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Nathan-cross

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2 THE COURT: Please proceed.

3 MR. HUGHES: If it please your Honor, Mr. Hoynes
4 will conduct the cross examination.

5 THE COURT: I will be glad to have Mr. Hoynes.

6 CROSS EXAMINATION BY MR. HOYNES:

7 Q Mr. Nathan, would you please tell me by whom you
8 were engaged to make the testimony that you have given today
9 and the investigation that you have revealed to us today.

10 A I was engaged by the law firm which Justice Arthur
11 Goldberg represents, and I was contacted by him and asked
12 if I would be the economic witness in this case, and I con-
13 sented in my discussion with him.

14 Q When was that? When was your initial discussion
15 with Justice Goldberg?

16 A Approximately two weeks ago.

17 Q With whom have you consulted in preparing for to-
18 day's testimony?

19 A I have consulted with Mr. Iverson in Washington and
20 Mr. -- Justice Goldberg by phone and with Mr. Topkis, and
21 I think one other -- two other lawyers and with Marvin
22 Miller.

23 Q Marvin Miller, the executive director of the
24 Major League Baseball Players Association?

25 A That's correct, sir.

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Q Will you tell me what source material you may have used in preparing your testimony, other than the conversations with the attorneys and Mr. Miller?

A Yes. I went back first and reviewed my own testimony in the Milwaukee Braves case. I read the report of the Celler Committee back in the mid-50's. I reviewed some literature, articles, especially one by a professor of the University of Chicago, Professor Rottenberg. I assembled some statistics on salaries and wages and wage changes over time by economic sectors and for various professions: doctors, dentists and lawyers and accountants.

All of these data, by the way, I did not use, I have not presented here. I have them readily available and will be happy to present them. I didn't, because I didn't have the comparable data for up to recent date for the baseball industry.

But that is, I believe, other than the testimony that I have read of some of the witnesses here, that's the extent of my research.

Q Did you ever consult the baseball rules and contract provisions themselves?

A No; I did not. Only insofar as --

THE COURT: "No" is the answer.

THE WITNESS: No, sir.

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THE COURT: All right. Next question?

Q Have you ever been engaged or employed by a baseball team?

A No, sir.

Q To perform any services?

A No, sir.

Q Have you ever played baseball, Mr. Nathan?

A Just sandlot -- amateur, when I was a child -- youth.

Q I take you didn't face the reserve clause then.

A No, sir.

Q Are you a baseball fan?

A Yes, sir. Reasonably, one; yes, sir.

Q Would you say --

THE COURT: You mean, under reasonable control?

THE WITNESS: With reasonable limitation, your Honor, yes, sir.

MR. HOYNES: May I note that Mr. Nathan's home is in the Washington, D.C. area. Most baseball fans in that area must keep a reasonable amount of restraint.

MR. KRAMER: Your Honor, my enthusiasm is unbounded.

Q Are you at all familiar, Mr. Nathan, with the process by which the major league ballplayers negotiate their salaries with club officials?

A Not first-hand, no.

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Q Have you spoken to any baseball players about their negotiations?

A No, sir.

Q Have you spoken to any baseball general managers, assistant general managers or other club officials about the process of negotiating a baseball contract?

A No, sir.

Q Are you aware of the existence and functions of the Major League Baseball Players' Association?

A Yes, sir.

Q Do you know what if any impact the Association may have upon such matters as player compensation and the negotiation of player compensation?

A It is my understanding that they have no impact on individual player negotiations except for minimum levels and except for fringe benefits such as pensions and per diem allowances and things of that nature. But it is my understanding that it has no role in the individual negotiations of various levels of salaries achieved by different individual players.

Q Mr. Nathan, you have excepted several items. Do you not think that those exceptions that you have mentioned are of considerable importance, that is to say, the minimum salary level, the other benefits, particularly the major

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2 league baseball players' benefit plan?

3 A Very important, sir.

4 Q Are you familiar with the benefit plan?

5 A Not in detail. I have heard some of the character-
6 istics of the pension plan, for instance, but I have not
7 studied it in detail.

