

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CURTIS C. FLOOD, :
 : Before:
 : HON. IRVING BEN COOPER,
 Plaintiff, : District Judge.
 :
 vs. :
 :
 BOWIE K. KUHN, individually and : 70 Civ. 202
 Commissioner of Baseball, et al :
 :
 Defendants. :
 :
-----X

New York, May 22, 1970

STENOGRAPHER'S MINUTES

SOUTHERN DISTRICT COURT REPORTERS
UNITED STATES COURT HOUSE
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Curtis C. Flood

v.

70 Civ. 202

Bowie K. Kuhn, et al

New York, May 22, 1970
10:00 a.m.

(Trial resumed.)

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THE COURT: Won't you please proceed, gentlemen.

MR. TOPKIS: If your Honor please, the plaintiff
calls as his next witness Mr. Robert R. Nathan.

R O B E R T R. N A T H A N, called as a witness by the
plaintiff, having been first duly sworn, testified as
follows:

DIRECT EXAMINATION BY MR. TOPKIS:

Q Mr. Nathan, I understand that you are by profession
an economist, is that correct?

A Yes, sir.

Q Would you please tell the Court your education?

A My education included an undergraduate study in the
field of economics at the Wharton School of Finance and
Commerce, at the University of Pennsylvania, where I received
my Bachelor of Science degree in economics in 1931. I con-
tinued in graduate work there.

In 1933 I received a Master of Science in Economics
and undertook further study in economics and some graduate

courses at Georgetown University at a later date, and in addition --

MR. HUGHES: Your Honor, we are prepared to concede Dr. Nathan's qualifications.

MR. TOPKIS: If your Honor please, I would like to spread them on the record.

THE COURT: Very well. Proceed.

A (Continuing) In addition I was a student at the Georgetown University Law School and received a degree there in 1938.

Q Are you a member of the bar, sir?

A I was admitted to the bar, yes, sir. I don't practice, however.

Q Was that in the District of Columbia?

A That's correct, sir.

Q In your attainment of the master's degree, Mr. Nathan, did you focus your study in any particular field of economics?

A My field of study --

THE COURT: That calls for a yes or no answer, sir, if you can.

A Yes, sir.

THE COURT: All right, next question.

Q And what was that area?

1 A That was in the economic principles and policies and
2 statistics.
3

4 Q And upon graduation from or upon receiving your
5 master's degree from the University of Pennsylvania in 1933,
6 what did you do then, professionally?

7 A I went to Washington and worked in the United States
8 Department of Commerce, in the field of national income studies.

9 Q And what position did you hold?

10 A My first position was as one of the staff members in
11 undertaking the first national income study by the government
12 of the United States and then I became chief of the National
13 Income Section, and then chief of the National Income Division
14 in the United States Department of Commerce.

15 Q For how long did you remain in that post?

16 A Until the summer of 1940.

17 Q And at that time what position did you take?

18 A I moved to the defense agencies at the beginning
19 of mobilization for World War II, and became Deputy Director
20 of Research in charge of Military Requirements and then
21 Chairman of the Planning Committee --

22 THE COURT: Excuse me just a minute.

23 (Pause.)

24 THE COURT: I'm sorry. Won't you please proceed.

25 THE WITNESS: Thank you, sir.

A (Continuing) I became Chairman of the Planning Committee of the War Production Board at the beginning of '43, concerned with mobilizing America's economic resources for the war purposes.

Q The War Production Board, what were the functions of that agency?

A That was the organization which had the authority concerning the production and allocation of resources for military and essential civilian purposes during World War II.

Q Who was the head of that agency?

A Donald M. Nelson was the head of it when I was Chairman of the Planning Committee.

Q And to whom did you report?

A To Mr. Nelson.

Q How long did you remain Chairman of the Planning Committee?

A Until my resignation in March of 1943.

Q What did you do then?

A I became a private in the United States Army.

Q Were you honorably discharged?

A Yes, sir.

Q When was that?

A November 1943, a medical discharge.

Q What did you do at that time?

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2 A I conducted independent research on a private con-
3 sulting basis, including an economic study of the potentials
4 of Palestine and stayed out in private work then for two
5 years.

6 Q And this study that you did of Palestine, what was
7 its area of concern?

8 A It was a study of the economic potentialities
9 of the country and what the economic prospects were, and it
10 resulted in a book entitled Palestine, Problem and Promise.
11 It was one of the earliest studies of a country's productive
12 resources and what capabilities those resources made possible.

13 Q And that took about a couple of years?

14 A The better part of two years.

15 Q And what did you do then, sir?

16 A I returned to the government in April of 1945 as
17 Deputy Director of the Office of War Mobilization and
18 Reconversion as deputy to the then-Fred M. Vincent who was
19 the head of the office of War Mobilization and reconversion.

