect to broadcasting, I handle the national broadcasting package in baseball. One of my primary concerns is to make baseball as widely available as possible to the American public.

Since I have been commissioned, we have moved the world's series during the week to nighttime so that more people could see it. We have tremendously enlarged the number of Monday night games we telecast. By next year we will have 15 regular Monday night games telecast in addition to our Saturday day game of the week.

All of these things were designed to serve the public interest as I feel it should be served in baseball.

There is another point in this area of the general necessity, Senator, which I think is quite important, and that is: What has professional sports served the public? What is the current record?

Granting that there are problems in professional sports, many of which you touched on here today, as I have been listening, I think if you look at the other side, you will find that the competitive system which has been permitted to work was in the framework of existing law and regulations, and has provided the American public with the greatest cornucopia of sports, and good sports, that we have ever had in this country; more than we ever expected to have. Indeed, ironically, I find, there are people who are saying we are giving too much televising of one sport or the other, or the seasons are too long here and there, and something ought to be done to curtail this. I don't think that is so. I think we have given the public magnificent displays of professional sports, as we all have been able to grow in recent years and provide this to the public. I feel particularly this way about baseball where we have the biggest mass audience of any sport between our major leagues and our minor leagues.

We had over 40 million people attend our games last year. This is an enormous number of people. We think we are serving well with our games, and who we attract in part by maintaining reasonable ticket structures so that our game can have the mass appeal and be what it has been, our national game, because I think it has the broadest appeal to the greatest number of people, old, young, black, white, whatever economics, any economic group.

You will find that baseball has the broad-range attraction. I am sure you are aware that professional baseball, our world's series, our All Star games, and others, these are the gems we present to the public. They are all telecast in the cities where the game is played, recognizing that that could have an adverse effect on attendance.

But we have felt this obligation to the public and we have carried it out.

I think this is some kind of a measure of the responsibility that professional baseball has exercised toward the public.

I think the Senator further is aware that there is a serious problem of administrative workability of the bill, S. 3445, as I read it. I think you are going to have a serious problem, it presents the possibility of a serious problem of conflict with various agencies, those I mentioned before, who are now involved in one way or the other with the regulation of baseball.

I think, also, that it has got to be recognized and I am repeating in part something that I said before, that professional sports are not fungible. You can't treat hockey like basketball or football. They are very different in their respective needs. They have points of similarity, yes, but they are very different in their respective needs and structures, nowhere more graphically so than in major league baseball where we support, by subsidy, the minor league system in North America, Canada, Mexico, and the United States, of 150 minor league teams in 20 leagues. But for the subsidy of these leagues by major league baseball, you would not have in my judgment, you would not have minor league baseball.

You ask what the history has been of the minor leagues in terms of numbers. The high point was in 1949 when there was as many as 59 minor leagues in North America.

Unfortunately, with the growth of television in general as a medium in this country, the number of minor leagues that could function

effectively against that kind of competition diminished, so we are now at a level of 20 leagues in 150 cities.

That is a very big structure still. To give you some idea how big that is, that is more than any other sport, except major league baseball.

This is a big system, maintained at considerable expense. Perhaps here more than anyplace else you see a graphic difference between baseball and other sports.

Twenty-five percent of our gross revenues go in support of our player development program, most of which is for the minor leagues; 25 percent. That is an enormous amount, and it goes just to that. As compared to other sports, particularly basketball and football, and I am not critical—perhaps I am envious—who derive their talent from the colleges at the cost of the colleges, and what is more, fully promoted and developed as major league performers, whereas we have to maintain a system to develop our talent and then, having brought it finally to the major leagues, must develop it and publicize it so that the public knows the talent.

In other sports, this talent comes fully publicized and developed. There is a tremendous difference there, and one that has an important impact as we try to look at whether a sports commission can effectively properly regulate potential national sports.

There is a further consideration in terms of workability, and that is the international aspect of professional baseball. Professional baseball today has the biggest international operation of any sport. We have a major league team in Montreal and minor league teams in Mexico and Canada, and we have in addition our winter league operations in Mexico, in Venezuela, and in the Dominican Republic.

I think it would be an awkward problem to try to evenly administer a sports business such as baseball where you have these international boundary problems. I may say that I expect that problems which I consider to be a difficult problem from the operating point of view will be an increasing one.

We foresee in the years to come with the growth of baseball internationally that there is going to be a lot more international baseball than there is today. We don't think it is hard to conceive of a play with the Japanese, and we would envision greater growth of professional baseball in this hemisphere and at the present growth rate of baseball in Europe, it is not farfetched to think that the time that Europe will participate in professional baseball is not all that distant.

Today there are 60 countries in the world with organized baseball programs.

I have looked, Senator, at the specific areas of regulation which the bill contemplates, and I would like to address myself to each of those as baseball would be affected.

First, let us take broadcasting. I cannot feel that there is any problem as far as broadcasting is concerned in baseball. As I indicated before, we telecast and broadcast our games very widely. We make them as widely available to the public as possible, and we think we have done the maximum to serve the public there.

Senator Cook. There is a difference in the way in which they are handled in baseball and in football, is there not?

Mr. KUHN. Again, there is an important difference between the two sports. Professional football has only a national contract. In baseball,

we have both a national operation, which covers the game of the week, including Saturday and Monday, the World Series, the league championship series and the All Star Game, and then we have 24 individual local packages developed by the local clubs for their local radio and television, and those patterns there at the local club level vary considerably.

Some broadcast almost all of their games. All broadcast their games by radio, but some telecast almost all their games. Some telecast relatively few. The pattern is a highly diverse one.

Senator Cook. In that instance at the local level, the revenue belongs to the respective home team.

Mr. KUHN. Yes, as it ultimately does in the national. We simply divide it, but it funnels through my office first.

In the field of amateur relations and college relations, again I feel that baseball comes off with very high marks. I don't think any sport has better relationships with the colleges than we do in baseball. We have a rule which is designed to protect colleges' baseball programs. We have had very little problem with that rule.

I think colleges would be happy to second what I have said about our rule as it touches colleges and amateur athletes. We have few problems in this area. We think we have a good system and one which recognizes the development of the amateur athletes.

As far as player contracts are concerned, I think the most important thing I could point out to you gentlemen initially is that in professional baseball we have a well organized union representing our baseball players.

Senator Cook. Let me interrupt you a minute. When you talked about your respective relations with the colleges in the system, explain the differences in the draft processes, because I think this has something to do with the fact that you have such good relations.

Mr. KUHN. I will be happy to explain it, Senator, and I would think maybe there is another reason why we have such good relations but I will be happy to explain it. We have a 4-year college rule. Under that rule, no young man who is in college baseball, in essence, and it is a long, complicated rule, but in essence it says that no young man who is in a college baseball program can be drafted by major league baseball.

Once he is in college, he is exempt from the professional baseball draft. There is one qualification worth noting, and that is if he becomes 21, he does become eligible for the draft, but this basically protects and has protected college baseball programs which are quite significant, incidentally, and growing increasingly so.

It has protected them quite satisfactorily. In our draft, if a player is drafted and does not wish to go with the team that is drafting him, the player has the option of declining to sign and he goes back into the draft and he will be drafted and some other team will draft him, so he has an opportunity to go someplace else with us if he wishes.

So he is given that additional flexibility. We have had very little trouble with this system. Now there is an important difference between the baseball on the one hand and football and basketball as I mentioned, and that is that a great deal more of their talent, or virtually all, comes from the colleges.

If you take all of the college programs, including the junior college programs, something like 20 percent of our players come from those

programs, but only a handful would be able to perform at major league level even then. They still would have to go through a minor league development. You will get an exceptional young man like Pete Broberg, but that it unusual.

I was approaching the subject of player contracts and player relations and I was mentioning that we have a very well organized and strong player's union in major league baseball.

I think this goes a long way, Senator, to showing why regulation in this area along with NLRB jurisdiction, simply does not seem to be justified.

How strong is the union? This really is a test. Is it sort of a house union? No, indeed, it is not, under any stretch of the imagination. It is well led by an experienced and trained and experienced union man, Marvin Miller, and it is an extremely independent organization.

It has achieved quite remarkable gains for the players in professional baseball since this organization was formed, which goes back to the last half of 1966.

To give you an example, at that time the major league pension plan received annual contributions of \$2.8 million annually, making it the best in sports and the best in the United States in any industry.

Today, that level of contributions is almost \$6 million, so in that period of time the contribution has increased over \$3 million annually to the pension and benefit plan alone. I think this gives you an idea of the ability of this union to negotiate effectively in professional baseball.

So if you come to the subject of the reserve system, which I am sure somebody will want to come to in discussing baseball, one has to feel, as I feel, that the union has the ability to find any solution by bargaining that is necessary, or desirable with respect to our reserve system.

The reserve system has not been written in granite. While it is an old institution going back nearly 100 years in age, it has been constantly modified and changed. I think we can have every reason to anticipate that that evolution is going to continue, and certainly we can anticipate that in the face of the union with the power we have in professional baseball.

Senator Cook. Let's turn that around a little bit. Don't you feel they could negotiate pretty hard on other subjects with you because of the reserve clause? Not in spite of it.

Mr. KUHN. There is always give and take in bargaining, Senator, but I think that is a normal and desirable thing in labor relations. I think every business has something it particularly wants to protect.

Sometimes there is a collision, but in the normal give and take of bargaining, this can be protected as I feel it can be here.

I think they are both in a position to reach reasonable bargaining results, and I think they are in a position to reach results on the reserve system without saying I think this change or that change or the other change is what is going to happen.

I am quite confident that satisfactory solutions are going to be achieved one way or the other.

Senator Cook. You do feel a little bit more comfortable about it after the other day?

Mr. KUHN. It has been suggested I should. I don't actually and I will tell you why. Regardless of the decision in the *Flood* case, the matter was coming back to the collective bargaining table for deci-

sion. Either way, in my judgment, that is where it is going to go, and that in my judgment is where it could be resolved.

Senator PEARSON. And it may pop up here, Commissioner.

Mr. KUHN. I understand that, Senator.

The Supreme Court has indicated that it would not be inappropriate to have congressional review of such a subject. We would be happy to cooperate with any such review, and we think you will find the system, as it has evolved in baseball, the total compensation and working conditions picture is a reasonable one.

I think the reasonableness of the player-club relationships in the game of baseball are evident.

The fourth point I mentioned in the bill is of course the franchise problem, and there is one that does not, as I indicated to Senator Magnuson, make me all together happy as it has worked in baseball.

We have the longest history of any professional sport. The National League was founded in 1876, so we have been at this a long time. Major league baseball is usually measured back to 1901 when the American League and the National League joined together.

I think the history of baseball in maintaining a reasonable stability of franchise has been good.

However, what has happened in more modern times is that the acute financial problems of baseball have made it more difficult to maintain the kind of stability which we would like to have.

We don't think that instability of franchise locations is good, desirable, or anything else. Nor do we think under any circumstances it should be the whim of one man and it has never been, that he would want to do this, or that.

We think stability is desirable, but we have a problem of increasing competitiveness in sports, and in entertainment generally and in business generally, and this has made it more difficult for baseball to operate in an attractive way from a profit point of view.

Senator PEARSON. What I wanted to ask you was that in these franchise transfers which relate to economics, primarily, and maybe totally, have you ever considered that in the awarding or in the transfer of a franchise that conditions be prescribed by your office which are publicly known, that if teams are not supported at a given level of such and such, that automatically a transfer becomes the subject of the Commissioner's office and the subject of the owners of the league, so that you seek to avoid this fantastic disappointment and injury of pride and frustration of those few loyal fans who kept going out there and going out there?

Is there any way, or have you ever considered that preconditions, or any other word you might describe, might be utilized to allay some of this crisis of confidence that ends up that the owners are very greedy and that baseball is a rather ruthless institution in itself?

Mr. KUHN. Yes; we have considered conditions, and in our regulations that require a three-quarters vote, we do have a condition. The powers given the commissioner have a condition that has to be met, but that does not go to the kind of condition which I think you are thinking of.

We have considered a kind of operating condition that you mention, and the general view in baseball is that when you try to set these down, it is very difficult to do. We have tried to do it. It is very difficult to do.

I, too, think that the image of the clubs in baseball as being avaricious is one which is too prevalent for fairness.

It totally fails to recognize in my judgment, and that is a point I was making, the economic problems that our industry faces. If you look back over the history of sports, all sports, you will find that there is instability of franchise when there is economic instability in the sport.

This is true whether it is basketball or football. Hockey doesn't seem to have economic instability, and therefore, you don't find franchise moves in hockey.

But it is economic instability that creates one problem. It is not a callous disregard of the local community. No commissioner should tolerate that ever, and certainly, I would not.

But it is a problem of trying to operate successfully in a community given the operating conditions that we have in baseball.

If you are going to take 25 percent of your gross revenues before you even turn around and put them into player development and minor leagues in North America, you are going to have a very different problem from anybody else, and a very difficult one.

Baseball has to operate at a higher level of probability than it presently does if we are going to avoid this problem completely.

I think we can minimize it. I think we will minimize it, but it is the profitability that gives you stability. There is no getting away from it.

Senator COOK. You almost make me feel real sad that I can't get into the same business as Charlie Finley and Bob Short.

Yet, I am wondering, what do you do with underfinanced franchises. What do you do with the individual who uses communities, who carpetbags around the country? What do you think of this practice?

Mr. KUHN. Well—

Senator COOK. I know you have some stable institutions.

Mr. KUHN. Yes; we do. We have stable institutions where we have either very successful franchises or very well-to-do men who are willing to take the considerable financial beating required to operate in professional baseball, those two things.

Where we lack one of those, then we are apt to be facing a problem.

What do you do about it?

Why, you try to improve the operating practices in your sport so as to bring about the financial stability from which you get the product, franchise stability, which is what you want, what I want, and what everybody in the room would like to have.

There are various ways I think that can be done. I think we are doing that in baseball in a variety of ways, and I think the fruit of it, at least, I am hopeful the fruit of it will be to produce the stability we are looking for.

But this isn't going to be done overnight. I don't hold out any immediate panacea in that direction.

Another thing you can try to do is try to attract into ownership the quality of person, like Ewing Kauffman. We were talking about Kansas City. He is a very good example.

Senator PEARSON. What has he lost in his operation so far?

Mr. KUHN. I think he puts on a figure of \$6 million, and he has only operated 3 years.

Here in Washington, during the summer of 1971, when the problem was very obvious, an imminent problem—an actual problem, rather, and the danger was imminent, we worked as hard as—I personally worked as hard as I could work trying to find some person in this community or even outside this community, or some corporation to step in and take over that ball club. There never would have been a move out of Washington had there been one prepared to do it at a fair price. There was not.

This is a problem that we are faced with in baseball because we do have an operating picture which is going to be attractive only to certain kinds of people, those who get the psychic income, a psychic satisfaction out of what I consider to be the greatest game ever conceived.

The time of our popularity, we measure this to be the time when it is at its greatest, and attendance greatest, and we have this kind of operating problem, which causes an instability in the sport. This is something that we have to solve, but I think we can.

Senator PEARSON. May I ask another question?

Senator COOK. I didn't mean to interrupt you.

Senator PEARSON. Is Seattle the only city which has not had a franchise replaced?

Mr. KUHN. Seattle is the only city, yes; Washington and Seattle. In all other instances, where we have moved a franchise, it was either out of a city which already had a franchise, a second franchise, and therefore, it was not in a sense left by baseball, or it was a city to which we have ultimately returned, such as Milwaukee, or Kansas City.

We think, considering the problems that we have been faced with, our record is a very good one.

In ultimately maintaining baseball in its traditional cities and in Seattle, we are, of course, involved there in rather extensive litigation, which complicates the picture considerably, and Washington, as I am sure everybody here knows, we have been working closely with Congressman Sisk's group to find a solution to the problem of baseball having left Washington, and I think it is no secret to anybody that it is the wish of the commissioner of baseball that this problem be solved.

Senator Cook. I hope you agree with my ex-Senator, there is no way in the world that these hearings are connected with the hearings that have taken place and much of the criticism that you have gotten, that: "Don't worry about it, Congress will not allow a baseball team to go out of Washington, and they will be harassed until we get one."

I don't happen to feel that way. I am concerned about your feeling as commissioner, and I didn't mean to interrupt you again, Senator Pearson. But do you think the franchise is of any greater value in Texas right now than it was in Washington?

Mr. KUHN. Yes.

Senator Cook. You do?

Mr. KUHN. Yes; I do.

Senator Cook. Do you think it has a good potential and a good possibility of staying in Texas?

Mr. KUHN. Absolutely.

Senator Cook. Go ahead, Senator.

Senator PEARSON. Really, the questions that I wanted to ask related to broadcast, sale and transfer, transfers of amateur athletics, and you have been covering those. I won't interrupt you if you want to complete your statement.

Mr. KUHN. I have completed my statement, and I would be happy to answer any questions beyond what I said.

Senator PEARSON. What are the opportunities for further expansion of additional teams in the various leagues?

Mr. KUHN. As far as expansion is concerned, my view has been that any healthy sport is going to expand from time to time. Major league baseball has gone from 16 teams in the 1961 era to the present 24 teams, which is a very considerable increase.

However, there is this problem. In any sport, in expansion, you dilute your talent. There is not an endless supply of talent. Therefore, you must consider your talent situation when you are evaluating expansion.

I would think that baseball will be expanded again, but I really don't anticipate a very early expansion of baseball, both because I want to see the talent deeper, and because I would like to see a little more economic stability in baseball before we have expansion.

I am by no means saying we won't expand, but I'm giving you practical problems we are faced with in terms of expansion.

As far as realignment is concerned, the subject of major league realignment is not a new one within baseball and, indeed, among both commentators and critics of the game, and there have been many who feel that a geographical realigning of the major leagues would be a good thing, essentially a western, central, and eastern.

It is obvious that there are benefits to such an alinement. We have it under study at the present time. This isn't to say, again, that I think this is going to happen tomorrow, because I do not, but I think it has a chance in the future.

Senator Cook. In all fairness, I am going to agree with you that baseball happens to be my favorite sport, but for heaven's sake, don't give us a western and central and eastern division so we have to have three long-winded playoffs instead of the two we have now. I came to the conclusion that if basketball went on longer, we would be watching it in July.

Mr. KUHN. I had the same feeling.

Senator Cook. Let me say in reviewing the sport, I think probably you in baseball have done the most remarkable job of all to maintain identity. Really and truly, you have an American League and you have a National League, but you really have one league. You may disagree with me, but your draft is a common draft, and it is respected by the respective leagues, so, therefore, the public relations that you have done through the years has been rather a remarkable job, whereas, apparently what we are seeing today in Senator Ervin's hearings on ABA and NBA, is the serious problem of two leagues not being able to solve their problems, and getting themselves into a position of such high-priced talent that they find themselves in financial difficulty.

I would say to you that I don't really think it advances their argument a great deal relative to the financial problems that when they had two teams that folded, namely, Miami and Pittsburgh, that the other teams immediately drafted all the players from the two folded

teams and not only did they draft the existing players, but they assumed the responsibility for those defunct teams draft choices.

So I really have to congratulate you that you have accomplished something that they have not.

Now, Senator Ervin would agree that that accomplishment is in the worst interest of the individual. Maybe he is right, because I will refer you to your remark about the team moving from Seattle to Milwaukee. You said that it ultimately wound up in the community that offered the most money, but the player doesn't wind up with the team that offers the most money. So there is an inconsistency. You admit it, it is of tradition. You have your problems in that field.

I must say that I know you are going to go solve your problems at the bargaining table, but I think, whether you will admit it or not, that you do feel a little more comfortable now than you did before.

I am really interested in regard to baseball in relation to the fan, and I know you are, too.

I read an article in the newspaper the other day, and I have to tell the story again. I have a 10-year-old that can tell me every player on every team and every position, and he has more glasses from 7-Eleven, I think, than any kid within 97 blocks of our house. If he will just let go of them one day, I think his mother would be able to wash them.

But when he met the President of the United States, he asked the President whether he knew Frank Howard. I think that is a tribute to you and to your sport. But now we see Frank Howard on the bench, because he is so high-priced. What does this do to the fan?

I have a notion that it occurs in baseball more than it does in football. I know every coach wants to win, but at least this sports article indicated that one of the reasons that he was in the position he was in was that they are trying vainly to sell them. They are trying vainly to get part of that tremendous salary that they are paying him back, and I would like you to reflect on this as it deals directly with the attitude of the fan toward the sport.

Mr. KUHN. Well, Senator, I haven't talked to Bob Short or Ted Williams about the handling of Frank Howard. There are some areas of this game——

Senator Cook. I am sure that is not in your field and you don't want it to be.

Mr. KUHN. That is right. I know something about Ted Williams. I don't know anybody who wants to win more, or suffers more bitterly from defeat than that man, and if Frank Howard could help his ball club, he would be in there, and nobody, including Bob Short, would do any differently.

Senator Cook. Another thing that bothers me with respect to the fan is when all the rumors started to fly, and I don't really mean to spend a great deal of time on this. What happens to the attitude of the fan, when all of a sudden half a team is gone because of a name player, an untried name player, in that particular year, and all of a sudden, you get this community hostility.

As a matter of fact, I think this community and any ownership in this community is going to look with a very jaundiced eye the next time a team comes to town.

You admit that you have had franchise owners that have gone into the league underfinanced?

Mr. KUHN. Yes.

Senator COOK. Do you propose within the framework of your position to try to the best of your ability to correct that situation?

Mr. KUHN. Yes.

Most recently, we were faced with that kind of problem when the Cleveland Indians were sold by Vernon Stouffer to Nick Mileti, and you may recollect from the news stories that the initial proposal was turned down.

Why?

Because it was felt not to be sufficiently financed. The second proposal was an acceptable one and was accepted.

I don't think we are unmindful of this problem. This has been criticism, for instance, of the American League having accepted Bob Short in the first place as the operator of the Washington club in 1968.

Bob Short was the only person who made an offer.

Senator COOK. What you are really saying is that if you had not accepted that offer at that time, then, either the franchise would have gone further downhill or would have been dissolved.

Mr. KUHN. Or moved.

Senator COOK. Or moved?

Well, we found out it was moved anyway.

I still hark back to the days when the mayor of Louisville and I met with Mr. Finley, and it didn't take me very long to figure out what Mr. Finley was up to, and I think that is a detriment to the profession.

I recall after we had our long involved meetings in Louisville that morning, that the only thing that Mr. Finley was really interested in is how big a story he got in the first edition, and when they brought him in the paper, he said, "Well, that is going to shake a lot of people up." That is what he wanted to do, and that is what he accomplished.

How do you propose to attack these problems?

May I say, really, that these are some of the things that are the basis for the consideration that maybe the Federal Government should be a part of, or look into, or at least supply some oversight, because one thing I do have to agree with Senator Ervin on is that I think in your sports you do have it both ways.

The institution of free enterprise logically and readily raises its head when a man wants to move the franchise, but it doesn't raise its head with respect to the players in that system.

Mr. KUHN. As far as the players are concerned, I have to say collective bargaining, and I do think that provides a meaningful answer.

When you asked about the transfer of franchises, I would say that it depends more than anything else on the economic stability of the game, and where there is a potential for unreasonable action, I think depends on the league and the commissioner.

In the last 3½ years, there have been three transfers. There was no alternative. Whether that would have been different in the past, we can only speculate on, you and I here, but I would be inclined to think perhaps it would have been different in the past. It is not different today.

I think this comes down to something I mentioned earlier in my remarks, the quality of the administration. If you see that professional sports are being operated by people of less than the proper qualification and integrity to do the job, then I think another look has

to be taken by the Congress, but I think you have to try to evaluate, not only the administrators, but the mood that creates these administrators and the particular problems that particular industries are facing.

I sat here and listened to Pete Rozelle answer some of the problems he is facing. I can understand every problem he is talking about.

They are different than mine, but I can understand those problems. Maybe it is because I know something about sports administration.

Senator Cook. Maybe a sports commission would, too, and may be they could lend a degree of expertise to some of these things. Sometimes you wonder how a commissioner that you appear before makes a ruling, and you come to the conclusion that nobody on that commission knows anything about sports.

That is one of the things that really is in the back of my mind, that at least you can have an institution with some expertise.

You understand baseball inside and out, but you also understand the relative problems that other people such as Mr. Rozelle, and I am sure Mr. Campbell, and I am sure that the commissioner of basketball, have discussed before us.

As a matter of fact, I asked Mr. Jack Dolph of what he would think about this as an alternative litigation this issue by issue, and he said that is the only thing that really indicates a degree of support, because of what he has seen in rules presented by judges.

And I think I am quoting him correctly that if they could not be in that position, on occasions that they would find themselves having a ruling that would adversely affect the team, the franchise, the fan, whereas now on occasions that does not occur.

Mr. KUHN. I think this, that you have to look to the particular professional sports to see the quality of the people and to see the quality of the operation that they have and then compare that with what a Federal administration could possibly do in light of the various kinds of problems I have described here earlier.

If you look at baseball you will find in instance after instance highly responsible men who participate in the administration of this game. You make rulings in baseball by legislation, as you do in the Congress. We in our small way have legislation. We vote by clubs and even under some circumstances the commissioner gets to do the voting.

By and large, we sit down with a problem and try to find a solution, we have a very responsible approach to that problem, some highly qualified people. If you look around in our game, I think we can properly take some pride. I won't mention names for fear I will leave out others. I think I can take some pride in the quality of people who we have in professional baseball. I do think that they are going to be better equipped, along with people like myself and Feeney and Cronin and Peters who run the three basic administration departments within baseball, I think we are all going to be better equipped than a Federal commission to try to operate this sport in the best interests of the public.

And while I will grant that we haven't been perfect, it almost invariably is not because we didn't try; it is because some problem that neither we nor, I believe the fellow commission could deal with, intervened and made it impossible for us to be as 100 percent perfect as we would have liked to have been.

I think the record of baseball is good enough so that it would be not a proper thing to impose a commission operation on top of what we do have.

Senator Cook. When you were discussing a moment ago relative to the draft that you do not draft players in college, you can draft 18-year-olds and 19-year-olds that are not in college and as a matter of fact you do.

Here is a young man who, unless many States change their respective laws, has not even reached his majority, has not even reached the ability to be able to execute a contract in his own name, who is subject to this system, and who is subject, even in his minority, to actual team ownership.

Now I am not going to ask you to justify that system because you are going to and you feel that it should be that way. I have serious reservations about it but I must say that you do not have the baseball players in college, that you have with football players and that you have with basketball players, but that is because you don't have 18,000 and 20,000 and 30,000 and 50,000 people watching college baseball games, as you do have watching college basketball and football games.

To set the record straight, Commissioner, let me tell you one of the reasons I really got involved in this, was because of the situation in basketball. I became very disappointed watching teams go all the way to the NCAA finals, and all of a sudden having their college basketball teams forfeit a number of games, giving back funds, the school giving back funds it won in the NCAA.

A situation which happened at Western Kentucky University, Villanova, North Carolina. It happened also at Marquette.

I am not satisfied with the idea that you and I, as lawyers, are solving the problem by having a tort, or having a civil, against the player and against the league.

To me this is after the fact. I don't think this does a darned thing in the world to the poor guys that play basketball. I don't think it does a thing to improve the attitude of the 16 or 18 or 30 thousand students in a college who wind up having followed a basketball team from the time they were sophomores, having watched themselves raise themselves to national prominence, and all of a sudden down the drain the whole thing goes.

That is why I feel there either is going to be a better attitude in organized sports, or you may have to pay the penalty by reason of the fact that some in some other sports do not have a better attitude. It may be a collective thing. It is like saying one bad apple may ruin the whole barrel. I don't know.

It seems to me there have to be major penalties or some degree of activity that is going to stop it before it gets started.

Now I agree with Senator Ervin. I don't know what you do when someone offers someone \$2½ million. Maybe he ought to make up his mind that the \$2½ million is far better to accept than to accept the subterfuge of having to play with a team and having its goals dashed. I think something has to be done about it. I think if it isn't, all of sports gets a bad name, not just the sport of basketball, but the whole institution of sports.

If a poll says—in relation to pro football—that 60 percent of the people believe it is a business, I don't think you are going to have a different attitude toward baseball than they have toward football.

I think the day gets closer that if these things are not stopped, legislation is going to occur that is going to affect the whole broad spectrum of the sports world. I think you realize that too.

Mr. KUHN. I think there is interplay among the sports, Senator. I agree with that. I have often said that wherever there is a breakdown in integrity, for instance, that is the main job of the commissioner, really, to protect the integrity of the game, wherever there is a breakdown in integrity, I think all sports are hurt by that kind of thing.

I recognize there is some interplay, but there is some very definite necessity for compartmentalization of our problems and recognition of some distinct problems that various of us have.

Could I say one or two things about the draft in baseball? I know you have said I would defend it.

Senator Cook. Then I have two short questions to ask.

Mr. KUHN. You are correct. I will defend it. Prior to the adoption of the free-agent draft in baseball, we had the period of the Yankee dominance which was very good in a sense for those who liked to see all the talent gathered on one team but very bad overall for the sport and for the athletes in the sport, in my judgment.

Senator Cook. May I stop you right there? You better do something about your national television sports announcers because the other night in the Pittsburgh game, which I watched every bit of, there happened to be a certain player receiving tremendous accolades during the course of that game. It is not hard to figure out who it is.

Unfortunately, the sports announcer said it is too bad he wasn't playing in New York. I have heard that on various occasions, and somehow or other, I think you ought to take on that challenge that a player doesn't become the great star that he ought to become or is in fact just because he doesn't play in New York.

Mr. KUHN. Senator, I think that kind of philosophy which—there is a very serious problem with it, is a function with the Yankee domination of baseball.

Senator Cook. I may say the President said that about Stan Musial and I wish he hadn't said it.

The first world series I went to was in St. Louis and I was against the Yankees and all for St. Louis.

Mr. KUHN. We think the free-agent draft has done a remarkable job to equalize the competitiveness of our team. It is a situation like that, and the Senator asked me before what we were doing, trying to improve our economic problems, this is one of them. If we can even out our talent sufficiently so that we have even a better pennant race in our division and leagues, then you are going to see a good bit of the difficulty that baseball has faced economically disappear.

If we can get the kind of races that are shaping up, let's say, in the National League West, pretty generally occurring by an even division of talent, then you are going to find baseball in a much better situation. That is what we seem to be coming toward with the creation of the free-agent draft.

As a result we feel everybody in the game, including most importantly the fans, are better off because the talent is better distributed.

Now, are the young players who have been drafted off better off? My answer is yes. For that reason I have just given, they are going to be coming into a more productive system for them in the long-haul and secondly—and this is very interesting—we went into this in *Flood's*

case. Did bonuses—was the rule adopted to cut bonuses being applied to free agents. That was the suspicion of some of the critics. The answer is that after the adoption of the free-agent draft, bonuses increased, did not decrease.

Senator COOK. I will pass your testimony on to Senator Ervin.

Senator PEARSON. Let me ask a question. It seems to me that the focal point, the disenchantment with baseball and what gives rise to the kind of legislation we have before us, pretty much is the owners, they are characterized, whether rightly or wrongly, as misers who sit up reading profit and loss statements, or they are meddlers who are continually involved in the sport at the management level.

How many owners, generally speaking, as an estimate, you may not have considered this—how many owners of baseball franchises rely upon their franchise ownership as their source of economic achievement or wealth or so forth?

Mr. KUHN. I would say something less than half.

Senator PEARSON. Generally speaking owners actually participate in the operation of the ball club, on the field, involved in trades, et cetera?

I say that because I know one owner quite well and I will identify him only by the fact that he lives about four blocks from me, and he is quite a nut about computers and he runs all this ocean of facts and figures through computers and he gives Bob Lemon a lineup every day or so and takes great pride in the fact that Lemon has never used a single lineup that he ever gave him.

He thinks that is good.

How many owners actually get into this thing?

Mr. KUHN. I would say more than half of the owners get into the operation of the club.

Senator PEARSON. One further observation. You used a key word, I think, in your statement. You made reference to competition, aside from the classic man on man, team against team, you are really an enormous competitive operation today, with other sports, for the entertainment dollar, for the guy that just doesn't want to fight the traffic, rather stay home.

Let me just say to you that aside from further consideration of this bill, we found in this room. I think, day by day, in two fields, transportation and communications, that the great problems relate to industries that are in every severe competition and who are also under heavy regulation at the same time. We can't find our way out of that. We either think in terms of nationalization or we think in terms of removing all regulations.

So I think we will come around to those considerations here if we go much further.

Thank you. That is all.

Senator COOK. I think he raises a very interesting point and I commend him for it, because the—

Senator PEARSON. Excuse me. I have to go.

Senator COOK. We were talking about whether, in regard to the regulations of the FCC and the FTC and all those regulations you live under, maybe it would be better if we could get it under one head instead of this multiheaded giant we seem to be delighted in creating every time we mark up another piece of legislation.

Of course, it makes these lawyers mighty happy and mighty healthy.

One question. What problems do you see by reason of the New York Giants moving out of Yankee Stadium as to the future of the New York Yankees and their home in New York?

Mr. KUHN. The—

Senator COOK. And the commitment of the city of New York, which was a dual commitment to both football and baseball.