8 Q So you do not know the relationship or the importance
9 to the player of the pension plan? You are not familiar with
10 the precise details of it?

11 A That's correct, sir.

12 Q Are you aware of any other areas of negotiation
13 between the players' association and the major league clubs
14 other than the fringe benefits, pensions and minimum salary,
15 that may have a bearing upon the process of negotiation be-
16 tween the player and his club?

17 A No, sir.

18 Q Would you be surprised to hear that the players'
19 association has negotiated on behalf of the players on such
20 matters as the maximum reduction that a player may incur in
21 his salary in any year and has also negotiated on such mat-
22 ters as the representation in the process of individual
23 negotiation of a player by an attorney, accountant or other
24 agent?

25 A No. I would not be surprised at that.

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2 Q Do you not think that those things that I have just
3 mentioned have an impact upon the negotiating process, and
4 might there not be many other, similar matters which the
5 players' association could raise in collective bargaining
6 which would have an impact upon that process of individual
7 negotiation?

8 A Yes. I think that out of this organization and
9 its relations with the employers and with the employees,
10 it can have a significant impact in terms of the benefits
11 and the salary levels in the negotiations between the employers
12 and the employees.

13 Q So that whatever imbalance you testified to earlier
14 between the relative strengths as you would analyze it of
15 the club and the player tend to be somewhat diminished --
16 that is, the imbalance tends to be somewhat diminished by
17 the activities of the players' association?

18 A Yes, I would hesitate -- I would immediately say that
19 given the continuation of the reserve system, that diminution
20 would still inevitably leave a very substantial gap between
21 a system of employer-employee relations without the reserve
22 system and one with the reserve system.

23 Q You don't know that for a fact, that is to say, you
24 are not sufficiently close to and familiar with this individual
25 process of bargaining as you have stated before to be certain

that there would be a wide disparity, notwithstanding the efforts of the players' association?

A Well, when I used the word "difference," I meant a difference in the process of arriving at salaries, not necessarily the diminution of the salary from what it might be without the reserve clause system, or the reserve system, and what it would be with it. What I am saying is, the very bargaining process between employers and employees where a reserve system prevails and an employee has no alternative of employment within his vocation would make a substantial difference in the bargaining strength as compared with one where the reserve system does not exist.

Now, how large that impact is quantitatively, I'm not in a position to suggest or measure.

Q One of the reasons why you are not in a position to suggest or measure the quantitative difference is because you are not actually familiar with the process?

A That's only one of the reasons. I could measure it if I had the data, and I think if I had the levels of pay and I had the distribution of pay and I had these data over periods of time and could draw analogies between wage negotiations and salary negotiations in reasonably related areas of activity, I think I could develop quantitative differences which would be meaningful and significant,

whether they are large or small.

Q You have not, however, made such a study?

A That is correct, sir.

Q Have you considered the impact on the clubs, Mr. Nathan, of the fact that while the player only has one club to negotiate with, the club only has a limited number of players with whom it can negotiate, and indeed, with reference to any one particular player, his skills may be and could be so unique in the organization that it is imperative to the success of the ball club that an accommodation be reached with that player, since he is for all practical purposes irreplaceable?

A Yes. I have taken this into account, and certainly a uniquely qualified and outstanding player will have a better opportunity to arrive at a negotiation with his employer, despite the fact that it is only a one-to-one relationship rather than one to many. He will have a better chance of arriving at a mutual settlement than will someone who is not that unique, and undoubtedly, therefore, this is an element where you get some response to bargaining, but except for the exceedingly unique ones, there is very little latitude, and even in the most unique there is a question whether or not the ballplayer gets the most that he could get. I don't think he does.

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2 Q Are you familiar with the process of building
3 a baseball team with the type of talent and depth of talent
4 that expert baseball management people would require, would
5 feel necessary in order to build a competitive team?