20 Q And what were your responsibilities there?

21 A My responsibilities as deputy director of this
22 office were to plan the demobilization effort and the
23 reconversion of the United States economy from war time to
24 peace time purposes.
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2 Q And for how long did you hold that position?

3 A Until January 1, 1946.

4 Q What did you do on that date?

5 A Starting the beginning of January, I organized
6 and conducted my own consulting firm in the field of
7 economics and have been in that position during the ensuing
8 twenty-four and a half years.

9 Q What is the name of your firm?

10 A Robert R. Nathan Associates, Inc.

11 Q Has Robert R. Nathan Associates, Inc. from time
12 to time done work for the government?

13 A Of the United States?

14 Q Yes.

15 A Yes, sir.

16 Q And for governments of other countries as well?

17 A Some thirty governments around the world, yes, sir.

18 Q Referring to the work which you have done for
19 the government of the United States, would you sketch that
20 in briefly, if you would?

21 A It has varied from assignments -- for instance,
22 we have done a considerable amount of work in the field of
23 poverty with the Office of Economic Opportunity, with the
24 problem of economic distress in some of the areas of the
25 United States that have lagged in our economic progress.

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2 We have done work for the Department of Labor
3 concerned with manpower development in a field such as
4 paramedical services. We have conducted services for the
5 Department of Interior with respect to the whole field of
6 coal and opportunities for coal, exports, development.

7 We also, for the Department of Interior, undertook
8 a study of the economic potentials and a development plan
9 for Micronesia, which is a trust area in the Pacific Islands.
10 For the Navy Department we undertook an analysis of trends
11 in power, costs and rates on the West Coast.

12 For the Justice Department we undertook a study
13 concerned with liabilities deriving out of ships commandeered
14 by the United States Government during World War II.

15 And then we have undertaken a great many studies
16 for the Agency for International Development throughout the
17 world.

18 Q Do I understand you have also worked for the
19 Navy Department on occasion?

20 A I worked for the Navy Department on a rate case
21 concerning power and gas rates in California.

22 Q How about the Labor Department?

23 A Yes, the Labor Department, manpower training and
24 manpower availability and manpower demand.

25 Q Have you worked as well for the State Department?

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2 A The agency for International Development, which
3 is within the State Department, yes, sir.

4 Q Turning it around, if I may, Mr. Nathan, just
5 to move quickly, is there any government department for
6 which you haven't worked?

7 THE COURT: I don't think that would be of any
8 particular assistance.

9 MR. TOPKIS: I will withdraw the question, your
10 Honor.

11 Q In your private practice, that is, non-governmental
12 practice, Mr. Nathan, would you sketch in briefly for the
13 Court the kind of work that you have done?

14 A Very briefly, it ranges from work for organized
15 labor having to do with wage negotiations, productivity,
16 wage costs, fringe arrangements between labor and management.
17 For utilities we have undertaken a wide range of studies
18 having to do with rates of return, especially with respect
19 to capital costs. For corporations we have undertaken
20 market surveys and investment potentials and opportunities
21 in various countries.

22 And we have also done considerable work for state
23 and local governments around the United States having to do
24 with economic development principally.

25 Q Have you had any special involvement in the area

1 of wage policy and wage rates?

2 A Yes. I have had extensive work in that field.

3 Q Could you tell us, please, what are the pro-
4 fessional societies to which you belong?

5 A I belong to the American Economic Association;
6 I belong to the American Statistical Association, of which
7 I was vice-president at one time; I belong to the Society
8 for International Development; I belonged to the American
9 Marketing Association, not at present; I belong to the
10 National Planning Association.

11 Q Do you currently or have you held positions as
12 a trustee or director of any organizations interested in the
13 economics field?

14 A Yes. I am a trustee of the Committee For Economic
15 Development, which is a private group undertaking studies
16 in economic policy. I am also a member of the Research
17 and Policy Committee of that organization and a member of
18 several subcommittees. I was a member of the National
19 Commission on Money and Credit, which undertook a three-
20 year survey of the fiscal and financial policies of the
21 United States. I am a trustee of the Population Reference
22 Bureau which is concerned about population implications
23 of -- the economic implications of population growth.

24 I am a trustee of the Asia Society, which is
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concerned with developments in the Far East.

I am president of the American Freedom From Hunger Foundation, which is concerned with the economics of hunger and the development of food production around the world.

Q Mr. Nathan, have you written any books?

A Yes. I wrote one book on economic policies and prospects in the United States called Mobilizing For Abundance.

I was co-author of Palestine, Problem and Promise.