Mr. KUHN. I will try the very best I can to avoid getting into any situation where I am critical of the operations of any other sport. I have enough problems to deal with on my own.

Senator COOK. You are going to be faced with that situation, Commissioner, are you not?

Mr. KUHN. I feel that the Yankees have made a commitment to the city and so long as the city is prepared to live up to its commitment to the Yankees, I think that really is the end of the problem, whether the city is going to be in a position as time goes by to do that, Senator, I just don't know.

But the Yankees—they are very responsible, in my judgment—made a commitment to the city, and they will live up to it.

Senator COOK. I think the best example of that is RFK Stadium. It by reason of the desire of individual sports to separate their facilities, and the effect that this may have on some baseball franchises?

Mr. KUHN. It could create a problem. These are—these public facilities, these new ones are expensive and you need as much operating revenue as you can get.

Senator COOK. I think the best example of that is RFK Stadium. It has never paid a dime of its principle, yet it was built for one of the respective sports which is now gone.

Mr. KUHN. I think, Senator, your sports operations have to be viewed as a part of your community where you can not necessarily get back every nickel you may have invested as a community in trying to make your community attractive to them.

I think that is true of RFK Stadium.

Senator COOK. Now I guess I am going to prejudge what I am going to ask you before I conclude and then no more.

How do you evaluate what I consider to be Mr. Samuel's rather ridiculous projection of allowing gambling on baseball games and allowing gambling on football games. At least in your game it is on an odds basis. I wonder if you might say something and then I want to say that we are delighted to have had you here and I know you have another appointment to make.

Mr. KUHN. Senator, I think it is one of the worst proposals I have ever seen made. I shudder to think what the effect on professional sports in general would be if we ever adopted legalized betting on professional sports.

I have made a number of statements on this, I will send you, for the record, a copy of my statement which is in the Congressional Record. I could not feel more strongly that this would be a disaster for professional sports.

Senator COOK. Thank you very much, Commissioner.

We are delighted to have had you here.

Mr. Clarence Campbell, president and treasurer of the National Hockey League.

STATEMENT OF CLARENCE CAMPBELL, PRESIDENT AND TREASURER OF NATIONAL HOCKEY LEAGUE

Mr. CAMPBELL. I want to thank the committee for the opportunity to be able to make a presentation on behalf of my sport.

I have it in the prepared form which I would like to read and I will be very happy to answer any questions concerning any portion of the presentation which I will make here today.

Mr. Chairman, I trust that the request which I am about to make will not contravene either the rules of procedure or the established protocol of the Senate or of this committee.

With your indulgence I would like to place on the record a short statement on behalf of the National Hockey League, the American Hockey League, the Western Hockey League, and the Central Hockey League and all of their member clubs which combined, consist of 40 professional hockey clubs of which number 36 carry on their operations in 21 different States.

A few days ago there were added to this roster two additional conditional franchises to become operational in 1974-75. One was awarded to Washington, D.C., and the other to Kansas City, Kans.

These four professional hockey leagues have just concluded the most successful season in their history attracting to 1,400 regular scheduled games a total of 11,426,000 paid admissions and just under 750,000 more in our playoffs.

For this enthusiastic "welcome" and acceptance of the game of hockey and this magnificent manifestation of its support by the sports fans of the United States, we are sincerely grateful. Thank you very much indeed.

It is the desire and the ambition of the NHL to cultivate and develop the game at all levels in order that hockey will become a truly indigenous sport.

This is a matter of increasing significance because of the fact that the game is expanding so rapidly around the world into every country in which ice can be maintained. This likewise expands the opportunities for international competition on a grand scale.

I might say those are about to occur for the first time. There will be a competition between Canada and the U.S.S.R. in September.

I would like to preface the remainder of my remarks on the topic of this inquiry by saying that I am speaking only on behalf of the National Hockey League and its affiliated leagues.

It is readily recognized that some of the observations that will be made may be neither relevant nor appropriate with respect to some or all of the other professional team sports to which this proposed bill is applicable.

Please be assured that this approach is prompted neither by indifference nor by any feeling of superiority.

The inventory of unresolved disputes and controversies which beset the sports world, which Senator Cook recited in his address to his Senate colleagues when presenting Bill S. 3445, is indeed impressive;

And the warning he sounded in that address, that the sports fan is becoming weary of the intrusion of the legal wrangles and the financial hassles and maneuvers on to the sports pages, is both valid and timely.

The sport fan does indeed want a stable professional sports system in which he can be reasonably sure that the star player of his favorite team hasn't jumped to a rival league or, worse still, to a rival team.

He also wants to feel confident that his favorite team will not be spirited away to some far-off country.

Senator Cook. Mr. Campbell, will you relax for a moment while I run over and make a live quorum. Maybe one of these days we will do something about this system.

Mr. CAMPBELL. Fine.

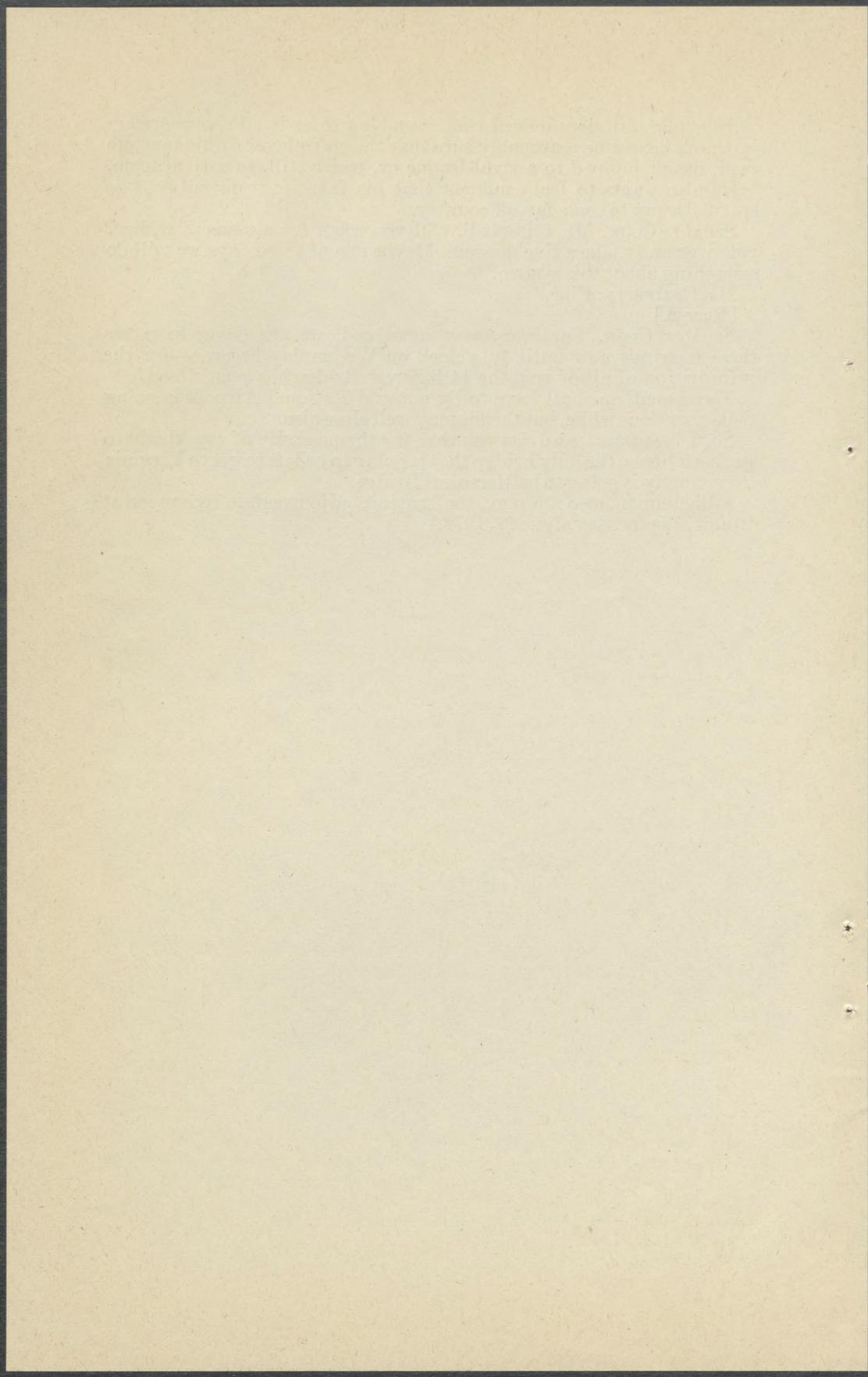
[Recess.]

Senator Cook. For everybody concerned, we are going to recess these hearings now until 10 o'clock on Wednesday because—for the information of all of you, the 14th Street Bridge has been closed.

These gentlemen all have to fly out and National Airport is going to be open for awhile, but then it may well close also.

So, I just want to advise you that for the necessity of everybody to get back home, the only bridge that is going to be left to get to Virginia very shortly is going to be Memorial Bridge.

(Whereupon, at 3:35 p.m., the hearings adjourned, to reconvene at 10 a.m., Wednesday, June 28, 1972.)



## FEDERAL SPORTS ACT OF 1972

WEDNESDAY, JUNE 28, 1972

U.S. SENATE,  
COMMITTEE ON COMMERCE,  
*Washington, D.C.*

The committee met at 10 a.m. in room 5110, New Senate Office Building, Hon. Marlow W. Cook presiding.

Present: Senators Cook and Weicker.

Senator Cook. We will bring these hearings to order.

This is a continuation of our hearings that we hope we can wind up today.

Our first witness this morning is Hon. Jack Kemp, Congressman from New York.

Jack, we are delighted to have you here this morning.

### STATEMENT OF HON. JACK F. KEMP, U.S. REPRESENTATIVE FROM THE THIRTY-NINTH DISTRICT OF NEW YORK

Mr. KEMP. Thank you, Senator.

Senator Cook. With no further ado, I know you have some remarks to make, we will let you proceed.

Mr. KEMP. I appreciate the chance to appear here before your committee and to answer some questions, Mr. Chairman, and I also want to commend you for the genuine interest that you have shown in sponsoring this legislation, the Federal Sports Act of 1972. As I understand the proposal it is designed to protect, preserve, and promote the interest of the fans, the players, and the owners, all of whom have a vested interest in the stability, competitiveness, and viability of professional sports.

I am going to make just a very few introductory remarks.

I am on the Education and Labor Committee which is holding hearings right now on a very important piece of legislation, and I am very anxious to get back to them, but I did want to appear before your committee to express a perspective that I have as a former professional football player for 13 years.

I was the cofounder and the president of the American Football League Players Association for 5 years, and now I am a first-term Congressman from New York.

I would just like to take a moment to welcome to the hearings a couple of old—I shouldn't say old—a couple of young exteammates—

Senator Cook. You have already committed the sin, Jack.

Mr. KEMP. Leon Hart, of the Detroit Lions, the team which drafted me out of Occidental College in 1957. Leon, I think in 1957, that was

at the end of his very great career, and 1957 was the start of my career, and I am pleased to see him here today.

And Bill Dudley, the great All-American who played for the Pittsburgh Steelers, another team that I at one time played for.

Alan Eagleson, who is the counsel for the National Hockey League Players Association. Alan and I have had the chance to get to know each other over the years when he was counsel and I was president of the American Football League Players Union, and Mr. Walter Kennedy, able commissioner of the NBA.

I mentioned your sincere interest, and I, too, have a real interest in protecting and preserving the interest of the players and the fans in all aspects of professional sports and that is why I am in opposition to the bill, Mr. Chairman.

I am in opposition to the bill from the perspective of someone who has had experience in professional football, and at the bargaining table, as well. I am a strong advocate of collective bargaining, and am someone who feels that the business is big enough to have strong representation on behalf of the players. I also believe that the problems and whatever inequities do exist and whatever other issues today are attendant to professional sports, in the operation of professional sports, can better be solved within the framework of the collective bargaining process.

As an advocate of collective bargaining, and one who represented the players for many years, I am convinced that the football players with whom I have the most contact are well represented today. They have access to fine legal representation.

The president of the National Football League Players Association, John Mackey, is very articulate and is a strong advocate of the players' rights and the players' obligations, and the players' interest, and so I am of a mind that whatever differences, whatever critical problems that are with us today in professional sports can better be solved through the framework of this process rather than turning the commission-ership or the regulation of professional sports over to the Federal Establishment through the Federal Sports Act.

I commend the gentleman for his sincerity, and I just strongly disagree, and I am here to answer any questions that might be helpful to the committee in making up their minds.

Senator COOK. Congressman Weicker, do you have any questions?

Senator WEICKER. Now you are giving me a great honor to be back with my former colleagues in the Congress.

I have no questions of Jack. I know of his fine work since he has come to Congress, and it is good to hear this type of opinion from a man who has been on both sides of the fence, both in the Congress and in professional sports.

Jack, it is good to see you here.

Mr. KEMP. Thank you, Senator.

Senator COOK. Congressman, he carries a great deal of weight as far as I am concerned, too, but let's have a little colloquy, because last month you made a speech in New York, and you urged professional football to begin cleaning up its own house before the Congress began cleaning it up for them.

What areas were you concerned about and what areas were you discussing at that time?

MR. KEMP. Well, I have candidly expressed my opinion that it is legislation like this that ultimately would pass the House and the Senate if some of these problems and issues that have come to the attention of the public are not resolved. I made the point that I thought they should be resolved within the framework of the business rather than turning it over to the Congress. I felt at the time that one of the problems was that the public was going to lose confidence in professional sports if there were a continuation of the type of work stoppages or strikes that I think are not in the best interest of the players, the fans, or the owners.

I think that many people recognize, in the labor movement and out of the labor movement that the strike is really almost an anachronism in the resolution of these difficulties that should only be used as a last resort.

I think there should be collective bargaining over the question of the option clause, or the reserve clause in baseball. But all I was suggesting was that these problems can better be solved within the framework of the collective bargaining process than by turning it over to the Congress.

I don't think there is any condition that is so oppressive today in professional team sports that it requires Federal regulation.

Senator Cook. So you were talking about such things as work stoppages or strikes when you made these remarks?

MR. KEMP. Yes. And I mentioned the fact that I thought the option clause—and the reserve clause, the conditions of employment, are a natural subject for negotiation, and I asked that the owners spend more time in communicating with the players, that there is a strong mutuality of interest between the players and the owners, and I have lived through it. I saw the growth of the American Football League from absolutely zero to unprecedented popularity and financial stability. So I lived through the growth of this, and I feel very strongly about it.

Senator Cook. What bothers me about it, the things you are talking about are things in relation to the players as such, work stoppages or strikes. Did you discuss the matter, as it occurred in Buffalo, where the people of Buffalo have been threatened on numerous occasions with the removal of the Bills to Seattle, unless certain conditions are met? What do you think about this in relation to the fans?

MR. KEMP. Well, I don't think that over the years there have been very many franchise shifts. In the American Football League there were only two. I could be wrong. But the Los Angeles Chargers moved to San Diego, and I was a part of that, and the Dallas Texans moved to Kansas City.

So the right of a franchise to shift is a right that I don't think should be taken away. I don't think it should be used capriciously, and I didn't agree at the time of the Bills situation that there was much of a threat of it. I was not asked to comment, but I did make several private comments to people that were involved in the negotiations over a new stadium in Buffalo, that it was my impression, based upon my background in professional football, that I did not think that the Buffalo Bills would move. Primarily because I think that Buffalo is a tremendous sports market and that the owner of the Buffalo Bills can do much better in a proven market for his product than he could in Seattle, which was unproven, and for that strong reason I felt he would

not shift. I was not privy to any information that I could say with assurance that he wouldn't move, but it was my feeling, based upon having played in Buffalo, and seeing what the team had done in the early 1960's, and what had happened over the years, the attendance, the enthusiasm, the tremendous regard for the team, win, lose or tie, poor weather or good weather, it just seemed to me that the Buffalo Bills would be poorly advised to think about moving to Seattle.

Senator Cook. Wouldn't the city council in the city of Buffalo be poorly advised to build an 80,000 seat stadium when the Buffalo Bills are selling 23,000 season tickets?

Mr. KEMP. I don't know what that has to do with question of the Federal regulation of the business.

Senator Cook. It has a good deal to do with it, because I think the pressure is coming from the management of that organization to build them a new stadium where they will move. Isn't this the main bone of contention? This is what I have gotten out of reading the newspapers.

As a matter of fact, shortly after Mr. Rozelle testified before the Congress asking for the merger of the two leagues and the exemption, he testified at that time that no franchise would be moved, and yet within 60 days we find all over the Buffalo newspapers Mr. Wilson saying if you don't build me a new stadium, I am going to move.

Now, I can't quite see the necessity of a community going into debt millions of dollars on an 80,000 seat stadium when you have got a football team selling 23,000 season tickets.

Mr. KEMP. Please don't criticize our football team, Senator. It is hitting close to home.

Seriously, Senator Cook, I think the point is that whatever the owner of the Bills might have said, anybody who had any understanding of the situation with regard to the stadium in Buffalo, would recognize that the city of Buffalo had strongly made a pretty substantial agreement to the fans and the players and the owners alike in the American Football League that Buffalo would build a new stadium. Anybody who saw the progress of the team and saw the decay of the stadium recognized that Buffalo needed a new stadium.

And anybody who understood the situation and was willing to look behind the headlines of the Courier Express or the Evening News recognized that Ralph Wilson, the owner of the team, would make a mistake in moving to Seattle.

I think the threats were not too credible, at least in my eyes, because I have a high regard for the owner, but in my eyes anybody who would leave Buffalo would be making a mistake. And I said that I would strongly oppose any move, and still would. But I think it is better to do it at that level than it is to turn it over to a Federal regulatory agency.

Senator Cook. He got a lot of coverage for lack of credibility, though, didn't he?

Mr. KEMP. Well, not really. I am a Member of Congress, and a former football player, and I can't speak for Ralph Wilson, but he is a terrific owner. I would have done some things differently. But there is a stadium being built, and I think that the majority of the people in Erie County want a stadium built, and they want the Bills to stay. It has been decided that there were things said on all sides of the issue

that I think people would like to retract if they had the chance to play second gusser on the subject.

But I am convinced that the situation today is more harmonious, despite some of the criticism that I would have had about the past.

Senator Cook. Now, if you believe that these situations ought to be solved at the collective bargaining table, you don't think after the *Flood* case that you can have very much collective bargaining about the reserve clause, do you?

Mr. KEMP. Yes, I think you can. I think the players in professional baseball are going to see negotiations on the reserve clause. I only know what I have read from statements by both sides of the table, Mr. Kuhn and the players, that there is going to be some strong bargaining on the reserve clause.

I personally feel there should be an amelioration of the reserve clause. Yes; I do think it could be resolved.

Senator Cook. You think Congress ought to take away that right of professional sports?

Mr. KEMP. What right?

Senator Cook. The right to have a reserve clause and the right to have option clauses?

Mr. KEMP. I made the point that I think it should be resolved in the bargaining process rather than in Congress. I think the football, baseball, and basketball players, despite the fact that it has taken a long time to have the type of representation that they have, have good representation. I don't mean to say there haven't been problems, but there are problems in every business of America, and I still believe as an advocate of collective bargaining they would be better solved in private climate than from the outside regulation.

Senator Cook. If you believe in collective bargaining, as you say, and that this is really the answer to it, then don't you agree with Senator Ervin—that the exemptions that professional sports now have ought to be taken off, so it can all be done by collective bargaining, because if you say it should operate like a business, I can only tell you that under the statutes we have created, it doesn't operate like a regular business.

My only point is that if that is the way you really feel, then shouldn't those exemptions be taken off?

Mr. KEMP. Well, I have to ask the question of you. Are you speaking now about baseball or football, because there is a difference as to how they are treated. I frankly believe they should all be treated alike, No. 1. This is not to say that there aren't—

Senator Cook. Well, Mr. Hart played for the Detroit Lions. If the Detroit Lions wanted to sell him to the Buffalo Bills or anybody else, they could. It then becomes Mr. Hart's decision whether he wanted to play with that other team or quit football. I don't know that General Motors can sell anybody in management, or United States Steel can, or I don't know that any other business under the collective bargaining system can.

My only point is that you may say they are really different, but they are only a little bit different between themselves and not between the law as it applies to any other business facility in the United States.

Mr. KEMP. Well, Senator, you know, you make a very good point. As long as you brought up Leon Hart, I don't know that Leon ever

played for any team other than the Detroit Lions, but I lived through it. Not only was I cut or released from a team, but I spent time on a taxi squad, and I was traded, and I spent those 13 years going from \$6,000 a year well into five figures in professional football. I can assure you that when I came in, I was eager to make a team and anxious for an opportunity to play and I like most was willing to accept some of these restrictions on my freedom to trade my services in the marketplace with the understanding that those restrictions allowed the game to be profitable enough to afford to employ me at the price that it did, and pay the fringe benefits that go to the players, and have the financial stability and the job opportunities that are now prevalent in professional football.

All I can say is that if you take a look at the growth of professional football in the last, say, 13 years, from the time that Leon Hart quit, and I started, to today, you will find that, for instance, one very dramatic instance of this growth has been in the pension area.

In the American Football League in 1964 and 1965, when I was first going in as president, I think the pension plan prior to the merger with the National Football League was something like \$10 a month for every year's service. For a 5-year vested player, and I was on the AFL pension board at the time, it was \$50 a month at age 65.

Let me finish my point, because I think it does point up the fact that with the merger and with the growth of the game, the pension today, I think, is at an unparalleled height. For example a player coming into professional football now can receive a pension of \$1,048 per month at age 65. If he should elect to take the pension at age 55 he would get \$400 per month. It is not high enough. There is an inequity with regard to past NFL players. I think that some of the former players, as evidenced by the report by the National Football League Alumni Association aren't treated fairly.

But, again, I think some of these restrictions, some of the trades, are necessary in order to make sure that Buffalo, N.Y., can compete Angeles and Green Bay can compete with New York City, because I don't believe that you would have the type of competitive climate in professional sports today if it weren't for the fact that you had some restrictions on this laissez-faire approach to the signing of players.

I think there has to be some restrictions in order to make the game profitable enough to go forward.

And all I can suggest is that there are more people watching football today in 1972, than ever before; more franchise, more jobs, and more opportunity for more people than in the history of pro football.

Senator COOK. That is why you have a bigger pension program.

Mr. KEMP. My point is that there are more players with job security, there is more job opportunity than ever before and the salaries are higher. Now, they may not be high enough for some, but I will go back to 1957. Correct me if I am wrong, Leon, but it seems to me in 1957 there were 12 teams in professional football. There was 32 men on a squad, the salaries, I think were—I don't know what Leon Hart was making, but I was making \$6,000. Bobby Lane, the great quarterback of the Detroit Lions was making around \$20,000. I am not trying to suggest that everything is perfect, but there has been considerable growth. The players are sharing in that growth, maybe not to the extent that they would like, but I would suggest that some of these restrictions have

helped to make the game as profitable as it is in order to secure jobs, create fringe benefits, and to have an unprecedented growth in salaries.

I think it should be higher. But I don't know of anybody who doesn't think their salary shouldn't be higher?

Senator Cook. You are not trying to tell me that it is easier to get a pension plan in a closed business system than it is to get a plan that doesn't have exemptions under the antitrust laws, though, because what we are really saying is that at that stage of the game when this started, it started out as a new idea to management, and if they got irritated at somebody because he made too much of a bone about it, maybe he did get traded. The only point I am trying to make is, suppose you really work with no exceptions under the antitrust system, no exemptions under the franchise system which you presently have, and suppose I decide to be that complete and absolute free enterprise man and decide I am going to bring a team into Buffalo and compete with the Bills and have a pension program.

Now, you say this shouldn't be done and it can't be done.

Mr. KEMP. I don't say that at all. I am a product of competition. I see that there is a new hockey league starting. I am not opposed to that. If it hadn't been for the American Football League, I guarantee there are 500 football players around the league today who would never have had a chance to play as long as we did and make as much money as we did.

Senator Cook. If it hadn't been for the fans, Congressman, really, because the league would have never been established if it weren't for the desire of fans to watch professional football. It wouldn't have grown if it hadn't been for the fans' desire to watch it. And there wouldn't be a pension program if it hadn't been for the fans' desire to pay the price of the tickets.

Mr. KEMP. I think the fans see more football, and more baseball on television. In fact, some of the fans who may be dissatisfied are critical of the fact that they are having so much football. I don't think that is the point. Sure the fans are the consumers of our product. Somebody had to invest some risk capital. And I guarantee in 1960, there was a lot of risk capital invested, and it was financially risky in the American Football League in 1960. Frankly I don't apologize for the fact that I am glad that there were Ralph Wilson or Lamar Hunts, because there wouldn't have been any career and jobs for a lot of people if some of these people hadn't taken that risk. But you are right. The tremendous interest in professional football generated by the consumer or the fan brought this about.

I don't quarrel with you about that at all, but for anybody who wants to start a football team, I imagine it would be difficult, but I don't disparage that opportunity. In fact, I favor it.

Senator Cook. Let's talk about that for a minute. Suppose a guy wanted to start a new football team, first he would have to find out if he could get a franchise, then find out whether he could enter a community. And I don't know of any other business who would have to go through that. If a fellow wants to build a plant out near the Buffalo airport, I think the city of Buffalo would be delighted for many to build a plant and put people to work. But if another guy wanted to have a football team, let's say, well, like the Giants moving over to a

nondescript community in New Jersey. Suppose a guy wanted to have a football franchise in Niagara Falls. Do you think he could get a franchise to do it? I think the answer is simple. The answer is, no, he couldn't.

Mr. KEMP. What does that prove?

Senator COOK. It proves that there is a system that exists here that exists in no other business. If you are saying in fact, that all of these problems can be solved at the bargaining table, all I can say to you, it is a bargaining table that is like nobody else's bargaining table in the United States. It is exempt from many otherwise restrictive rules. It can tell you it doesn't intend to do many things, because it is really not functioning under the free enterprise system. I am not sure these problems can be solved at the bargaining table.

Mr. KEMP. Well, let's talk about the fans for a moment. We both suggest that we are concerned about the fans. Really, would it be in their interest to have so many franchises just coming in, willy-nilly, so to speak, that you would—if you didn't have some control over the extension of the franchise, or the issuance of a franchise, be able to keep some stability. What is to allow for the opportunity for teams to be financially secure, when you just give out franchises simply to bring football to every single corner of the globe.

I think the fans in Niagara Falls are much more interested in the Buffalo Bills than they would be in another franchise. I don't know that they are suffering. In fact, I think for the fans today—there are more teams in more cities in the United States. There is more television of football than ever before. More people are watching. So I still ask the question, what is the great problem that can only be resolved by the U.S. Congress? Just because some problems can be proven to exist, there is no guarantee we are going to find a solution down here in Washington, D.C.

Senator COOK. I couldn't agree with you more. I don't think there is any question about that. When you talk about the financial status of it, I just want to say that Mr. Rozelle who is the commissioner of football said that he has no idea of the margin of profit of the respective teams because he doesn't get their reports. That is not part of his job, and that is not part of his authority.

So, really the commissioner of football doesn't know whether a team is successful or isn't successful except they tell him so if they want to move at a meeting and they try to convince the other heads of the respective franchises they want to move and yet, the commissioner has no knowledge of the financial status to make a determination whether they should stay or shouldn't stay.

Take the Giants. They have had a sell-out season for 15 years. And not a great deal more can be said about their success on the football field than some other teams. Yet, they have summarily said to many of the fans in New York City, to employees, to the city of New York, as a matter of fact, that they wanted \$24 million for renovation of Yankee Stadium, and they have said they need better facilities, and more modern facilities and it is up to the community, to pay them, to keep their free enterprise going, and if the city doesn't pay it, they are going to move some place else. By the way, they also have the option when they move, as long they don't go 75 miles away, to black out all of New York so they can't see the Giants' football team.

We can't say these apply to other businesses in the United States.

Mr. KEMP. I don't want to be in a position of defending the Giants moving from New York City. I mentioned many times that these are some problems—there is plenty of room for criticism in professional sports. I don't want to be in the position of simply sitting across the table from you and trying to defend or support every single thing that has come down. I have played with players who I think have been treated very shabbily, black and white. I have seen some pretty good things, too. I don't want to be accused of just taking the lesser of the two evils, but I don't know what there is in the Federal Sports Act that is going to automatically solve all of the problems. Are you going to suggest in this bill that the Federal Sports Commissioner is going to make the decision as to whether or not there should be franchise shifts? How are you going to make the decision as to what type of a contract a player should receive? I just don't understand how the Federal regulation is going to bring to sports the purposes of the bill, which as I understand it, is to protect the interest of the fans, the players, and the owners. The very sincere goals of this legislation are not going to be implemented by the Federal regulations of sports. In fact we may create problems.

Senator Cook. You talked about the moving of franchises. We have many court decisions where a company has trouble at the bargaining table of negotiating a contract and they decide that in an effort to break that union in a given community that they will move out.

They are not moving out because of economics. They are moving out because they cannot get the kind of agreement they want. And the Federal courts said they cannot move.

On many occasions they have said that to the free enterprise system.

Now, apparently nothing can be done of the moving of a franchise in the professional sports field. It does not make any difference whether it is making good money or whether it is a total sell-out. If they decide they want to move, they merely make up their mind to move and move.

So what I am saying is there is a basis that this could be done by a sports commission. It is done in the free enterprise system by reason of the courts themselves. But unless we take away the extraordinary freedoms that the professional sports field has under the anti-trust laws there is no way, except with the soundness, let's say, of a commission to make a determination by examining the records, that a franchise is a substantial investment, that it is giving a good return and, therefore, it cannot be moved.

Obviously if a company wants to move from a community where it is losing its fanny, I don't think the court in any way could sustain an opinion that that corporation wouldn't be allowed to move. But in this instance we find the opposite—for instance, let's take the Dodgers in baseball.

Mr. O'Malley decided he was going to move them. He was not losing money. He just decided he was going to move them.

Now, isn't the sports fan entitled to a degree of stability within the sports field so a community like Kansas City does not have to float a \$67 million bond issue, of which the sports facilities can only pay off \$8.5 million, because they do not want to move the sport, that they have complete immunity to threaten a community?

Mr. KEMP. I do not want to be put in the position of defending threats. I do not agree with them. I did not when they were made, and I do not now.

I think it is in the interest of the business to have some stability.

I do not think it is of interest in professional sports to have franchise shifts that destroy markets, that destroy fan appeal, that would erode the chance to make some ultimate progress, both financially and in every other way.

I don't favor capricious moves, but I have not seen them in professional football.

I do not know, frankly, how the Congress or a Federal regulatory agency are going to make a decision that better should be made, I think, should be made within the private sector.

Senator COOK. If it should be made within the business, shouldn't the business live under the same regulations that any other business lives under?

Mr. KEMP. What exemptions does professional football have? The two leagues were allowed to merge.

Senator COOK. They have a right to turn down any franchise in a community. They have a right to grant a franchise in a community. They have a right to authorize the transfer of a franchise.

Unless there is another totally complete new league established there is no way any other franchise can get into these communities.

Mr. KEMP. That is not exempt from antitrust.

Senator COOK. Let me give you an example.

There is no way for instance that if one came in, that it could make a contract with a television station that already has it tied up, and there is a contract already in existence.

To give you an example of this, do you think if this—

Mr. KEMP. Are you telling me that that is not exempt or that is exempt?

Senator COOK. The only thing that was accomplished under the provisions of the 1966 legislation, which was an exemption to the antitrust laws, allowed the NFL and the AFL to merge and to remove the merger as a cause of action so the players couldn't bring actions against the management or ownerships of teams.

Mr. KEMP. So that they could have a common draft and play the Super Bowl.

Senator COOK. That is right.

Mr. KEMP. As far as I know all other practices of professional football come under antitrust. There is no blanket exemption from antitrust.

Senator COOK. But if we are talking about the bargaining table, where else in the entire business world would you allow a common draft of employees? The answer is nowhere.

Mr. KEMP. The fact remains that the common draft is a necessary ingredient in professional sports, Senator, that makes the game stable, competitive, and profitable. Without it, you would turn to laissez faire where everybody just trades their services in the free marketplace. If you really want to protect the stability and growth of professional

football, I would ask you how you are going to do it if every player can simply go to any team he desires.

As much as I uphold the right of an individual to be competitive, I still recognize the fact that the player must accept some of these restrictions on the understanding that it makes the game competitive, profitable, and attractive to the ultimate consumer of his product, the fans of professional football.

Senator COOK. Well, the necessity to have stability in a particular business: let's say that ABC, or NBC, or CBS gets a contract because it has the right sportswriters that sell themselves to the fans who watch the football games. Should we give the networks the same exemption that they can keep a Cosell or a Meredith, they can keep a Schinkle, or Summerall, or they can keep a Gifford.

Should we say that it is absolutely essential to their business and their profit and the stability of their station to be a profitmaker, that they be allowed to keep these great names in the sports world, or do you think we should give to ABC the right to sell Cosell and Meredith to NBC?

Mr. KEMP. No, Senator; I do not. I make my point very clear that I think that when it comes to competition in professional football, it takes some sort of restriction that the players should be, and I think, generally are willing to accept.

Empirically, the best example I think that I can give is the past competition for talent between the American Football League and the National Football League.

