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Q It was to try to win the pennant?

A Yes, sir.

Q And the world series.

A Yes, sir.

MR. HUGHES: I have no further questions.

THE COURT: Mr. Kramer.

MR. KRAMER: I have none, thank you.

MR. TOPKIS: Could we have just a minute or two,
your Honor?

THE COURT: Surely. Take your time, please.

(Pause.)

CROSS EXAMINATION BY MR. TOPKIS:

Q Mr. Dale, do I understand it to be your testimony
that baseball club owners are motivated primarily, predom-
inantly by local pride and similar considerations rather
than by the desire to make money?

A My testimony was that some are. All are motivated
primarily by the desire to win.

Q And I suppose then that it would be your testimony
that the Brooklyn Dodgers moved to Los Angeles for sentimental
reasons?

A I don't know all of the reasons why they moved,
but I am certain that the move included that motivation,
yes, sir.

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2 Q Really?

3 A Yes, sir.

4 Q Do you have the idea that there was any connection
5 whatsoever between the ownership of the Brooklyn Dodgers
6 before the club was moved to Los Angeles and Los Angeles?

7 A Yes, because economic success, of course, produces
8 the possibilities to win. They go hand in hand, of course,
9 but the primary motive is to win.

10 Q So it is your notion that when Walter O'Malley, or who-
11 ever it was, decided to move the Brooklyn Dodgers to Los
12 Angeles, he did that in order to win and he thought he would
13 do better economically in Los Angeles and then would win more,
14 is that right?

15 A I have no idea, of course, what Mr. O'Malley had in
16 his mind, but I would suspect that that is the case, yes, sir.

17 Q Do you happen to know what the Dodgers' record was
18 in the years before they moved to Los Angeles?

19 A No, sir, I do not.

20 Q You haven't the faintest idea?

21 A I have the faintest idea, but you didn't ask me that.

22 Q What is the faintest idea that you have?

23 A They were a successful club, yes.

24 Q They were one of the most successful clubs in the
25 major leagues, weren't they?

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2 A Of course.

3 Q They were winning pennants and world series quite
4 frequently, isn't that right?

5 A Yes, sir.

6 Q And you think they thought they would do better if
7 they went to Los Angeles and made themselves a bundle of money
8 and be able to win more for that reason?

9 A I think perhaps they included in their considerations
10 the fact that unless they moved they would not continue to be
11 as good.

12 Q History teaches nothing, is that your view?

13 A No, I didn't say that.

14 Q Would you stake your reputation as a lawyer on the
15 proposition that those were the considerations which moved --

16 A I am sorry, I did not hear the question.

17 THE COURT: Would you read it, Mr. Court Reporter?

18 MR. TOPKIS: I wasn't finished, your Honor.

19 THE COURT: All right.

20 Q Would you stake your reputation as a lawyer on the
21 proposition that the thinking that you attribute to Brooklyn's
22 management was the thinking that moved them?

23 A That is not a legal question so that my reputation
24 would not be based on that, I don't think.

25 Q Would you stake your reputation as anything on that

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kind of a proposition?

A Yes, I testified here to that, yes.

Q I suppose the New York Giants, too, were moved by the desire to win more pennants when they moved to San Francisco?

A My testimony was that I would suspect that included in the factors that they considered was the fact that unless they moved they may not be able to continue their success.

Q Why not?

A Because of the economics of the situation, perhaps, and it takes economics, it takes a large investment in baseball in order to produce a winning team, and I can testify to that of personal knowledge.

Q You don't have the idea that the Giants had been a money losing club before they moved, do you?

A I don't know. I said that I believe that among the factors included in their consideration was that unless they moved, the economics would not permit them to continue to be as successful as they were in the past.

Q As a lawyer, wouldn't you agree with me that that is the sheerest speculation on your part and that you have no idea what went into these people's thinking?

A I said at the beginning of my testimony --

Q Thank you.

2 A -- that I did not know what they were thinking. You
3 asked me what I thought they were thinking and I gave it to
4 you.