I was author of three small books or pamphlets on wage policy done for the Steelworkers Union, the CIO, back in the late forties. I have contributed chapters to a wide number of additional books.

Q Have you written any articles?

A Yes, I have written a great many articles for professional journals and for some popular publications.

Q Mr. Nathan, there has been testimony here that in baseball a player is but one of many players and that by means of the operation of what is known as the reserve system a player is permitted to deal for his services as a player with only one employer.

Can you, as an economist, describe to the Court the likely consequences as to the wage levels of players

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2 of this set of circumstances?

3 A Yes, I can.

4 Q Would you please do so?

5 A From the economic point of view, the lack of
6 an alternative set of opportunities for a ballplayer would
7 tend to depress the wage level of the ballplayer in view
8 of the fact that he has no opportunity to negotiate and
9 bargain among alternative users of the talents and services.
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Q Are there any other consequences that you as an economist would expect?

A Yes. There are other consequences, which I must put in the context of the type of economic system in which we operate.

We operate in the United States under principally a free enterprise system, where the maximum degree of freedom is permitted to the individual and to the entrepreneur and to the investor in using his resources where and when he feels they will be most satisfactory to him in terms of the economic yield they will provide him and also in terms of non-economic satisfactions that this individual or this businessman or this investor might seek. And when any possessor of resources, whether it is a man possessing his own talents or whether it be a saver who possesses capital which he has accumulated or whether it be a businessman who has the capacity to mobilize and organize resources and build up a business, as a choice to where he uses these resources, we in our economic system believe that this tends to bring about the greatest benefits to the individual who has undertaken to use these resources as well as to society, because in this free market what people want and what people are willing to pay for and what people are willing to sell determines how our resources are used.

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2 I have no question whatsoever that this is not just
3 meaningful in theoretical terms, your Honor, but I think in
4 very practical terms as having worked in more than thirty
5 countries around the world in the last twenty years that this
6 system which we have adopted, which gives the greatest
7 material rewards and the greatest material benefits to
8 society in my judgment is also one which gives the greatest
9 satisfaction to the individual.

10 So therefore there are social and human consequences
11 as well as purely economic consequences involved in this
12 subject.

13 THE COURT: Mr. Topkis, I dislike interrupting you.
14 You and all the attorneys are so competent, and you have done
15 your homework. I thought I had been attentive, but had you
16 developed whether the witness had been given an opportunity
17 to reflect on this particular subject? You have developed
18 all his credentials, and then you suddenly flung at him the
19 issue with which we are vitally concerned, and I don't know
20 whether that is the first time he heard it. From the record,
21 one would certainly think that was the first time.

22 Forgive me -- I don't want to criticize; I don't
23 want to butt in -- but I hope there is at least something
24 to my thought, because otherwise it would have been a waste
25 of time on my part.

MR. TOPKIS: As always, your Honor, I benefit from your suggestion. I had, of course, omitted the point which your Honor has brought up.

THE COURT: I like to test myself out from time to time to see if I am listening as well as I should.

MR. TOPKIS: We haven't caught you yet, your Honor, and I don't think we will.

Q Mr. Nathan, have you had occasion in your professional career to familiarize yourself with the operations of the sport or business of baseball?

A I have, to varying degrees, under different circumstances.

For instance, several years ago I was employed as an expert witness by the State of Wisconsin concerning the move of the Milwaukee Braves to Atlanta, and at that time I testified in the court in Milwaukee with respect to the nature and character of baseball's operations and the Milwaukee response and market reaction to the presence of the Milwaukee Braves and then the economic impact of the move of the Milwaukee Braves to Atlanta. Insofar as it had an impact in Wisconsin, I did that.

More recently, when I discussed this particular case with Justice Arthur Goldberg on economic grounds, I undertook to study the reserve clause very carefully, and also I

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2 have had an opportunity to read some of the testimony pre-
3 sented so far in this case.

4 THE COURT: Very well.

5 MR. TOPKIS: Again, my thanks, your Honor.

6 Q You know, then, what we mean here by the term
7 "the reserve system" or, as it is sometimes called, the
8 reserve clause?

9 A I believe I do, sir.

10 Q Does the set of circumstances which we label with
11 that term "reserve system" correspond or not to the conditions
12 and circumstances which prevail in any other area of the
13 American economy, as you have studied it?

14 A To my knowledge -- and I have worked in a great
15 many industries, many service industries as well -- I know
16 first hand of no parallel in any other general field or any
17 other sector of activity where the economic relationships
18 between employers and employees have anything like similar
19 characteristics to what this reserve system provides.