There are several teams in the American Football League that never signed a first round draft choice or a second round draft choice, and wouldn't be here today if it weren't for the merger. As president of a football players association, representing the players of the American Football League, was it in their interest to make sure that there was some opportunity for the players of the Denver Broncos to make it. The merger allowed the Denver Broncos to enjoy the stability, the competition against more attractive franchises, and ultimately bring into existence, 40 or 50 jobs for a lot of guys who really only wanted a chance to play professional football.

I am not sure we would have some of the franchises in professional football today if not for the fact that there was a merger.

Take the All-American League, as an example when it was in competition with the National Football League in the late 1940's."

Tell me where the Los Angeles Dons are today, or some of the other teams in the All-American League.

As I remember, only one team came out of that conference and that was the Cleveland Browns, who were so successful that they destroyed all the competition. The Cleveland Browns literally in the 1940's were so successful on the football field that they really created a situation in which other teams could not compete and ultimately those teams went by the waysides and a lot of jobs, a lot of fine people's jobs went down the drain.

I am concerned about jobs. I am concerned about the stability in the game. And I am concerned about the opportunity that I think 26 football teams that are successful and viable and paying the type of salaries

and fringe benefits that they are paying, are doing today for a lot of football players.

I do not justify or try to justify all of the mistakes that have been made in the past. I just happen to think that whatever the problems, they might be better resolved through this process than turning to a Federal Sports Commissioner.

Senator Cook. Do you think there was any desire on their part, when the Green Bay Packers tromped Oakland, that they wanted to merge the two leagues?

Mr. KEMP. I do not understand.

Senator Cook. When there was competition for player services, between the NFL and the AFL, and when they had the first Super Bowl Game, and there was no competition on the field, do you think that the NFL owners felt any pressure to have a merger of the two leagues so that they could save football for the benefit of the fans in the United States?

Mr. KEMP. I do not know that you could tell the Oakland Raiders that there was not competition in the first Super Bowl.

Senator Cook. I am talking about the score.

Mr. KEMP. The score does not always reflect the competition. The point should be made, Senator, it was the product of the merger that allowed that first Super Bowl to be played, and it is that Super Bowl, that merger of the two leagues' interest that brought about the unprecedented profits and moneys that have allowed the pension plan to reach the point that it has today. I think more players should be under the plan and under the financial aspects of that plan.

But if it were not for the fact that there was a merger and the Super Bowl, there would not have been the money, there would not have been the growth, there would not have been the resources available to do what has been done for the players' fringe benefits and salaries.

Now, they may not be high enough. But, I point out that that is something that is true in any business. I think the competition was great. I think that Joe Namath coming into the American Football League and running the salaries of quarterbacks up, was of tremendous benefit to all of us. I am the first to agree. I am very grateful for the American Football League's competition with the NFL, but it came to the point, Senator, that had it been allowed to go much further, there would have been five or six teams in the American Football League who would have gone down financially, and taken a lot of jobs, and you would have less competition, and less people watching football, and franchises fewer than you have today.

I just say that it is not perfect, but it has done a lot in practice.

Senator Cook. Well, I cannot disagree with what you are saying, but I can only say, that I think the only reason it could have survived was that it was operating in a closed system, and it was not operating in a free enterprise system, because if it operated otherwise, maybe some of those teams might still be in existence, and there would be a matter of competing for those players.

Let me ask you one more question, and I will use another item.

I will just ask you a general question, because it was raised by Mr.

Coniglio, and it has been raised by other people. It was raised by the fans in Baltimore to the extent that they made it optional whether a fan has to buy preseason tickets in order to get his season tickets.

What do you really think of—for the benefit of the consumer, really—an organization that would send you a letter and say, "Buy your tickets for a 10-game schedule," when three of those games are preseason games, and have nothing to do with the schedule, and yet it is mandatory that the fan buy them in order to see the scheduled games?

Mr. KEMP. I do not particularly like it. I am a consumer in the marketplace, and my buying a product, or my abstention from buying a product happens to determine the success or the lack of success of any product and any service in this country.

And, to that extent, I guess my ultimate weapon is to not buy in this case, or to register my disapproval by abstaining from buying those tickets.

Senator COOK. Of course, if you abstain, then you lose your tickets to the regular games?

Mr. KEMP. I did not finish.

Senator COOK. All right.

Mr. KEMP. I do not like it. I think that most players in the game, and I should not really speak for players, because I have been out of it now for 2 years, so I will just say, as far as I am concerned, preseason games have become one of the chief vehicles that the owners have in making a higher profit in their business.

I think the players should get a better share of the preseason schedule, and I stand second to no one in my belief on that subject, but preseason games are a financial necessity at this point.

Whether or not the Congress, the Federal Regulatory Agency, or the Federal Sports Commissioner ought to take it upon themselves to act solely as an advocate of the consumer, I think the consumer or the fan, the players, and the owners, need the type of interplay that I think your committee gives, but also the type of interplay that is attendant in professional sports bargaining today.

Senator COOK. If you are talking about the fact that for the owners, it makes additional profit, in your instance, in Buffalo, it contributes about \$464,000 of the income. I have no idea what the profit is out of that. It would be incorrect for me to say that is profit, because it is income.

Yet, as I understand it, the players who compete in those preseason games are not particularly under a contract. They are paid per game. And yet—

Mr. KEMP. They are under contract.

Senator COOK. They are under contract. But they are paid per game for preseason games as opposed to having an increase in their salary for playing three additional games and being under a contract.

And the point I am trying to make, is that if in fact, the management calls it a schedule, should they not crank three additional games into the salaried contracts of the respective players so that he can get pension benefits, so that he can get health benefits, so that he can get all the rest of the coverage, and count those three games on his income,

and get an increase in his income, rather than being paid per game for three, or four preseason games?

Mr. KEMP. I think you make a valid point. As I said before, no one bargained tougher on the subject than we did, and the increase in pay was raised every year and we always wanted to cut down the number of exhibition games.

I tried to take a look at what the financial side of the picture was from the owners' standpoint, to see what those six games added to the overall profit-picture of the club, and I think it should be recognized, parenthetically, that the players do have an interest in whether or not those clubs are financially sound.

Senator COOK. Absolutely.

Mr. KEMP. Nothing could prove that point more than the history of the AFL.

Senator COOK. Absolutely.

Mr. KEMP. But, I think it is something that the players are giving strong consideration. I cannot understand why that could not be negotiated at the collective bargaining table.

I commend you for your interest in that subject. But, I think it is a matter of collective bargaining, and I do not think that it is going to be in the best interest of the players to turn over the collective bargaining process to a Federal Sports Commissioner.

They may not come out as well, or they may, I do not know. But, in my view, as an advocate of collective bargaining, it would be better to protect that climate rather than turn it over to a Federal Commissioner.

Senator COOK. If I thought it was easier for the collective bargaining to function in the professional sports field as it is in any other industry in the United States, I might agree with you, but somehow, I think it is tougher because the door is already closed.

Mr. KEMP. The door is not closed. I know there are times when a lot of players did not think they were being adequately represented, and they probably were not, but there has been significant progress.

There were times in the National Football League when the counsel could not even get in the room with the owners. Now, I deplore that. We were part of the process that opened up that door. It could always be broader. It could also be under a better climate.

All I am saying is today, I think that professional sports have come a long way. I think the players today are more adequately represented than ever before, far more than under my term of office, but ours was a necessary step, I think, and had we gone the route of a Federal Commissioner I do not think that you would see the strong representation that the players have today.

Senator COOK. We have a vote on. I am through. The only point I want to make with you; I think it is easier for collective bargaining to take place in professional sports today because of their fear of losing their antitrust exemptions than it is because they are afraid somehow or other they are going to be destroyed from within.

I will be very frank with you.

Mr. KEMP. You take 26 owners, you get people from all sides—there are people who have been with pro football since the beginning. There are some who are brand new. There are some very good owners,

and there are some who could squeeze the last red ounce out of the turnip, that is true of any business.

But, there are some pretty good guys up there, too. There are many that you can work with, and you have a tremendous pro football Commissioner. I think, in all the sports, most owners and players want to enhance the collective bargaining process rather than destroy it.

The point is that collective bargaining today in this country, can work, it can work in sports, and all I suggest, and the reason I am here today is to suggest, that I would rather see these things resolved in that framework than to turn it over to a Federal Regulatory Commissioner.

Senator COOK. Jack, I want to thank you very much.

You have added a great deal to this record, and the only reason you and I have had this colloquy is for the benefit of the record. I hope that everybody understands it.

Mr. KEMP. I understand it.

I appreciate the chance to appear and commend you for your interest.

Senator COOK. Thank you very much.

(Recess.)

Senator COOK. Mr. Walter Kennedy, Commissioner of the National Basketball Association.

Mr. Kennedy, it is my understanding we made a solemn promise to get you out by noon.

Mr. KENNEDY. Thank you so much. I appreciate it very much. At the time that I made the request last week, I had a problem, and I am most appreciative of this opportunity.

Senator COOK. We are delighted to have you here, Mr. Kennedy.

You may proceed.

**STATEMENT OF WALTER KENNEDY, COMMISSIONER OF NATIONAL BASKETBALL ASSOCIATION; ACCOMPANIED BY GEORGE GALLANTZ, COUNSEL**

Mr. KENNEDY. Thank you, Mr. Chairman.

Accompanying me is George G. Gallantz, legal counsel for the National Basketball Association.

Mr. Chairman, my name is Walter Kennedy. I am Commissioner of the National Basketball Association. I want to thank the committee for its invitation to me to express to it the National Basketball Association's point of view.

I want to say first that I am not a lawyer, so I cannot presume to comment on how legislation should be drafted or on how a bill is likely to work when it becomes law.

I can, however, make some observations on the problems that today are facing professional sports in general and basketball in particular.

To begin with, I should like to associate myself with one key remark made by you, Mr. Chairman, on the floor of the Senate when you introduced S. 3445. You said that "the first right to be protected is the right of the sports fan to a stable professional sports system; one upon which he can rely, and one which he can enjoy." The NBA heartily endorses that principle and I should like to make it my text for today.

Now, what does a stable sports system require? I believe that almost everybody would agree on a few fundamentals. For example—one—a balanced league. That is to say, a league which as far as possible will produce games between well-matched teams.

Two, teams with stable identities. That is to say, players who do not too frequently move from team to team and teams which do not too frequently move from city to city.

Three, a stable system of collective bargaining between players and leagues.

Four, an attractive investment for the private capital that is essential if professional sports are to continue to grow.

Any steps that would serve these fundamentals would in our opinion serve the American sports fan. Whether this can be done by the pending legislation, I am simply not qualified to say.

I do know that there is at least one important respect in which league sports differ from any other business. You cannot have a league unless a group of men sit down at a single table and agree on how their businesses are going to be conducted.

And once you acknowledge that difference, it seems to me that you cannot apply the antitrust laws to sports in the same way that those laws are applied to other businesses.

Therefore, it seems to me that any legislation you pass is not going to serve the sports fan unless it redefines the antitrust laws as they apply to sports.

I would also respectfully suggest that any legislation you pass should not interfere with the players' right to bargain collectively with their respective leagues and, of course, the right of the leagues to bargain collectively with their players.

Our lawyers tell us that in the Curt Flood case, the three dissenting Justices recognized the importance of this right. They contended that the real issue in the case was whether the antitrust laws, though they should otherwise be applicable, might not be applicable to the terms of a player's contract which are a proper subject for collective bargaining.

These comments are intended to apply to all professional sports, and because I am not a lawyer, I will not try to make any specific comment on the bill pending before this committee.

I would like, however, to remind the committee that basketball, unlike other sports, is now confronted with an immediate problem which is being considered by a subcommittee of another Senate committee.

The pending merger legislation, S. 2372, is designed to deal with that problem, which arises out of the fact that we now have two basketball leagues, the NBA and the ABA, locked in a destructive bidding war.

Two ABA franchises have gone under since S. 2373 was introduced. The statement of Commissioner Dolph of the ABA before this committee to the effect that "the immediate problem of professional basketball is merger" is clearly warranted by the facts.

The enactment of S. 2373 is critical to the solution of the most immediate problems of professional basketball. As you, Mr. Chairman, said, in introducing S. 3445, the professional basketball situation is "the most deplorable example of the critical condition of professional sports."

You mentioned "player pirating" and the temptations engendered by the bidding war to college players. These matters are traceable directly to the bidding war. The enactment of the merger bill, with its resultant common draft and contractual stability, will serve the right of the sports fan to a stable professional basketball system and remove at least one of the problems with which your committee is now concerned.

While S. 3445, the bill pending before this committee, deserves serious and detailed considerations, it is the NBA's hope that such consideration can go forward while the merger legislation—designed as it is to deal with a critical emergency affecting basketball—will be advanced to speedy enactment.

Mr. Chairman, Senator Weicker, let me say again that we are delighted with the opportunity of appearing before this committee, and hopefully from our comments and the comments of others, meaningful contributions will be made to your deliberations afterwards.

Senator COOK. Senator Weicker, do you have any questions?

Senator WEICKER. I have no questions, Mr. Chairman. I just would like to welcome Walter Kennedy before this committee. He was once in the same profession that you and I are in. He was the Democratic mayor of Stamford, Conn.

So, Walter, it is a great pleasure to welcome you here and to say to you in public that you have done professional basketball just as proud as you did the city of Stamford when you were its chief executive officer.

Mr. KENNEDY. Thank you very much, Senator. Those days in government and politics served me well for the position I am now in.

Senator COOK. I think I can agree with that comment very, very much, Mr. Kennedy.

Let me ask you, do you agree with Commissioner Rozelle that there are not significant similarities among professional sports to effectively promulgate rules that will be equally applicable to all sports?

Mr. KENNEDY. Yes. I think our problems are somewhat different. For example, the very fact that one sport has been granted antitrust exemptions, and the others have not, and the fact that some other sports have a reserve clause and others have an option clause, I think that the very nature of our businesses are different. One sport or another enjoys for more economic success than others, and therefore our problems must be met and treated differently.

I think there are a number of problems that are different.

Senator COOK. Well, let me address myself, for instance, in relation to these problems and get to the owners that now are becoming multiprofessional sports owners. Own a football team, a basketball team, a baseball team.

Do you find that at least they are intelligent enough to assume the similarities between their diverse ownerships in professional sports? That is kind of a loaded question, in a way, but I think you are faced with that problem.

Mr. KENNEDY. Yes. Well, I must answer that to date I have found that there is no serious problem in the decisions and deliberations and thinking of NBA owners who may have interests in other sports teams. Their deliberations at board of governors' meetings or committee meetings are based entirely on their interest and participation

in basketball and they do not carry over from whatever participation they may have in other sports.

I think that at some point some owners who have multi-interests in professional sports may have to face up to serious problems. But to date this has not presented itself, at least to the basketball league.

Senator COOK. Do you think there are distinctions, for instance, in your handling of the NBA, and Mr. Rozelle's handling of the football league, that are totally dissimilar, let's say, as far as stadiums are concerned, or concessions, or as far as tickets, this type of situation?

Mr. KENNEDY. Well, I can't speak for Commissioner Rozelle, except from what was discussed earlier at the time that Congressman Kemp appeared. But apparently similarly to Commissioner Rozelle, I have no responsibility for leases of arenas, or the setting of prices for ticket sales, et cetera.

Senator COOK. For instance, it is my understanding that the New York Knicks, that the facility itself requires a season ticket holder to buy tickets to other events at Madison Square Garden.

Is that true, or do you have any knowledge of it?

Mr. KENNEDY. To the best of my knowledge, there are several season ticket plans offered by the Madison Square Garden, some of which are all-encompassing for all events, others for individual events.

Senator COOK. That is handled by the Garden, and not by the Knicks?

Mr. KENNEDY. Yes. That is part of the total operation of the Garden.

Senator COOK. Even in that situation, they do not have control over their own ticket sales?

Mr. KENNEDY. I am not involved in that, Mr. Chairman. But to the best of my knowledge, the answer would be no. Although, frankly, I have no expertise in that particular field.

Senator COOK. So again in this instance, it is entirely up to the management of the Garden. If a fellow wants to buy tickets to nothing but the Knicks' games, he may find himself buying tickets to other things, whether he wants them or not. Would this be true?

Mr. KENNEDY. No. I believe that there are four or five or six, I really don't know how many different plans that a purchaser may take advantage of. If he wants to purchase them for all, he takes plan A, and if he wants them just for basketball, plan B, et cetera.

Senator COOK. But plan B may get him behind the backboard. This is conceivable, is that right?

Mr. KENNEDY. No, I don't think so, Mr. Chairman. I think certainly there must be certain advantages to buying season tickets, but I think that there are also a number of—my experience has been that there are a number, limited as they may be, for individual game purchase. This is something that our office does not get involved with.

Senator COOK. There is a whale of advantage in buying your season tickets with the New York Giants, because if you don't buy them, you don't get them.

Mr. KENNEDY. That is very true.

Senator COOK. Now, there is something that I would like your opinion on. I have asked Mr. Kuhn, and I have asked Mr. Rozelle, and I want to ask you, because I have a repugnant attitude toward it, and the fact that we can at least get it into these hearings may really help professional sports to a certain degree. And that is Mr. Samuel's idea

in New York about gambling on basketball games, baseball games, and football games.

Mr. KENNEDY. I can only express my personal opinion. This has never been a matter of discussion with the members of the board of governors of the NBA, which is our policymaking board.

Personally, I do not think it would be in the best interest of professional basketball to have such legislation. At the present time, there is no question that there is gambling on professional basketball. I am told that such takes place. I have never seen it take place, but I am told that such takes place.

Senator COOK. I am sure you have seen the cards, haven't you? I have seen the football cards.

Mr. KENNEDY. Frankly, I haven't. They undoubtedly may exist, but I haven't seen them. I think it would not be in the best interest of professional basketball, indeed in professional sports generally, for open gambling counters to be established where problems that already exist could be multiplied by, say, the presence of one of the player's butchers, or neighbors, or even a member of the family, making a bet on a game in which that player might be involved with that player having some intimacy to the person making the bet. And good Lord forbid, if something happened to that player, he might miss two foul shots at a crucial part of the end of the game which would result in his team losing. I think it would have very, very adverse effects on the game.

Senator COOK. I think Mr. Samuels should be reminded of some of the situations in the past where it did occur, and the great consternation that it caused at that time, and I think that would be sufficient to convince him that if we were to open the door to this kind of situation it would be disastrous.

As a matter of fact, I might say to you that S. 3445 attempts to do something within the framework of trying to consolidate the efforts of a better sports program. I must say to you, I think if gambling were to be interjected into the sports field on a legitimate basis it would almost make the Federal Sports Commission mandatory, because I think under those circumstances, the situations that would arise would be disastrous.

You said you could not have a league unless a group of men sit down at a table and agree how their businesses are going to be conducted.

Now, as you know, other than the sports field, if that were to happen, it would be in violation of the antitrust laws. As a matter of fact, when we were sitting here with the respective networks, and we were discussing the incidence of crime on television, my main objection was that we were discussing it with them in an open hearing, frankly, rather than to sit down with the networks and discuss with them how we could work something out, because if the three networks sat down and made a determination to do it themselves, they would be in direct violation of the law.

So we find that what you are really saying is that you feel that under no circumstances can professional sports operate or function in the United States without the absolute necessity for ground rules, and rules and regulations originating and being made between the respective owners?

Mr. KENNEDY. Yes.

Senator COOK. Let me ask you, because this has always amazed me, and I guess I should have asked Congressman Kemp this: Actually, we have two baseball leagues, National and the American, but we really only have one baseball league.

They have a common draft, they have worked out their problems within two leagues. They don't have to worry about whether they have to merge to stay in existence. Has there ever been any attempt, for instance, or was there any attempt between the ABA and the NBA to sit down and try to work this out so that there would be a common draft, that there wouldn't be this problem? Or was it just that it got off on such a bad foot between the two leagues that they never really could get together?

Mr. KENNEDY. The ABA started independent of any discussions with the NBA. At some point, and I really forget exactly when, there were discussions in an attempt to work out something that would be acceptable to both sides.

At about that same time, the NBA players association brought a suit against both teams, which in effect—

Senator COOK. Both leagues?

Mr. KENNEDY. Both leagues, I am sorry. And again, in effect, I am not a lawyer, so I can't talk in legalese, but the net effect of it was a court order, which except for going to Congress hand in hand to seek merger legislation prevented us from doing anything that would discourage a club in one league from competing with a club in the other league.

Senator COOK. Let me ask legal counsel, if I may: What is the significance of that court order in New York as it applies to the two teams that went under, Miami and the Pittsburgh Condors? Were those players actually still the property of the league? Did they become free agents when those teams folded, or were their contracts such that they were still obligated to the ABA? And even the right of the ABA, as I understand, to pick up the future draft choices of the Floridians and the Condors?

What is the significance of the court order in New York as it applies to the players on the two teams that are now defunct in the ABA?

Mr. GALLANTZ. None that I can see, Senator.

Senator COOK. Would those players become free agents to deal with the NBA?

Mr. GALLANTZ. To deal with the NBA? I think the commissioner would have to answer that question, player by player. Some of these players were drafted by NBA teams, and if they are not otherwise bound by valid contracts, they might very well be sought after by NBA teams, and there would be no impediment so far as the ABA is concerned. How it is being treated in the ABA, all I know is what I have read in the newspapers, and I haven't read very much on that subject.

Senator COOK. Well, Commissioner, let's discuss it from the standpoint of what would happen to players on a team in the NBA if a team went into receivership and asked to go out of business as a qualified member of the NBA? What would the disposition be within the framework of the rules and regulations of the NBA as to those players on that team?

Mr. KENNEDY. Since it has never happened, I wanted to make quite sure before I answered.

We do have a constitutional provision that if a team should go into bankruptcy, and I believe that is the terminology, or there may be other terms, the contracts of the players of that team are sought after by the other teams in the league to fulfill the contractual obligations that exist.

Now, what method of distribution would be used, whether they would be drafted similar to the college draft or what, there is no provision for that. I think in anticipation of it that this should be spelled out very carefully. It has never happened, to the best of my knowledge.

Senator COOK. It is my understanding that in the ABA those players from the two teams were subject to being drafted by the other teams, and that if a player's contract was not picked up by any of the other teams in the league, it then became the responsibility of the league as such to honor his contract.

Do you have anything like that in the NBA?

Mr. KENNEDY. Nothing in our constitution, no.

Senator COOK. In other words, the contract in the NBA is with the respective teams and not a contract with the league, but that you are under contract to the league to play for the Knicks or the Celtics or somebody else?

Mr. KENNEDY. Mr. Chairman, could I have Mr. Gallantz answer that question?

Senator COOK. Absolutely.

Mr. GALLANTZ. Senator, we provide a standard form of contract. Then from there on, it is between the player and the club. And I don't look at every contract. The commissioner and his staff do. I doubt very much whether there are very many contracts that stick strictly within the form. Most of the contracts, particularly of the more valuable players, have riders that are very often longer than the standard form.

All we provide is the standard form. The contract is between the players and the club. In the case where there are individual guarantees or escrow moneys, things of that nature, it is the people who put up the escrow moneys and the guarantees. Never the league.

Senator COOK. I have no other questions, Mr. Kennedy.

I wish to thank you very much for coming.

I am sure we gave you a much better time before our committee than my distinguished colleague from North Carolina gave you before his.

Mr. KENNEDY. With the discretion of a former mayor of Stanford, Conn., I thank you very much.

Senator COOK. Before you leave, one of the things I have learned in this hearing is a great deal more about blackouts than I ever knew before. One of the things that was said in the other hearings by Senator Ervin was that one of the degrading things was that the leagues had the opportunity to writeoff their players, as he put it, like chattels. I could never quite understand the validity of this argument, when in fact the player does the same thing to himself. The player wants deferred income. The player negotiates from the point that he only has so many years to be competitive, and he wishes to be taken care of beyond that point.

Obviously he has no guarantee of the deferred income unless the franchise stays in existence. Because if they were set aside for him at the time he signed the contract, I am sure the Internal Revenue would be delighted to say that that is all income received in the year in which it was set aside for him. I am sure we have a number of such athletes.

As a matter of fact, I am sure Bobby Hull is not going to pay taxes on \$2½ million in the year 1972. So we don't have to worry about that.

I think the only thing Mr. Hull has to worry about is whether the World Hockey League survives long enough for him to receive the \$2½ million. So I can only say that if in fact it is essential to the business, that its product is in fact the ability of man to compete and be competitive, it therefore becomes the asset which lends itself to be written off to the highest degree.

And as a matter of fact, we had testimony from Mr. Dolph of an untried rookie at \$900,000, a \$50,000 bonus, three Cadillacs in a 5-year period, and his mother put to work in the public relations department at \$10,000 a year.

This doesn't appear to be what one would call a logical good business contract that presently operates in the normal free enterprise system.

Would you not agree with that, Mr. Kennedy?

Mr. KENNEDY. Yes; I would say so.

Senator COOK. This is really what you are fighting, isn't it, in regard to the merger of the respective leagues?

Mr. KENNEDY. Yes.

Senator COOK. And you are saying that the price of talent is becoming so high that the ABA is absolutely in jeopardy?

Mr. KENNEDY. And the NBA teams also are.

Senator COOK. And the NBA.

Mr. KENNEDY. Yes.

Senator COOK. How many teams are in the NBA?

Mr. KENNEDY. Seventeen.

Senator COOK. You either can or can't tell us if you want to after this last season: Can you tell us how many teams in the NBA did not make a profit?

Mr. KENNEDY. Well, we do not have their financial records. That is not a requirement of our office. But I would guess that perhaps only four or five finished in the black of the 17.

Senator COOK. And I guess it is public knowledge that none of the teams in the ABA were in the black this year, is it not?

Mr. KENNEDY. Yes. I believe that has been testified by ABA people. Not necessarily to this committee, but I think at the subcommittee hearings of the Senate.

Senator COOK. And what you are saying is, as long as you have the situation that presently exists, that even collective bargaining cannot solve the problem, is that correct?

Mr. KENNEDY. Yes. In that particular instance, I don't think collective bargaining can.

Senator COOK. I have just been advised by counsel for the committee that six teams made it last year. So you are very, very close.

Thank you very, very much.

Mr. KENNEDY. Thank you.

Senator COOK. Mr. Alan Eagleson.

Mr. Eagleson, the National Hockey League Players Association.

#### STATEMENT OF ALAN EAGLESON, NATIONAL HOCKEY LEAGUE PLAYERS ASSOCIATION

Mr. Eagleson, we are delighted to have you here. You may proceed.

Mr. EAGLESON. Senator Cook, thanks for the invitation to attend. I think I know a little bit about legislative process in that some years

back, 1963 to 1967, I was a member of the Parliament from the province of Ontario.

The format of the brief, Mr. Senator, is simply——

Senator Cook. Mr. Eagleson, I am going to ask you a question before you start into this.

This is off the record.

(Discussion off the record.)

Mr. EAGLESON. The first comments reflect on the history of the Players' Association, and if I may, Mr. Senator, I will just touch on points therein.

The Players Association began in 1967. At that time there were six teams. In 1967-68, they expanded to 12, subsequently to 14 in 1970-71, and in this year it will expand to 16.

As the league has expanded, so has the association, obviously. In its first 2 years of existence, all players but two in the NHL were members, and at the present date every player in the NHL is a member of the Players Association.

In fact, we have some players who are still members of the NHL Players Association who have now signed contracts with the newly formed World Hockey Association.

The association is recognized by the owners of the NHL under the terms of the recognition agreement, with the understanding that two-thirds of all the players in the league must be members of that league. There is no formal collective bargaining agreement as such between the members of the Player Association and the league.

For purposes of direct discussion between players and owners, the format of our negotiations with the owners includes a player-owner council. On this council are eight owners and eight player representatives.

In direct discussion, the problems of the players and the problems of the owners are discussed jointly. Requests of the players are cabled 10 days in advance to the owners, for their consideration, and there is a minimum of two meetings per year of the player-owner council.

The decisions supersede any terms of the players' contract. So to that extent, whatever that group decides upon and reduces to agreement between the players and owners, in fact becomes part of the body of the rules and regulations of the league.

During the past 5 years of its existence, our association has negotiated for players in the National Hockey League several improvements in their working conditions.

In 1967, the players contributed \$1,500 per person annually toward a pension fund that guaranteed a player \$300 per year at age 45 for each year of service.

In 1969, the pension became funded solely by the owners and the pension figures remained the same.

In June of 1972, we presented to the owners a request that the set pension guarantees be doubled and these negotiations are continuing.

In 1967, there was no coverage for major medical insurance for either the player or his family.

In 1969, it was negotiated that one-half of the cost of the said plan would be paid by the owners, and in 1970, the owners accepted total obligation for the cost of this benefit.

Because of our relationship with the owners, we haven't gotten to the point beyond the threat of a strike. The owners know it exists. We know it is fine labor, and we hope to be able never to have to use it.

In 1967, a payment for exhibition games was negotiated, and in 1971, it was decided that every player who attended training camp, who had been on the roster of a National Hockey League team for 50 games during the previous season or a protected player, would receive \$600 as a training camp expense payment.

Senator Cook. Let me ask you: How long is the training period?

Mr. EAGLESON. Three weeks.

The minimum salary in 1967 was approximately \$5,000. At the present time, the minimum salary is \$12,500.

Prior to 1967, the owners took the position that under the standard players' contract, all endorsement rights belonged to the club, and no player could endorse a product without the prior consent of the club, with or without the club uniform being involved.

In this particular area, the Players Association has a licensing contract with a company called the Licensing Corporation of America, which has guaranteed to the Players Association a minimum of half a million dollars over a 5-year period, and in the past year the figure has reached \$175,000. So it has proved to be a significant source of income for the Players Association.

The standard players' contract is quite involved. It includes a reserve clause, whereby the club has the right to an option on the player's services in each year for the ensuing year.

This particular aspect of the contract is presently in stages of negotiation and the owners have already offered an adjustment in the reserve clause. The owners and players are still negotiating this matter, and I would expect that a decision in this area will be made very quickly.

We have a major difference in hockey that prevails to the benefit of the player, in that as of September of 1971, all National Hockey League standard player contracts become no cut, or guaranteed contracts. Thus, if a player signs a contract for a term of years, the club cannot sever that employment simply because the player does not have the ability physically to perform the contract.

Prior to September of 1971, we were in a somewhat similar position to baseball, in that upon 14 days' notice, a club could advise the player that they no longer required his services, and make him a free agent. That is not the case now.

The player signs for 5 years. He is going to receive 5 years' pay.

And in discussion with Mr. Campbell on this point just a few moments ago, the president of the league, he indicated, and I am satisfied that this is the case, that under the conditions you discussed a little while ago, where a club failed, and the players are still there, the understanding that prevails in the NHL is that if the club fails, the league will pay the contract.

Senator Cook. Then the contract is really made with the league?

Mr. EAGLESON. The player contract is made between the player and the club, but one of the rules says that subject to approval by the president of the National Hockey League. As such, every contract come into the office and is signed by the president. In that way, I think they accept the responsibility.

Senator Cook. Now, let me see if I can give an analysis of a no-cut contract and the option clause.

If a player makes a 5-year contract, then obviously both parties are bound for the 5-year period, production or no production. If he decides that that contract is financially too much to enter into, and he really isn't quite sure of the qualifications of the player at that time, he can then take his chances on the option clause, on a year-to-year basis.

But the only difference is that he has to negotiate the cost of that contract each year.

Mr. EAGLESON. Yes, and subject to one other aspect that applies to my knowledge only in hockey: That we have an arbitration procedure whereby the salary, if the player and club cannot agree, is referred by agreement to an independent arbitrator, and prior to 1967, that arbitrator on salary disputes was the president.

As of 1970, that was adjusted. At the present time we have a 3-year agreement with the owners as to an arbitrator, a lawyer in Ottawa, who has a significant knowledge of hockey, and I think last year about 25 cases went to arbitration.

Senator Cook. And a significant background in arbitration, I take it?

Mr. EAGLESON. Yes. That is for certain.

The aim of the association is to eventually extend that arbitration to include an independent arbitration of all problems between players and owners. But it is a first step. And in this fashion we feel that it gives the club perhaps a little better advantage, but gives the players significant advantage over what—over the position he has previously been in. Because a player can still say, all right, that is the position of my association, and my association has agreed that the arbitration will be binding, but I may decide after having heard the decision on arbitration to say to hell with my association and the owners, I am not going to play for that kind of money.

This happened, I think, only on one occasion, and it only lasted for a matter of a day and a half before we were able to express to the player that, look, fair ball is fair ball. As a result, things have gone rather smoothly in the past 2 years in this year.

Senator Cook. Let me ask you, because I want to become more familiar with hockey than I am, frankly, and because the testimony has been that these sports are so dissimilar that nothing could be done to establish an agent that would consider all of them.

Let us say, you have a hockey player under a 5-year contract, and he turns out to be a rather poor hockey player, and he is still on your payroll, what do you do with him?

Mr. EAGLESON. Well, in hockey, you have something a little different. I do not agree that all of these are sufficiently dissimilar that they cannot be bound together. Because the relationships that exist between players' associations are such that we have joint efforts toward certain goals.