6 A I am familiar with the training matter, the re-
7 cruiting matter, the minor league matter, yes, and I have
8 studied this and read the Celler report in great detail
9 to understand the process of building a team and getting
10 talent, so I have, I think, an economic background in this
11 subject.

12 Q I seem to derive from your answer to a question
13 or two before that it was the rare ballplayer that had
14 sufficiently unique abilities to cause the club to extend
15 itself to him, and I suggest to you, Mr. Nathan, that
16 the building of a ball club gives a large number of players
17 on the team a special uniqueness, and that it is not the
18 isolated case.

19 Would you agree with that?

20 A In degree I would agree with it, but how does
21 one ever test -- it seems to me in an economic sense,
22 how does one ever test whether that salary which the unique
23 or the number of near-unique players reach, whether that
24 is a matter of stretching or some concession by management
25 in order to keep them playing rather than to go out and
be a hold out and lay off for a year, because that alternative

1 to the unique or the near-unique player is hardly an
2 attractive alternative, whereas in the case of Washington
3 this spring we had a hold out with Frank Howard, and
4 finally Bob Short did give Howard an increase, but whether
5 Frank Howard may have gotten another \$50,000 from the
6 Cleveland Indians or the Cincinnati Reds, no one knows
7 because he didn't have this alternative, and I happen to
8 believe that the market place is a very disciplined determin-
9 ant of benefits to the source of labor and benefits to
10 the market for labor, and I believe that it is the very
11 limited negotiation that takes place on this one-to-one
12 basis which precludes us from getting other than what I
13 think you properly characterize as a stretching or a con-
14 cession by the manager to get this unique or a number of
15 near-unique players.
16

17 Q Don't you think in the case, the example that
18 you cited, that the Washington Club needed player Howard as
19 much as player Howard needed the Washington Club as an
20 employer?

21 A I certainly do, but player Howard may have
22 gotten 30,000 or \$40,000 more if he had been a relatively
23 free agent in terms of negotiating with other clubs.

24 Q Well, your analysis on that point, I believe your
25 entire analysis considers economic factors really to the

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exclusion of other matters with which baseball is concerned. You mention having read the Celler report in the mid-fifties, I believe. Were you referring to the report of the Celler Committee in 1952 on organized baseball?

A That is right.

MR. HOYNES: I believe we have a stipulation on this matter. I don't think it is in evidence yet.

Q Did you read the section of that report that relates to the history of organized baseball?

A Yes, I read, going back into the nineteenth century, quite a bit about the leagues and the teams and the changes, yes.

Q Did not that history reveal that in the early days of the game, before the organization of baseball prevented the revolving of free mobility of players, that the integrity of the game was frequently, if not constantly, called into question?

A Yes, sir.

Q So history teaches us that while some individual players may achieve some few more dollars if they can bargain with additional clubs, that the industry as a whole pays a price, and a price that is ultimately paid by all of the people associated with the industry, includ-

ing the players?

A But one must judge that in the context of the times. If I may, your Honor, I happened to be an expert witness in four Indian claims cases going back to the 1830's having to do with the Piute Indians and the Snake tribe and the Mono tribe, and the Chippewas, and the Winnebago tribe, and what I read in the early history of baseball is no different at all from what I read about mineral rights and land rights and forest rights in the early history of the West, in terms of the corruption and the integrity and the buying of U. S. agents even in this process.

Now, I think, myself, that as I observe what has happened to our variations in our economy and the degrees of principles we establish that what happened in the 1870's and 1880's and 1890's would not be likely to happen today in the context of our principles of good business and Better Business Bureaus, and monitoring economic activities, and I think the disadvantages that occurred then would not be very likely to be repeated today.

Q Mr. Nathan, a great deal is at stake here; the future of baseball, perhaps. You can not assure us that the integrity of the game would not be called into question again by a system which permitted players to negotiate with rival clubs, can you?