20 THE COURT: Specifically --

21 THE WITNESS: The motion picture industry, sir.
22 We undertook a study, many, many years ago, your Honor, for
23 Actors Equity, concerning the economics of the legitimate
24 theater, and in that respect I did study the labor relations
25 between management and labor in that industry.

Over the years, we have -- I had conducted studies of the medical profession as far as income is concerned in relationships, and more recently the paramedical field.

I have served in relations to the steel workers union and the steel industry, the communications union and the whole wage policy in the communications industry for the federal communication workers.

I have served, your Honor -- we have worked with the signalmen and the oilmen and the carmen in the railroad industry; the building service employees, and I have been concerned, your Honor, with wage policies and wage relations in other areas, too, and I know personally of no arrangement like this in any other sector or any other field of activity in this economy.

Q Would you expect, Mr. Nathan, by reason of your professional work and by reason of your reading in the field, that were there a parallel set of circumstances in any other area of the American industry, you would have been familiar with it?

A Not necessarily. There may be some small professional or service activities that I don't know about, but certainly in any large-scale functioning or sector in our economy I am confident there is none or I would know about them.

Q Now, does this set of circumstances that we refer

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2 to in shorthand as the reserve system to an economist sug-
3 gest any impact on employer-employee relations?

4 A To an economist, it represents a degree of imbalance
5 in the bargaining capability, which is very substantially
6 different from the bargaining relationships which generally
7 prevail in a free society between buyers and sellers of
8 goods and services, where there are obviously varying ele-
9 ments of strength, depending on how much administrative
10 pricing there might be or how much exclusiveness there might
11 be, but by and large in our society there is a tendency
12 for substantial strength on both sides of a bargaining
13 table.

14 But from an economic point of view, the reserve
15 system is one which is totally and completely unbalanced
16 in terms of strength of bargaining between the player and
17 the employer.

18 Q You have testified, I believe, that you would ex-
19 pect that that would tend to lower the wage level in the in-
20 dustry.

21 A That is correct.

22 Q Can you analyze for his Honor as a matter of marginal
23 analysis the degree to which that depressant effect would
24 operate?

25 A Only in abstract terms. I could not quantify it,

1 your Honor. If we had data available whereby one could
2 study the distribution of salaries in this particular field
3 of activity, then we could draw parallel data between the
4 distribution of incomes in other sectors of the economy
5 where unique capabilities also prevail, and if we were able
6 to compare the trends over time of the high pays and medium
7 pays and low pays of people in different categories of
8 economic activity, I think, sir, that the impact of this
9 system could be reasonably identified and within ranges
10 quantified. But we have no data to make that comparison
11 now.
12

13 Q Very well --

14 MR. HUGHES: It seems to me that under those cir-
15 cumstances, the answer of Dr. Nathan that he thinks, should
16 be stricken out, because I think he is quite candidly
17 acknowledging that he hasn't the data and knowledge from
18 which he can give an actual opinion on the subject.

19 THE COURT: The last answer contributes nothing,
20 but it should remain, to show the quality of the testimony.
21 Where a witness says, "I don't know," and has a sense of
22 humility, that is important.

23 Proceed.

24 Q Mr. Nathan, you have acknowledged with candor the
25 lack of precise data, but may I inquire:

Can you state as a matter of professional opinion, with a reasonable degree of confidence, that the depressant effect to which you have testified would exist and operate?

A I feel there's no question about that from an economic point of view.

Q Would you expect as an economist, again, that the existence of these circumstances, the reserve system, that is to say, throughout an industry would encourage or discourage possible employees -- players, here -- from seeking careers in that industry -- here, professional baseball?

A I believe, as an economist, that if all other factors were equal -- this is often an economic consideration that is expressed, but if all other factors were equal, as an economist I would say that this system of salary determination would tend to discourage more persons from entering this field than if the system were one where there were an opportunity for each individual to bargain independently with his employer.

Q Mr. Nathan, going back for just a moment --

MR.TOPKIS: Excuse me, your Honor.

THE COURT: Certainly.

Q Now, again calling on your professional competence as an economist accustomed to studying the functioning of our economic system, I would ask you, if employees in an

1 industry are free to move from employer to employer, would
2 you expect that this would tend to cause the turnover rate
3 in that industry to be higher or lower than it would be in
4 an industry operating under an arrangement like the reserve
5 system?
6

7 A It might or it might not result in a higher turnover
8 rate, but the mere availability of alternative opportunities
9 in other places would tend to bring about wage levels or
10 wage relationships which would be responsive to the demand
11 and supply, and to the extent that the employer and the
12 employee bargained with each other on the wage in relation
13 to the fact that the employee could move or not move, it
14 might very well result in different wage levels but not in
15 more mobility of workers.