As an answer to your question, in hockey this player—let us just pick an arbitrary figure, 5 years at \$50,000 a year, and you find he is not good enough after the first year to make the club.

You then can send him to your minor league affiliate, and there is a significant minor league system in hockey. We have the American

League, the Central League, and then we have some quasi-amateur leagues.

Senator COOK. Semipro?

Mr. EAGLESON. Semipro. But, they are called amateur, because they are under the U.S. Amateur Hockey Association.

Senator COOK. So your system is similar to baseball?

Mr. EAGLESON. Yes, in the minor league area.

Senator COOK. So if you were to make a distinction between the sports, you would say that probably of all the professional sports in existence today, relative to having to bring up a young player, having to sign a young player, that your situation and baseball's are almost identical?

Mr. EAGLESON. Almost identical, insofar as looking objectively at them, but looking internally, I think we are in a better position as far as players' rights are concerned with management.

I have touched on the one point of a no-cut contract. Every contract is signed for 3 years. It is for 3 years. It is not for 28 days, or whatever the number of days a person can be cut under baseball.

In addition, we have a waiver system that we are quite proud of. And it points to this view; that once a player is a professional for 2 years, during the first 2 years of his professional career, and he signed with the team, they have the right unilaterally, to send this player to the minor leagues.

During the third year of the contract, however, after he has been a pro for 2 full years, from the signing of his contract, before he can be sent to any minor league team, he is placed on waivers and every other team in the National Hockey League has an opportunity to pick up his contract.

Senator COOK. Now, hold it. I was personally involved and I should not have been.

What you are saying, is that a player under a 5-year contract now cannot make it with his team?

Mr. EAGLESON. Right.

Senator COOK. Now, are you saying that they cannot automatically send him to a minor league team?

Mr. EAGLESON. For the first 2 years of his professional career. So, if he has just turned pro, and this is a 5-year contract, during years one and two, they can, without his consent, require that he go to the minor leagues.

Senator COOK. If he does not want to go, he is out of hockey?

Mr. EAGLESON. If he does not want to go, he goes home. And, of course, if he does not want to go, he loses the guaranteed aspect of the contract that prevails.

But, in the 3d year—and this happens on occasion, and that is why the rule was brought in. Previously, some players were being sent to minor league affiliates because their senior team had plenty of top-line personnel or alternatively, there was a difference of opinion between player and management, and it was used for disciplinary purposes.

Now, because of the new waiver system, only for the first 2 years can a player be sent down. Once he is a pro for 2 years, if they want to get him out of their big league club, they have to offer him on waivers at a waiver price of \$40,000 to a team in the National Hockey League.

Because of expansion, last year, I think there were three examples of players that were asked to go to the minors, and they said, "No, I would rather be put on waivers," and the waivers found them with different employers within a matter of 24, 48 hours.

Senator COOK. But again, a player would have to think seriously about this in light of the expansion of the league?

Mr. EAGLESON. I will put it this way:

When it was what we called the six-team house league, prior to 1967, there could have been any number of reasons for that player not to be picked up by the five other partners, because it was a closely knit group.

Because of expansion, and because of the lack of topline talent, there is now a great—and this is obvious now with the new league—there is competition for talent, and as a result there is going to be less and less opportunity for any club to send any player to the minors, because he will say:

Well, I may be out of hockey for a couple of weeks, and I may be losing the advantage of my contract, but I am not going to stay out of work very long, because there are ten or twelve teams in the WHA that are looking for players with my capacities.

Senator COOK. That is a very interesting point, Mr. Eagleson, because I asked this of Mr. Kuhn, when he was here, whether this expansion—and we find that those who testified, particularly Senator Ervin, said, "Well, you can always expand."

Do you think, by reason of expansion that we may see the fan who pays the bill seeing a lesser grade of hockey, or a lesser grade of baseball, or a lesser grade of football?

Mr. EAGLESON. I will put it this way; I think it is already happening. I think it has already happened.

Senator COOK. Ticket prices are not going down, are they?

Mr. EAGLESON. No. I think it is fair to say that they have gone up.

But the delusion in that area is something that I think the owners can adjust from its present position and handle it if we can avoid the automatic desire to protect one's high and lofty position.

If one convinces the owners that they should acknowledge that you are only as strong as your weakest partner, I think we will find a much more competitive value.

If I can just step sidewise for a moment to that point; I think the fans feel better, seeing competitive sports, between two teams, than seeing one team literally annihilated. Certainly I refer to the National Hockey Association, which I am going to touch on in a moment anyway. I sat in Czechoslovakia in April and saw hockey that is certainly inferior to the National Hockey League, and yet, there were 16,000 to 17,000 fans on the edge of their seats for the full periods, three times 20 minutes.

I do not think that same excitement prevails except one way, when the Boston Bruins are playing the California Seals, and the statistics will show that in their meetings this year, of which there were six, I think California won one game with a last period splurge; but on the other occasions, it was devastating.

The problem is that the Boston Bruins, the Montreal Canadians, New York Rangers, Chicago Black Hawks, as four teams; have enough talent in their system, I think, personally, to set up two National Hockey League clubs.

I would think that either the Atlanta Flames or the New York Islanders, who have just now come into hockey, had they had their choice, I think they could have said, I will take all the players on the Nova Scotia teams, or all the players on the Boston Braves, two minor league teams.

Because, I think, even looking at it now, with the talent that they would have received, that they would have been more competitive with those two clubs, because there are players from those two teams that are definite major leaguers, but because they have to be playing for the Montreal Canadians and Boston Bruins, respectively, they have not had the same opportunity to show their wares. This touches on what I think is another major problem from the players' point of view.

That a player who gets a bonus to sign and has a right to play with the Boston Bruins, but plays with the Boston Braves is in this position; if he spends 2 years in the minors, his bargaining position is not nearly as good or as high as if he had been in the National Hockey League, playing for a second division team.

Because he is a very unimportant cog in a very strong wheel in Boston, where as he could be a very strong cog in a very weak wheel in California. The balancing of the system is something that the player's association is committed to.

Someone asked me, is it the type of issue you are going to strike over, and I say, you do not like to talk strike and have it roll off quickly.

On the other hand, if the players become convinced that their livelihood, namely hockey, because we feel this is as much our business as the owners, if we were risking our business by putting in a diluted product, in an attempt to say, well, this is a protection for the old six teams, then I think we are not only putting in a diluted product; we are deluding the public, and deluding ourselves.

I think that has to come out of negotiation.

Senator Cook. This is very interesting. What you are saying is that the draft isn't as effective in achieving balance as it is in maintaining seniority in many instances?

Mr. EAGLESON. Well, as an example, Senator Cook, there was an amateur draft in June, June 8. I think it is safe to say that the four teams I mentioned are the strong teams in hockey, the strongest teams in hockey. When one looks back on the Montreal-Canadians, one finds in the past 17 years, they have won the Stanley Cup 10 or 12 times. So it is acknowledged they are one of the strong forces in hockey, wound up with 106 or 107 points in the NHL this year, even though they were third to the Bruins and Rangers. Yet, because of their strong farm system, of the top first round draft choices, namely, six teams, because there were 16 teams, Nos. 4, N. 6, N. 8, and 14 went to the Montreal-Canadians.

So they did get stronger every year and No. 4, the Los Angeles Kings, they are so far in last place in the western division, they would have loved to have the player Montreal took, Steve Shut.

The No. 6 choice, I guess, was Pittsburgh. But they had dealt that right to Montreal for a previous consideration on a player and they would have loved to have Michelle LaRoque, one of the top junior goalies in Canada. No. 8 was Minnesota. They traded for Danny Grant 3 years ago and the player that went as No. 8 this year was Dave

Gardner, who won the scoring championship, tied for first in all of Canada for scoring in the junior OHA.

No. 14, the one they were entitled to, John Banboxbere, that is the one they would have taken under normal circumstances. So that the strong get stronger and the weak get troubles.

Unless we come to the position where teams are precluded from dealing in draft choices, then we are saying, all right, here is a formula to balance hockey, but now we are going to let you adjust the formula so that those that are strong now can continue their strength by dealing from strength when the other groups in the business don't have the right cards to play.

Senator Cook. Don't disillusion me now. The testimony we have had up to now is that the draft is necessary to achieve balance, and you just heard Congressman Kemp say that if it weren't for this kind of a situation, that there wouldn't be balance in the respective leagues. Now all of a sudden, you are telling me that the balance isn't there anyway, and as long as you can trade off all draft choices, and as long as you can wind up with no draft choices at all, you will not assure balance. On the other hand, once the draft system is solid, and they cannot be traded away, or bought and sold as a commodity, then you might have balance.

But as long as it is a free system within the draft, and the draft is kind of an excuse to give balance within the league, and as long as you have the right to buy and sell and trade draft choices as you can buy stock on the New York Stock Exchange or the Canadian Stock Exchange, that that balance really is never going to be there.

Mr. EAGLESON. I agree completely with your statement.

Senator Cook. Let me ask you, in regard to a new team coming into the National Hockey League, would you say that of necessity they go through a period where they have to trade their draft choices to try to come up with a half way competitive team in the first few seasons?

Mr. EAGLESON. Of the expansion teams since 1967, there is only one team that has dealt with draft choices, dealing its draft choices away and had any degree whatsoever of success and I am not convinced that they wouldn't have had that success anyway. But the other teams have been annihilated. That exception is the Minnesota North Stars. They traded draft choices for quality players. But the Los Angeles Kings, for example, traded their top draft choice, a hockey player named Reg Leech, one of the top three in Canada 2 years ago, for a player who didn't last more than another 6 months in their organization. The Oakland Seals traded the draft which would have given them last year the No. 1 draft choice, and a great hockey player, with a great future, 19 years of age, for two players that I can't even remember.

Senator Cook. Can you trade draft choices for money?

Mr. EAGLESON. Oh, sure. There is nothing to restrict you from doing anything on the draft choices except this, and it is a wise rule and I think Mr. Campbell will share my opinion on the draft when he speaks with you later today.

Mr. Campbell. I think convinced the owners that the new expansion teams, since 1967, after the first expansion, Vancouver and Buffalo, now Atlanta and New York, are precluded from trading their draft choices for the first 3 years once they have them but there is no similar restriction that they can't trade that draft choice in advance.

I think it should be extended. If one wants balance, as the players want, I think that should be extended to say not only can you not trade a draft choice once you have it, but you should not be permitted to trade your draft choices or sell them or bargain in future draft choices because you are selling a known commodity for an unknown commodity and that usually militates against the purchaser.

Senator COOK. If a team is way down in the league, it can sell its draft choices for well needed cash?

Mr. EAGLESON. Yes.

Senator COOK. And it happens quite frequently?

Mr. EAGLESON. I don't know of any occasions that a club has parted with a draft choice for cash. Mr. Campbell might know better than I.

Senator COOK. You don't think so, though?

Mr. EAGLESON. As far as I understand, there is no restriction on that happening because we have had draft choices traded for future considerations and that "future considerations" is a phrase that doesn't impress me at all. I think a player is entitled to know what the hell he got traded for.

Senator COOK. Do you have blind draft choices, where, let's say, Montreal will trade a player for an undisclosed draft choice in the future?

Mr. EAGLESON. This is phraseology in Canadian football today and unfortunately it is creeping into hockey, that involves future considerations which means they don't have to define at the moment of the trade what the details were.

Senator COOK. Well, what you are saying is that future consideration might include a future draft choice?

Mr. EAGLESON. Yes.

Senator COOK. One of the sports fans who testified here said that as far as the fan was concerned, he thought one of the things that ought to be put out on the line for public knowledge—because after all, the fan is the guy that makes the sport what it is—that they ought to know when they lose a football player for another football player in a future draft choice, who is unknown at that time. Their team winds up at the bottom at the end of the season, and the greatest quarterback in the United States is available next year, and when they get to the draft situation, all of a sudden they find their team doesn't have the first draft choice because they sold it the year before.

Mr. EAGLESON. I don't know whether it is a matter of regulation internally in the National Hockey League, but it is a matter of history, that in a situation of that type, it is stated that a player is traded for the team's first or second round choice in 1972.

As an example, the Los Angeles Kings, if my memory serves me correctly, don't have a first round draft choice for the next 2 or 3 years, because they have sold in advance players who could now have been the core of a very good, young hockey club. Instead, Mr. Cook, in his wisdom, or lack of same, determined that he would take a chance with veterans in return for players of an unknown quality as he calls them.

My feeling is this: That history shows that the top draft choices, particularly in the first round, the top 15 players in junior hockey in Canada, became within 3 to 5 years the top players in the National Hockey League.

Now, there are going to be two or three fall by the wayside. But Bob Yore—

Senator COOK. Mostly by reason of injuries.

Mr. EAGLESON. Sure. There is always an exception. There is always some player who can't make it in the big leagues. Generally, if you are good enough in the big league in Canada, Junior OHA, you are going to be good enough in the National Hockey League.

Maybe I should get back to some of the points I wanted to make.

Senator COOK. Go right ahead. I didn't mean to interrupt you.

Mr. EAGLESON. It is enjoyable. Thank you.

History indicates, particularly in Canada, that government has long been involved in amateur sport.

As a result of the report of the Task Force on Amateur Sport in Canada, the bulk of amateur sports operations has been headquartered in Ottawa, our Capital City. The sports are covered by a "Sports Canada" umbrella which, in turn, works closely with the Department of Health and Welfare for the Dominion of Canada. There is only one suggestion in the entire report that relates to the NHL. The report strongly recommends that the NHL should at least adopt the option right that prevails in the Canadian Football League and the NFL. I am sure you gentlemen are aware of that particular clause. It may be interesting to note that some of your top American football players have chosen to come to Canada, after their college careers, to play in the Canadian Football League. Some of them play for a few years, play out their option in Canada and subsequently return to the United States to play in the NFL. This affords these players an opportunity that is not available in hockey.

We know about the Rozelle rule, you play out your option, but you still have a few grapple hooks left in the player, namely that, sure, you are a free agent, but if you try to deal with a team over in Baltimore, and you just left Pittsburgh, Baltimore has to pay something to get you. It went so far in football with Miami, that when the coach left employment, they gave up the first draft choice in Baltimore.

In football, in Canada, the same applies, but if you go from the Canadian Football League to the American Football League, or the National Football League, there is no problem, so that Bo Scott left the Ottawa Rough Riders after playing out his year and got a great contract. Peter List played quarterback, and the following year he was playing for the Broncos.

What he left in that option year, playing for 90 percent of his previous salary, he more than made up in his bonus alone, let alone the increased salary he received.

So there is a great advantage in an option clause, as long as you don't have the grapple hooks left in the player.

If you are going to have the hooks in, as far as I am concerned, you can have your option clause. I would rather take my chances in a competitive manner and give the opportunity to a player to sell his wares in the marketplace. And this is the type of challenge that I am sure is going to be coming on the basis of what has happened in the WHA.

I think we will see some testing of the reserve clause as it applies in hockey, because some teams in hockey are going to have to try to protect what they think is theirs. They may be right, they may not. The courts are going to let us know soon, I suspect.

Senator COOK. There are going to be a lot of lawsuits, aren't there?

Mr. EAGLESON. Subsequent to that report on sports—

Senator COOK. Was Sports Canada created by the direct statutory authority of the Canadian Parliament?

Mr. EAGLESON. It is created under statute, but it is an umbrella principle, mainly to fund these amateur organizations, because operations like the Canadian Rowing Association, the Canadian Amateur Ski Association, were really going begging to get enough money to keep an executive in power in a group of offices spread from Vancouver, to Halifax, Newfoundland, Nova Scotia, on the east. The Government felt that for amateur sports sake, there should be a central location. They are still independent and operate within their sphere, but when it comes to financing, they have to show a budget to the Department of Health and Welfare and work within that budget, or show reasons why they should get a greater grant.

Senator COOK. How independent do you really think they are?

Mr. EAGLESON. I am satisfied they are quite independent. I have got a close contact with Hockey Canada, which again is to some extent a Government agency, and it is under the aegis of the department, again, National Health and Welfare.

The position they have given us, or the strength they have given us, is such that for all intents and purposes were independent. We have been advised that there are certain conditions under which we should operate, and the money will be there, and in many cases we have found that as long as a reasonable group of people are involved in the leadership of an amateur sports group, that the money is forthcoming.

You are always beholden to anyone who pays the bills, and there are times that I am sure we do things that upset the Minister of Health and Welfare, but fortunately the press and TV, the media people, take a little heat off when the Government gets a little too much into the act.

The Players Association generally is satisfied with its relationship with the owners. We have improved the benefits for every hockey player. One example of joint operation between players and owners is the upcoming Soviet-Canada hockey series. Four years ago a committee of players and owners was to pursue international hockey possibilities. Through the vehicle named Hockey Canada that I touched on a moment ago, Mr. Chairman, and with the cooperation with the Department of External Affairs, the Canadian Amateur Hockey Association, the NHL Players Association, and the NHL Board of Governors, agreement was finally reached in April for an eight-game series.

The proceeds of this will be shared almost equally by the amateur sports body and the pension fund for the players. A similar committee of players and owners has been discussing for the past 2 years adjustments that are possible in the reserve clause area.

Senator COOK. What kind of adjustments?

Mr. EAGLESON. Well, this is where we get to a matter of negotiation. The position of the players is that the best is if you have signed a 5-year contract, or a 2-year contract, or a 3-year contract, and that is it.

At the end of that time you walk out. That would be perfection from the player's point of view.

Perfection from the owner's point of view is as it exists at present.

Something that is going to be acceptable to both has to be somewhere inbetween. I think that every player in hockey should have the right to become free, and I saw a position stated by Mr. Wolfe, a lawyer in Boston, that to me is ridiculous.

To say that a player, to help the owners, and to help hockey, and to help sports, should be tied up for 5 years is a lot of bunk as far as I am concerned.

I mean, if I am a lawyer, and I want to leave my law firm, I can walk across the street. Granted there is a great inherent right supposedly in the hockey owner to the rights to a Bob Orr, but surely somewhere, sometime, he should have the right to change his mind, and to change his employer. That right has obviously been taken by Robert Marvin Hull and I guess you saw the Washington paper this morning, with a smiling picture of Robert with his check for \$1 million.

It will be determined by the courts whether that right is available to him or not. I hope so, because if it is available to him, it is available to everyone else. And it is always a big strong fellow, like a Hull in hockey, or a Unitas, or quality personnel in the other sports, that do a great deal for the little guy.

The sports star is often maligned by the public, because they say, "Oh, look what he is doing, and look at all the money he is getting," but little Johnny Smith, the third string quarterback, the poor son-of-a-gun is not getting anything at all.

But as Orr made an impact on hockey, and Namath made an impact on football, as they go, so go the others relatively, so that every \$10 Bob Orr gets, it might put another cent-and-a-half in the pocket of the player that otherwise would not be there.

So, I am satisfied that whatever is good for Bob Hull is going to be good for every player in hockey. It certainly is not going to be good for every owner in the National Hockey League.

The president of the National Hockey League, Mr. Campbell, and I have one grave disagreement on one topic, in that for some time now, and he may still be committed to this position, I do not know, but I do not feel that an adjustment or removal of the reserve clause in hockey would result in calamity. I am satisfied that if we are—the big worry is that some team is going to wind up with all the players. What could be more out of balance than the Montreal Canadians winning the Stanley Cup 12 times in the last 17 years; the Toronto Maple Leafs winning it four times, Boston winning it twice, Chicago winning it once. So it is 12, four, two, one. Now, is that balance or imbalance?

I suggest it is more imbalance you are going to get if you have one team with all the superstars. There was a common draft in football. The Green Bay Packers had a dynasty. The New York Yankees had a dynasty.

Because of the draft and the opportunities, you have seen teams like Minnesota come up in football. Similarly, you have seen it happen in hockey with the Minnesota North Stars.

As long as the balance is there and not simply, yes, sir, we have a common draft, but we really do not require our people to keep to the concept of the common draft, as long as that exists, there may never be balance.

As far as I am concerned, the exemption that baseball enjoys from antitrust is an anachronism. There is no way that the players in the National Hockey League can accept the position under the present circumstances; namely, lifetime option on a player's service.

There may be a time, and there may be—and it may be soon when we can say, "All right, if these are the conditions, then perhaps we can

support some antitrust exemption," but under the present conditions, and the present standard player's contract, I cannot accept that the players would be for antitrust exemption for hockey.

As far as this bill is concerned, there are certain things therein that do and do not apply to hockey. When one looks at it, Mr. Chairman, section II worries about—it talks to the arbitrary sale and transfer of team franchises. That has not happened in hockey, because the hockey owners indicate, and have indicated in their expansion plans, that when they make a commitment to a city, that commitment stands, so that a team like the Oakland Seals, that were going for \$1 million bath every year, are still in Oakland, because the owner said, "No, we expanded, and we have got to sell hockey in Oakland, because if we move it to Vancouver, all we are doing is precluding ourselves from an expansion 2 years hence."

Pittsburgh got into financial trouble the first few years, and the owners paid the freight. There was an assessment against the other owners, and they bailed Pittsburgh out and now Pittsburgh has a pretty good hockey franchise.

So, I think that does not apply in hockey. The pirating of the professional athletes did not apply until this summer with the founding of the WHA.

Senator Cook. The WHA may give you more problems. They may give you the same problems of the stabilization of franchises within the respective communities. You may find yourself in the position that all of the problems that have presented themselves and these other things may now for the first time be cropping their head as far as hockey is concerned.

Mr. EAGLESON. It well may be. All I know is that there is definite pay rating now.

As far as commercial television, we are in a rather unique position in hockey, particularly in Canada, in that the home games are televised, and the home games are all sellouts, and history has shown that we give away our hockey on hockey night in Canada.

Every Saturday night and every Wednesday night you see your home team play. In Toronto, if I do not go to the gardens, I see them play.

Senator Cook. You have no problem within the National Hockey League televising hockey games within the community in which the game is being played?

Mr. EAGLESON. Only one, and that was during the Stanley Cup playoffs in 1971, a year ago when the Chicago Blackhawks were in the final games against the Montreal Canadians, and at the time the owners of the Blackhawks had sellouts, and they were approached to put it on free TV and they declined, but rather put it on pay TV, and I gather sold out two or three or four theaters at "two or three bucks a pop," and did very well financially out of it.

I might also point out that the players did not share in those proceeds. That is under discussion with the owners.

Senator Cook. Have you had any complaints on the televising of NHL games, that it has affected the amateur leagues?

Mr. EAGLESON. No. In fact, we televise some of our amateur leagues. You must remember that I am talking now of hockey in Canada. It well may be that the "CBS Game of the Week" hurts the Cleveland Barons in the American Hockey League—I do not know. I can only

speak from the point of view in Canada, as a television consumer, and from the point of view of the players who have not reflected upward to me any criticism of the fact that the game of the week is on.

In fact, in many cases, they feel that it is selling hockey, and doing a good job.

On the other hand, there is not the total emersion on the networks by hockey as there is by football and baseball. We have one baseball game a week televised on the Expos, and yet on the weekends, we can pick up games on your TV networks from the States.

So, those parts, some apply, and some do not.

Joint bargaining, the situation with the owners and players, through the player-owner council seems to be working.

I think there is a strong possibility, however, and I am not sure that this bill is the answer—that is not for me to determine. I can only make my comments as they relate to the sport in which I am involved.

But the position of the players has to be this: That for the time being, and maybe we want both edges, or both pieces of the cake, but for the time being we are happy, but if we need some help, we will be looking to government and/or to the courts for assistance and direction, because if an adjustment is not forthcoming in the reserve clause, it is something that is ultimately going to be determined, either by strike action, and I do not anticipate that to be the result, but rather by a petition to the courts or to government for intervention.

And I think the dissenting opinions in the *Flood* case suggest that perhaps Congress should review the position as it applies to sports, and perhaps this position expressed in this bill may cover some of those problems.

It is obvious that the aims of this legislation, at least in part, are directed to the benefit of the player. They are obviously in other cases directed to the benefit of the owners, and in general directed to the benefit of sports.

I would like to think that to use the English vernacular, "I am all right, Jack, but maybe just for the moment. I may need your help next week, but this week I am not doing badly."

Competition is something that has gone unnoticed in hockey up until now, and as an example of the changes, I touched on the million-dollar check that you saw in the paper this morning for Bob Hull. That was impossible 6 months ago.

In the same area, a young first draft choice now has doubled his price in the marketplace for one reason only. There is another place to work.

This is obviously good for the players, provided, and I am sure this is touched on in your bill, provided that we do not put a team out of buisness. If we put a team out of business, we put 20 players out of work.

Senator Cook. Wait a minute. You cannot have it both ways. I am going to argue with you now.

Mr. EAGLESON. You are going to let me have it both ways?

Senator Cook. I am not sure you can have it both ways. What you are really saying is that the only relief the player is going to get in the NHL is the fact that you have a league-buster now known as the World Hockey Association.

The World Hockey Association is going to start picking up million-dollar players, at least they think they are; they never have been until now.

Now, what happens to a franchise if you continue this? I think we have good examples in professional basketball. What happens to a front office that is encumbered with \$4 or \$5 million worth of contracts, on an untried hockey team except for one player, or maybe two players? How long can a team last that carries a few half-million-dollar players, and a few \$750,000 players? How do we reflect this to the fan?

Mr. EAGLESON. I think you get to this point: The consumer is the ultimate determiner of this—that if fans stop going, there is no way; there is no way; there is no profit; there is no money to pay the players.

But someone said to me what is the definition of a WHA franchise? I think a WHA franchise for the first few years, based on the dollars they are paying players, is a license to bleed, and if you have a lot of blood, you are going to survive, but if you have not got much blood, you are going to die.

Senator COOK. You cannot bleed very long, can you?

Mr. EAGLESON. Except, we go back to what happened in the AFL; they have bled, but they had plenty of blood.

The first few years of business that those men went through, they lost a lot of money, millions of losses, and yet they survived it, because they had many more millions in their wallets.

Senator COOK. Lamar Hunt bled a lot.

Mr. EAGLESON. That is right.

Senator COOK. Do not forget. Are you really saying to me, then, that one of the basic concepts of the creation of the World Hockey Association is to be able to stay long enough to merge with the National Hockey League? Is that what you are saying?

Mr. EAGLESON. Since I was not involved in the formation thereof, I can only suspect, but there have been enough comments by enough owners who have said, "Look, I would rather start in this business with a \$6-million deficit to my players than to a league just to become a partner and get a bag of moneys thrown at me as expansion players." On that basis I am satisfied that this obviously at one stage or another entered their mind.

And one of the founders of that league, in its formation, called me and said, "Look, we would like your help, because ultimately, you know, these leagues are going to merge, and we think you would be an ideal commissioner of both leagues, because you are independent of everyone." Which was very nice, I thought, but I turned it down.

Senator COOK. I am sure Mr. Campbell was delighted.

Mr. EAGLESON. I recommended him for the job.

Senator COOK. This is very interesting, because after all, it only took 6 years for the American Football League to merge with the National Football League. So, what you are really saying is that this is in their mind, and if they can get into a bidding war over the real good hockey players and sustain themselves in regard to their losses, that then they can look forward to moving into the league, with whatever indemnification it may take to move into the other league.

Mr. EAGLESON. Either that, or as an alternative, get enough of the good players that they suddenly become the good league, and if they become the good league, and the stronger league with the better quality of players, then certain emoluments of office will defer to them—television contracts, contracts in Winnipeg, as an example in Canada.

If all the good players wind up with Edmonton, Winnipeg, and Quebec in the WHA, and leave Montreal, Toronto, and Vancouver, you can rest assured that our two television corporations are going to be vying for the rights of those three cities rather than the three they presently have.

Senator Cook. Well, you have raised some very interesting points, Mr. Eagleson. I thank you, very much. I think what you have brought out first of all is the fact that the supposed sancity of the draft is not as everybody professes it to be.

You have brought out the fact that maybe what we are seeing in the WHA is an effort to push its way into the NHL, when otherwise, if they could get a franchise in the NHL, they would be stuck with a bad team before they could be competitive.

And as a matter of fact, even to have the exemptions that they have in the National Hockey League, short of antitrust exemptions, they still have the ability to acquire players and to keep players and to deal with players sometimes, maybe not always, and maybe not very often, but on occasion to the detriment of the player.

To keep a good hockey player in a minor league club because he cannot make the big team, is like saying you have your choice between a Mantle and a Maris, and you could only have one of them in the big league, so Maris had to play in the minor leagues until the position was opened, and if it was not opened, he could not play for any other team, and he could not get off that team, and the only thing he could do is just keep playing for that minor league ball club and hoping something might happen to get into the majors.

That is one of the faults you see in the present system.

Mr. EAGLESON. Right.

Senator Cook. Thank you, very much. I enjoyed your being here. You have enlightened be a great deal.

Mr. EAGLESON. I will send you a note on the task force.

Senator Cook. Mr. Campbell, let me go over and vote, and we will come back, and we will proceed, and we will catch lunch when we can.

You were so courteous last Friday that I think we just ought to continue.

I will be right back.

(Recess.)

Senator Cook. Mr. Campbell.

I want the record to show that Mr. Campbell has been most, most courteous to the committee. He was here last Friday. I am afraid that I took some bad advice. I later found out that the airport did not close, and I owe him an apology, and I owe Mr. Hart an apology which I will give him when he gets here. It just shows you how, at least when it comes to pending disasters, Members of Congress can work more diligently in an effort to try to get somebody to an airport than they can, maybe, to solve a more serious problem.

Mr. Campbell, I want to personally thank you a great deal.

If you want to, sir, because you started to read your statement, if you don't want to go all the way through it, you may submit the whole statement for the record, and it will be printed in the record in full, and then you can address yourself to the remarks of Mr. Eagleton, you can address yourself to the remarks of other witnesses that you heard last week, or you can handle it any way you want to. I am going to leave it at your option.

**STATEMENT OF CLARENCE CAMPBELL, PRESIDENT AND  
TREASURER, NATIONAL HOCKEY LEAGUE**

Mr. CAMPBELL. Well, Mr. Chairman, thank you very much for your kind observations. I am not at all sure, or I hadn't thought of the possibility of filing it and making secondary comments. I know once again the time factor is becoming important, and I am not anxious to impose on you anything that is beyond what is necessary.

Mr. Eagleton made some observations on some matters which are contained in my brief, and there are a number of matters on which I think he has misled you.

I don't believe intentionally. But he has, nonetheless. At least if I understood him correctly.

Senator COOK. The nice thing about that, Mr. Campbell, is we are going to give you the closing argument on that.

Mr. CAMPBELL. There are a number of observations made about the Canadian scene, which perhaps while they are fresh in my mind, might be well to deal with.

He spoke with some degree of approval of the option arrangement that exists in the Canadian football league, that is, the player plays out his option, he is free to go, and there is no compensation.

That is not by choice. Let me explain to you how this happens.

The players who go to Canada from the United States are not normally players who are subject to draft in the United States. They are dropouts who are awaiting the opportunity to come back to play in the United States, when they will be eligible to be drafted. So the result is that in the interval, they go to Canada, and since they are outstanding players, they obviously have no difficulty securing employment, and since they didn't cost the club anything to start with, either in developing cost, or signing money, anything of that character, it is a relatively simple matter.

So that when the player is playing out his option he is doing something which he is perfectly entitled to do.

Senator COOK. Don't we have some examples, though, where players did not want to accept their draft choice, and consequently as a result of not wanting to accept the draft choice—

Mr. CAMPBELL. There are some who have refused and go up. But I am sure the large majority of them, if they did not have the privilege of playing out their option, would not have gone under any circumstances. This is the key so far as they are concerned, the freedom of action, the opportunity to develop themselves in a way which would contribute to their additional development, but apart from their gate receipt productivity, they mean nothing more to the club than that.

They—the public—have no real stake in the players. There are some who have come to live. A lot of them are very good football players, and they stay, and they make their homes there. But that is an entirely different consideration. The freedom to depart in most instances is exercised by those who are simply awaiting the opportunity to be drafted in the United States.

Now, in another field, he left you with the impression that players who come on to the rosters of the powerful clubs in the National Hockey League can be kept in the minors to rot.

We have a unique system in hockey—the intraleague draft under which an annual draft takes place each year, in which all NHL teams take part. And in this situation, each club is entitled to protect 20

players, 18 players and two goalkeepers, the number normally required for the operation of a team.

In addition to that, the first-year professionals, those having their tryout year, are exempt from the succeeding draft.

Then each year, and this has had to be suspended in the years in which we have had expansion, because the demands on the clubs in expansion made it impossible.

Since 1967, we have only had one what we would call normal intra-league draft. It works this way: The team lowest in the standing has the opportunity to claim any player outside of those 20 players and the first-year professionals from any other club for a modest figure of \$40,000.

You couldn't begin to buy a player to play in the National Hockey League for twice that amount, or \$75,000, who is good enough to play in the National Hockey League.

Senator COOK. Wait a minute. You are not just talking about \$40,000, though, are you? You are talking about \$40,000 to the team that owns you, and then negotiation with the player in relation to what you are going to pay him to play for your team?

Mr. CAMPBELL. They take over his existing contract, whatever it may be. And if his contract has run out, and he is under option, then they must go for his services.

Senator COOK. What would you say is the average salary of a player of, let's say the Boston Braves, or Nova Scotia? What would you say an outstanding player in that league would receive?