1 A No, sir.

2 Q You mentioned, in discussing your familiarity
3 with baseball, that you had testified a few years ago
4 in a case involving the transfer of the Milwaukee Braves'
5 franchise to Atlanta.
6

7 Was your testimony in that case not limited
8 almost entirely to demographic data concerning the Milwaukee
9 area and to an economic analysis of the impact upon the
10 Milwaukee area of the departure of the Braves?

11 A Those were two out of the three subjects that the
12 study was concerned with. You are correct. One had to do
13 with the demographic and economic characteristics of the
14 area and the impact of the removal of the Braves, but
15 there was a third that concerned itself with the economic
16 operations of the Braves in relation to population, in
17 relation to its standing in the league, in relation to the
18 factors that were influencing community acceptance, such
19 as, for instance, the latter stages of the stay of the
20 Milwaukee Braves was characterized by a very substantial re-
21 duction in attendance, attributable to community management
22 relations, so that we did get into some aspects of the
23 operational side of the Milwaukee Braves in addition to the
24 demography and the impact on the community.

25 Q But you did not make any economic study of the

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2 reserve clause and the relationships of the clubs and
3 players?

4 A Not at all, sir.

5 Q You stated that you would not necessarily expect
6 the players, if they were free to choose their employer
7 club, to gravitate, I think was your word, to the highest
8 paying clubs, but that there were other factors which would
9 influence the decision?

10 A That is right.

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Q Would not the offer of significant salary increases be a predominant factor in that decision, however, if one were to look at the player group as a whole without focusing on one player who might have strong communities?

A Yes, I think that the salary level offer will be the most important single factor.

Q Are you aware that among the 24 major league clubs there is a wide disparity of financial support, economic base, both in terms of matters that you discussed, population and city, but also in terms of the individual financing of the club and the owner of the club?

A Yes, I know there is very considerable difference. I saw that in Washington where Bob Short took over, a man of very considerable means, and despite the fact that Washington is one-tenth the major market area of New York City and is near Baltimore, that he was able to attract Ted Williams, which was an important factor, and his resources I think will reveal themselves in the economic profitability.

By the way, I would like to emphasize, your Honor, that profitability is different from gross revenues, that sometimes you have clubs with very high gross revenues that aren't very profitable.

And basically, and I don't say this critically,

1 because I think it is the heart of the American system,
2 it is the bottom line, what businessmen refer to sometimes
3 roughly as the bottom line, the net, which is what determines
4 whether businesses are successful or not, and that is
5 true of baseball, too, because one is concerned with the
6 expenditure side as well as the revenue side, and I do
7 believe that we sometimes overlook this factor in judging
8 whether the so-called big cities or the big market areas
9 will overwhelmingly dominate the smaller ones, and this
10 doesn't always happen.
11

12 Q In terms of practicability to pay, to develop
13 players, to pay players, there is a wide disparity among the
14 range of the 24 major clubs?

15 A Certainly.

16 Q You testified that the offer of salary is an
17 important and indeed perhaps predominant factor in a player's
18 determination as to where he will play.

19 A I believe it is.

20 Q Is it not the inevitable conclusion, therefore,
21 that the clubs with significantly greater resources will
22 be likely to make significantly better offers to players and
23 therefore achieve a team with considerably greater strength
24 than the clubs who are more limited in their financial
25 ability?

1 A Not necessarily. You have that capability
2
3 today in terms of trades and buying contracts. If that
4 were the only consideration, we would have today attractive
5 offers to purchase players from teams who are in need of
6 money or who are weak financially, and if this were the
7 only consideration we would have today a tendency for
8 the top players to gravitate to the one team. That is one
9 factor, and we don't see it.

10 The second factor is I do believe we are not
11 dealing with a fungible or an easily interchanged commodity.
12 A ballplayer is not like a ton of carbon steel or a ton
13 of nickel steel or a ton of another alloy, as we know class-
14 ifications. There are changes in some ballplayers. They
15 are desired in some places and not in others. While as an
16 economist I can say I would agree with you without question
17 that the salary level will tend to attract a player to where
18 the salary offer is the highest, nonetheless we don't see
19 under the purchase system, which provides this transfer-
20 ability, a tendency for all the good players to be in New
21 York or Chicago.