5 Q Do you know how many times the club formerly known
6 or still known, for that matter, as the Braves have moved in
7 the last seventeen years?

8 A No. I know they moved from Boston to Milwaukee to
9 Atlanta.

10 Q And do you believe -- and I am asking your belief
11 now -- that it was the desire to win that predominated in
12 the thinking of the Braves' management?

13 A My belief is that among the considerations that
14 they took into account in making those moves was the fact
15 that unless they moved the economic situation in their club
16 would be such that they could not continue to compete as
17 successfully.

18 Q When you formed this investment syndicate that
19 bought the Reds, did you issue a prospectus or registration
20 statement or anything like that?

21 A No, sir, we did not.

22 Q Did you do any written solicitation of participations?

23 A No, sir, we did not.

24 Q Do you happen to know how many moves there have been
25 of franchises in the American League in the last 20 years?

1 A No, sir, I do not know the record there.

2 Q But I suppose that it would be your belief also that
3 there the managements were moved by the consideration, among
4 others, of a desire to win more pennants?
5

6 A Yes, definitely.

7 Q Are you under the impression that there is some-
8 thing peculiar which marks the people who manage baseball
9 clubs in that they have a lust to win rather than the desire
10 for money which is said to characterize our capitalist system?

11 A No, I think the desire to win is characteristic of
12 our people in this country, and baseball owners, despite the
13 press reports to the contrary, are like other people, and they
14 like to win and they like to bring pride to their city.

15 Q They like to bring pride to their city wherever that
16 city might happen to be this year or next year, is that the
17 idea?

18 A No, I didn't say that.

19 Q How many times have the team known as the Athletics
20 moved in the last seventeen years, do you know?

21 A I don't know. They moved from Philadelphia to
22 Kansas City and now to Oakland.

23 Q And you think that in both of those moves they
24 were chasing victories rather than dollars?

25 A I did not say that.

2 Q I asked you --

3 A I said that was one of the considerations.

4 Q I am sorry?

5 A I said that was one of the considerations. I did not
6 say that.

2 7 Q That is your belief?

8 A Yes, it is.

9 Q That is your belief?

10 A Yes, sir, it is.

11 Q Do you happen to know the owner of the Oakland team?

12 A Yes, sir.

13 Q Mr. Finley?

14 A Yes, sir.

15 Q He is an insurance man, isn't he?

16 A Yes, sir.

17 Q What did you pay for the Bengals?

18 A The Bengals?

19 Q Yes.

20 A I would rather not answer, if your Honor would permit.

21 MR. HUGHES: This is football.

22 MR. TOPKIS: This is the football club and certainly

23 Mr. Hughes is not competent to object on their behalf. He
24 is not their counsel, so far as I know.

25 MR. HUGHES: Well, I am competent to rise when the

witness indicates that he would prefer not to answer and to indicate that I would trust your Honor would not force him to, and that is the reason I rose.

MR.TOPKIS: Your Honor, this business of offering half the story I think has gone far enough. I didn't go into this on direct. It was gone into by Mr. Hughes. He asked the man, "Did you buy the Bengals?" The man said, "Yes."

I want to know how much he paid for it. It seems to me it is entirely pertinent.

MR. HUGHES: I object to it as incompetent, irrelevant and immaterial to any significant issue in this case.

THE COURT: Are you about to get up, Mr. Kramer?

MR.KRAMER: Yes, sir. Sometimes one wonders whether when two lawyers get up, they cancel each other or emphasize their objection, but I wish strongly to join in Mr. Hughes' objection. I think the answer to the question is irrelevant and will not advance any issue of fact in this case which your Honor will ultimately find.

THE COURT: Mr. Topkis, I really do not see the full value of going into that particular point insofar as asking for dollars. Can you reframe your question and get something in rough figures? Would that content you?

MR. TOPKIS: I will try, your Honor, and let's see. May we do it that way?

THE COURT: Certainly.