Mr. CAMPBELL. There will be players playing there as high as \$20,000 to \$25,000 a year.

Senator COOK. So he can pick up the player for \$25,000—

Mr. CAMPBELL. No, \$40,000. You mean to get the player?

Senator COOK. He picks up the player for \$25,000 salary, and he pays to the team that owns him twice as much money.

Mr. CAMPBELL. \$40,000, yes. That is a standard amount.

Senator COOK. So really he is picking him up for \$60,000 or \$65,000?

Mr. CAMPBELL. Well, he is getting a year's service for that as well.

Senator COOK. I know. I understand that. But the point of it is, he has got to pay twice as much to the team that owns him than he pays to the player, basically?

Mr. CAMPBELL. Well, I don't look at it that way. That is one way to put it, of course.

Really, we should keep the contract of the player completely separate from whatever the rights to his services are sold for. The rights to his services that are required by the club is \$40,000. He has still got to go into negotiations with the player. There is nothing extraordinary about that. What they are going for then is his services in the following year, for which they are going to get proper value. They are not paying anything for it.

Senator COOK. Well, let me get this straight: Montreal picks up a player from the Boston Braves that belongs to the Bruins; is that correct?

Mr. CAMPBELL. Yes.

Senator COOK. If they pick up a player from the Bruins' chain, which is the Braves, and that player is under a 5-year contract to the Bruins at \$20,000 a year, does Montreal have to pay him any more than \$25,000 a year?

Mr. CAMPBELL. No.

Senator COOK. The point I am trying to make is that he picks up his contract at a salary of \$20,000, but the commodity is worth \$20,000—

Mr. CAMPBELL. No. I don't consider it that way.

Senator COOK. The commodity is the player, isn't it?

Mr. CAMPBELL. The rights to his services is the commodity.

Senator COOK. The point I am trying to make is that the commodity is worth \$20,000, but the cover charge is \$40,000.

Mr. CAMPBELL. That may be your way of expressing it. In point of fact, the commodity which is being sold is the right to his services which costs \$40,000. What is paid to him as salary is an entirely different matter.

Senator COOK. I think this is what we are getting at, though. The right to the services is not incumbent upon the corporation that owns him.

Mr. CAMPBELL. That is right.

Senator COOK. It is a good thing Senator Ervin isn't here, Mr. Campbell. Go ahead sir.

Mr. CAMPBELL. This—the intra-league draft—has not had its full impact in the last few years because of expansion. There had to be limitations imposed on the number of draft claims that could be made in order that the new teams which had been admitted to the league could be stocked.

Now, the biggest single different between our sport and any of the other sports primarily is that we have to finance it from the lowest levels right up to the time when they play in the National Hockey League.

Senator COOK. Yours is the same as baseball, or almost?

Mr. CAMPBELL. We have the minor league provisions, yes.

Senator COOK. Is there a percentage of league finances, or league revenue, that goes into the financing of the minor league chains?

Mr. CAMPBELL. Not league funds, no. It is club funds in every case. We have a system by which every club that comes into the National Hockey League, as a condition of its franchise, must maintain in the minor league a player development team, on which over half of the players, or approximately half of the players, must not be 24 years of age. In other words, to insure a continuity of talent.

But long before we ever get to that stage at all, the National Hockey League finances the development of players at the amateur level, and in this regard we have paid to the Canadian Amateur Hockey Association, and the Amateur Hockey Association of the United States, approximately \$5 million since expansion in the first 5 years, an average of about a million dollars a year.

Senator COOK. How is this distinguished from the Olympic Hockey Team? It would seem to me that if a professional team in the United States financed any type of system in this country in minor league sports, or amateur sports as such, then that player would automatically be ineligible to compete in the Olympics.

Mr. CAMPBELL. I think you are correct, as a matter of fact. My experience with that operation is that those rules are more honored in their breach than in their observance. For instance, let me say this: When you discuss this question of professionalism with a Russian or anybody behind the Iron Curtain, and you complain about them having 11 months a year at least, training 11 months a year, and they are as-

signed to some kind of public services, maybe the Army, or maybe some other facet of the civil service, and you say, well, this is a new amateur status, you have a civil service and amateur team. His answer to us is very simple. He says, you subsidize everybody who goes to college, what difference does it make?

Senator COOK. I have three in college, and I don't know anybody who subsidizes them, other than the fellow you are looking at.

Mr. CAMPBELL. He is 100-percent right. He has at least got the consistency of the whole approach.

Senator COOK. What you are saying is that room and board is a subsidy, tuition is a subsidy.

Mr. CAMPBELL. Certainly. There is no question about it at all. I think we are just exercising semantics to pretend anything else.

I think their philosophy is more in keeping with logic than the one—the Victorian concept of an amateur. It just does not exist. There hasn't been one since I can remember.

Now, in the development of amateur talent, it costs quite a lot of money also, and we subsidize it on two bases. One is a general development fund which is contributed to the Canadian Amateur Hockey Association to spend however they please in the development of leagues. It is mostly leagues. But the ever-increasing amount of money which is being paid over to the amateur authorities is the draft payments which are made for the amateur drafts, and the clubs which are primarily responsible for the development of the player get that money.

Until this year it was 2 payments; \$3,000 was paid for each player claimed at the time the claim was made, and a further \$3,000 when he turned professional.

This year we modified the scale so as to give some recognition to the quality of the player claimed, and likewise for the effort put in by the club to develop a more competent player. And the price therefore has been raised from \$3,000 and \$3,000 to \$3,000 and \$7,000 for the first two rounds of draft choices, and that is 32 players; and a further \$3,000 and \$4,000 for a total of \$7,000 in the case of the players in the next two rounds of the draft. This covers a total of 64 players.

After that, all players are treated the same as far as the draft is concerned. That is \$2,000 for claiming and \$2,000 for actually signing.

Senator COOK. That is a substantial sum of money, isn't it?

Mr. CAMPBELL. Oh, yes. This is the lifeblood of the business.

Now, in order to understand hockey's philosophy about these contributions, originally the professional teams provided all of the costs of the development of the individual teams which they supported.

In other words, it was a method of professional sponsorship of amateur teams. This was quite open and aboveboard.

And at the time the expansion took place, there were in existence 54 of those sponsored teams in total, and that was in 1967.

Now, obviously those teams that had established sponsorships in favorable places had a big advantage and were going to have an even greater advantage over the teams coming into the league fresh, new. There were no such resources. So we had to abandon that system completely and go to a system of universal draft so that everyone would have an equal claim on whatever players were developed, regardless of by whom.

And there was an invitation by a Canadian Commission called the Task Force on Amateur Sports; they had the feeling, or at least they thought that somehow or other the National Hockey League might be

an insidious influence on the operation of hockey in Canada, and they invited us to withdraw our direct support of amateur clubs, and the signing of players at lower ages than they thought were appropriate.

We acceded to all those requirements, and now no player may turn professional until he has exhausted his junior eligibility, which means he will be 20 years of age before the next season—before he is eligible to turn professional.

Senator Cook. Why don't you address yourself to the draft in relation to the previous testimony?

Mr. CAMPBELL. Yes, sir. You are speaking of the amateur draft, I assume?

Senator Cook. Yes.

Mr. CAMPBELL. Let me say this: One of the great disappointments, as the president of the league and as a director of it, or at least as the sponsor of the concept, I proposed legislation that required the drafting club to retain the player claimed for a minimum of two seasons, the reason being that, as Mr. Eagleson pointed out, you then are aware of the quality of the article which you acquire by reason of the draft claim.

Senator Cook. So we can get straight, and not get this record confused, you said you proposed legislation—you mean you proposed a regulation or a rule within the constitution of the league?

Mr. CAMPBELL. I think that is right. I agree. I used the term legislation because that is a term which we use in our own business, but I realize the conflict that could develop out of having the term used in more than one sense.

I wanted to establish regulations that would insure that the club would retain the talent of that player for at least 2 years, or that he be exposed to draft or waiver, one or the other, which would provide an automatic benefit for a newer team.

In any event, the new owners took a hostile attitude to my proposal—it was not the old owners who wanted this. It was the new clubs that took umbrage at this suggestion that we implied that they were not competent to run their own business. In other words, they said they were quite capable of deciding what was in the interest of their organization rather than some paternalistic institution.

Senator Cook. Have you found that by not having that rule, they didn't know how to run their own business?

Mr. CAMPBELL. I don't know if they demonstrated any, but I can tell you this: We have one club in our league which today, notwithstanding the fact it doesn't have a draft choice available until 1975, neither does it have a single player which they acquired for the draft choice.

Senator Cook. In other words, they just plain, ordinary disposed of their draft choices?

Mr. CAMPBELL. Well, they did it under circumstances which they believed, I guess, were in their interest, but clearly it proved to be wrong.

I must concur with Mr. Eagleson's point of view that no one should basically be permitted to dispose of a draft choice until they know what the quality of the article is.

Senator Cook. Doesn't that shoot a few holes in the attitude of the sanctity about the draft, Mr. Campbell?

Mr. CAMPBELL. Well, let me say this: The draft by itself is a fair way of distributing the talent. What you cannot do—if you had a

redraft, perhaps you could get a different result. There are some clubs in the National Football League who trade away their draft choices quite readily.

Senator COOK. I agree. The point I am trying to make is if you have the right to buy and sell draft choices at will, and they do, then doesn't this really knock a hole in the theory that the sport really depends on the draft? That is the theory that you can't really take away this right of draft, because if you do, you are not going to have a moderating of the capabilities of clubs to make everybody competitive?

Mr. CAMPBELL. That is one way to put it, certainly. I agree with you. The other way I would like to put it is, I still think it would be highly desirable that there be a draft of this kind and that the legislation be of the character that I indicated, and then we will achieve a quicker return to parity. That is the point I am making.

I think that the regulation which I proposed is one which should exist, and I think if I had the opportunity, I would press for it again. The problem is that it is appropriate, and we have a rather tight interpretation of what our property right is, and under these circumstances, in some instances it requires unanimous consent to modify our own regulations, and this is one of the fields in which we are so handicapped at the moment.

Senator COOK. Let me ask you: This team that doesn't have a draft choice until 1975, are you saying no draft choices at all?

Mr. CAMPBELL. No. It has the opportunity to participate in the intra-of talent in those leagues is becoming less and less because of the fact from the independent clubs in the minor leagues, but the availability of talent in those leagues is becoming less and less because of the fact that these players—most of the minor league clubs now are becoming player development leagues, and that is the way the sport can strengthen itself, and that is what is happening.

Senator COOK. Well, what you are really saying to me, then, is that if a draft is really going to be a draft, and if in fact it is sacrosanct in the professional field, then it is your desire that at least it be stable?

Mr. CAMPBELL. Yes.

Senator COOK. And that at this stage of the game, maybe it is not that stable?

Mr. CAMPBELL. That is my observation.

Senator COOK. And if the draft is sold to the American sports fan, and the Canadian sports fan, on the basis that a draft really is established on a permanent basis for the benefit of establishing competitive teams, that there are many, many instances where it just doesn't operate that way?

Mr. CAMPBELL. That is right. That is the way it has worked out since expansion. I have to concede that, because they were not prepared to accept that degree of regulation. They wanted to have the freedom of action to deal with their draft choices, not only those actually made, but those who were not aware, and couldn't possibly be aware. There is no way you can tell what your choice might be in 1973 or 1974, and less so in 1975.

Senator COOK. Is it publicly known when teams give up their draft choices in the NHL?

Mr. CAMPBELL. Oh, yes; but contrary to what Mr. Eagleson told you, there are no draft choices which are not specified.

Senator COOK. In other words, an additional consideration or a future consideration in the NHL, does not mean a future draft choice?

Mr. CAMPBELL. If it does, it will be spelled out in the transfer. I would insist on that. I have got to know if the future consideration means a draft choice, then it must be specified and registered.

Senator COOK. Now, we have the situation in the National Football League where we quite frequently read that a team acquires a player or another player for an undisclosed draft choice.

Now, are you saying that the regulations in the constitution of the NHL prohibit that type of disclosure?

Mr. CAMPBELL. I don't regulate the disclosure. I regulate what the contract says. And they may not make an indeterminate transfer.

Senator COOK. They do not have to make that public?

Mr. CAMPBELL. No, they don't. But it is recorded.

Senator COOK. But it is recorded in the league office, and it is not available to the general public?

Mr. CAMPBELL. No. It is not publicized.

Senator COOK. So, therefore, we can have a situation, although you have knowledge of it, where the Montreal paper can read that Montreal required X for a future undisclosed draft choice?

Mr. CAMPBELL. I suppose that can be, because I don't control what they put in the paper, that is right.

Senator COOK. So really the knowledge is yours, it is not the general public's?

Mr. CAMPBELL. It is league knowledge.

Senator COOK. Do you think the fan, if he is an enthusiastic fan, and has bought tickets for 10 years, ought to know if his team gave up a first or second round draft choice?

Mr. CAMPBELL. I would like to agree with that. I think that could be good for the business. I think they would be better off if they did.

Senator COOK. What problems do you foresee with the establishment of the World Hockey League Association?

Mr. CAMPBELL. The first thing is very obvious, the contention which will arise for the talents, not only those players who are currently signed with us under option to our member clubs, but also, of course, the amateurs are perfectly open.

We have provided the supply of talent through our subsidization of the sport, and they are going to benefit from it, I assume, to the extent to which they acquire those players, and they will be perfectly entitled to acquire them.

We place no obstacles in their way of any kind. We have not advanced our draft. We have conducted no secret draft of any kind. We have just carried on our normal regulations.

Now, undoubtedly, with that degree of competition, obviously the cost is going to be higher. Salaries and signing money are going to be much higher.

Senator COOK. What effect would it have on your minor league system?

Mr. CAMPBELL. I can only observe that the minor league system is going to be hurt much worse than the major league system, because the economics of the situation enables them—they are primarily concerned in fielding a team for the moment. They have made no pretense up until now of providing competitive types of entertainment that could possibly compete with the NHL teams.

Senator COOK. I bet you that is what the NFL thought when the AFL started.

Mr. CAMPBELL. The only difference, when the AFL started, they started almost completely in new territory. This is not true in our sport.

The three major cities to which they have gone in the East are all places where we are currently in operation, where we own the buildings in which we play.

We have extended them the use of the buildings.

Senator COOK. You have extended to them the use of the buildings?

Mr. CAMPBELL. Oh, yes, certainly.

Senator COOK. What communities are those?

Mr. CAMPBELL. The Madison Square Garden.

Senator COOK. Does the Madison Square Garden Corp. own the hockey team?

Mr. CAMPBELL. Yes, and the Boston club is a wholly owned subsidiary of the same organization. They have given up the maximum number of dates they have available. My statement in this respect might be premature, but I understand that Philadelphia has done so also.

Now, they have no buildings in which to play except in the buildings in which we operate. That doesn't hold out much prospect for a joint operation, or two franchises in the same city. It is very unlikely that this will continue, and they will have the problem, of course, of competing at a greater cost, in some respects, than we, because any players they acquire, they will certainly have to pay them more than we would have to pay them, because they don't have the depth of security for payment, and therefore, it will cost them more money for the risk that a player takes in jumping to the WHA.

Plus, of course, nobody knows yet, and it would probably be tested in several places, as to whether or not players will be able to jump. They may not be enjoined from doing so.

Senator COOK. You don't look forward to handling that on a player-by-player basis?

Mr. CAMPBELL. Yes. That will be on a player-by-player basis. Individual players will decide that.

Senator COOK. In a civil action?

Mr. CAMPBELL. Yes, a civil action.

Now, in other respects, I should—to follow that point, the other places to which they have moved, or have established teams, they have established teams in Chicago, and up to now that is not very active.

I don't know how they propose or where they propose to play.

In St. Paul, which is just a short ways away from the beautiful new stadium in Bloomington, and a successfully operated franchise there, St. Paul has started a franchise in the WHA.

Los Angeles, I don't know where they are going to play, but I assume they will play in the arena.

They are competing. The WHA team is competing with an existing NHL franchise.

The Canadian cities are question marks, all of them, because economically my assessment is that they can't afford it.

Senator COOK. Let's take the situation of the California Seals.

Now, if the World Hockey League pirates, and I guess that is the proper word—I don't know what else to use—acquires a substantial number of players out of the NHL, do you consider that an extreme threat to the franchise in California?

Mr. CAMPBELL. If I thought that they would be likely to come up with a real competitive attraction, yes.

Senator Cook. Don't forget, they only have to be competitive in the World Hockey Association. They don't have to be competitive in the NHL. Here is the point I am trying to make.

A community likes a winner. Now, they may not be playing at the same caliber, let's say, but if they have a competitive team in that community, that has—that has a record of 13 and 3 and 2, and the Seals are sitting there with 2 and 6 and 15, even though it may not be the same caliber of hockey, I have to confess to you, I am going to go see the winner.

Mr. CAMPBELL. I don't entirely agree with that. I think a competitive league will draw better than a noncompetitive league at whatever level it is. This is perfectly true, if you are talking about juniors, intermediates, or minor leagues, or the major leagues. This is a situation with which they are completely uncertain, as far as that is concerned.

One thing is sure, and that is this: That the pattern which they have laid out for themselves, and the salaries which they have declared publicly they are offering, there is no way they can maintain themselves without a schedule of prices that is equivalent to ours. And I know that they are very unlikely to be able to do that.

Senator Cook. Until the signing of Bobby Hull yesterday, what was the total remuneration—

Mr. CAMPBELL. What was the total what?

Senator Cook. Two and a half million dollars? Wasn't that the total package that Bobby Hull got yesterday, two and a half?

Mr. CAMPBELL. Two and a half.

Senator Cook. Until that signing, in your memory, Mr. Campbell, what was the highest price contract ever paid to a hockey player to secure his services?

Mr. CAMPBELL. Just for signing money?

Oh, I don't remember any hockey player being signed for the acquisition of his services by anyone for more than—I don't remember any player being transferred, even from club to club, for in excess of a hundred thousand dollars.

Senator Cook. Boy, you have come a long way in a hurry; haven't you?

Mr. CAMPBELL. Basically, I want to point out, or to give some additional strength to the position that we require the preservation of the reserve clause more on account of the requirement, our player requirements, which have to be based on the cost of developing the player.

In other words, if a player were free to take advantage, either of his initial signing, and the number of years in the minor leagues, and a fairly substantial salary, and they are fairly substantial now by former standards, or by the ones under which I grew up, then the gross inequity of the situation where he could just walk off and say, it was nice of you to have provided me with an apprenticeship to get to the National Hockey League, and now thank you very much, I think I will go and play for the Jersey Devils, or somebody else, somebody else in the same league.

To me this would simply—the only effect this is going to have is that people will not expend the money to do this development work and the sport as a whole will deteriorate as a result of it.

Senator COOK. What problems do you see, for instance, in the drafting younger players in your amateurs, down among your 17-, 18-year-old players; with regard to the World Hockey League?

Mr. CAMPBELL. Let me say this: For the time being, at least, the talent is going to be acquired almost exclusively in Canada.

The program which we established in 1967 to strengthen the teams, the amateur position, and not to take their talent away from them too early, is one which has the full approbation of the Canadian Government, and the governments of every province, and I think if they attempt to violate that basic principle, I think they will be in deep trouble, certainly, the Canadian franchises will be.

Senator COOK. Then you do have statutory law in Canada?

Mr. CAMPBELL. No. We don't have any statutes that govern it all all. We just have a clear understanding that this is a pretty good arrangement and don't interfere with it.

Senator COOK. They are not going to tell a franchise in Miami that, are they?

Mr. CAMPBELL. No; they can't.

Senator COOK. So you are really going to see an L.A., a Philadelphia, and a New York, move into the provinces, and move in to pick up the 17- and 18-year-olds to put them in their respective chains. So this is going to be a pretty difficult situation. Do you feel it is going to be brought to a resounding head and you may require legislation in fact?

Mr. CAMPBELL. No, I don't think so. I think the problem will be resolved by simple economics.

Senator COOK. Well, then, what you are really saying is that the World Hockey Association is doomed to failure, and you are not really disappointed that that is going to occur?

Mr. CAMPBELL. Well, I said that once before. I didn't say doomed to failure, but I said if the effects of certain actions ran counter to our position, that was all right with me. That is as far as I went.

Senator COOK. I go back to saving again, Mr. Campbell, I am sure that is the same attitude that the NFL had.

Mr. CAMPBELL. No, it isn't, really.

Let me explain the difference. For them to take 17- and 18-year-old players, they have got to spend at least another 3 or 4 years in developing them before they can do them one bit of good. All they are doing at the moment is they are just exhausting themselves by signing them for what will be, I imagine, if they want to sign—of course, they are going to have no competition from us—

Senator COOK. If that is the caliber of play they are going to have throughout that entire league, this is where I disagree with you, because they are not going to have to train that player for 4 years. They are going to be content with that caliber of play.

Mr. CAMPBELL. All I am saying is, if they do, they haven't got a good enough show.

Senator COOK. You may well be right.

Let me ask you this: Do you believe that you have a good, standard caliber of hockey all the way through the National Hockey League?

Mr. CAMPBELL. No; not at all.

Senator COOK. So therefore, there are some franchises in the NHL that you would put in the same position that some World Hockey League teams will be in this stage of the game?

Mr. CAMPBELL. That is also possible. But you have to keep in mind, in any organization, or the admission of any club to the National Hockey League, we take pretty careful steps to make sure that there is a depth of financial stability to enable them to carry on.

It is not for me to comment on the financial strength of the WHA, but I just am quite satisfied that we will be able to survive in this situation. And I want to say another thing about it, since it was mentioned briefly by Mr. Eagleson, and that is, our relations with the players, and with the communities, the National Hockey League, in its entire history, has never moved a franchise.

And the reason for this is double-barreled.

In the first place, it was unlikely they would do so because originally, our clubs had to own the buildings—they did, as a matter of fact, own the buildings in which they operated. That was just a fact of life.

Senator COOK. Do you feel strongly about this?

Mr. CAMPBELL. That they should own them? I don't say it is necessary, but what I say is that I think it contributes enormously to the stability of the franchise if you own the building, or if you have a heavy stake in it.

For instance, if you wanted to underwrite the bonds for a community to build the building, then you have a really big stake in it, and this has happened in many of our franchises. Now, apart from everything else, we have at the present time 10 buildings which are owned by the organization with which they are associated, 10 out of 16 rinks.

And we pay civic taxes and every other kind of taxes on them. This contributes to the stability of the league.

Another thing is this: When we dispose of a franchise, we don't take money in the sense of delivery of \$6 million of, let's say, equity money, and he has a franchise and he starts off. That is quite unrealistic in terms of tax position that exists in our country.

And so there has to be a means by which he can work this off and charge the interest so he can get some benefit out of it.

Now, in order for us to do that, it is necessary for us to make sure that a franchise is awarded in a territory in which it is likely to be successful. And in our judgment, we have done that.

And having exercised that judgment, we have to see that it is vindicated, plus the pride that we have in our sport that it can be made successful any place, if it is properly run.

Senator COOK. That is interesting.

Mr. Kuhn testified the other day that he thought there was not any question about the fact that some people who owned major league baseball franchises were underfinanced.

Now, can that occur in the NHL?

Mr. CAMPBELL. Not underfinanced. We had two experiences which were I consider our own fault. There was adequate money in the organization but we didn't marshal it in the way that insured its continuity. That is what get us into trouble in two places.

But because we have the necessary pride in the operation we insisted that the franchises be not moved, and the league itself undertook the operation of the Pittsburgh franchise to make sure that this did not happen and we were going to allow that franchise to go someplace else, but we did not and in the end I had the responsibility of running that club financially for a year and in the course of that time we committed league resources up to \$2 million.

This was highly successful because, in the end, in the following year, we got back owners into the club who were in charge of the club who were local residents who took up the total obligation and nobody lost a cent.

Now, in the other situation there was a controversy between the vendor, the original franchisee, and the purchaser, and it led to a foreclosure of the of the interest of the purchaser and in turn it was sold and an approved sale, and that resulted in the transfer of a franchise to another owner, who also had—in Oakland, Mr. Finley bought it, because he had another sports interest right there. It was quite a logical thing for him to do.

Senator COOK. I wish you luck.

I have repeated on several occasions that Mr. Finley came to Louisville and utilized Louisville to club some other community in the United States over the head, and I would hope that the restrictions under which you are functioning with your Oakland club are a little bit tighter.

Mr. CAMPBELL. Let me say this. I think they are pretty tight and we intend to keep them that way. That has been one of the touchstones of our operation.

Senator COOK. But you have moved into absentee ownership? With your expansion?

Mr. CAMPBELL. Let me see. Let me analyze that. I don't think you could call Mr. Cook an absentee owner in California, although he had not been there any length of time. He is not exactly an absentee owner.

The Oakland Bay area franchise definitely was absentee ownership in its entirety. In Minnesota, entirely a home ownership. St. Louis, Pittsburgh, entirely home ownership. Pittsburgh, Philadelphia, Atlanta, in the areas which—to which we have just granted the franchises, into Washington and into Kansas City, it is home ownership.

Senator COOK. What percentage of ownership do you want one individual or one group to have?

Mr. CAMPBELL. Well, obviously, the best owner is one who owns everything. In terms of what we desire to have, we want to be sure that the organization is one in which there will not be any quarrel over control.

We want to be sure that the governor that is designated will be able to speak for the organization with a degree of finality.

As far as ownership is concerned, nine of our clubs are in a position where 51 percent or more is owned by one group.

Senator COOK. How do you look upon community ownership of a franchise?

Mr. CAMPBELL. Well, community ownership is like a club. It has a lot of nice features. When the club is running well, we don't have any trouble, and when it starts to go bad, people don't come around so often.

This is the difficulty. Support requires an enormous amount of capital and this is where the community breaks down. Even if they were enormously successful and acquired surpluses which should be set aside for the rainy day, that isn't the normal attitude of a large group of people because they are not used to handling that sort of money and the result is that when it comes at a tough time and they are not able to face it.

I think it is a wonderful thing to have great fan support and I think it should be encouraged in every conceivable way.

I think, as they did in Vancouver, they had no trouble at all selling debentures there. It is very easy. But basically I think there should be one good solid organization behind it, regardless.

Senator Cook. Well, then, you don't have the problems, for instance, that many communities have. You don't have the problems of a tremendously successful National Football League franchise which tells the community it has to build a stadium or it is going to move. It has to add so many more seats or it is going to move, and that sort of thing?

Mr. CAMPBELL. We don't have any of that. Our franchise is awarded primarily to a territory. The thing we look for next is a competent person to direct it, both in terms of business acumen, and also in terms of financial resources. Now, those are the two major things we look for.

Obviously, in the earlier days we were more concerned than we are at the present time about the question of geographical continuity to other places for scheduling purposes, but that doesn't matter any more. There is no place in America that you wouldn't be close to some other franchise. So that is not a factor.

Senator Cook. Well, address yourself, if you would, Commissioner, to this idea of the necessity for the NFL. After all, you are the Commissioner of a highly successful professional league, longer than many of the leagues that are in existence today, and as a matter of fact, I think the Stanley cup is the oldest trophy in North America, is it not?

Mr. CAMPBELL. It is the oldest world's trophy, yes, 1892.

Senator Cook. Address yourself to the horrible anxiety and great fear that, let's say, the NFL has about blackouts.

Now, here you are in a situation where you subsidize an entire minor league system, you are comparable to baseball in that regard, you have a very highly competitive league, you have a rather expensive sport. I suspect your rosters are pretty expensive.

As a matter of fact, your rosters may not be as big as a professional football team; but if you included all of your rosters all the way down in the minor leagues, they would be far, far larger.

Why don't you address yourself to this great fear that the NFL has that they can't show a football game in the home town because nobody is going to come and see it.

Mr. CAMPBELL. I think there are two factors that enter into that. One is the economics of the situation; that is, people coming to the game at a fairly high price and we have a high priced sport. That is one factor.

Senator Cook. Are you higher than football?

Mr. CAMPBELL. I don't know what their average is, but I know what ours is for the entire league, and last year it was \$5.25 a ticket, average, for every ticket sold in the entire league. That is 9 million.

So that is the position that we take in that regard.

But I think one of the biggest fears is this: There is hanging over the head of every sports promoter the fear that someday there will be a means by which the sport can be staged on a studio basis, let's put it that way, and he may not be able to extract from that system the equivalent of the sport which he has been able to get, not only in gate receipts but in concessions and so on by the presence of the spectator.

That is leaving out of the count entirely the question of the quality of the show which is going to be provided.

I have said in my statement and you may have observed it that in my opinion television of a sport under a studio basis is in my judgment doomed to fail because I think there are too many factors that are missing.

But there is another factor that one must keep in mind in this connection and that is that the present indications are that where television has been provided any time within the past 5 years, the suggestion is that they will not be allowed to change to pay TV for the next 5 years. Now, that is the inherent risk at the moment.

In spite of the fact that hockey has taken a very broad attitude toward not having blackouts, basically, this is the threat that bothers some of us, some of our teams, and it is the reason why they have not been willing to telecast even when they have it.

Senator COOK. You have some teams in the league that are not willing to televise?

Mr. CAMPBELL. They all televise their away games. You are talking about home games. They all televise their home games—I mean their away games. But when it comes to televising your home games, and this may not amount to very much in fact, because our Canadian experience and our Boston experience would seem to indicate that we have generated a degree of support that is going to insure that the building itself will be physically filled, that seems to be reasonably certain, but the thing that deters some others who are equally successful is this threat of being barred from the pay-TV field.

Senator COOK. In other words, you are coming to me a little bit at a time. What you are saying is that maybe other sports that want blackouts and maintain blackouts are looking forward to pay television and cable television, as they may present in the future another source of tremendous revenue, by saying either come to the arena or go to the Bijoux Theater and you can see it there.

Mr. CAMPBELL. I don't know what their logic is because I have not discussed it with them, but I know what our fears are from our discussions, and I know they are actuated in the same manner.

Senator COOK. Thank you very much, Mr. Campbell. Is there anything else you would like to add?

Mr. CAMPBELL. If there is, I am sure it will not be of that great consequence that it cannot be supplied in some other way.

Senator COOK. I appreciate your coming. I certainly appreciate your patience, believe me.

I will walk over and vote. We will be with Mr. Hart next.

(Recess.)

Senator COOK. Mr. Hart, can you make it to the table; and Mr. Dudley.

Well, my thanks to you all. As you well know, from my bad advice last week, and from your appearance today, I am most appreciative. I just really can't thank you enough.

Mr. Hart, you may proceed.

**STATEMENT OF LEON HART, NATIONAL FOOTBALL LEAGUE ALUMNI ASSOCIATION; ACCOMPANIED BY BILL DUDLEY, FOOTBALL'S HALL OF FAME**

Mr. HART. First I would like to thank you for the invitation to appear here. We are glad to be able to do so.

I brought with me one of our constituents on the alumni executive committee, Bill Dudley.

Mr. Chairman, I have been asked to speak for the National Football League Alumni Association in reference to S. 3445, the Federal Sports Act of 1972. The comments expressed are to be interpreted as those of the association and former football players. In context, I personally agree with these comments, but will preface any personal opinion by stating specifically that it is a personal opinion. Prior to coming to Washington to appear before this group at the hearing of S. 3445, the Federal Sports Act of 1972, a survey was made of a large segment of former football players throughout the United States and their reaction on the subject. Also surveyed were the members of the National Football League Alumni Association. This inquiry was almost unanimous in that the game of football should remain with those who have a vested interest in sports: The players, the former players, and the public in general.

Senator COOK. You don't mind if I interrupt you just one minute.

Mr. HART. No, sir.

Senator COOK. Other than to buy tickets, what vested interest does a sports fan have?

Mr. HART. The vested interest would be in his locality, his enthusiasm for a possible community interest, and I would guess a general identification with the team that is in the area.

Senator COOK. Do you think that the owner has that same feeling toward the fan?

Mr. HART. I would guess, yes, in most cases, personally.

Senator COOK. All right. Proceed.

Mr. HART. We endorse the general principle which has been historically the touchstone of our form of government, holding that government wherever possible should refrain from superimposing Federal control over nongovernment functions or enterprises. We don't feel that a need has been demonstrated for Federal controls in this area at the present time, which would be so emergent in nature as to override the obvious advantages of self-regulation.

Four questions were asked in the survey. No. 1, do professional football alumni endorse the Government entering into control of professional athletics and professional athletics in relationship to amateur athletics?

No. 2, do professional football alumni wish, should a bill be enacted, representation on the commission and/or sports council?

No. 3, do football alumni endorse the option clause?

No. 4, do professional football alumni have any other views on the Federal Government getting into professional sports?

Attached to this written statement is a sampling of the names and answers given to question No. 1 regarding the Government getting into control, there is a resounding unanimous no; on the question of representation, a unanimous yes.

On the option clause endorsement, two said no; all others said yes.

As to the other comments or views, I will quote from the attached written statement, and I might digress somewhat at this time. Mr. Chairman, in asking these questions and getting answers in regard to this, on many occasions, because of the outspokenness, which is the kindest word I can give, of some of my constituents, I had to ask them to rephrase it in printable forms.

Senator Cook. If you had to ask them to rephrase the first one, I wonder why Congress spent so much time in hearings in both the House and the Congress on whether to give football an exemption so that they could merge the two leagues?