16 You may have more turnover; you may not, depending
17 on how responsive the employer and employee are to their
18 bargaining under these new circumstances as distinguished from
19 the reserve system circumstances.

20 Q Let me ask you to contrast, if you will, in your
21 own mind a situation in baseball where, as at present, the
22 reserve system operates, with a hypothetical situation,
23 where the restraint on the players moving from one team to
24 another is less than the reserve system permits? Could
25 you state to his Honor what you would expect to be the dif-

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2 ferent turnover rates in those two situations, that is, the
3 different degrees with which players could move from one
4 team to another?

5 MR. HUGHES: Your Honor, I object to that. I don't
6 see how he could possibly give an opinion unless in the hypo-
7 thesis put to him he has some idea of what these alternatives
8 are. Otherwise, it is just a blanket, vague alternative
9 to the existing system.

10 THE COURT: As I observed yesterday, I think where
11 the witness impresses the Court as being competent and the
12 question seems somewhat uncertain, I will let the witness
13 handle it. Let him tackle it first, and then we will deal
14 with it after.

15 Do you remember the pending question, Dr. Nathan?

16 THE WITNESS: Yes, your Honor.

17 THE COURT: Can you answer it?

18 THE WITNESS: I believe so, sir.

19 A To the extent that a system were less restrictive
20 in the tying together of the employee with his employer,
21 there would tend to be a larger turnover, subject again,
22 however, to the degree to which the employer and the employee
23 were able to negotiate effectively in relation to the value
24 of the employee from the employer's point of view and also
25 from the employee's point of view.

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2 To the extent that you had a freer system, by de-
3 gree from the reserve system all the way down to where there
4 was no restraint at all, you would tend to have more turnover,
5 but only if they were not able somehow to reconcile their
6 interests.

7 That is why, as I said before, it might not result
8 in more turnover of employees to other employers, because it
9 depends on how responsive the wage negotiations are and the
10 wage settlements are to a wide range of circumstances.

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Q What circumstances would you have in mind?

A Well, for instance, I have been thinking a lot about this in terms of one of the subjects that has always come up in the economic field as to the power or strength, economic strength of the employer, and we do know that in economics there are marginal responses, and by marginal responses I mean, sir, that if, for instance a top team were to have three outstanding players, the addition of a fourth player may be less advantageous to that team than the addition of the third player, and the addition of the third outstanding player would tend to be less advantageous relatively than the addition of the second player, and that that fourth player being on a team which has three outstanding players, that addition of one player to a club that does not have an outstanding person may have more value than to the fourth, in that it probably does have three outstanding players, so that these marginal factors become very important.

Then there are other factors. For instance, you ask about mobility. We live in a society now where survival is not the problem of most of the people. We have been called an affluent society and as I travel -- I came back from around the world two weeks ago, your Honor, and there are countries where our affluence is so great relative to what one sees abroad that we realize that what controls

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2 and motivates us now is not entirely economic. Some people
3 prefer to live in one part of the country than in another.
4 Some people prefer certain communities because of the schools
5 or the health conditions or the environmental circumstances
6 rather than others, and these factors of a non-economic
7 nature also enter into this consideration of whether an
8 employer or an employee can arrive at a negotiation, and
9 that is why when you ask me if there would be more turnover
10 with no reserve system or with varying degrees away from the
11 reserve system, I must say that one has to take into account
12 many of these factors and the bargaining capabilities between
13 the employer and the employee in view of these factors.

14 Q And these are factors which an economist today takes
15 into account when making economic forecasts?

16 A Without question. Otherwise it is purely abstract
17 and has no reality in the world in which we live.

18 Q Now, you spoke a moment ago of a situation in which
19 a fourth outstanding player would be of less value to the
20 team already having three outstanding players than he would
21 have to a team having no outstanding players.

22 A This would tend to be the case, yes.

23 Q And in that situation would you expect that the
24 player would be employed by the team already having three
25 outstanding players or would you expect the bidding to result

1 in his going to the team without any outstanding players?

2 A Given not too much difference in their overall
3 capabilities or reasonable differences, I would certainly
4 expect that after a team has a number of outstanding players
5 and where the marginal increment or margin of value would be
6 somewhat less, that he would tend to be employed by a team
7 where they had no outstanding players.
8

9 Q Now, were there less full restraint on a player's
10 mobility than exists under the reserve system would you
11 expect that the best players would tend to gravitate to the
12 teams in a position to offer the highest wages by reason of
13 their gate receipts or whatever other phenomena?