Q Mr. Witness, did you pay more or less for the Bengals than you paid for the Reds?

A Approximately the same amount.

THE COURT: Thank you, Mr. Topkis, for your fairness.

MR. TOPKIS: Not at all, your Honor.

Q You paid about the same amount. All right. Now, of course, in football there is not the reserve system which characterizes baseball to its fullest extent, is there?

A Not exactly the same. There is a reserve system, however.

Q Oh, yes, but in football a player at the end of his last year of his contract -- and if it is only a one-year contract, at the end of that year -- may decide to play out his option by which we mean play the next year for a stipulated figure; isn't that right?

A Yes, sir.

Q In your judgment, does that render the operation of professional football economically or otherwise impossible?

A No, sir.

Q You bought into football on that basis, didn't you?

A Yes, sir.

Q Does the existence of the football right in a player to play out his option make you regard your investment in

football as speculative or risky or anything like that?

A Well, it is not one of the finest investments that you can make, in my belief. Any investment in professional sports is not the finest investment you can find from a business point of view.

Q Agreed, but from some point of view you decided to invest in the Bengals and so did the other members of your syndicate.

A Yes.

Q As you had decided to invest in the Reds?

A And the primary reason for that investment, primary reason was --

Q I don't think I asked for the primary reason.

A Sorry. I apologize.

THE COURT: All right.

Q Did you ever play baseball, Mr. Dale?

A Only as a high school sandlot player, not organized baseball, no, sir.

Q Now, you testified that you made a legal inquiry before you bought the Reds.

A Yes, sir.

Q And you made the same kind of legal inquiry when you bought into the Bengals, I suppose, or bought the Bengals?

A Yes, sir.

Q And you found that the Bengals were not exempt from the antitrust laws, didn't you?

A Yes, sir.

Q That didn't deter you from making the investment?

A No, sir.

Q And in your study of baseball status under the laws, you found, I suppose, that baseball is not exempt from the operation of the 13th Amendment?

A Yes, sir.

Q And you considered that?

A Not specifically, no.

Q Did you consider whether baseball is exempt from the operation of the antipeonage statutes?

A I am not aware of any antipeonage statutes that apply here.

Q Very well. Did you consider whether baseball was subject to the operation of the antitrust laws of the State of Ohio?

A Yes, sir, we did.

Q And what conclusion did you reach?

A We concluded that it would not violate the antitrust laws of the State of Ohio.

Q It would not violate the antitrust laws of the State of Ohio?

2 A That's right.

3 Q But it was subject to them, is that right?

4 A Well, no case had been held about this. It had not
5 been raised in the State of Ohio, so we did not know.

6 Q You didn't have any idea that it was exempt from the
7 operation of the laws of the State of Ohio, did you?

8 A The issue had never been raised.

9 Q I am asking you whether you had a professional opinion
10 on that subject.

11 A My opinion would be -- was then and is now -- that
12 if it were raised that the reserve system would be held to
13 be reasonable in light of the circumstances and it would
14 therefore be held not violative of the antitrust laws.

15 Q Very well. And in order for a Court to determine
16 that question it would first have to determine the question
17 of whether baseball was subject to the antitrust laws of the
18 State of Ohio, isn't that right?

19 A That's true, yes.

20 Q And so you reached the conclusion that it was subject
21 to the antitrust laws, but being a reasonable restraint it
22 did not violate the Ohio laws, is that right?

23 A No, sir. I reached the conclusion that if it were
24 held subject to the antitrust laws of Ohio, it would then be
25 held not violative of such laws. I did not make the decision

whether it was subject or not.

Q You just did not form any judgment on that subject?

A I assumed -- I went to the assumption that if it were held to be under the antitrust laws of the State of Ohio it would also be held that the reserve system did not violate it.

Q Did you consider whether it would violate the anti-trust laws of the State of New York?

A No, sir, I did not.

Q Nor of any of the other states in which the Reds play National League opponents?

A No, sir, I do not.