22 Q That tendency that you described as being potent-
23 ially present with the trade system, that tendency would
24 be, nevertheless, accentuated, accelerated greatly if the
25 player were now the determining factor rather than the

club as to whether he would be transferred to another club?

A No, I don't agree with that, because I think that the owner of a club will be more money-responsive or money-conscious than a player. An owner of a club who is offered say a quarter of a million dollars for the contract of a player will be inclined as a businessman, as an investor, to look at the monetary reward more exclusively than, in my judgment, would a player who has these other factors: A family, community relationships. So that I would frankly, as an economist, expect the opposite. I would expect that under the contract transferability that there would be more tendency for a concentration of players through the transferability in sale of contract than by the free negotiation.

Q You haven't discussed this with any club owners or general managers, you do not know their actual views?

A I do not.

Q Do you know how many players move from club to club for \$250,000 or \$300,000 prices?

A No. I know there are trades going on, I read them in the paper, but I have no statistics. I have no idea of how many sales at \$250,000 or \$300,000.

Q Is it not true that almost all those trades are the assignment of player contracts for, in return, the

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2 assignment of other player contracts and not the sale of
3 a player contract for cash?

4 A Usually the trades are -- I don't know how much
5 the cash is, but often it involves the trade of players
6 plus cash, but I am not knowledgeable on the specifics.

7 Q There is no evidence that you are aware of to
8 suggest that the club owners are in fact motivated by the
9 money considerations that your economic analysis would lead
10 you to believe?

11 A That is correct.

12 Q You discussed the training programs that other
13 industries in the United States and I suppose throughout
14 the world engage in, and you mentioned the figure of
15 three to nine months as being a typical time for training.

16 Do you have any idea how long it takes to train
17 a major league ballplayer?

18 A No, I really do not.

19 Q Would you expect it to be in the three to nine
20 month range?

21 A No. I would expect it to be longer.

22 Q You would expect it to be considerably longer?

23 A Yes.

24 Q If you are a retail establishment -- you mentioned
25 that as one of the kinds of businesses that trains employees --

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and you are training 100 employees, how many of those employees would you expect to be capable of performing their assigned tasks at the end of a training period?

A I really don't know, but I am sure the percentage may be half. One tries to do a preselection. Although I happened to serve in an advisory capacity to a transit company, and I was shocked at how many people they bring in -- how many they recruit for bus drivers and how many they drop even before the end of the training period, let alone the probation period. But I would think that you would expect, you know, a third or a half, a fairly substantial portion, to be eligible and available and suitable for employment.

Q Do you have any idea what proportion of the players that enter baseball at the minor league level become regular performers at the major league level?

A I noted those figures, but I don't remember them. I am sure it is a very, very small percentage of those who enter pro ball that end up in the major leagues, very small.

Q Much smaller than the results that you would find in a bank training program or a retail establishment training program?

A Yes, substantially.

Q And after a considerably longer period of time?

A Yes, sir.

Q What proportion of the gross revenues of an industry, say the banking industry or retail establishments, what proportion would you expect of those kinds of businesses to spend on their employee training?

A I have never discussed it, but I am sure it is a very small percentage, possibly one or two per cent of their payroll, maybe three per cent, but it would vary by industry and duration and what kind of training, what kind of recruitment they undertake, but it is a relatively limited percentage.

Q If I told you that approximately 25 per cent of gross baseball revenues are invested in training of young players, would you consider that to be a significant difference between the training expenses of baseball and the training expenses of these other callings which you described?

A Yes, I think that would be significantly different.

Q So that in baseball there is a considerably greater investment, if you will, in the training program than the typical industrial case with which you are familiar?

1 A In total baseball, yes.

2 Q You also mentioned that although other industries
3 do invest large amounts in training, although we have seen
4 it is not nearly as much of their gross revenues as baseball,
5 that they invariably expect to lose to some of their
6 competitors some of the products of their training system?