14 A I would not expect this without limitation. I
15 don't think that -- and I think I know considerable about
16 many industries in this country, and we find that in industries
17 where there is freedom between employer and employee we do not
18 find that all the top designers go to General Motors and
19 nobody to Ford or Chrysler, or all the top men's designers
20 go to Hart, Schaffner & Marx or Botany 500 and nobody goes
21 to others. We do find in our society, despite freedom of
22 movement, that there is not a tendency for all of the top
23 talent to aggregate in one particular location or with one
24 particular entity.

25 THE COURT: You say all, but would that be true of a

substantial number of all?

THE WITNESS: In a perfectly free environment these enterprises which have the capability immediate of paying more will tend to get more talent than those who haven't the capability to pay that much. That certainly is true.

THE COURT: All right.

THE WITNESS: But, your Honor, we find -- well, there is an old saying in economics that we move from shirt sleeve to shirt sleeve in three generations, and what that means is that success tends to come to a firm or a family, but it doesn't last very long because others come in and pretty much displace them and new innovations, new entities arise, new capabilities emerge, and in a free system one finds that not many groups stay on top of the heap for very long.

A great playwright may write three or four plays and then some other playwright comes to the top, or a great musician happens to be the one who will sell several million recording records, but sooner or later someone with more talent, and usually sooner, emerges, and so what we tend to have in our society, in our free system, is not a gravitation of talent and ability into one entity where it tends to be frozen and be permanent, and I think to the extent our society permits, your Honor, freedom of movement among entities,

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to that extent I think our society will find that diversity tends to result in not concentration over time. There will be exceptions but over time, your Honor, I think this tends to bring about a rather remarkable distribution of capabilities.

Q Would it be accurate to say, then, that the plain money factor is, in your experience, studying the American economy, usually overbalanced by other factors in determining the top position?

A No. I think the money factor is still in our society the predominant factor in determining how resources are used and where they are located, but there are other factors where money itself does not control and where loyalties and interests do tend to modify the price, the market economy.

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But the market economy, where the price is dominant, still is the most important factor in our society.

Q Well, let me put the question in quite concrete terms, if I may, Mr. Nathan: Were there three or four clubs that, by reason of the population in the areas in which they had their teams, had the likelihood of drawing higher gate receipts, in a system without the reserve clause or with a less restraining system than the reserve clause, would you expect that those clubs would be able to win far more frequently than their less privileged brothers?

A I would say over time they would tend to win some-

1 what more frequently, but again I come back to the factors
2 that prevailed before. The thing that impressed me the most
3 your Honor, in the Milwaukee Braves case was that here was
4 a city of size and growth and vigor but certainly was not
5 New York City, it wasn't Chicago, and as a matter of fact,
6 it was close to Chicago and had competition from Chicago,
7 and it wasn't the size of Boston or Philadelphia, where the
8 attendance was phenomenal and where, by effort and, I think,
9 outstanding leadership, they were able to acquire very
10 substantial talent -- and it is my recollection that in six
11 or seven out of the thirteen years or seven or eight out of
12 the thirteen years the Braves were in Milwaukee, I believe
13 they finished first or second in the National League and
14 had the top attendance of all of the 16 teams except one
15 over that thirteen-year period, and here there was not a
16 tendency for all the players to move.

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18 Now, on the other hand, very frankly, we must look
19 at the New York Yankees who, over the period of many years,
20 had an outstanding attendance record, being in a big popu-
21 lation center, and here there was a capability of acquiring
22 a substantial number of players and holding onto them, but
23 it is my conviction that in the interest of the owners and
24 in the interest also of the public and the players that
25 many techniques could be adopted which would preclude any

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2 strong tendency toward concentration of talent in the bigger
3 cities, and I think this is entirely possible without the
4 kind of a rigid restraint on labor-employer relations that
5 now prevails.
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2 Q You mentioned various possibilities. Could
3 you indicate some to his Honor?

4 A Well, your Honor, for instance, if the teams
5 were to divide the home game and field game receipts on
6 a different basis, I understand now that about 80 per cent
7 of the total home game receipts accrue to the home team
8 and about 20 per cent to the visiting team.

9 If, for instance, those were distributed on a
10 60-40 basis, let us say, and one were really concerned about
11 excess strength of the larger city teams relative to
12 the smaller city teams, this would certainly bring about a
13 smaller dispersion in economic strength between these teams
14 and increase the capability of the smaller city teams to
15 hire higher priced players. But even that would still
16 yield, I am certain, very substantial differences that one
17 can't anticipate in economic terms where many players hold
18 great promise and don't turn out to be very outstanding,
19 and others seems to hold great promise and turn out to be
20 very disappointing.

21 But certainly if one were to be deeply disturbed
22 more than I personally am as an economist about this matter
23 of wealthy clubs in large cities, then the redistribution
24 of the home game proceeds would be far more logical and far
25 more compatible with our free enterprise system than this

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rigidity imposed on a player for his lifetime.

