

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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1 motion to compel his answer.  
 2 Q. Do you believe, as you sit here  
 3 now, that Exhibit 118 provides for any money  
 4 to flow to any retired player?  
 5 MR. KESSLER: Same objection.  
 6 A. My answer is the same. It's not  
 7 going to change. It says what it says.  
 8 MR. KATZ: My motion to strike is the  
 9 same, so we'll take it up with a judge.  
 10 Q. Looking now at Exhibit 117, the  
 11 Charlotte Observer article, have you ever -- I  
 12 realize you may not have seen it in this form,  
 13 which is sort of a computerized print-out, but  
 14 do you recall that there was an article in  
 15 which you were quoted in the Charlotte  
 16 Observer on January 15, 2006?  
 17 A. Yes.  
 18 Q. And do you believe that this  
 19 contains the words that were contained in that  
 20 article, Exhibit 117?  
 21 A. Not for accuracy, no. I mean, are  
 22 you asking me are these the words --  
 23 Q. Is this that article, as far as  
 24 you can tell?  
 25 A. To the best of my knowledge, yes.

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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 first paragraph, it says: Much has been made  
 2 -- well, the re line is: The Truth about  
 3 Retiree Benefits. What were you referring to  
 4 there, sir, when you say retiree benefits? To  
 5 what benefits were you referring?  
 6 A. I was referring to the benefits  
 7 that are in reference to the ones that are  
 8 listed here on this page, and several others,  
 9 but that was what I put here.  
 10 Q. The six bullet points?  
 11 A. Yes.  
 12 Q. These comments were made in  
 13 response to several retired players' criticism  
 14 of me and the NFLPA.  
 15 To which retired players are you  
 16 referring there, sir?  
 17 A. The retired players that were  
 18 mentioned in the Charlotte Observer article.  
 19 Q. So Joe Montana is one of them; is  
 20 that right?  
 21 A. I received calls, I received  
 22 e-mails at one point, I can't remember, from  
 23 several players that were mentioned in the  
 24 article who felt the same way as I did, Howie  
 25 Long in particular, who pointed out, and so

<p>61</p> <p>1 did Marcus Allen, that he knew that his quotes 2 and comments were taken out of context, the 3 same way as mine were taken out of context in 4 this article. That was later. So when you 5 say those players and you mentioned Joe 6 Montana, they were quoted in the article. 7 Q. Right. So you're referring to the 8 people who were mentioned in the article, the 9 retired players who were mentioned in the 10 article? 11 A. Yes. 12 Q. And that includes Howie Long, 13 right? 14 A. Yes. 15 Q. And Joe Montana, right? 16 A. The people that are included in 17 the article. 18 Q. Which includes Joe Montana; isn't 19 that right? 20 A. Yes. 21 Q. And John Elway, isn't that right? 22 You have to answer audibly. 23 A. Yes, they're in the article, all 24 of the names that are there. 25 Q. All right. And in fact, you've</p>	<p>63</p> <p>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,</p>
<p>62</p> <p>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.</p>	<p>64</p> <p>1 sir. 2 A. That's my answer. 3 Q. I agree with you, they're not 4 members of the bargaining unit, okay? I'm not 5 asking that question. The question I'm asking 6 is simply, isn't it correct that retired 7 players are members of the NFLPA? 8 A. Yes. 9 Q. And when did they start being 10 considered as members? 11 A. When we made the constitutional 12 change, and I told you earlier I don't 13 remember exactly when that occurred. 14 Q. Are you familiar with a document 15 called an LM-2? 16 A. Yes, I am. 17 Q. And the LM-2, among other things, 18 lists a number of members of the organization 19 every year; is that correct? 20 A. Yes. 21 Q. And are you aware that up to the 22 year, I think, 2005, 2006 -- and we have all 23 the LM-2s here. I'm just trying to cut this 24 short a little bit, but we can show them to 25 you -- up to the year 2005, 2006, you listed</p>

P A U L S O N