Mr. Hart. As I say, I am giving my reaction now.

Senator Cook. It gets down to what have you done for me lately, doesn't it, Mr. Hart?

Mr. Hart. Quote, Congress should spend more time running the Government than getting into sports. Quote, without the option clause, the league is dead. Quote, the owners and players should go through the bargaining process. Quote, all sports owners and all sports players should go through the collective bargaining process. Quote, Government control of sports is one more step in the wrong direction. Government interference will not change the attitude of our athletic society. Quote, should controls be enacted, they should be such that there is only one controlling body with no State jurisdictions allowed as with boxing. The question is, what help did Government controls do for boxing? At present, the boxing sport is a good example of Government control and its chaotic effect.

Quote, sports is the core of everyday American life. Congress should take heed of the potential reaction all American voters will take if and when all infringe on the individual's enjoyment and participation in sports as they see fit.

Quote, don't wish any Government infringement in sports at all.

Quote, pro sports do not need Government controls as it would be like another hump on the camel's back.

Quote, sports people should run their own business.

Quote, Government intervention in sports would be most appalling. Time should be devoted to bigger domestic problems.

Quote, after all these years, let sports continue to solve their own problems.

Quote, discipline is lacking today. Some need some sort of check but definitely not the Federal Government.

Quote, if owners and players cannot work out their problems, then as a last resort, some Government body should be empowered to do so.

Quote, dream up something strong against the Government getting involved and say I said it.

However, in the event that S. 3445 should be enacted into law, whether in its present form, or some amended form, then we earnestly recommend and in fact, urge that the retired professional football

player receive recognition and representation by appointment of one of their ranks as a member of the Commission. These individuals would be particularly suited to such a position by reason of their wide experience, including high school, college, and professional football, together with the maturity and judgment that comes from their years and their postfootball experiences. As an example of this, we would like to present for the record attachment to these comments covering the position taken by the NFL Alumni Association in response to the NFL Players Association request for exemption to the Pay Board. It does, in effect, place professional sports in its proper perspective. I can read the text, Mr. Chairman, if you desire. If not, we do request that it be included in the records of this hearing along with the written comments.

Senator COOK. Just give me basically what the NFL said.

Mr. HART. Well, basically, we state that we do not, having had the experience of being in it, and now out for many years, in business of our own, do not feel that professional sports is a career. We feel basically that it is a pleasant interlude in life that is had in preparation for what a real career is.

An example of this might be Mr. Hull's transfer into the other league of hockey and if you will read the article further, you will see that his intentions were to spend upward to a million dollars on the purchase of cattle or his cattle farm. We suggest that this is the true career of the professional athlete after his interlude. Also that they work possibly for 6 to 7 months, and we suggest that the other 6 months of the year that they are truly working on their career.

So, we do believe that you should take the position that it is not a career, and by admission of Mr. Garvey's statement, the average life of a professional athlete is 4.5 years, Mr. Garvey being the executive secretary of the Players Association.

No career should be considered a career if you are talking in that length of time.

I could have read it probably in the same amount of time. But I would like to submit that.

Senator COOK. Let me ask you, Mr. Hart. Don't you think that as a result of some of the phenomenal sports figures that are now in, say, the broadcasting business, pursuing a sports career as such, the fact that they become famous in their sports, do you think that they would be in the positions they are in today if it hadn't been for the career they had, and isn't their career still in sports?

Mr. HART. I would say their career is as a sportscaster or sports writer, as you see fit, however, this is an interlude. But to consider being a professional athlete as a career specifically, it is not, in the opinion of the alumni association.

Senator COOK. Let me ask you, in sum and substance, was this position of the NFLAA that the player should not be subject to the regulations of the pay board?

Mr. HART. We took a position that they should be subject to the pay board.

Senator COOK. They should be.

Mr. HART. Yes, sir.

Senator COOK. Then despite all of the comments that were made by some of the former alumni about not wanting to get Government into

it, you did say they should be subject to the Government regulation on pay?

Mr. HART. The present freeze on wages is already in existence. This is not being thought out or pending.

Senator COOK. You did say they should be subject to the pay board with regards to ticket prices?

Mr. HART. This is always an essence of facts as it stands today under which the players and the owners have to work.

Senator COOK. I think the misnomer is they all say Government should not be into it. Some of the comments were that they should be allowed to arbitrate their problems.

The whole basis for arbitration is set up under the labor laws in the United States, and I assume they take advantage of them. So it just seems to me they are saying they do not want this to happen, and yet that percentage of the sports that it totally and completely controlled by Government, they do want to take advantage of.

Mr. HART. I believe Mr. Rozelle said there were already regulations in effect.

Senator COOK. Absolutely. No question about it. Mr. Dolph said some of the decisions that were rendered by courts in relation to some of the problems presented by the ABA to the courts showed that the decisions were made by people who had absolutely no knowledge or information about sports whatsoever.

And yet this is intervention by Government, obviously, because the Government set up the court system; the Government set up the rules and regulations by which the Federal procedures are adopted, and I think there have been a number of suits by individual players against their teams since the merger of the AFL and the NFL.

One of the things they really had an exclusion from was the right to be sued by their respective players because of the merger. So these are remarkable comments on the part of the players, but I wonder if they sat down and tried to come to the conclusion as to how much control Government has already.

Mr. HART. I think so, having been through the entire array, and now being ordinary citizens, or the public in general, and I think they can look back on it with some essence of judgment.

Senator COOK. I guess I would have to say that in many ways I agree with some of their comments, very much so.

For instance, I agree that we should maybe be taking up other subjects. We do all day long, as a matter of fact.

I agree that if there were alternatives maybe Government should not be involved in this. But the thing that really bothers me is the court decisions that have said that this institution, that is pretty big business, really does not operate like a business, but operates like a sport, and I think most of the law review articles, and the cases that have been researched, show that usually the side of the courts is on the side of reserve clauses, and substantiating the establishment position. As we saw the other day, in the Supreme Court of the United States, one of the first times I have heard the Supreme Court in its majority opinion say that Congress established something, and what the Congress giveth, the Congress can taketh away.

But I have to tell you there are a lot of other statutes that we passed, that the Supreme Court of the United States sure did not say that about.

So, I can agree with them in many, many ways. Maybe nothing will come from this bill. Maybe nothing should come from it. Maybe it is an opportunity to be here in this committee room and explain and express your feelings and give the feelings of other people about a tremendous industry in the United States, and obviously a very desirable and growing industry, which has run into problems with its operations, and I don't think there's any question about.

Let's take, for instance, all of the remarks that were made by these individuals, I have a notion that none of these fellows would have made those comments, for instance, if they had an investment in the American Basketball Association, or if they were basketball players in the American Basketball Association, who are now coming to Congress and saying, "Come help us before we get into trouble." I suspect that some of them may not have said this—if at this very time Mr. Rozelle were over in the House testifying that we ought to give exemptions to the antitrust laws so that the NFL and the AFL could merge. And so I get back to the old statement, it is kind of like what have you done for me lately?

So, I am only saying that I hope this committee takes those comments in the spirit in which they are intended, and I am sure, knowing a few good athletes myself, that you did have to correct some of this language pretty much.

You might address yourself to what you think may have happened to professional football if the antitrust exemptions had not been allowed to the AFL and the NFL so they could have merged.

Mr. HART. Probably this is a bigger war that went on prior to their merger, and continuing in the matter of economics, somebody in the leagues would obviously get hurt financially.

Senator COOK. But when it comes to economics, it is all right to come to the Government, so apparently many of the alumin feel. But when it is not economics, when you consider it a sport, rather than a big business, then you say, "Mind your own business and keep your hands off."

All I am saying is that it is all right to want it both ways, but I am just wondering whether you really can have it that way.

Proceed.

Mr. HART. Furthermore, the individuals comprising the group of retired football players have long been overlooked.

Some years ago, the NFL Alumni Association was organized. Its purpose was to gain representation for the players who had retired before 1959 to secure for them the representation and benefits to which they had long been entitled but had never received.

NFL Alumni Association, which comprises among its members the greatest names in the history of football and the people who built the game as we know it today, has been engaged for years in a desperate struggle to obtain pension benefits for the so-called oldtimer football player.

Out of this, 75 former professional football greats now enshrined in the Canton, Ohio's National Professional Football Hall of Fame, there are approximately only three enjoying pension benefits.

Hopefully in the future we wish to avoid any Jim Thorpe endings. For years, we have attempted in every way we know how to go with the NFL owners and the NFL Players Association. These attempts have been futile.

At this very moment, the NFL Alumni Association members through its executive committee are on the threshold of bringing legal action against the NFL owners and the NFL Players Association to establish the rights which have so long been denied us.

It may be a revelation for some of us to learn that there is a business like professional football where an employee need only to work for 5 years and he will be eligible for an income at age 55, sufficient for him to live off of the rest of his life.

It is in fact the intention of the present NFL Players Association, in the near future, to lower this income to age 45; and after listening to Commissioner Rozelle and his testimony, that has already occurred.

The NFL Alumni Association recognizes the inequities of guaranteed annual wages and wishes to point out that such inequities do exist in professional football.

The current players reap the entire benefits from the foundations laid by the former players. These former players prior to 1959 receive nothing.

Senator Cook. Let me interrupt you at this point and ask you how you think the comments would have been if we had introduced this bill with an extra section that said there is hereby created, a national football players pension fund for which all football players, as of the establishment of the league are eligible and that the benefit schedule be so-and-so.

Mr. HART. This is a personal opinion. I think the position is that probably we would be still against the Government getting into and organizing a commission of this nature.

However, if you so desire, Mr. Chairman, to do so, we in effect would like to see the people in sports who have been in sports and have had some experience run the particular thing that you are talking about, not an outsider who is not familiar with it.

Senator Cook. But they would have been a little bit—

Mr. HART. We would have taken care of the problem that you just talked about.

Senator Cook. All right. I think you have answered my question pretty well. Because what you are saying is if you had had an opportunity to be on the board, you would have seen to it that this situation would have been taken care of anyway.

Mr. HART. Yes, sir. That the inequities would have been corrected.

Senator Cook. Go ahead, Mr. Hart.

Mr. HART. Attached to this written document is the entire history of the National Football Alumni Association's effort to achieve NFL pension and benefit equality.

I can, Mr. Chairman, read into the record of this hearing, or submit it for the record, these comments.

Senator Cook. They will be included in the record in total.

Mr. HART. We cite this brief historical example to indicate to this honorable body only one instance which reflects the substantial interest of the retired player which would warrant their having representation on any commission under the Federal Sports Act of 1972.

We could elaborate further, and we would be happy to furnish data, statistics, documents, and other materials which this body might request.

In closing, it is the general opinion of the membership of the NFL Alumni Association that the public can best be protected if they are allowed to protect themselves.

The simplest way is not to patronize that with which they are displeased. Their control over professional sports is whether or not they purchase a ticket.

As to the financial stability of pro football franchises, franchises will rely on what the basic supply and demand in that area of influence dictates.

No show of Government regulation will provide financial stability. The interests of professional athletes depend, like any other product or service, on what they have to sell.

It should be recognized that being a professional football player can never be classified as a life's career. The relationship between professional and amateur sports must be handled by the sports themselves as they should realize the dangers of self-destruction they may be employing.

Obviously, in some of these quotations in the background here, I have omitted the statements of my constituent here, Bill Dudley, and he is prepared to fill in that void a few statements of his own, Mr. Chairman.

Senator Cook. Absolutely. Proceed, Mr. Dudley.

Mr. DUDLEY. Senator Cook and gentlemen, my name is Bill Dudley, member of Professional Football's Hall of Fame, and also the National Football Association Hall of Fame.

I appreciate this opportunity to reiterate the statements made by Leon Hart regarding the National Football League Association's comments as well as to add a few personal observations that come from a lifetime interest in the game of football.

Regarding the four questions asked of professional football players presented in Mr. Hart's statement, I would like to add the following:

1. Do professional football alumni endorse the Government entering into control of professional athletics and professional athletics in relationship to amateur athletics?

My answer will have to be "No." (Comments regarding this will be given following question No. 4.)

2. Do professional football alumni wish, should a bill be enacted, representation on the Commission and/or Sports Council?

"Yes." Should any legislation pass regarding the Government relating to sports, I feel that an individual who has played the game and following his participation taken his place in the business world, should be in a position to render a tremendous amount of service and information to any commission engaged in governing the activities of professional sports. This should be true whether it's basketball, baseball, hockey, football, or any other sport which the public supports.

3. Do professional football alumni endorse the option clause?

"Yes." I do not like to take issue with a man that I respect and admire like Senator Erwin; nevertheless, I feel I must do so as the option clause is indeed one of the backbones of professional football.

A club will spend many dollars and time in developing a ballplayer and selling his performance to the public. In my opinion, in the long run, it costs a ballplayer money if the club does not have some control over him than just a year's contract.

Bonuses will undoubtedly be cut severely unless a club can have some control over the activity of its ballplayers. There may have been a case where a ballplayer was hurt because of this option. However, I, personally, know of none.

In my 9 years of active playing and three coaching, I was traded to two different teams. Maybe, if I had had a choice, I might have chosen a different ball club. Such was not the case, however; the fact that I was traded did not hurt my bargaining power. In fact, it may have been enhanced.

4. Do professional football alumni have any other views on the Federal Government getting into professional sports?

"Yes." I am in complete sympathy with the problems that exist today with players jumping contracts, franchises being moved, players leaving college to sign professional contracts, and so forth.

You know, being a member of the General Assembly in the State of Virginia, there is a cliché that goes: "At times, government is something like a cockroach." By itself it is not too bad, but it's what it gets into that it messes up.

If I may, I would like to comment briefly about the business of professional sports.

Professional sports, and particularly football, is a business. But, completely different and unique from any other business I know of. In professional football, a great majority of the ball players come into it after their college career is over. Most of them probably went to college and had an opportunity to receive an education based on their athletic ability. Many would not have ever received an education if it had not been for their scholarship.

Each of these recipients owes a sense of gratitude to the school and individuals responsible for their receiving this opportunity.

To me, the opportunity to play professional sports is a "plus" and should not be overlooked. After all, the average length of a "play for pay" career is only 5 years and the individual must do something else for the balance of his life, which actuarially would approximate 40 to 45 years.

One of the reasons professional football is completely different from any other business—where else can an individual work and play for 5 years and accumulate a minimum retirement income at 65 in the neighborhood of \$1,300 a month and at 55 around \$500 a month?

This he is able to do through the efforts of his predecessors. These efforts should be protected. It's my personal opinion that the ball players of yesteryear, today and the future should be protected because of their contribution to this unique business.

Present play representatives or an attorney don't give a damn once an individual retires and this is how it should be. He is paid to solve current problems by current players.

Past players deserve representation and participation in any additional benefits that may accrue. For example, it's not inconceivable that any of the pro sports could possibly set up its own television network.

In addition with cable or paid TV, it is not inconceivable that one or two games during the year could bring in several millions of dollars, in addition to regular TV and gate receipts. Think what increase in benefits this could bring to all players, past, present and future.

There is no doubt that where tremendous amounts of money become involved, government interest is going to enter into the picture, because problems will arise that did not exist before.

Thus, in the future, there may very well be a real need for some kind of action on the part of the Federal Government.

However, it is my humble opinion that such action is not needed at this time but should be handled as it has been to date, through the courts.

However, I would like to reiterate that due to the nature of this business of sports that mechanisms should exist to protect those individuals past, present, and future who participated to make professional sports what it is today.

In closing, may I again express my thanks for the opportunity to present the views of a past performer who is interested in preserving the dignity of the game, remembering at all times that once an individual signs a contract, he is paid to perform and the playing of professional sports is not a lifetime occupation but a short, well-paid interlude in one's lifetime.

Senator Cook. Mr. Dudley, let me ask you to explain to me the difference between allowing it to function with some of your exemptions, and your phrase that, "However, I would like to reiterate that due to the nature of sports, that mechanisms should exist to protect those individuals past, present, and future who participated to make professional sports what it is today."

Are you talking about mechanisms at the bargaining table?

Mr. DUDLEY. Well, I really do not know, Senator.

Senator Cook. Because you have been unsuccessful at the bargaining table.

Mr. DUDLEY. So far we have, mainly because this thing has mushroomed so fast. I was very close to the time when the original pension plan and benefits came into being, which is in the history of the thing. I do know at the time it was the intent of the present Commissioner Bell, to try to take care of all the past ballplayers that had played. but they did not have the money, and I do not think anyone could foresee at that particular time that there was going to be the revenue coming in through the gate receipts as well as television that there is today.

And I think that you should try to judge the future by the past.

I think starting now, whether we get anything or not, I think that the current situation in all sports, and if legislation is necessary, then I think it should be in there because sports is unique.

A player goes in; he participates for 4 to 5, 6 months a year, and not only for 4½ or 5 years, and as I said, what other business can a man go into. All other employees of a professional team, they work their lifetime to develop a pension.

Senator Cook. Mr. Dudley, I guess we could research this, but I would venture to say that I think there are a lot of endeavors in the United States today where the ability of a man to perform that job is rather limited. Maybe it is not 5 years. But maybe it is 7 years, 8 years, 10 years. Where he must either go up the ladder or he is going out.

I think there are many efforts on the part of individuals in this country today, because of the stamina, or because of the strength that it takes, whether it be in the industrial world, or whether it be in the

sports world, where his career is rather limited, where he has to look forward to something else, where he may receive a very high price for his services at that time, but he can't sustain that service for a long period of time.

Now, nobody says to this individual that is an interlude.

Mr. HART. What service would that be?

Senator COOK. Well, I don't know, but I think I am going to find some for you, Mr. Hart. I am just saying that I have a notion there may be. I am not sure that it is all in the field of sports.

Mr. DUDLEY. There may be, Senator. I won't say that I have researched it a whole lot, but I have spent a lot of time thinking about it, and I have looked into it, and in most pension areas also salaries are usually taken into consideration as well as length of service, you see. Of course, this is not taken into consideration.

Senator COOK. Let's say the great names in the field of artistic dancing, let's take singers, let's take—

Mr. DUDLEY. But are they covered under pension plans? This is my point. Do they have an appeal to the public where their performance has been viewed by several millions throughout the United States all the time and are they organized and are they set up so that they can receive a pension?

Senator COOK. There is a little outfit called ASCAP, and as a matter of fact, we have had legislation before us on several occasions since I have been here, and I have been here over 3 years. We consider legislation every year that asks for the acquisition of a royalty on all records that stations play throughout the United States.

Mr. DUDLEY. Royalties, yes; but this is not a pension plan from the standpoint of a Government-approved plan.

Senator COOK. You don't have a Government-approved plan, either, and the plan that the players have right now isn't a Government-approved plan.

Mr. DUDLEY. Approved by the Internal Revenue.

Senator COOK. But the point is, it is not a plan that was negotiated by the Government. It was a plan that was negotiated by the players, and that is the way it should be.

Mr. DUDLEY. Yes, sir; that is right. Very true.

Mr. HART. Senator, are you classifying then possibly sports in the entertainment phase of this?

Senator COOK. No. I am just trying to give you some examples of what you talked about as a slight interlude in one's life, and then one has to look forward to doing something else. That is the point I am trying to give you. I don't think you can make a comparison between the two.

Mr. DUDLEY. Sir, you take your thespians, you take your dancers, you take your musicians: Most of them are usually working the year round.

Now, they may only have 10, 15, or 20 years where they can perform. You may be right there. But for someone, particularly professional football, most people go to college to get an education, even the football player, and the percentage that goes under professional football are very few, and therefore this is the reason that I maintain that they must do something after playing professional football, and as a result they are doing something they like, that it is a plus, that once they

finish college it is an extra plus that they have, that the good Lord gave them an ability, and that is the reason I call it a pleasant interlude, because unless you succeed here, you are not going to perform well on the field, and that is the reason I call it a pleasant interlude.

Senator Cook. Well, first of all, you said in your statement that football is in fact big business.

Mr. DUDLEY. Yes, sir.

Senator Cook. So, therefore, if it is big business, and we shouldn't set up a system, or set up any commission at all, just forget about it. Well, if we shouldn't set it up, then don't you think that Congress should take away the exemptions that it has already given to this big business?

Mr. HART. What exemption is that?

Senator Cook. The merger of the AFL and the NFL, the exemption that Congress gave to baseball years ago that resulted in the *Curt Flood* opinion the other day. If in fact this is big business, let it function as big business, and let's not even give it the slightest degree of exemption.

Mr. DUDLEY. I don't think it is any other business. That is my whole point.

Senator Cook. It is big business, but it is a special kind of business.

Mr. DUDLEY. That is exactly right.

Mr. HART. It is a sports business.

Mr. DUDLEY. I think sports is a special kind of business. This is my whole point. I don't think it would be completely out of line, that if regulations were going to be made, or legislation, to really make sports a special type of business, because I believe it is a special type of business.

Senator Cook. Let me tell you what impresses me, Mr. Hart. In a way, I am kind of glad everybody said no, I am kind of glad everybody you interviewed said no, purely and simply because I am finding out that maybe some of these things aren't as onerous as I thought they possibly were.

Are you saying to me that there isn't much sympathy for, let's say, a Joe Kapp, there really isn't any sympathy within the professional football players association in the alumni association? They really don't have much sympathy for a Joe Kapp. They think he was offered a hell of a lot of money, and he should have taken it, and he should have signed the contract.

Mr. HART. I believe you might talk to Joe Kapp, and I believe you will find that he does admit he may have made a mistake. I don't mean to say we are not sympathetic, but I think if you would discuss it with Joe, he might say that he did.

Senator Cook. There is no sympathy for a Curt Flood, that he belongs to a ball club for the rest of his life if they want to keep him. I think these are interesting points, really.

Mr. HART. A man going into sports, when he signs his contract, or whatever, is signing a service contract. He realizes at that time what his obligations and his requirement or his responsibility is, how he has to perform his portion of his contract.

Senator Cook. Don't say that about an 18-year-old ballplayer that the Orioles or the White Sox pick up. In most States, he is not even old enough to execute a contract. In most States, he would be con-

sidered a minor, and a guardian would have to be appointed for him in a court of law to execute the contract for and on his behalf.

Are you really telling me that this young man knows he is going to be the property of somebody for the rest of his football life or baseball life, or that he can be traded?

Mr. HART. Is he now as an 18-year-old permitted to hold property?

Senator COOK. Yes.

Mr. HART. We must say that he is capable of doing that. I don't necessarily agree with that phase of it.

Senator COOK. Let me ask you for the judgment of a 19-year-old, a 20-year-old sophomore in college, who is on a scholarship, who is playing on a nationally recognized basketball team. All of a sudden somebody says, we want you to come and play basketball for us. Sign this contract; it is worth a million and a half dollars. We say it is fine, go ahead and do that. I mean, you think he has good judgment, and it is perfectly all right that he is going to belong to a team, that they can shuffle him off to another team.

Mr. HART. I think we are both proponents, Mr. Chairman. Good judgment comes from experience, and experience comes from poor judgment.

Senator COOK. Well, experience comes from time.

Mr. HART. And some experience comes from poor judgment, too.

Senator COOK. Never worry about where you are going if you remember where you have been.

Mr. HART. It is cliché time.

Senator COOK. A very interesting point was just raised. If such a commission were to be set up, although you completely and absolutely are opposed to it, and you would be represented on it—there shouldn't be a 20-year-old at least who is eligible to sign and enter into a contract without having some experience on that commission.

Mr. DUDLEY. I think we both agree on that, sir. But nevertheless, by law, which is passed right here, this man has been told by law that he is capable of making a mature judgment.

Senator COOK. Let me ask you some of the things that have come up, Mr. Hart, relative to the conduct of sports. I guess I am not saying anybody has control over it or they ought to have control over it. Somehow or other I don't look at a sports commission as some agency that is ultimately going to be as big as the Pentagon and have agents all over the place. Kind of like that old saying about the Department of Agriculture. You know, ultimately there is going to be more people in the Department of Agriculture than there are farmers, and we may be close to that point.

For my part, I think it is too bad. But what do we do about some of these problems that occur? What do we do about communities that are threatened with the movement of franchises? What do we do about a draft system designed to maintain a franchise which permits a situation where ultimately you may not have draft choices, or you give away all your draft choices. And yet we say to the fans we need this kind of system because it is going to give us a competitive system. I think we heard some good remarks this morning. One by a player representative who said, you know, the draft really isn't what it is supposed to be. Suppose there is a team in the National Football League that doesn't have any draft choices until 1975? What do you

do about a situation like this? Do you think that maybe these hearings—even if a bill never comes to life—will result in some good, purely and simply from the standpoint that here it is, everybody can look at it, and everybody can discuss it. Maybe that is one of the responsibilities of the Government also.

Mr. DUDLEY. I don't think there is any doubt about it. That is one of the responsibilities of the Government. At least, that is the way I feel at the State level. That ever so often something needs to be aired.

Senator COOK. For instance, as a former member of the Virginia Legislature, do you think that a community ought to be badgered into extreme debt to build a stadium for somebody when it has got a 5-year contract or a 10-year contract, and all of a sudden at the end of the period, they walk off and go someplace else?

Mr. DUDLEY. No. I don't believe in badgering anybody to do anything personally, Senator.

Mr. HART. I think, Senator, to answer one question at a time would be better here. As far as personal opinion on whether or not the club should badger the public to put in a stadium for them and service bonds and so forth, if the public so desires not to do so, and there is an economic advantage for the club to move to another town, who has agreed to do so, at a particular economic advantage, then should the club move, it is up to the judgment of someone new coming in, it ought to be, and I agree with Senator Ervin, it ought to be a nice place to start another franchise under the conditions that the previous club left.

Senator COOK. Let us take away the exemption so that we do not have that problem.

Mr. HART. Take away the exemption on what?

Senator COOK. Take away the benefits that they have, that they know they can move a franchise. For instance, the Giants can move to New Jersey, and because they have a blackout in New York, they cannot move another team into Yankee Stadium.

Mr. HART. Is there a Government prerogative or a league prerogative?

Senator COOK. I am asking you.

Mr. HART. I am saying, leave it alone.

Mr. DUDLEY. They could possibly, with agreements of the other team, move a team into New York, could they not?

Senator COOK. You mean the owners?

Mr. DUDLEY. Yes, sir.

Senator COOK. Do you think that is going to be successful?

Mr. DUDLEY. I think it is possible.

Senator COOK. It is my understanding that one of the conditions that the Giants agreed upon in the merger of the two leagues was that when the Jets came into New York, that compensation was paid to the Giants in the sum of some \$10 million for the right of that team to come into New York.

Mr. HART. That would be pretty much described as a free enterprise type of contract.

Senator COOK. Take away the exemption that we gave them under the antitrust law, then.

I agree with you. That is fine. I am not going to argue with you. Let us take away the exemption that they already have. Let us let them function like any other business in the United States.

Mr. HART. Do they have an exemption under the antitrust law?

Senator COOK. They had to get permission of Congress to merge the two leagues because otherwise they would be in violation of antitrust laws if they did not.

I mean, I can only give you history.

Mr. HART. If the country is interested in bigtime sports and bigtime athletics, and professional sports, it will be necessary to work an environmental profit for the owners, and I am sure that they are able to give them to them under conditions as they, who are very familiar and have a vested interest in sports with experience, that this is their judgment what they should do.

Without certain exemptions, without treating it as a business, as a unique business, why, then chaos might exist, as possibly we have referred to with the basketball problem, and then the public in turn would be harmed as far as teams followed, go, and letting the economics of supply and demand, so-called, either destroy teams, or the sport itself, would be hurt, if you did not have special recognition that it is a sport—being a business also, because a sport deals with the emotions of people, and emotions of a team specifically.

A man on a team can perform 125 percent of his capability or he can perform 50 percent of his capability, and this, in effect, is what we are saying.

If he enjoys his work and performs it as a free person, and none of us—as oldtimers, we look back and we may have objected to the option clause while we were playing.

However, in having the benefit of hindsight now, which beats the heck out of foresight, we realize what the benefits are, what they were to us, and we endorse it fully.

Senator COOK. Another reason that I am kind of glad that everybody said “no” to question No. 1 is that I am delighted they feel there should be a total and complete enactment of the free enterprise system as it applies to sports.

I think there is a distinction as to how the free enterprise system works with the players and how it works with the front office.

Mr. HART. I think you will find the free enterprise system with people involved in sports, who have developed themselves with personal capabilities in sports, and achievement, that they do largely endorse the full, free enterprise system, I would say, as a whole.

Senator COOK. I am delighted.

Mr. DUDLEY. We feel that sports definitely is a big business, but it is a completely different business from running a factory or something like that.

Senator COOK. All right.

Mr. HART. I might make a point regarding the pension. Mr. Dudley referred to this.

Pensions are usually for a whole group involved with a company, and yet we have within professional sports a pension fund involved with players and not the front office, or the secretaries, or the ticket manager—he is not included in this.

Therein lies some kind of a difference. Now, how you describe this is an oblivious thing.

Senator COOK. Mr. Dudley, as a former legislator, let me give you really the main reason that any bill was introduced by me at all, and that was that I thought something ought to be done relative to a situation which does not apply to football at all.

The situation that is applied to the North Carolina State situation, the Villanova situation, the Western Kentucky University situation, where the only action that is left by the NCAA, by the school, is to bring a civil action after the sports scene has been seriously tarnished.

Mr. DUDLEY. I could not agree with you more.

Senator COOK. After a team has been required to forfeit, after a team has lost its position, after four competitors have found that they have fought themselves to a national championship only to find out that it is all down the drain because of the fifth.

Now, the sports fan has a vested interest in this. The sports fan bought all these tickets. Even the situation as it applies to Flood and Kapp. The sports fan maybe bought a lot of season tickets when they found out that Joe Kapp was going to be signed, or that Flood was going to play, and all of a sudden, these things are gone.

It seems to me that if you say the only recourse you have is after the fact, that the only recourse you have is a civil action, to get a money judgment against the league, or to get a money judgment against an individual, what does that do to the record?

Mr. DUDLEY. Sir, may I ask this question? You know, out of all the history of all the ballplayers playing professional sports, I do not think that you can make any kind of legislation, or pass legislation, that is going to be right down the line for everyone.

Senator COOK. I agree.

Mr. DUDLEY. There has got to be a few exemptions.

Now, to me, the few exceptions that have gone into the courts, the Kapp, the Flood situation, I mean looking at facts as facts, both of these boys had some age-old theme; both of these boys signed contracts to pay them real good money.

Except what I have read in the newspapers, from time to time, I do not know the reason that the suits were brought and so on. But then the ballplayers in college—this is another question completely different from these two men—I do not know actually about the ones in college, except that I do feel that the basketball leagues, whoever is in charge, they should have an agreement not to sign a boy as long as he is in college.

Senator COOK. As a matter of fact, one of your men, Elroy Hirsch, said, "Yes" on the second part of that first question: you asked, "Should the Government enter into the field of professional athletics in relation to amateur athletics?" and he said, "Yes."

Mr. DUDLEY. As I say, there should be some kind of a stop-gap in there. But it would appear to me that the owner—as I say, professional football took this action several years ago, but they could not sign a ballplayer as long as he was in college.

Mr. HART. Senator, excuse me. We have problems involved in sports, and if we did not have these problems—they have been continuous since the time Bill and I played—there has been no changes in the problems.

If we did not have them, the sportscaster would not have anything to talk about.

Senator Cook. Lots of times we talk about problems that really are not there.

Mr. HART. They have a lot to talk about in this regard. There are problems that do exist. I think what Bill is saying, we cannot just with one swipe of the wand correct the situation, because we may be running some sportscasters out of business.

Senator Cook. I think that is one thing this record is going to lay out. I think—I hope the sportswriters say that to you after this is over and you walk out. I just have in my mind that somehow or other, if a league is not going to say that it is not going to abstain from this particular type of piracy, then maybe the end result of this thing will be nothing more than the imposition of a fine or a criminal penalty against anybody who does, and maybe that will be the only thing.

I would say, I suspect that everybody could live with that.

Mr. HART. Senator, are you referring possibly to a settlement in the courts?

Senator Cook. Yes. I think these are the things you find out from this point of view.

Mr. HART. See, we realize, too, we are contributing to some of the debacle that is involved in sports, too, because of our claims.

We may be adding to it. As we stated in the statement, we are on the threshold of a court suit. We may be adding to this. But we do not believe that it is anything that cannot be settled in court.

Senator Cook. Do you have great hopes of winning that suit? I have serious misgivings about contracts having been terminated. After all, I assume you are under the Social Security System. I assume that as meager as it is, you made a contribution to it, and your employer made a contribution to it, and as you so aptly put it, frankly, the negotiations that are going on today are the negotiations that apply to the active players.

Mr. DUDLEY. Right.

Senator Cook. And the active players are not one bit concerned about the inactive players, because to them, you are just fellows that maybe laid the groundwork for them; but frankly, they are the beneficiaries of it, and they are not going to share any of it with you.

It just seems to me that that is the position that you find yourselves in.

Mr. HART. Do you feel, in regard to your last statement, that this is the right way to approach it, as far as retired players are concerned?

Senator Cook. Some judge is going to have to find a real good moral reason to include you in a pension program that has increased through the years.