Q Are there any other alternatives that have occurred to you in your study of this field?

A Well, certainly the division of television and radio receipts is another one whereby the economic compatibility of the company could be more nearly equalized than it is at the present time.

As an economist, however, who believes in the free enterprise system, I do have grave doubts about such schemes, just as I have grave doubts about the reserve system.

I believe that we will find that even if we don't redistribute economic compatibility by size of city that if we will permit players to move more freely and reduce the rigidity of employee-employer relationship that we would find a considerable amount of competition and a considerable amount of varied strength and a considerable changing over time in the win-lose relationships of individual teams.

Q In your study of the Milwaukee situation, do I gather that you looked into the question of how attendance varied with population in various cities around the country?

A Yes.

Q Baseball attendance?

A Yes, I did.

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2 Q Did you find that attendance was directly
3 related to population of the market area on which the team
4 drew or were there other factors that contributed to deter-
5 mining how large attendance the team managed to attract?

6 A Attendance did not vary consistently and directly
7 with population. There were other factors. We did not
8 analyze those factors in great detail, but we tabulated
9 and showed the figures on attendance and the figures on size
10 of population of cities and where they ended up in the
11 league and a whole variety of factors, but attendance
12 and population is not -- do not correlate precisely and
13 directly with each other.

14 Q Would it be accurate to say that population is
15 just one of the factors determining attendance?

16 A Yes, sir.

17 Q And there are a number of others?

18 A Yes, sir.

19 Q Mr. Nathan, in your studies of the American
20 economy, have you observed that American industry, any
21 companies engaged in American industry, conduct training
22 programs for employees?

23 A Yes, I have observed that and I have studied
24 the subject.

25 Q Is that a common phenomenon today in American

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industry?

A It is a common phenomenon today in American industry, especially for the larger enterprises, to engage in formal training, to engage in on-the-job training, to engage in refresher training, to engage in apprentice training of workers in order to provide the capabilities needed in this increasingly mechanized and increasingly skill-required economy.

Q What industries, to your knowledge, conduct such programs?

A Almost all the large manufacturing companies do, the banks do, the large retail establishments do. The common practice is to recruit from among college graduates or technical school graduates individuals who are then given training courses, some three months, some nine months. It varies. The pattern is very diversified. But these companies do engage in extensive training of new recruits, and this is one of the important sources of expanding the technological capability of our people.

Q Is it common practice for employers engaging in such programs to bar the employees from moving to another employer?

A It is not.

Q Have you ever heard of an employer doing that?

1 A No, sir.

2 Q So that there is always the risk that an employee
3 trained by such a program will go to another employer upon
4 the conclusion of the program?
5

6 A There is always that risk that a person may be
7 trained by a given bank and they will go to work for another
8 bank or go to work for a retail establishment or go to work
9 for a trading concern or somebody else sometimes immediately
10 after the training period.

11 Q And in that event, I suppose the cost of training
12 that employee would represent a net loss to the employer
13 who had trained him?

14 A In that specific instance of the one individual
15 who was trained and who left and went with another employer,
16 that would represent a cost of doing business or, yes, one
17 could say it is a loss, but to the extent that our free
18 enterprise system affords this individual an opportunity
19 to employ a trained person who has been trained by another
20 employer, this is sort of an exchange where one person
21 loses and another one gains. It is clear on the basis
22 of the continuity of the training program that this is
23 a risk which employers have been willing to take, because
24 the net benefit of a better trained cadre of personnel
25 adds to the total capability of people and each company

1 tends to benefit.

2
3 Q Are the funds that are spent by American industry
4 today on such training programs substantial or insubstantial?

5 A I have no quantitative figure on this. I believe
6 there have been some studies, but I don't know the total,
7 but it is a sizable figure, I am sure, but the magnitude
8 of which I am not familiar with.

9 Q It is, however, a standard characteristic of
10 the operation of the American economy today, is that right?

11 A Certainly of the larger enterprises, but, as I
12 say, even smaller enterprises, for instance law firms,
13 engage in this in a sense, too. You bring in a college
14 or a law graduate, and I believe that there is an important
15 period of training after law schools in terms of how to
16 prepare papers and how to deal with clients and how to
17 engage in certain brief preparations and the like, and there
18 is no assurance that after a year of that kind of work the
19 young lawyer may not go off to another law firm or may not
20 become self-employed, your Honor, and this is part of the
21 system. So that even in small areas -- we have the same
22 problem in my own firm, your Honor. We employ young Ph.D's
23 and sometimes Masters and they will come with us and stay
24 a year or two, during which time, frankly, they may be a
25 cost to us rather than a net benefit, and then they will

1 go off to somebody else.