Q Did you consider the question -- pardon me. There are two questions here: First, whether baseball was exempt from the operation of any of those state antitrust laws, and second, whether if the state antitrust laws were applicable baseball would be held reasonable or unreasonable lawful or unlawful under those laws.

Did you consider either of those questions?

A In no other state other than Ohio, no, sir, I did not.

Q And in Ohio you did not consider the question of whether the law applied but merely considered on the assumption that the law did apply that baseball would be held lawful, is that right?

A I did consider it, and not having an answer, since there was no legislative exemption, there was no court ruling on it, I considered the question, and in resolving the question I said to myself, if it were subject to the Ohio antitrust laws, what would be the result if a case were brought, and I concluded that if a case were brought it would be held that the reserve system was reasonable in light of the circumstances and therefore not an unlawful restraint

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2 of trade.

3 Q Who acted as counsel to the investors in the
4 Cincinnati Reds?

5 A Mr. Henry Hobson, a partner in the firm of Frost
6 & Jacobs.

7 Q Did Mr. Hobson render an opinion on the subject
8 of the application of the Federal or State antitrust laws?

9 A A written opinion, no, sir.

10 Q You mean you invested \$7 million without having
11 a written opinion from counsel?

12 A Yes, sir. I am an antitrust lawyer myself.

13 Q Well, so am I. And there was no written opinion
14 rendered by anyone on the basis of which this \$7 million
15 investment was made?

16 A There were written legal opinions but not on
17 this question.

18 Q On this question. I am sorry. I should have been
19 more clear.

20 A No, sir.

21 Q Mr. Dale, is it your opinion that the reserve
22 system as it today operates in baseball is indispensable
23 to the economic success of baseball and to the acceptance
24 by the public of baseball?

25 A Yes, I do.

1 Q And in forming that opinion do you include every
2 aspect of the reserve system as it today operates in baseball?
3

4 A I include the system as a whole as it is operating
5 now, yes.

6 Q Let me ask you what your opinion would be as to
7 some possible modifications of that system. Let us suppose
8 that the system were modified in this respect and in this
9 respect only, namely, that when a player and a club got
10 into a dispute as to what the player's salary should be for
11 a given year, then pre-season, in advance of the season,
12 either the player or the club would have the right to submit
13 that dispute to impartial arbitration.

14 In your opinion, would that one modification of
15 the reserve system be fatal to baseball?

16 A It would not be fatal to baseball, of course.

17 Q Thank you --

18 A Because baseball -- if I may explain my answer.

19 Q You may.

20 A Because baseball is run by people who have
21 ingenuity and skill and I am certain that they could handle
22 it. My opinion would be, however, that such a plan as
23 you propose would be perhaps the most unfair thing that
24 you could do to the ballplayers as well as to the owners,
25 and in that regard would weaken baseball considerably.

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2 Q You come here as a friend of the players and
3 tell us that, is that right, I mean in their interest?

4 A I come here as a witness to this. I am not here
5 as a friend of anybody.

6 Q You are here to protect your investment, aren't
7 you?

8 A I am here to testify in this case. I am very much
9 interested in baseball; I am very much interested in the
10 ballplayers and their success; and I would resent any
11 implication that I am not here in the interest of our ball-
12 players, because I most -- any place I am, I am in the
13 interest of our ballplayers.

14 Q And you are here to protect that \$7 million in-
15 vestment, aren't you?

16 A That is part of the reason. I have an invest-
17 ment, obviously, yes, but I am not here primarily to follow some
18 dollars,, if that is what you are trying to infer, because
19 I am very much interested in the ballplayers.

20 Q It is your testimony, then, again that people
21 in baseball on the management side are not predominantly
22 interested in dollars?

23 A I am not predominantly interested in dollars.
24 I am not interested in losing any, but I am interested in
25 winning the pennant for Cincinnati.

Q What is your personal investment in the Reds?

A I have no personal investment whatsoever. The company which I head has the investment, the newspaper.