I am not going to pass judgment on it. I wish you luck. But, if I were to have to venture a curbstone opinion, which is worth exactly what you are paying for it, that is going to be a tough, tough lawsuit.

Mr. HART. Senator, if we didn't think we couldn't win the game, we wouldn't appear.

Senator Cook. Of course, I know in our activities, as a legislative body, when we deal with programs of this kind, for instance, I have

a notion that before this week is over, if the Senate has anything to do about it, there will be a substantial increase in social security.

But that increase will be for the benefit of the recipient and paid for by the man today, and those who will receive it will have not made the contribution necessary for the investment that gives the amount of payment that is going to be made to the recipient.

Mr. DUDLEY. Do you think you might be setting a precedent for this pension plan, paying those who did not contribute?

Senator COOK. Well, no, because I think the argument of the recipient is that they all paid, but because of inflation, and the economic situation as it has advanced through the years in this country, they paid in dollar bills that were worth  $x$  dollars then that are worth far less now. And, therefore, the contribution that they are going to receive in payment is going to be no more than a fair return for the money that they invested in the first place.

But the fact is they did make the first investment, regardless of how small it may have been, or regardless of what the values of those dollar bills may have been.

I mean, that is just an opinion of mine.

But, I must say, I have learned a great deal. I have learned for my benefit a lot about professional football players.

I am delighted that they are a damn good independent lot, and they ought to be congratulated for it.

Mr. HART. Senator, you were looking for information and attitudes, and I might reflect some of the attitudes of the alumni group.

I think in regard to sports, we all do feel, in looking back, that as a player, you are a basic commodity. I have heard some reflections made by the Senators that there is something wrong with trading players promiscuously from place to place and selling them for money, and that they handle them like beef.

We contend, what else does sports have to sell but that player. He is a commodity. He is a depreciable thing, but he is not necessarily a piece of machinery, but he is treated that way, but his performance is that he has a desire to compete from within.

So this in effect is what the sport has to sell, the commodity of the player, which is a business asset.

Senator COOK. What you are saying to me then, if I can paraphrase it is—let's take the league of the NFL. The league of the NFL is really the business, not the individual businesses within it.

Mr. HART. I think you will find that is a nonprofit organization, Senator.

Senator COOK. The point I am trying to make, though, in the analysis, a General Motors can transfer a guy from Detroit to Jacksonville, Fla. If he doesn't want to go, then he doesn't have a job.

What I am trying to say is that a man can transfer a man anywhere he wants within the country, but he transfers him within that organization.

Now, are you in effect saying to me, if we analyze it, that the big business is really the whole sport itself, that the parts of the whole constitute a Cleveland or a Detroit or a Philadelphia, or a Los Angeles, or a Washington, but that it is the whole. And that it is the same thing as saying to a man in General Motors, "We are going to transfer you to New Orleans," and that what you are really saying to me is that the

whole is the sum of all of its parts, and that the industry known as General Electric, that has facilities all over the country, is kind of the same thing, that it is really the sport we are talking about that is business, and not the independent franchises that constituted that sport.

Mr. HART. That is a singular question, yes. I would say that we are talking about professional sports as such.

Senator COOK. And that is the distinction that we are really trying to make, and that is why it makes it different, that you look at the whole thing and not the sum of its parts.

Would you agree with that, Mr. Dudley?

Mr. DUDLEY. I don't know whether I would go along completely with that assumption or not, Senator.

If I work for General Motors or General Electric and they said to me that I have got to go somewhere and work, I can quit and go to work for Western Electric.

Senator COOK. But so can you if you are working for the Detroit Lions. If they transfer you to New Orleans, you can quit. You can go anywhere else.

Mr. DUDLEY. Yes; but I can't play professional football any more.

Senator COOK. We admit that.

Mr. DUDLEY. Therefore, this is what makes professional sports different, you see.

Senator COOK. I agree. But the difference I am trying to explain is that the business is all of the franchises, not the business being the individual franchises as they exist in a respective community throughout the country.

That is the point I am trying to make. If General Motors transfers you to Western Electric, and the same thing you are doing at General Motors, you are going to do at Western Electric, then it is the same thing as saying, "All right, we are transferring you from one football team to the other football team, you are going to be doing the very same thing."

Mr. DUDLEY. There are contracts in business that——

Senator COOK. Absolutely.

Mr. DUDLEY. All right. When this man signs a contract with the club, he knows what he is doing.

Senator COOK. As a matter of fact, I think you will agree with me that there are many contracts that people have entered into that said you shall work with us over a period of years.

Mr. DUDLEY. You will work for them for a period, and if you leave, you can't work with anybody else.

Senator COOK. If you leave, you can't work with a competitor. There are many of those, and I think the court has sustained many of those.

And again, it depends on the talent of that individual, and you are saying that same thing in the field of football.

Mr. HART. What he has to sell.

Senator COOK. I must say I have learned a lot.

Mr. HART. There are cases, of course, where a person, if he has something to sell in regards to whether or not a club will trade him or not, he may have negotiated in the contract that the club cannot trade him, and if this be the case, then he has negotiated this particular trade clause out of his contract sufficiently.

Senator COOK. Now, as to former professional football players, because I think it is important to get this into the record also, what do you think of Mr. Samuels discussions in New York about having gambling on football games, basketball games, baseball games, along with off-track betting?

Mr. HART. I think I could speak personally on that, and probably for the entire group.

We think that would be a dastardly thing for professional sports.

Senator COOK. I happen to agree with you.

How do you feel about it, Mr. Dudley?

Mr. DUDLEY. I couldn't agree with you more. I think it would be tragic.

Senator COOK. At least there are some good things in this record about what could occur in sports in the future.

Somehow or other, obviously, I think you can throw a horse race, but at least it takes a man and an animal to do it, and sometimes the animal can be pretty obstinate. When it is just up to the man himself, he doesn't have to get the cooperation of anybody else to do it.

I thank you all very much. This has been very enlightening.

We will put all of this into the record, including Mr. Hart's entire statement, and all the addendum thereto.

I am going to have to write to Steve Van Buren and ask him what he would dream up, because really, I would like to hear it.

Mr. HART. I told you in the beginning, I attempted to reword some of these things, and that basically sounds to me like a very honest and straightforward kind of a feeling he had, and that is the reason I put it in as he said it, and it was conveyed to me in that fashion.

Senator COOK. Well, this is kind of an odd situation for me, because I am really trying to see that some particular agencies of Government expire, not enlarge, and again, I think what we have done is we have made a good record to explain professional sports more fully.

Mr. HART. I might say, Mr. Chairman, that we have a rather unique setup. We are unique in our ranks as far as the alumni groups go. We have for the record, and your own information, two people who are in charge of alumni reps in all 26 towns that there is a league representative, and each town has an alumni rep where one man is responsible for at least 13. So we have quite a unique setup where we can make contact with these people, and we know pretty much where they all are.

Our difficulty with this venture here is that communication is the big problem, as I am sure you are aware. We didn't get everybody, but we made a stab of trying to get as many as we could. But we do have this network that we can bounce things off of quite easily.

Senator COOK. Let me ask you, Mr. Hart: What do you think of the situation, for instance, of requiring ticketholders to buy tickets to pre-season games before the schedule starts?

Mr. HART. I think you will find in our statement here, that the simplest way for the spectator is not to buy it if they are dissatisfied. However, Senator, there are probably 50 people waiting in line to take his place.

Senator COOK. That is right.

Mr. HART. So if he is displeased with it, he can't control it. Some clubs, as I think Mr. Rozelle said, do not ask for that, because the supply and demand isn't there.

Senator Cook. But Mr. Rozelle also said that if Coniglio loses his suit, that the chances are that every professional team in the league will proceed to make it a larger schedule and proceed to make it incumbent upon everybody who has season tickets to buy preseason tickets and make that a condition precedent for them to receive the tickets to the scheduled games.

You see, you are throwing a free enterprise axiom at me. If he doesn't want the tickets, he doesn't have to buy them. Let's suppose he is sitting in a community and he helped promote a bond issue, and he helped vote for the community to place itself in debt like Kansas City to the tune of \$67 million. He is a taxpayer, and he is going to have to pay off the indebtedness, he pays taxes to the community, and all of a sudden he has to buy these tickets, or he isn't going to get his season tickets.

Mr. HART. The indebtedness, as far as the people involved in building the stadium, clarified the point.

Senator Cook. Well, I am just trying to get the quid pro quo. The individual helped convince the community—and by the way, we say obviously they do have this free choice, but it is a pretty good advertising facility that goes on about all the great things that are going to come into a community as a result of a new stadium.

I don't know how Mr. Wilson in Buffalo is going to sell 80,000 tickets when he can't fill the stadium that he has now, but he has himself an 80,000-seat stadium coming, and the people of the community are going to pay for it, and I will venture to say that most of those 23,000 season-ticket holders are going to help pay that indebtedness off, and not just through the purchase of season tickets. Through the contribution as a taxpayer in that community in many respects, because it is going to take community revenue to pay off that investment.

Mr. HART. You aren't criticizing Mr. Wilson's business ability in that regard, are you? If he is able to make the kind of economic deal to the advantage of his club, and the people of Buffalo say yes, well, this is an asset to him, is it not?

Senator Cook. No. I can only say to you that I know of no other facility in the entire United States that one would qualify as "business" as Mr. Dudley did that would say to the community that I want to bring a General Electric appliance park in here, you get the community to put up \$165 million worth of bonded indebtedness, because I am going to bring 12,000 jobs in here. I don't know of any facility anywhere in the United States that can say to the mayor of the city of New York, you either put \$24 million worth of new facilities into Yankee Stadium, or I as a business am going to move out of your town.

I don't know of any tenant in any building in New York that is going to say to the mayor of the city of New York, I am going to keep my home office in New York if you pay my rent from here on out.

If you don't pay my rent, I am moving to San Francisco, Los Angeles, or wherever it is.

Now, that is unique to this business. I don't think it makes either a good businessman or a bad businessman. I will tell you where I think Mr. Wilson isn't a good businessman. He has given the sports fans of the city of Buffalo, at least 23,000 loyal fans, 12 wins in 5 years.

Now, from that standpoint I don't think he is too good of a businessman. But he sure conned the city of Buffalo into keeping him for an 80,000-seat stadium.

Mr. DUDLEY. Sir, is it not true that several localities, in order to get an industry into their community, will offer them certain incentives to come there?

Senator COOK. Industrial revenue nuance, Mr. Dudley; but I would say to you that most of those corporations have not been of great magnitude in the corporate structure in the United States, and I don't think that you would class them financially—for instance, I don't think you would class them in the position that you would classify the New York Giants, where you can't get a ticket and haven't been able to get one for 15 years, because I have a notion that if that same business corporation was selling every product as soon as it manufactured it, and not only that, but was getting paid in advance for it on or before the 1st of June, before it even started manufacturing it in August, or September, that they wouldn't be looking for some community to give them industrial revenue bonds.

Mr. DUDLEY. I personally have got to agree with you on the season-ticket sale situation. I don't think the clubs should require the fellow to buy an exhibition game ticket in order to get season tickets.

Senator COOK. Thank you, Mr. Dudley and Mr. Hart. I enjoyed having you very, very much.

Mr. DUDLEY. Thank you very much.

Senator COOK. Our next witness is Dr. Horowitz, and he comes from Indiana University.

#### STATEMENT OF DR. IRA HOROWITZ, PROFESSOR AND CHAIRMAN OF MANAGEMENT, UNIVERSITY OF FLORIDA

Dr. HOROWITZ. I might say, sir, just being an amateur handball player, I have exercised my freedom, and I have moved to the University of Florida.

Senator COOK. Well, at least you picked a place where you can play handball year round.

Dr. HOROWITZ. Yes. I do have a prepared statement.

Senator COOK. Would you care to read it, or would you care to put it into the record in full, and then you can summarize it?

Dr. HOROWITZ. It would take about 15 minutes to read, which isn't bad by academic standards, but I will be happy to do that which you prefer.

Senator COOK. If you would care to highlight it, really and truly, we have one more witness.

Dr. HOROWITZ. Why don't I just read the first two pages, which I think summarizes it pretty well.

Senator COOK. All right.

Dr. HOROWITZ. I appreciate you giving me the opportunity to voice my opposition to S. 3445. In my judgment, professional sports have been accorded too much, rather than too little, special consideration; and notwithstanding the unassailable motives that have prompted this bill, its passage would run counter to the public interest.

The concerns that have led to this proposal are indeed real concerns. Instability and inefficiency do abound in professional sports. I would

suggest, however, that these are attributable in no small measure to: (1) Previous legislation—specifically, Public Law 87-331 permitting the pooled sale of television rights, and the exemption from the anti-trust laws granted by Congress to the AFL-NFL merger—that is inimical to the competitive process in a free enterprise economy, and (2) a failure to correctly interpret and enforce existing antitrust legislation. These two complementary acts of commission and omission have enabled the professional sports cartels—baseball, basketball, football, and hockey leagues—to: (1) Allocate television markets and markets for paid attendance by exclusive territorial arrangements and exclusive franchises, and (2) allocate their primary resources, the players themselves, by reserve clause contracts or their equivalents that bind players to particular cartel members—the individual teams.

Senator Cook. May I interrupt you right there, Doctor, and say this basically is what Senator Ervin said. Senator Ervin said what a sports commission would be doing is freezing in these facilities, and what really should happen is that these laws should be repealed, and I have a notion probably if they were, then these hearings probably would never have occurred in the first place.

Dr. HOROWITZ. I suspect that is correct.

Senator Cook. Go right ahead.

Dr. HOROWITZ. In the former instance, the member clubs have individually and collectively exploited their monopoly positions so as to enhance their individual and collective profits. In the latter instance, the member clubs have exploited their virtual ownership of the players by: (1) Failing to pay salaries commensurate with those that the players could earn if left free to negotiate with all clubs, and by (2) failing to compensate players who are sold or traded as marketable assets.

A clear result of these two restraints has been to restrict consumer choice. A not unlikely result is that prices, including broadcast fees and paradoxically player salaries, are higher than they would be in the absence of these restraints. In the case of salaries, however, these are certainly less than they would be without the reserve clause, but with the exclusive territorial provisions. In effect, the owners do share some of their monopoly and cartel profits with the players—network television revenues being a case in point—but only when forced to do so in order to protect their own interests.

To the extent that all clubs are not uniformly successful in exploiting their exclusive franchises and the reserve clause, or that apparently uneconomic and irrational events such as player contract wars occur, this is a reflection of: (1) The nonprofit motives of a decreasing number of owners, such as Messrs. Wrigley and Yawkey, (2) inept management that is not unique to professional sports clubs, and (3) a historical inability of the cartels to regulate themselves intelligently.

It seems inappropriate, however, for a Congress presumably dedicated to preserving competition to do for these individual clubs, which in the final analysis are predominantly profitmaking and profitseeking business ventures, that which they have only been able to partially accomplish on their own—monopolistic exploitation.

Rather, the Congress should encourage such off-the-field competition in professional sports as would have the effect of: (1) permitting firms involved at various stages in the presentation of a sporting

event, in particular the clubs and broadcasters, competitive profits as opposed to monopoly profits, and at the same time of (2) assuring sports fans a greater freedom of choice in satisfying their sports appetites.

Senator Cook. Why don't you summarize the rest of it.

Dr. HOROWITZ. The rest of the statement goes on to describe what has happened to broadcast revenues as a result of Public Law 87-331 and as a result of the allocation of television markets by the restrictions imposed by the leagues among themselves, and specifically in this regard it goes on to note that in the latter case, with respect to local markets, the restrictions have been designed not to protect gate receipts, but rather to give each club a television monopoly in its home territory, which increases the value of local broadcast rights, and in the case of the pooling, although it has been alleged that the reason for pooling is to equalize television revenues amongst all clubs, the actual purpose of this of course, is to set up a single cartel and to eliminate competition between television broadcasts which raises the value of each league's network rights, so that in fact the individual club differences in network rights, or broadcast rights, are the same now as they were 10 years ago.

In football, for example, we are dealing at a level of something like a million and a half higher per club than we were dealing with in 1960. And in the case of franchise movements, and the regulation of franchise agreements, I think that a lot of this, if not all of it, can be laid to the blame of individual communities. All the community pays for sports, but only a few members of the community enjoy them. Teams are lured partially through the tax system and partially through long-term broadcast contracts in virgin broadcast territory that becomes their exclusive privilege.

Senator Cook. Are you saying in effect that the networks that presently cover football, let's say, ABC, or NBC, if a game is played in Washington on Sunday afternoon. That is far better—that they not only cannot see the game that is being played in their own hometown in a stadium that they financed, but they can't see any other football game. That part of the contract is that they not only can close out your ability to see the hometown team play one of the most important games of the season, but that the people in Washington can't watch any other football game. That doesn't occur any more.

Dr. HOROWITZ. That is no longer the case. But what is the case is that the fans in New York City, for example, during baseball season, can watch approximately 160 games that the New York Mets play, and they can watch approximately 160 games that the New York Yankees play, and neither of these teams is reluctant to put up the competition of their television broadcasts against their gate receipts.

But in 1958, when the Philadelphia Phillies attempted to televise their games into New York City, and in fact did telecast their games into New York City, they ran into a good deal of difficulty from the New York Yankees, and it is alleged that—or it was at that time reported in the Philadelphia newspapers at any rate that in the following season, 1959, the Phillies removed their broadcast from the New York area under threat that the Yankees would now come into the Philadelphia area.

Now, what possible concern could the Yankees, who are televising 162 of their own games, have with the Phillies televising their games into New York City? Clearly back in 1958, when the Yankees did have quite a respectable team, to say the least, they were not concerned with the competition of the Phillies on television. But what the Yankees were concerned about was the competition of Philadelphia Phillie telecast versus New York Yankee telecasts. Because while somebody might not stay home from the stadium to watch the Phillies play on TV, somebody might well sit home for a game on TV, and during the Ballantine commercial, turn over and see what is happening with the Phillies and the Cards, and the Phillies and the Giants and the Dodgers, which were of great interest at that time. Which, of course, would reduce the value of the New York Yankees' rights.

I might point out to you, by the way, that it has only been in the last few years that in the major league cities professional football has in fact been telecast on the day when the home team is at home. And what is also true is that this is because of the courts.

Back in 1953, in Judge Grime's decision, where Judge Grime, or when he attempted to prevent the National Football League from blacking out games—

Senator COOK. Was that in 1953?

Dr. HOROWITZ. 1953 case, the *United States v. NFL*.

Senator COOK. Doctor, I thank you.

Your statement will be put into the record in full.

What you are really saying is that those exemptions that have already been adopted for the benefit of this industry as distinct from any other industry, should be removed, let it function as a business in the free enterprise market, without the exemptions, or without so-called privileges, and that then the desire for any Federal control would not only be not necessary, but it wouldn't even be considered.

Is that what you are saying?

Dr. HOROWITZ. That is a decent summary.

Senator COOK. What is the alternative to removing the existing laws? Do you have any? Do you have any suggestions?

If the Congress of the United States is going to, say, ignore the dissenting opinions, or even the majority opinion in the *Curt Flood* case, what is the alternative

Dr. HOROWITZ. Well, it is difficult for me to say. I can't really speak about the alternatives if you tie my hands by telling me that we have to live with an existing set of regulations.

Senator COOK. You have it in existence today.

Dr. HOROWITZ. What I am suggesting that we can do is simply to enforce the laws that we have on the books. We can certainly enforce the laws against attempts to monopolize, which is clearly what happened in the case of the AFL-NFL merger. We can certainly enforce the laws insofar as not permitting the NBA-ABA merger. We can certainly enforce the laws insofar as not permitting the World Hockey League to ultimately merge with the National Hockey League.

I think we can set up competition between these two leagues.

Senator COOK. Wait a minute. Who is going to set up that competition?

Dr. HOROWITZ. It is permitting it to exist once it arrives on the scene.

Senator Cook. I was going to say: I do not mind having a commission maybe, but how are you going to foster this competition unless you give them exemptions, and if you give them that, you are saying we run into the same problem we are already running into, and you say, "Why don't you enforce the law with regard to the AFL-NFL merger."

The law said they were entitled to do so if they wanted to do so.

Dr. HOROWITZ. No, sir. I am saying at the time that merger should not have been permitted. I am saying enforce the antitrust laws insofar as not permitting the NBA and the ABA to merge insofar as that would eliminate one competitor and replace two competitors with a single monopoly, or a single cartel, at any rate.

Senator Cook. It does seem rather strange there is not great movement to repeal what has already been done, but there is a great movement to see to it that nobody else does it.

Dr. HOROWITZ. I think that perhaps is unfortunate, that there is no great movement to undo that which has been done. It is not clear to me, for example, and in fact I suspect we might well be better off if we had an American League competing with a National League as separate entities or four divisions competing, in a sense separate cartels. To the extent in which there is mutuality of interests between individual teams, they have to form a league in order to generate that sort of thing.

Senator Cook. Do you agree that the Super Bowl is really no more than an NFL playoff?

Dr. HOROWITZ. I think that is very clear; it is only an NFL playoff. We just have one big league.

Senator Cook. When you had a Super Bowl, it was two teams from two different leagues that had never played each other before, and when they played each other, you knew it was going to be a real knockdown-dragout affair, because they had never met on the field before. Yet today you have two teams playing each other which may have met earlier in the season, and one really trounces the you-know-what out of the other team, but it is billed as a Super Bowl game.

Isn't that really true?

Dr. HOROWITZ. Well, we are sports fans, and I think that what we recognize as sports fans is that when we watched Dallas playing at the end of the season, we were not watching the same Dallas team that played the first month of the season.

Senator Cook. One must confess, that is a consolation.

Dr. HOROWITZ. Yes. I might just say this about competition.

You have heard a lot about the American Football League and about the owner's willingness to absorb losses and take risks and everything else to compete with the National Football League.

But the simple fact of the matter is that it was a desire for television network competition, competition on the television screens, that led to the ultimate survival of the American Football League and made them a viable competitor.

It was the fact that NBC wanted to have professional sports, specifically professional football, on Sunday afternoon, that led them to assign the American Football League to a \$900,000 per team contract over a 5-year period.

When each one of those teams is getting approximately a million dollars a year just for fielding anybody, I do not quite believe—my heart does not quite bleed for those owners.

Senator Cook. Thank you, very much, Doctor. Good having you here.

Dr. HOROWITZ. Thank you.  
(The statement follows:)

STATEMENT OF DR. IRA HOROWITZ, PROFESSOR AND CHAIRMAN OF MANAGEMENT,  
UNIVERSITY OF FLORIDA

I appreciate being given the opportunity to voice my opposition to Bill S. 3445. In my judgment professional sports have been accorded too much, rather than too little, special consideration, and notwithstanding the unassailable motives that have prompted this Bill, its passage would run counter to the public interest.

The concerns that have led to this proposal are indeed real concerns. Instability and inefficiency do abound in professional sports. I would suggest, however, that these are attributable in no small measure to (1) previous legislation—specifically, Public Law 87-331 permitting the pooled sale of television rights, and the exemption from the antitrust laws granted by Congress to the AFL-NFL merger—that is inimical to the competitive process in a free-enterprise economy, and to (2) a failure to correctly interpret and enforce existing antitrust legislation. These two complementary acts of commission and omission have enabled the professional sports cartels—baseball, basketball, football and hockey leagues—to (1) allocate television markets and markets for paid attendance by exclusive territorial arrangements and exclusive franchises, and to (2) allocate their primary resources, the players themselves, by reserve-clause contracts or their equivalents that bind players to particular cartel members—the individual teams.

In the former instance, the member clubs have individually and collectively exploited their monopoly positions so as to enhance their individual and collective profits. In the latter instance, the member clubs have exploited their virtual ownership of the players by (1) failing to pay salaries commensurate with those that the players could earn if left free to negotiate with all clubs, and by (2) failing to compensate players who are sold or traded as marketable assets. A clear result of these two restraints has been to restrict consumer choice. A not unlikely result is that prices, including broadcast fees and (paradoxically) player salaries, are higher than they would be in the absence of these restraints. In the case of salaries, however, these are certainly less than they would be without the reserve clause, but with the exclusive territorial provisions. In effect, the owners do share some of their monopoly and cartel profits with the players—network television revenues being a case in point—but only when forced to do so in order to protect their own interests.

To the extent that all clubs are not uniformly successful in exploiting their exclusive franchises and the reserve clause, or that apparently uneconomic and irrational events such as player-contract wars occur, this is a reflection of (1) the nonprofit motives of a decreasing number of owners, such as Messrs. Wrigley and Yawkey, (2) inept management that is not unique to professional sports clubs, and (3) a historical inability of the cartels to regulate themselves intelligently.

It seems inappropriate, however, for a Congress presumably dedicated to preserving competition to do for these individual clubs, which in the final analysis are predominantly profit-making and profit-seeking business ventures, that which they have only been able to partially accomplish on their own—monopolistic exploitation. Rather, the Congress should encourage such off-the-field competition in professional sports as would have the effect of (1) permitting firms involved at various stages in the presentation of a sporting event, in particular the clubs and broadcasters, competitive profits as opposed to monopoly profits, and at the same time of (2) assuring sports fans a greater freedom of choice in satisfying their sports appetites.

In no aspect of professional sports are the motives of the club owners and the deleterious effects of both exclusive franchising and the legalized cartelization of the member clubs as apparent as they are in broadcasting. This is not to argue against the position, supported and reaffirmed by the courts, that the rights to the broadcasts of a club's home games belong to the club to be sold as it might wish. But the courts have also recognized that the member clubs' sole concern in agreeing to exclusive home territory broadcasts has not been the protection of gate receipts, as team and league officials repeatedly allege. Instead, the clear purpose is to allocate broadcast markets so as to guarantee each club a monopoly

(except for two-team cities) in its home territory. This monopoly guarantee increases the value of the rights to the broadcasters and prospective sponsors, and thereby increases the clubs' broadcast revenues over what they would otherwise be.

In the process, it will tend to reduce the number of broadcasts available to sports fans in league territories. Similarly, the pooling of broadcast rights for network broadcasts assures that individual clubs will not compete in the sale of these rights in order to participate in network broadcasts. Indeed, the club owners and their representatives have never attempted to obscure this purpose, having had the temerity to offer this to the Congress as a rationale justifying the legalization of pooling. A second argument in support of pooling is that it equalizes broadcast revenues and consequently on-the-field competition. Curiously enough, however, the clubs have never felt the compulsion to share *local* revenues, even when they share gate receipts.

The financial consequences of home territory broadcast monopolies and pooling of network rights are quite apparent. Since 1960 network television rights in baseball and football have more than tripled and nonupled, respectively; total regular-season broadcast rights have increased from \$7 million to \$42 million in baseball, and from \$5 million to \$46 million in football. Only a minor portion of these increases is ascribable to expansion, for on a per team basis broadcast rights have doubled in baseball and octupled in football. Nor is the spread of television more than partially responsible for these increases; between 1960 and 1970 the number of television households increased by only one-third.

Comparable figures are not available for basketball and hockey, but since broadcast revenues were unimportant in 1960, whereas both the NBA and NHL currently have quite lucrative network broadcast contracts, the revenue growth in these two sports is undoubtedly even more dramatic. Moreover, the "benefits" of these increased revenues have not been enjoyed by the consumer. Rather, quite the opposite is the case. In baseball, for example, the number of home telecasts per team has not changed much over the past 15 years, although some teams have expanded and some have reduced the number of local telecasts. In no case, however, have revenues declined. Nevertheless, the number of network telecasts has declined from about 100 in 1960 to approximately 30 in 1971. Moreover, internetwork competition between broadcasts which did exist in 1960, has ceased entirely.

Notwithstanding what appears to be an avalanche of telecasts during the fall, the number of televised weekend football games has also declined. For example, in Indianapolis in 1960 there were 50 *different* games televised on eighteen dates. In 1970 there were 62 different games televised on thirty-one dates, 13 of the games being Monday evening telecasts. Immediately following the passage of Public Law 87-331, the number of telecasts dropped to around 30. Here, the decrease is directly attributable to CBS's acquisition of the rights to *all* NFL games. Prior to the pooled sale of rights NBC broadcast the Pittsburgh and Baltimore games, and the Cleveland Browns had their own national network. Thus in 1960 as many as four simultaneous games, three in the NFL and one in the AFL, competed for the television viewer.

After 1962, there were never more than two games on simultaneously. This despite the growth in the number of television households, league expansions, and the increasing popularity of professional football. In fact, following the AFL-NFL merger NBC and CBS took pains to minimize internetwork football competition by scheduling their televised doubleheaders so that on only one occasion in 1970 did both networks televise two games on the same date. Similarly, the occasional Saturday games and the Thanksgiving broadcasts have been "conveniently" scheduled to assure that they do not compete.

One effect of existing regulations is to exclude independent stations from telecasting professional football, and prevent smaller networks, such as the Hughes Sports Network, from developing multi-team packages of their own that would compete for the television audience with other multi-team packages. Since a fair yardstick is that sponsors will pay triple the rights fees for a sponsorship, a second effect is that as regards local broadcasts, but especially as regards network broadcasts, only the largest firms will be able to afford sponsorships. Yet, to such firms these sponsorships are inexpensive. For example, NFL football is the most costly sport to sponsor. The average cost of a commercial minute in the 1969-70 season was \$57,622. But the cost per viewing household for this minute was only \$.00604. Thus, smaller firms cannot afford network advertising, but it is an extremely efficient medium for the larger firms, and the ones who have

taken advantage of it have been gleaned from several consumer-oriented, oligopolistically-inclined industries—petroleum products, brewing, tobacco, automobiles, etc.

To the extent that such sponsorships give these firms competitive advantages over their smaller, and any potential rivals, the regulations that govern the broadcasting of professional sports serve to enhance the positions of the largest firms in a few concentrated industries. And, it is the consumer who ultimately pays, whether or not he or she takes advantage of the telecasts.

These facts make it apparent that while those of us interested in professional sports might like to regulate broadcasting so as to guarantee say, the viewer in New Orleans the opportunity to watch the Super Bowl game when it is being played in New Orleans, the issue is far more complex than this simple humanitarian interest. Whether or not the game is telecast should be determined "in the market" by the price that sponsors are willing to pay and the price that the clubs are willing to accept. Legislation that might, say, force the telecasting of such games "in the public interest," but that would also sanction present arrangements that grant territorial monopolies, exclude independent broadcasters and smaller networks from the professional sports scene, abet the competitive advertising strategies of large firms in concentrated industries, and reduce the viewer's choice is, however, scarcely the most desirable means of accomplishing this end.

Government involvement would appear to be particularly inappropriate with respect to the sale and/or regulation of franchises. Under a free-enterprise system these are certainly matters to be decided among investors and within the framework of the competitive market. The club owners are profit-seeking entrepreneurs who have assumed the risks of operating professional sports enterprises. Although there are risks, instability, and financially-troubled clubs, the rewards of success are not inconsiderable, and the location of franchises should properly follow the demand. New York, for example, can support a second hockey team, and it will get one in the event that a second hockey league emerges—but not if the Rangers have anything to say about it. Memphis, however, probably cannot support a single hockey team, which is why it will not have one under any circumstances. Certainly the Giants did not welcome the Jets into New York, the Yankees did not welcome the Mets, and the Knickerbockers did not welcome the Nets. But monopolists do not care to have their preferred positions encroached upon, and despite the fact that all six teams are surviving quite nicely, none would grieve at the demise of the others. Yet, in the absence of league territorial restrictions, New York might well have a *third* team in each of these sports.

In point of fact, what appears to be a series of capricious franchise moves on the part of some owners is in large measure either a response to (1) local governments that lure teams with new stadia leased at advantageous rates, (2) tax considerations, and (3) broadcast monopolies that lure teams to virgin broadcasting territory and its promise of lucrative long-term broadcasting contracts, or (4) an attempt to correct earlier judgments that have not been borne out. If one portion of the population were not, in effect, forced into subsidizing the interests of another through publicly-built stadia and the tax laws, if the value of broadcast rights were not increased by the allocation of territorial markets, and if the rewards of success were not as great as they are, the inducements to shift franchises, or to undertake one where the probability of success is small, would be lessened.

Finally, the form of players' contracts does not require government regulation. In a sense, just the reverse is true. What *is* required is a correction of the unfortunate series of antitrust exemptions given to the reserve clause and its variants. This would permit a player's salary to be determined through open market negotiations. The predictable response to this suggestion always raises the spectre of instability, with players continually shifting between teams, and the wealthiest teams in the largest cities buying up most of the talent to the ultimate destruction of professional sports. In fact, however, under a reserve-clause system players are continually shifting between teams (a pitcher named Kilkenney recently joined his fourth major league team *this season*), and the wealthy clubs in the large cities do buy talent from financially-troubled clubs (a team named the Mets recently purchased a player named Mays from a team named the Giants).

Under the present system, however, the club owners, rather than the players, reap the financial benefits of a player shift. Thus if, say, the Mets are willing to

pay \$400,000 for Mays' services over the next two years, it should not matter to the Mets whether they pay \$400,000 to Mays to sign a two-year contract, or whether they pay Mays a two-year salary of \$300,000, and the Giants a \$100,000 purchase price. With the reserve clause, the Giants reap some of the profits deriving from Mays' value to the Mets; without the reserve clause, Mays would reap the full financial benefits of his own talents.