7 A That is correct, they do.

8 Q Is it not true that in the military and in many
9 branches of government service and, indeed, increasingly
10 in private industry significance, additional training that
11 might be measured in months and even perhaps in years, is
12 conditioned upon employment pledges or the signing of
13 employment contracts by the prospective trainee?

14 A Not to my knowledge.

15 Q You are not aware of any such contracts or arrange-
16 ments?

17 A No, sir.

18 Q In answer to a hypothetical question posed by
19 Mr. Topkis, you discussed the effects of adopting long
20 term contract arrangements with players. Did you consider
21 the practicability of adopting long term contracts from
22 the club financial point of view and considering the useful
23 life of a baseball player and the uncertainties of continued
24 high performance of a ballplayer?
25

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2 A Well, yes, I did. I am assuming that if a club
3 gives a five-year contract to a player who breaks his
4 arm in a way that he can't continue to play that there
5 would be a provision in the contract that beyond certain
6 accident or employment compensation provisions and health
7 provisions in the contract that they would not be required
8 to pay him for the whole five years if his capability is
9 terminated. It would induce some added risk on the part
10 of a club, but I don't think that one can say that a five-
11 year contract at a given amount or an increasing amount
12 would commit the club for that full amount irrespective
13 of what develops.

14 Q So that is a qualification to the five-year
15 concept that you were discussing?

16 A Yes.

17 Q Would a player who is working under a five-year
18 contract be likely to have the same incentive to improve
19 his skills and performance as a player who is in a position
20 to negotiate his contract again at the end of every season?

21 A In my judgment, he would have more incentive,
22 because when he is working with one company -- with one
23 team and he knows that unless that team sells him he is
24 always going to be with that team, I think how much more
25 he can make out of that team is limited by how successful

1 he is in negotiating with his manager, but if he knows
2 two years hence or three years hence or four years hence
3 he is really a free agent and he is going to be able to go
4 out on that market and be an openly competitive product
5 or has an openly competitive service, in my judgment the
6 inducement for his achieving outstanding fame and reputation
7 would be even enhanced by that.
8

9 Q So that you suggest that he would have a greater
10 incentive to improve his individual record so that his
11 ability to bargain would be enhanced?

12 A I think so.

13 Q Is there not some tension between a major league
14 baseball player's desire to improve his individual record
15 and the qualities of team play that produce a winning team,
16 that is to say, a player sometimes must try to hit behind
17 the runner, he is going to be out, his batting average is
18 going to suffer, but the runner is advanced to a scoring
19 position; is there not some inconsistencies between the
20 desire to increase your own individual standing so that
21 you will have a greater bargaining power with strange
22 clubs which care not whether you advanced a runner the year
23 before?

24 A No, I don't believe so. I think if a club is
25 going to hire or employ someone who has been with another

club, I think they are going to very much take into account that employee's personality and character and teamwork and team cooperation, because no entrepreneur, whatever business he runs, likes to bring into his firm someone who is going to destroy morale.

From an economic point of view, one has to hire not in terms of the individual as an individual player, but one has to take into account what he is going to contribute to the totality of the enterprise.

Q It is not as likely that other clubs will be as aware of the team contribution of a player as the club for whom the player has made the contribution during the year, is that not true?

A I am sure it would be less, Mr. Hoynes, but how much less in this relatively small family. We are dealing with a relatively small family of 24 entities and a limited number of people in each entity.

If a fellow was self-interested and an egotistic person who was disrespectful and disregards the interests of the team, I suspect that his reputation gets around pretty quickly. I would assume so in this environment.

Q But you would not deny that the system you suggest would put emphasis on individual achievement?

A It might, Mr. Hoynes.

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2 MR. HOYNES: I have no further questions,
3 your Honor. Thank you.

4 THE COURT: Mr. Kramer?

5 MR. KRAMER: No, thank you.

6 THE COURT: Any redirect?

7 MR. TOPKIS: May I have just a moment, your
8 Honor?

9 THE COURT: Certainly.

10 (Pause.)
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