Q Do you have an equity interest in the newspaper?

A Oh, yes. I am the largest shareholder.

Q You are the largest shareholder?

A Yes.

Q Could you tell us the percentage? I don't mean to inquire into something confidential.

A It is relatively minor. It is less than 5 per cent.

May I make one correction, if your Honor please?

THE COURT: Surely.

A I am the largest individual shareholder.

Q Of the company that owns the Enquirer?

A Yes. There is a corporation that owns more shares than I.

Q In what respect, Mr. Dale, would the existence of a system of arbitration as I outlined it to you be unfair to any player?

A Because if you referred the salary dispute to an independent arbitrator, it is my judgment that the resolution of the dispute would be based on statistics alone, field performance alone, so many errors, so many hits, and

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2 for example, as part of the team and part of the whole
3 operation, I think that is a very important consideration
4 and I think that that would be lost in such a reference
5 to an arbitrator.

6 Q Tell me this, if you will, Mr. Dale: In negotia-
7 tions as they are today carried on between player and manage-
8 ment, which side has the better array of statistical data
9 available to it for negotiating purposes?

10 A Most of the data is publish so both sides have
11 it available.

12 Q Is there any data public or published on how
13 many times you advanced a runner from second base in the
14 eighth inning in a tie ball game?

15 A No, not public.

16 Q And there are lots of other such data which
17 are regularly accumulated by club management, aren't there?

18 A Yes, and in most cases available to the player.

19 Q On the Reds?

20 A I think on all clubs it is available to the
21 player.

22 Q Do you represent to this Court that the Reds
23 today in negotiating with its players makes available to
24 those players all of the statistical information which the
25

1 club possesses on the player's performance?

2 A I did not say that. I said for the most part
3 available to the player.
4

5 Q For the most part. What do you hold back?

6 A I don't hold back anything. I don't know what
7 the general manager holds back. What I am suggesting to you
8 is if a player would inquire of his general manager or his
9 field manager as to any of these aspects of his performance,
10 my belief is that the player would be given the information.

11 Q But I thought you just told me that the club
12 doesn't give the player all of the information.

13 A My belief is that if a player asks for specific
14 information he would get it.

15 Q And suppose the players ask for all information
16 in the possession of the club.

17 A I don't know the answer to that question. That
18 is a supposition. I don't know the answer.

19 Q You don't represent to the Court that today
20 Cincinnati management makes such information available to
21 the players in salary negotiations?

22 A Not only do I not represent that, I did not say
23 that.

24 Q In referring to an arbitration system, you would
25 agree with me, wouldn't you, that the parties would be
free to present to the arbitrator any information that they

1
2 thought pertinent?

3 A In all arbitrations you are permitted to do that.

4 Q I would agree with you. And one thing is sure
5 today, isn't it, and that is that players are not regularly
6 given information on the salaries of other players by club
7 management?

8 A So far as I know, that information is not given
9 to them by club management. I understand that it is avail-
10 able to them otherwise.

11 Q What is the basis of your understanding?

12 A My understanding is that it is available to them
13 through the Players Association, but I have no personal
14 knowledge of that.

15 Q Where did you ever get such an understanding?

16 A That is an understanding that I have from what
17 I have heard among the ballplayers, among our managers.
18 I believe that our managers know or feel that the ballplayers
19 know relatively each others salary. Salary is always a
20 subject of newspaper comment, etc. I have no personal
21 knowledge of that.

22 MR. TOPKIS: Your Honor, the witness volunteered
23 this information. I didn't ask for it. It is based on
24 hearsay.

25 On those two grounds I ask that the answer be

1 stricken.

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3 THE COURT: I am afraid you solicited it, Mr.
4 Topkis. I am going to allow it to stand.

5 MR. TOPKIS: Your Honor, deferring to you, of
6 course, might I invite you to ask the reporter to read the
7 transcript to see what my question was and what the answer
8 was?

9 THE COURT: Certainly. Would you be good enough
10 to do that, Mr. Court Reporter?

11 (Record read.)

