

Exhibit 3
to the
Clark Declaration

IN THE DISTRICT COURT OF THE UNITED STATES
NORTHERN DISTRICT
(SAN FRANCISCO DIVISION)

BERNARD PAUL PARRISH, HERBERT
ANTHONY ADDERLEY, and WALTER
ROBERTS, III, on behalf of
themselves and all others
similarly situated,

Plaintiffs,

v.

Civil Action
C07 0943 WHA

NATIONAL FOOTBALL LEAGUE
PLAYERS ASSOCIATION, a
Virginia Corporation, and
NATIONAL FOOTBALL LEAGUE
PLAYERS INCORPORATED, d/b/a
PLAYERS, INC., a Virginia
Corporation,

Defendants

CONFIDENTIAL VIDEOTAPED DEPOSITION OF
GENE UPSHAW

Wednesday, February 13, 2008
9:05 a.m.

Manatt, Phelps & Phillips, LLP,
One Metro Center, Suite 1100
700 12th Street, N.W., Washington, D.C.

Reported By:
Susan E. Smith, RPR, Notary Public

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APPEARANCES:

RONALD S. KATZ, ESQUIRE
RYAN S. HILBERT, ESQUIRE
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On behalf of the Plaintiffs

JEFFREY L. KESSLER, ESQUIRE
ROY TAUB, ESQUIRE
DEWEY & LeBOEUF, LLP
1301 Avenue of the Americas
New York, New York 10019
(212) 259-7164
On behalf of the Defendants

ALSO PRESENT:

RICHARD BERTHELSEN, General Counsel
NFL Players Association
KEN NUZZI, Videographer

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58

1 Q. Okay, fine. So directing your
2 attention to the second page of Exhibit 117,
3 it quotes you as follows. Well, in the first
4 paragraph it says: Upshaw, sixty, who has
5 been executive director of the NFLPA since
6 1987, says he stands by his record and rejects
7 a suggestion he's supposed to be the retirees'
8 representative. "The bottom line is I don't
9 work for them," he said. "They don't hire me
10 and they can't fire me. They can complain
11 about me all day long. They can have their
12 opinion, but the active players have the vote.
13 That's who pays my salary."

14 Did you say those words?

15 A. I said those words directed at one
16 individual, Joe DeLamielleure.

17 Q. Then it continues quoting you in
18 the next paragraph, it says: "They (retirees)
19 say they don't have anybody in the
20 (bargaining) room. Well, they don't and they
21 never will. I'm the only one in that room.
22 They're not in the bargaining unit. They
23 don't even have a vote."

24 Did you say those words, sir?

25 A. Once again, those words are

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1 directed to one individual, Joe DeLamielleure.

2 Q. Did you say those words?

3 A. Yes.

4 Q. Okay.

5 MR. KATZ: Have the reporter mark as
6 the next exhibit.

7 (Whereupon, Upshaw Deposition Exhibit
8 No. 119, marked.)

9 Q. Is this a memorandum, sir, that
10 you sent out in the regular course of your
11 business on or around January 20, 2006?

12 A. Yes.

13 Q. And is it referring to the
14 Charlotte Observer article which is Exhibit
15 117?

16 A. Yes.

17 MR. KESSLER: Are you representing
18 this as the complete document?

19 MR. KATZ: I'm not representing
20 anything. I'm just asking questions.

21 Q. Is this the complete document,
22 sir?

23 A. I'm not sure. I can't tell by
24 this.

25 Q. Directing your attention to the

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1 received -- is it fair to say you've received
2 widespread criticism from retired players?

3 MR. KESSLER: Objection to form of
4 the question.

5 Q. You may answer.

6 A. I mean, I don't know how to answer
7 it.

8 Q. Well, let me back up a little bit.
9 Is it correct that you have received criticism
10 from retired players?

11 A. Yes.

12 Q. Is correct that that criticism has
13 gone on for a number of years?

14 A. No.

15 Q. Is it correct that criticism has
16 been made by hundreds of players?

17 A. I wouldn't say hundreds.

18 Q. Dozens, would you say dozens?

19 A. Yes.

20 Q. Okay. Then it says, in the second
21 paragraph it says: Like any other labor
22 union, we represent only active players.

23 And when you say represent there, you
24 mean in collective bargaining?

25 A. Yes.

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1 Q. Because you do represent the
2 retired players in other ways, right?

3 A. Yes.

4 Q. For example, you represent them in
5 their licensing; isn't that right?

6 A. We provide access for the retired
7 players through our programs, yes.

8 Q. You represent them, the NFLPA
9 represents them, and PI represents them in
10 their licensing activities; isn't that
11 correct, sir?

12 A. Some, yes.

13 Q. Then it says: As a retired
14 player, you are not a union member.

15 That's actually not right, is it,
16 sir? They are union members, right?

17 A. They're not union members in the
18 sense of collective bargaining. That is
19 accurate. They are not union members. They
20 are not part of the bargaining unit.

21 Q. I understand that. But they are
22 members of the NFLPA, correct?

23 A. That doesn't make them members of
24 the bargaining unit.

25 Q. I don't want to argue with you,

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STATE OF MARYLAND) ss
COUNTY OF BALTIMORE)

I, Susan Smith, RPR, a Notary Public of the State of Maryland, do hereby certify that the within named, GENE UPSHAW personally appeared before me at the time and place herein set out, and after having been duly sworn by me, was interrogated by counsel.

I further certify that the examination was recorded stenographically by me, and this transcript is a true record of the proceedings.

I further certify that the stipulations contained herein were entered into by counsel in my presence.

I further certify that I am not of counsel to any of the parties, nor an employee of counsel, nor related to any of the parties, nor in anyway interested in the outcome of this action.

As witness my hand and notarial seal this 14th day of February, 2008.

My commission expires
November 1, 2010

Susan E. Smith

Susan E. Smith
Notary Public

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