In sum, then, much of the difficulty that seems to hound professional sports stems not from the absence of regulation, but from the existence of restrictive regulations that tempt businessmen with the bait of monopoly profits, and that permit the exploitation of monopolistic positions. The elimination of these regulations will not necessarily result in the elimination of all the ills that plague professional sports. But, shoring up these regulations, or imposing minor variants on these traditional themes, will only help establish these ills as a permanent part of the professional sports scene.

Senator Cook. Our next witness is Mr. David Foster, National Cable Television Association.

Mr. Foster, nice to have you here.

**STATEMENT OF DAVID FOSTER, PRESIDENT, NATIONAL CABLE TELEVISION ASSOCIATION, INC.**

Mr. FOSTER. Thank you, Mr. Chairman.

I should say that the National Cable Television Association is the only trade association which represents the cable television industry.

Senator Cook. Starting off with one league.

Mr. FOSTER. Right. And I only want to talk about those aspects of the bill which relate to the carriage of professional sports on cable television.

As you know, cable television got its start in the early 1950's as a method for relaying by wire hard-to-receive television signals into people's homes. From this original concept as a master antenna service in remote areas, cable has grown into a full-blown communications medium bringing diverse entertainment and information to millions of American homes.

To be more specific, there are about 2,800 operating cable systems in 50 States, serving also 6 million homes. But even this is only the tip of the iceberg.

According to one recent estimate, there will be 25 million subscribers by 1975. And, with the addition of domestic satellite links, the wired Nation is not that far off. The point is that the cable revolution has begun.

However, this cause for optimism is very recent in origin. In the 1960's when CATV began to develop in more populous areas, bringing not just clearer reception of nearby stations but also diverse programming from more distant cities, the FCC was prodded by worried broadcasters into taking action.

To make a long and painful story mercifully short, the FCC asserted regulatory jurisdiction over CATV in 1966 and imposed a virtual freeze on cable growth in the 100 largest television markets. This freeze effectively denied cable service to some 75 percent of this country's population. The freeze was finally broken early this year with the adoption of less restrictive regulations.

The cable industry has not been standing still for the past 6 years, however. In addition to instituting service in outlying areas; the industry's fertile minds have developed the technology and the method-

ology for the offering of an incredible array of services unrelated to the simple carriage of over-the-air television signals.

To name but a few, CATV systems can originate their own programs, fire and burglar alarm systems can be installed, meters can be read, two-way interactive systems can give a subscriber the ability to respond, and the list goes on.

These services will be the really unique contribution of cable. But they are not yet economically feasible. The principal reason for this is that few cable systems yet have a sufficient number of subscribers to warrant institution of these new services. Market tests have shown that people will buy these services once they are subscribers, but they will not subscribe to get the services. The key to obtaining subscribers remains the standard television fare.

This is where sports enters the picture. Sports is unquestionably the most popular category of programming on television. A Louis Harris poll released last week found sports interest in the United States to be at an alltime peak, with television coverage playing a major role in that popularity.

The new FCC rules governing CATV permit a cable system in a top-100 market to import a limited number of distant (out-of-the-city) television signals. But special rules on program exclusivity, designed to protect local broadcast stations, sharply curtail the programs on those distant signals which a cable system can air.

Protected programs, in other words, must be blacked out. What is left largely consists of movies and sports. So, imported sports programming assumes an even larger role on CATV. It is perhaps the major factor in cable's hopes to substantially penetrate the major markets, a penetration which is needed before all of the promised services can be offered.

New threats to this scenario are looming on the horizon, chiefly in the form of a proposed blackout rule for cable television by the FCC. The ostensible purpose of such a rule is to parallel the television blackout rule sanctioned by Public Law 87-331.

Putting aside the merits of the television rule as applied today, that being a matter for Congress or the proposed Federal Sports Commission, the FCC is proposing a far wider reaching rule.

In its docket No. 19417 proceeding, the FCC is proposing a rule to prevent a CATV system in the home territory of a professional sports team from importing any game of the same sport on a day when the local team is playing at home except when the imported game is already on local television or the local team and its league have given consent.

In addition, "home territory" is defined as the grade B contour of any television station in the market. This is a broadcast definition, and it marks off a restricted area far larger than the principal population center from which ticket-buying fans can be expected to come.

We read the intent of Congress in Public Law 87-331 as permitting local blackouts of a team's home games so as to protect the home team's gate.

Any blackout rule applied to CATV should reflect this legitimate interest and no more.

It is evident that the FCC's proposed rule caters to broadcast interests as well as to sports interests. In this instance, the FCC has moved far beyond the intent of Congress in the sports blackout area.

Furthermore, some sports entities have asked the FCC to adopt an even more restrictive rule.

Senator COOK. What is the more restrictive rule they are asking for?

Mr. FOSTER. I don't have the details of the more restrictive rule in front of me. I think the sports interests should talk to that.

Senator COOK. I would assume the only more restrictive rule that they could establish would be, if they can't bring in a game that is the same game that a network station is bringing in, they can't bring in any game at all.

VOICE. I am the associate general counsel of the association—

Senator COOK. Give your name, please.

VOICE. Charles Walsh.

Senator, you have described it perfectly.

As they propose it, when the Washington Redskins are playing at home, it would prevent not only the San Francisco 49'ers from being brought in, but also any hockey game, any basketball game, any game of any sport, any professional sport from being broadcast into that area while the home football game is being played.

Senator COOK. By any other networks or by CATV?

Mr. WALSH. Right. In this instance, they are proposing that the system should not be able to bring in any game of any sport while the game is being played at home. That is their proposal before the Commission.

Senator COOK. That is like saying if there is any comedy on Sunday afternoon, you can't bring in any other comedy programs.

Mr. WALSH. Yes, that analogy is appropriate.

Senator COOK. You, general counsel, are going to get an opportunity to try a lot of lawsuits, aren't you?

Mr. WALSH. We think that rule is illogical. That has not always been the standard, though, that the Commission has followed.

Mr. FOSTER. We can scarcely believe its proposal, Mr. Chairman.

Senator COOK. What stage of the hearings is docket No. 19417?

Mr. FOSTER. The FCC has scheduled oral argument on July 20, next month.

Mr. WALSH. All the written comment in that rulemaking has been filed with the reply comments. It would appear, or our understanding is, that the Commission is moving to adopt a rule, if it finds that one is necessary, before this upcoming professional football season.

Mr. FOSTER. Let me interject at this point, Mr. Chairman. We are not trying to preargue the docket itself at this point. We simply want to point out to you that if the FCC is no more able to balance the competing equities in this situation, so as to protect the legitimate interest of these sports fans, in a diverse sporting program, then we think that a separate Federal Sports Commission might be a better forum for deciding this and other related questions which vitally affect the future of this industry.

Senator COOK. Let me give you an alternative, because one ought to be the devil's advocate rather than the greatest advocate in the world.

Rather than a Federal Sports Commission, legislation on this particular point that wouldn't handle that situation, wouldn't that solve your problem just as easily?

Mr. FOSTER. We would be happy to carry any distant signals permitted by the distant signals rule, permitted by the FCC, any kind of signals.

We feel there shouldn't be separate rules for sports programing as for other kinds of programing, but we recognize that Congress has spoken on this and has adopted a blackout rule, and at this point in time, until Congress has changed that, we feel we must respect it.

Our feeling generally is that sports programing should not be treated differently.

Senator COOK. The blackout rule is another instance where the sport fields want to be left alone, and it doesn't need any regulations but it needs Congress' help to be left alone.

Mr. FOSTER. It seems that way.

Senator COOK. Then you are saying to me that if on a Sunday afternoon, and the Skins are at home, and the game that Sunday afternoon is Dallas versus San Francisco, that as you understood the proposed rule prior to the hearings that are presently in existence, that the only CATV game that could be brought in this community is Dallas and San Francisco?

Mr. FOSTER. Yes, sir. We have many situations in which one of our cable systems would have the right to bring in a different game from a station that it could carry under the FCC rules, but it could not bring in, say, a different football game, because that would offer exactly what our subscribers want, great diversity in programing.

Senator COOK. What you are saying is that if a cable had the opportunity to pick up Green Bay-Chicago, that afternoon, that they would be prohibited from bringing the Green Bay-Chicago game into Washington?

Mr. FOSTER. That is correct. And bear in mind that we will be showing the same commercials that the sponsor has paid for when we bring that game in. We are not trying to delete anything that the sponsor has paid for. We are simply trying to give the subscriber what he wants to see.

Senator COOK. You are saying the present hearing that is taking place will even limit your bringing in the same game on a station?

Mr. FOSTER. Well, if the game is being shown on a local station, then we can show that.

Again, whether we are bringing it in by a distant signal or not, is that correct?

Senator COOK. You said you understand that they propose even harsher regulations.

Mr. WALSH. Senator, the regulations as proposed would prohibit the CATV system—and let's talk about the Washington Redskins at home—would prohibit the CATV system from bringing in the Red-skin game from, for example, Richmond, which is comparable to the existing practice of the national broadcasting networks.

It would likewise prohibit the CATV system from bringing in from Baltimore the Colts-San Francisco game, or from any other city, from Richmond, for example, the Dallas-Denver Bronco game.

Senator COOK. As I understand, they are even considering that you can't bring in the Baltimore Bullets basketball game?

Mr. WALSH. Senator, this is a proposal by the sports leagues. That is not the proposal of the FCC.

In the comments to this rulemaking by some of the sports leagues, they have suggested that the Commission should go even farther than the Commission's own proposal.

I would doubt, to be very honest with you, that the Commission would take up that particularly expansive approach, but the one that they propose is far more expansive than we think is appropriate.

Mr. FOSTER. Mr. Chairman, I would hesitate to try and knock down that particular case without its being formally presented to you. I think it does point up that the sports interest and the broadcast interest are departing from the protection of the gate concept, and they are going to a protection of broadcast interest rather than protection of the gate, which goes far beyond what the Congress has dealt with before.

Senator COOK. Protecting the contract between the NFL and the respective leagues rather than protecting the ability of the sports fan to see what he would like to see.

Mr. FOSTER. That is correct.

Senator COOK. Your contention is that the sports fan is left hanging onto what he is allowed to hang onto and nothing else?

Mr. FOSTER. What he is allowed to hang onto. Our whole case is based on the fact that cable television has a capacity to bring a wide variety of programing to these sports fans. We simply want the right to bring them to these people.

Senator COOK. Let me be the devil's advocate then. Let's say ABC brings into the community that game on that afternoon, and it has signed a contract, and it is bringing in that game, and that game is a pretty substantial financial burden to them, which they have to sell the advertising for, and let's say that cable television comes along and it is going to fly in two or three other games. Then I have a notion it isn't going to be very long before ABC is going to be peddling a game pretty cheap, and maybe they will have to peddle it so cheap that they won't be able to put it on.

Now, just to take the opposite side for a minute: How do you rectify that? How do you rectify the guy that has to sell the game? You are on cable television. You are not trying to sell the game. You don't have to buy the game and then send your salesman out and convince General Motors and convince the Chrysler Corp. and convince somebody else that they ought to pay all the costs of all of these land lines, and all the costs that have to be expended to bring that telecast to Washington. All of a sudden, you say we have three choices of games that we can bring in there Sunday, but what is your cost to bring that game into Washington, compared to ABC's cost to do the entire production, to bring that game into Washintgon, on the same day that the Washington Redskins are blacked out?

What is your cost as an entity, what is your cost as a corporation, on cable television, to bring a different game into Washington?

I mean, because I think these are things you ought to discuss.

Mr. FOSTER, let me address the first part of the question, Senator.

Someone has paid to sponsor that game. If we bring in a distant signal, someone has paid to sponsor that game.

We will be glad to provide on our statistics for the viewers on our cable systems to the broadcaster that has sold that game so that he can charge that sponsor exactly what he should charge him if it is coming

into our territory and a significant number of our viewers are looking at it.

Senator COOK. You are not the originator of it, you don't have to go through all the work of the establishment of all your camera crews. I hope they are being paid for it. I hope they don't televise any games they are losing money on.

My only point is, you are picking up what that station will sell you a signal for, and that has to be an altogether different cost factor than the cost factor involved in, let's say, in ABC buying a game on Monday night and then proceeding to have to sell that game, and seeing whether they can market that game when they get through selling it.

Mr. FOSTER. I don't want to talk about the economics of the broadcaster's business, but the price they can sell that game for is dependent on the number of viewers they can bring it to.

And if our cable system can bring it to a larger number of viewers, they can sell it for a higher price.

Senator COOK. Yes, but are you saying that the station in California that you can pick up a signal from is going to sell it on the basis that it is going to show it to a market in Washington or Detroit or some place else. Or are you saying that the main sponsor of the game knows it is going to be cable televised, can say at the time that he picks up that game, that instead of just showing it to you at a given territory on that day, we are going to show it to 25 million other people, and therefore, it increases the cost?

Mr. FOSTER. We have found broadcasters are not at all adverse to using signals from existing systems to increase their revenues of sponsors. They are glad to have our system show the signals.

Senator COOK. You wouldn't be in it unless you are making something out of it, either, would you?

Mr. FOSTER. Absolutely, this is a profitmaking industry.

Mr. WALSH. Senator, the Commission, in its general regulations, has taken into consideration the fact that you are speaking about, that is, fractionalization; they have now gone further under the guise of protecting the home gate which is something that you are not speaking about, and we believe that in terms of protecting the home gate, the rules that they propose, that is, to prevent any game for the same sport of coming in, they do not do that.

I think the Senator is familiar with the Commission rules generally, how they limit the number of signals that could be brought in.

We believe, and I think the Commission believes, that they have protected in terms of fractionalization in taking care of the Senator's concern.

Senator COOK. If you are talking about the asterisk markets, I don't think so. You and I can get down to an altogether different subject, but if you think that the regulations as proposed by the FCC adequately took care of what they themselves designated as the asterisk markets when they analyzed the markets in the territories, I must tell you we are going back to the same old system of let's file a lawsuit after the fact, and I have to tell you I am not quite sure I agree with you at all.

Mr. WALSH. Senator, I hope we can discuss that at some other time.  
Senator COOK. All right.

Mr. WALSH. I don't think the Commission's proposed rule is in any way related, however, to protection of the home gate, and I guess that is what we are here for.

Senator COOK. You may well be right.

Gentlemen, I thank you very much.

I have a closing statement I want to go into the record.

**CLOSING STATEMENT BY HON. MARLOW W. COOK, U.S. SENATOR  
FROM KENTUCKY**

Senator COOK. This concludes a 4-day series of hearings on S. 3445, the Federal Sports Act of 1972. These hearings have provided an invaluable record in regard to the problems now plaguing professional sports in the United States, and particularly in regard to the concerns and interests of the American sports fan. The record before this committee has convinced me that the specific provisions of S. 3445 must be altered significantly in order to strike more directly at existing problems affecting the sports fan, but also to avoid unnecessary incursions into traditional and already effective regulatory mechanisms. However, the record has also convinced me that there are certain common aspects in professional sports that adversely affect the fan in a large number of instances. It is these areas that should be the target of this committee's activities.

Although this was to be the final day of hearings on the pending proposal, there are several witnesses who have requested the opportunity to testify at a later date. One of these witnesses, Mr. Marvin Miller, who represents the Major League Baseball Players Association, has made such a request due to the fact that his membership is scheduled to meet on July 24 to discuss the Supreme Court ruling in the *Flood* case. I believe that his testimony following that meeting would be an invaluable contribution to this record, and would be helpful to the Congress if legislation relating to the reserve clause is considered in the near future. With that in mind, any witness who may desire to appear before the committee at a later date should contact the committee staff.

I merely want to say that all witnesses who have appeared thus far, and we can advise them, should be advised that the record will remain open in the event that they may desire to submit additional testimony or material relative to these proceedings.

May I say that those who have been interested, or who have been here, if there are any remarks they want to make, or if they want to add anything to what has already been done, they they should feel free to write to the committee or write to me, and they will be put in and made part of the record, because I feel we should make it as extensive and as full as we can.

Under those circumstances, these hearings will be adjourned, subject to the call of the chairman of the Commerce Committee.

(Whereupon, at 4 o'clock p.m., the hearing was adjourned, subject to the call of the Chair.)

RICHMOND HILL, N.Y.,  
June 26, 1972.

COMMITTEE ON COMMERCE,  
*U.S. Senate, The Capitol, Washington, D.C.*

HONORABLE GENTLEMEN: I have noticed that in most hearings on issues having to do with professional sports the fan, who is the one who really should have a voice in whatever decision is made is never invited to testify. Consequently I am taking the privilege to testify in writing as just a rank and file fan, and kindly accept what I say in this perspective rather than as an expert.

Most of my testimony will be in behalf of baseball and the reserve clause since the Supreme Court has more or less passed along jurisdiction on it to the Congress.

In my estimation baseball is definitely not in the same category as interstate commerce. I will agree that it is a conglomerate of individual enterprises engaged in making a profit, but the success of the sport is dependent upon the controlled operation of a league. This is true of any sport made up into a league. And thank God for sports since they have long been a contribution in directing kids away from a life of crime. Rocky Graziano will vouch for this.

A league could not very well exist for any length of time if it did not have a governing factor included in its operation to prevent the wealthier teams to lure the star players away from the less-wealthy; particularly after the less-wealthy had invested in an athlete, possibly paid him a substantial bonus to sign, and then coached and guided him to a successful professional career through which he had the opportunity to earn a very good living.

To permit inter-league bidding for athletes without some equal value in return as is done in Professional Football, where the Commissioner makes sure a team gets its fair return when a player exercises his option and signs up with another team, an imbalance could develop in the league, resulting in runaway pennant races and a loss of interest, with eventual destruction of the sport, which in turn would add one more aid to crime under the guise of protecting individual rights or anti-trustism.

No matter how one tries to compare sports to commerce they are different and are much less a conglomerate than organized labor. No one has ever heard of a major sport tying up a nation so that its industry could not operate and its transportation was brought to a standstill. Sports are a major part of the public's recreational interest, a prop to its morale, and it is difficult for me to rationalize how supposedly intelligent lawyers acting as agents, and equally intelligent athletes cannot see this. I would also expect learned lawmakers to see this also. Maybe they do see it but are more concerned about getting all they can as quick as they can or if they are lawmakers think more in terms of political advantages without worrying about the future of the game of baseball or whatever sport it may be, or, most important, the fans who support it.

The arguments that have been presented with regard to the individual's rights being bargained away hold little water in the balance of the individual rights of the fan who is the lifeblood of any sport and keeps it going.

Supreme Court Justices on three or four occasions over a long span of years have been aware of the total effect of what tampering with the mechanics that keep baseball an interesting recreational outlet for Americans can do and made their decisions carefully and wisely after long studies of the arguments presented.

The Curt Flood case was studied for months before the court handed down its most recent decision, and one might say the decision was weighed more on the effect it would have on the fans (millions of them) than one the fat-cat owners or wealthy ball players.

Also it would have been a miscarriage of justice had the Court ruled in favor of Flood solely on the ground that he was a black, since his conduct in recent years has been questionable, running off to foreign lands to indulge in what he was reported to have called "good drinkin'" and "good beddin'", and, finally leaving the argument of his case in the hands of the Players' Association.

Now in all the discussions about the reserve clause and those poor "chattels" who average about \$30,000.00 a year, plus a substantial pension after five years of work, plus windfalls for T.V. commercials, talk shows, bit parts in movies (and if a star major parts), appearances at Department Stores and Super Markets as guest of the week, and if you can play a guitar and sing appearances at the clubs at Las Vegas, and numerous invitations on the banquet circuit, the fan is rarely ever mentioned. After all the fan is involved in this reserve clause, also, and it is a protection to him as well as the sport.

Having been a fan for over forty years, and having followed the game from a time when individual rights were judged equally, not just in behalf of those

who shouted the loudest, I know the importance of the reserve clause. As a kid I wanted it more rigid so my team had a better chance to win instead of the New York Yankees all the time. It is the fans who keep the game alive. No fans—no fat salaries, no unreasonable demands, no high television ratings.

For many years the kids of America were the most ardent fans of the game, and I believe they still are. I am sure those that follow the New York Mets are. And by the way it would not be a bad idea for the whole Committee to take a Saturday or Sunday afternoon off to take in a ball game at Shea Stadium in New York City if they really wanted to get some information about baseball at the grass roots level. Here is where they would get more sound information about trying to legislate sports than from all the legal and technical oratory being heard at Committee hearings, which in my estimation is mere rhetoric and in some cases exhibitions in self-interest. Of course some valuable statements are being made but these will have to be sifted out from the transcript.

As mentioned before baseball has done more to keep kids from going off the deep end during the vacation summer months than most other interests. They follow the game with a vital interest, argue its fine points, discuss possible trades that might better the team they root for (now after a hundred years, or even seventy if that's a more realistic figure, trading players has become a slave market practice), recite batting averages of every man on their team and the stars on other teams, and dream about the prospective stars their team may acquire through the free-agent draft (a sure-fire next on the list of litigation in the behalf of disgruntled players and their self-interested lawyers acting as agents).

Every kid's team should have the equal opportunity to win the pennant. This is the foundation of the game, the fans' expectancy of having a winner. This is the joy of going to the ball game to see your team win. Perhaps the Committee might ask the T.V. Companies to play back for it the thousands of youngsters (blacks, white, yellow—all nationalities) dancing and cavorting in the streets of New York after the last game of the world series when the New York Mets defeated the Baltimore Orioles. Most of that team was tremendously happy to satisfy the fans who were so loyal to them. They were not rebelling against baseball as the great Simon Legree of the sport world. Of course after they all got great big raises and became money-conscious they (at least a few of them) also became reserve clause conscious.

Every ball player when he was a kid wanted his team to win, and if the reserve clause helped in accomplishing this, well and good. And this was the main purpose of the reserve clause, to prevent the rich clubs like the old New York Yankees to offer high salaries and other inducements to the stars of the other clubs and monopolize and destroy the game. Even with the reserve clause the old Yankees were taking the interest out of the game through perennial world's championships made possible by paying the highest prices for the purchase of minor league stars before Branch Rickey introduced the farm systems. Then even the farm system eventually failed since the New York Yankees instituted a huge farm system where hundreds of young ball players came under contract to them and created a constant flow of talent to the parent club.

This was the reason for the free-agent draft which finally opened up an equalizer for every team. Fans can now hope for a winner with greater expectations than they once had, that is until the free-agent draft is contested by some great reformer or disgruntled ball player with the possibility of a court decision that will kill the goose that is laying his golden eggs.

Perhaps few members of the Committee remember the incident in the signing of Bob Feller, one of the greatest pitchers of all time. The Cleveland Indians made a deal with the boy and his father. There was a coverup of some kind in the deal which was illegal according to League rules. As I recall the infraction carried with it the possibility of invalidating the boy's contract and making him a free agent. Since he had already shown super-star potential, the New York Yankees would have offered him an astronomical bonus to sign with them. This would have further unbalanced the league. Many fans became concerned about the decision Judge Kenesaw Mountain Landis, then Commissioner of Baseball, would hand down in the case, since with Feller on the Yankees in addition to the many super-stars they already had, interest in the game would have just fallen apart. So many of the fans wrote to this great Judge asking that he take into consideration the impact his decision would have on the game. I was one who wrote also. Judge Landis made a wise decision (and having spent many years working with criminals in a religious program of rehabilitation I am inclined to believe that Judges as a rule hand down decisions which will be of the great-

est help to the Community). He did not judge the case so much on the infraction of the rule but on what effect it might have on baseball and its loyal fans. He fined the Cleveland Club a substantial amount but did not invalidate Feller's contract, thus preventing him from being offered a fabulous sum by the Yankees, and thereby protected the game and satisfied the great majority of fans.

Feller, could have taken legal action in the behalf of his individual right it would seem, but he accepted the verdict in good faith and in the interest of the game, and went on to a very successful and lucrative career, and won great respect and admiration from the fans. How different from some of the athletes of today.

So now this great American sport, which, as mentioned several times before, does so much to hold down juvenile delinquency (And even I can personally vouch for this, since when I was a kid in Brooklyn I played baseball practically everyday in the summer vacation period, a time of the year when I could have easily been lured away to less wholesome pastimes) is being gradually weakened by mistaken actions taken in the interest of individual rights or for political reasons in the guise of fighting monopoly. I hope none of the Senators are that naive to believe that every player who signed a contract to play ball for a living was not fully aware of the reserve clause, and that he was perfectly willing to abide by it so long as he had the chance to play in the big leagues. Then of course there are those who after they have reached stardom and are fat cats in their own right, they get bored by success, become critical of the management, and want out, even if it means undermining the sport to do so.

It is certainly good to know that the Supreme Court in its decisions over the years has taken into consideration the full perspective of the cases it has heard, including the possible effect its decisions would have on the whole of the American public, and thereby helped to retain an interest in the game, and at least for the time being maintain a good image in the eyes of the youngsters of their idols, the ball players, some of whom have not been doing too much to maintain that image on their own.

We must not forget that when the players took the field after the strike last Spring some of the players' Representatives were soundly booed. The fans were giving audible expression to their sentiments regarding the strike. After all the average income of the fan is at the most \$9,000.00 a year, so he cannot be fed the argument about players being "chattels" or "slaves".

No one is going to convince a low-income fan that a \$30,000.00-a-year man, who earns this amount in only seven months of work, and if he plays in the winter leagues gets several thousand more, and gets a substantial pension after only five years of work, and is in the position of getting all kinds of windfalls, and who knew he might be traded at some future date when he signed for what may have been a substantial bonus, is having his individual rights interfered with.

It would be interesting if the Senate Committee now holding the hearings would invite a number of kids chosen at random from the ball parks throughout the land and let them say their piece at the hearings. Let them give their views about the reserve clause, free agent draft and monopoly. I still insist that in many ways it is their sport.

My personal opinion is that the fans need a Marvin Miller. They are the ones who will be paying the higher and higher prices as the players choose to strike and ask for more of everything. Of course there will be a breaking point, and the letters to the press during last year's players strike in the straight-to-the-point language of a fan, indicated that they will not tolerate being abused that they will turn their interest elsewhere if the demands become increasingly unreasonable.

The players and the owners with their lawyers Representatives squabble about salaries, pensions, reserve clauses, etc. and the fans who in the long run will have the last say anyway are not given a hearing. This is so typical of the current temperament of our Society. The majority of the American Citizens and their kids who are the backbone of our Society, who are paying the bills of the country through multiple taxations, who obey the laws, who set a good example in the eyes of foreign nations at home and abroad, who serve their country in its defence get very little exposure on television, while the complainers and protesters seem to be on endlessly since they are controversial and make interesting news.

So I said my piece, and a terribly long one at that, but maybe what I said may make some sense. Who knows?

Sincerely yours,

LOUIS H. KAMMERER.

THE NATIONAL FOOTBALL LEAGUE,  
New York, N.Y., December 18, 1972.

HON. MARLOW W. COOK,  
U.S. Senator,  
342 Old Senate, Office Building,  
Washington, D.C.

DEAR SENATOR COOK: During the course of the hearings on S. 3445, you requested information from the National Football League relating to the number of NFL teams that "require its fans to buy tickets to exhibition games in order to get tickets to the regular season."<sup>1</sup>

Ticket prices and ticket sale practices are the responsibility of each club individually. The league has therefore obtained from its member clubs the information necessary to answer your question.

There are 26 member teams in the National Football League. Thirteen of these included one or more of their preseason home games in their season ticket package during the 1972 season. But the number of preseason games included in the season ticket, the character of the games which were included, and the ticket-selling circumstances of each club differ so broadly as to make generalities about the effect of such practices quite inappropriate.

The New York Giants, for example, included only one of their three preseason home games in their season ticket sale package. This game is a traditional game played for the benefit of local charities. As another illustration, St. Louis includes only one preseason game in its season ticket package and permits the exchange of that ticket for a ticket to any other preseason home game or for any regular season home game. Still further, the ticket sale circumstances in substantially all NFL cities are such that the use of the expanded ticket sale package (including one or more preseason games) represents only one method by which the local fans have ready access to tickets.

The Los Angeles Rams, for example, solicit ticket sales in three patterns—a season ticket package including three of the team's four preseason home games, a season ticket package not including any preseason home games, and individual game tickets for each game of the regular season. In the case of the Rams, large numbers of tickets are available for purchase in all sections and in all price classifications under any one of these three methods.

Others of the clubs which include one or more preseason games in their season tickets have available for sale following completion of their season ticket sales regular season game tickets ranging in number from 3,000 to 30,000 for each regular season game. In the case of most of these clubs, the tickets available for purchase outside the package include tickets in every section and in every price classification.

To a large extent, therefore, the manner in which these clubs sell tickets poses no issue of required purchases of preseason game tickets in order to get tickets to regular season games; the issues are simply those of first-choice seating and guaranteed rights of renewal in the same location. Such ticket sale practices are followed by a great number of producers of other forms of entertainment within America.

Sincerely,

PETE ROZELLE, *Commissioner.*

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<sup>1</sup> See p. 151.

(The following information was referred to on p. 73.)

[John Steadman, News American, Wednesday, Dec. 13, 1971]

The following chart provides a rundown on earlier exhibitions staged here :

Opponent	Year	Attendance
Kansas City Chiefs.....	1971	16, 771
Chicago Bears.....	1971	17, 593
Dallas Cowboys.....	1971	22, 291
Minnesota Vikings.....	1961	10, 208
Washington Redskins.....	1960	6, 218
Do.....	1959	22, 409
Do.....	1958	18, 131
New York Giants.....	1958	11, 111
Washington Redskins.....	1957	24, 532
Do.....	1956	28, 471
Do.....	1955	23, 280
Do.....	1954	19, 380
Do.....	1953	22, 800
Pittsburgh Steelers.....	1950	16, 773
Chicago Bears.....	1950	17, 000
San Francisco 49ers.....	1950	6, 000

(The following information was referred to on p. 80.)

#### EXHIBITION REVENUE VITAL, FIGURES SHOW

For weeks now, we've been hearing that pro football teams need large crowds at exhibition games to keep their financial structure on solid ground.

But how are we to know if that's gospel truth or only a slice of baloney. We're just poor working stiff's without access to a pro football team's audited records. Are we supposed to maintain blind faith while the owners and players live on Easy Street.

What America's sports fans needed was one team to open its books and prove the point emphatically and permanently.

Well, it finally happened—right here in Baltimore, Carroll Rosenbloom, a cooperative man who responds to a direct approach, recently showed the Colts' 1970 fiscal report to WJZ-TV's sports director, John Kennelly.

"I was asked to keep some of the specific details, such as individual salaries, off the record," Kennelly said, "but the general totals I used were authentic and accurate. I saw the records which had been audited and submitted to the Internal Revenue Service."

His word is good enough for me.

The financial report showed the Colts making a \$275,400 profit in 1970. They listed an income of \$596,000 from six exhibition games, so the total would have been written in red ink without that little item.

#### \$2 MILLION FOR PLAYERS

The Colts' official 1970 fiscal report, which included a whopping \$2 million in players' salaries and bonuses, was as follows:

Operating income:

Net gate revenue (home and away).....	\$2, 082, 707
Gross radio and TV revenue.....	1, 566, 124
Preseason game revenue (six road games).....	596, 000
Playoff revenue (two home games).....	176, 822
Other income (parking, programs, et cetera).....	146, 547

Total income..... 4, 568, 200

Operating expenses:	
Player salaries and bonuses.....	2,000,000
Front office salaries, office expenses and rent, publicity costs, travel and hotel expenses and miscellaneous costs.....	1,444,000
Scouting expenses, membership in BLESTO-V, coaches salaries, equipment.....	570,000
Training camp.....	100,000
Taxes.....	334,800
Total expenses.....	<u>4,448,800</u>
Total operating profit.....	119,400

NOTE.—As nonoperating income, the Colts showed \$600,000 as one-fifth of their payment for switching to the AFC and \$25,000 from NFL Properties. But this gravy is highly taxable and the team wound up with only \$156,000 of it after Uncle Sam took his huge bite. Add that to the total operating profit and you get the club's black-ink figure of \$275,400.

#### PAID VISITORS \$80,000 EACH

"People seem to think we can kick the walls in our office and dollar bills will come rolling out," said Colt president Steve Rosenbloom yesterday. "We don't want to cry poor mouth, but it takes a lot of money to operate a football team."

The 1971 budget will show additional income from the Super Bowl, but the revenue from exhibitions won't approach \$596,000. The Colts did well in four road contests, but took a bath in three outings at Memorial Stadium.

"We gave Kansas City, Dallas, and Chicago \$80,000 each, which is approximately what we get from playing a preseason game at their parks," Steve Rosenbloom announced.

The \$2 million figure for players' salaries includes approximately 55 athletes—the 40-man active roster, plus the taxi squad, move list and injured men. It also covers prorated bonuses paid to rookies when they sign.

"The Colts always have been known as the most generous club (average salary: \$31,300) in football," Steve said. "In order to keep giving Baltimore a winner, we have to continue this policy."

The smallest NFL player payroll is around \$1,800,000.

There are two apparent solutions to the problem of exhibition income. The Colts must (a) cut ticket prices and hope for crowds of over 40,000, or (b) make the preseason games mandatory for season ticket holders.

Hopefully, they'll try plan a first.