2 But I would be less than frank if I didn't say
3 we do the same thing in terms of hiring people that others
4 have trained.
5

6 Q Incidentally, Mr. Nathan, I don't think I asked
7 you before, how large an enterprise is Robert R. Nathan
8 Associates?

9 A We have about eighty employees.

10 Q Mr. Nathan, as an economist, would you expect that
11 the replacement of the present reserve system with a system
12 in which the only restraint on player mobility was that
13 employers might sign players to contracts for a term of years,
14 for example five years, would you expect that the substitu-
15 tion of that latter system that I have just described would
16 adversely affect the level of competition on the field in
17 baseball?

18 MR. HUGHES: Your Honor, I object to that. I
19 don't see how he can answer that.

20 THE COURT: Can you answer it, Mr. Nathan?

21 THE WITNESS: I would like to ask what level of
22 competition on the field, what you mean specifically by
23 that.

24 THE COURT: Will you reframe the question, then.

25 MR. TOPKIS: Yes.

1 Q If the present reserve system were eliminated
2
3 and it were replaced by a system in which the only restraint
4 permitted on employees moving from one team to another
5 were the right of the employer to sign employees to contracts
6 for a term of years ranging up perhaps to five years, would
7 you expect that the level of performance of the different
8 clubs on the field in playing games would be significantly
9 affected?

10 MR. HUGHES: I object to that question. I sub-
11 mit that Mr. Nathan, with all of his distinguished quali-
12 fications, is incapable of giving a meaningful answer to
13 that question. It seems to me we are getting not into
14 the area of an economist, but we are getting into the
15 area of clairvoyance.

16 I respectfully object.

17 THE COURT: He has already testified that in his
18 undertakings in his specialty he always has to reckon with
19 the human factor, human limitations, human strength, and
20 I take it that in answering a question such as now pends
21 before you, you will take those factors into consideration.

22 THE WITNESS: Yes, sir.

23 THE COURT: Objection overruled. You may answer.

24 A As an economist I would expect that if the
25 reserve system were eliminated and players could sign with

1 any employer, any team, with the only restriction being
2 that the duration of contract be no more than five years,
3 I believe that this would tend to have some distributive
4 effects -- redistributive effects of players among teams.
5 I believe that this would tend to raise the salaries of
6 players, first, because they would then have the opportunity
7 to bargain after their three-year contract or four-year
8 contract, or maximum five-year contract.

9
10 I think that the economic forces would tend to
11 be freer in the decision of the player and the employer
12 as to where he would go because he might be offered \$10,000
13 more in another city, which he may or may not accept. He
14 might not like to go to this other city and therefore he
15 might prefer to take ten thousand less in one city where
16 he is than ten thousand more in another city.

17 Nevertheless, the market place would then become
18 a more important determinant. Given the facts of today,
19 there can be moves by selling of contracts or trading of
20 players. It would be my judgment as an economist that
21 the elimination of the reserve system and the substitution
22 of a contract arrangement with a maximum period of five
23 years would certainly be advantageous in the distribution
24 of player talents among teams.

25 Q And hence would tend to equalize competition

on the field?

A It would tend to make the teams' capabilities responsive to competition, not equalize competition, but tend to make the teams' capabilities responsive to what happens in their competition and negotiations for players.

I find the words "equalization of competition" somewhat -- I have read it in some of the context in this field. In our society I don't believe we seek to pursue equalization of competition. I think we seek to pursue equalization of opportunity, and I think it is equalization of opportunity that tends to bring about vigorous competition and that is what would be desirable and I think this would enhance competition in this field.

Q On the field?

A Yes.

Q On the playing field?

A Well --

MR. KRAMER: I am not sure he answered that.

MR. HUGHES: There was a shrug of the witness's shoulders. It is a question whether it is competition on the field or in some other way. That was the question that was put to the witness five minutes ago.

A Let me say in my judgment I would interpret this would enhance competition between the clubs.

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Q In what areas?

A In the performance of this sport and therefore in the assembly of players and assembly of talents and in their competition with each other.

MR. TOPKIS: Now may I have a moment, your Honor, to confer with my colleague?

THE COURT: Certainly.

(Pause.)

MR. TOPKIS: I have no further questions. Thank you, Mr. Nathan.

THE COURT: Before you undertake cross-examination, I presume we could all do with just a brief recess. Have you any objection or vigorous objection to that?

MR. HUGHES: I am heartily in favor of it, your Honor.

THE COURT: Short recess.

THE CLERK: Short recess. All rise.

(Recess.)

End 5