12 THE COURT: In my humble opinion, I think this
13 witness in the last few minutes has put you on notice that
14 he was talking with respect to information he had gleaned
15 from various sources and yet you went forward. I will let
16 it stand.

17 MR. TOPKIS: Very well, your Honor.

18 THE COURT: I wonder whether you would like a
19 little recess.

20 MR. TOPKIS: It would be as good a time as any,
21 your Honor.

22 THE COURT: You are the one who has the burden
23 right now and if you want to go on, you ought to say so.

24 MR. TOPKIS: I would perhaps shorten my questions
25 if we took a recess now.

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THE COURT: That is an excellent reason.

THE CLERK: The Court will take a recess.

All rise.

(Recess.)

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THE COURT: Won't you please continue, Mr. Topkis.

MR. TOPKIS: Thank you, your Honor.

BY MR. TOPKIS:

Q Mr. Dale, just to fill in a point, we were talking before about a system under which the reserve system as it today exists were modified only to the extent that either the player or the club would have the right to go to arbitration over salaries if the player or the club so desired, and you testified in connection with that.

Let me ask you the same question with this modification: Suppose that the Arbitrator were empowered not to fix whatever figure came to his mind as fair, but only to choose between the figure offered by the player and the figure offered by the club. Do you have that assumption in mind?

A Yes.

Q Now, under such a system can you envisage any unfairness to either the player or the club?

A Well, I think there is an unfairness to the club because I think, as I indicated before, any time you take the employment relationship away from the employee and the employer you tend to lose something there, and I think that relationship is very important in baseball, and I would for one want to preserve it.

Q Well, as a lawyer -- you have been in private practice

for how many years, sir?

A Since 1948.

Q 1948. You have seen a great many industries, businesses, which use arbitration clauses, haven't you?

A Oh, yes.

Q And you have seen them survive and prosper?

A Yes.

Q And you have seen, I daresay, many industries and businesses where there are arbitration clauses as to wages and salaries?

A Yes.

Q And you have seen those industries survive and prosper, have you not?

A Yes.

Q Now, let me ask you about another possible alternative. Suppose the player at the end of five years of major league service were free to negotiate with other clubs in the other leagues from the league in which he had been playing, and that is the only change that there would be in the reserve system as it today operates, would you regard that one modification as fatal to baseball?

A I quarrel with your word "fatal," Mr. Topkis. As I have indicated before, I have confidence that we are capable of handling ourselves in some situations. It would be

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fatal to baseball as we know it now and fatal to the kind of baseball I think we should have, yes, sir, in that regard it is.

Q But you have confidence in the resourcefulness and skill of baseball's managers that they could solve that and most other problems?

A Well, I am certain that we are not going to die in the face of these things except to the extent that baseball is going to die in the way we know it now and the way I think it should be presented to the fans, yes.

Q How would it die?

A Well, No. 1, on the proposition that you put, as you are aware, I am sure, it takes quite an investment to bring a ballplayer to the major league level and it takes a number of years before you can even begin to break even on that kind of an investment. At the end of five years you would be perhaps reaching the level point. I am not certain exactly when that is. It would vary, I suppose, with each club, but at the end of that five years, also, you have invested quite a bit in promotion and building up this ballplayer for his value. Your proposition does not say to me is he just going to walk away free and I have no compensation or I have nothing in return; am I losing my entire investment on him? If so, in that case I probably would not be willing to make the

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investment necessary to bring a ballplayer to major leagues, nor would I be willing to make the quite sizeable promotional investments that we make to build up the prestige and the notoriety of the ballplayer and his skill and make him a public figure. If he is going to leave us at his will and be free to walk away from us at any time, I would be much more reluctant to do the kind of thing that we are doing now for the good of the player and the club than I would under the present system, and therefore I think it would be very damaging to baseball, yes.

Q Are you familiar with the average life in the major leagues of a baseball player who spends at least sixty days in the majors?

A I have heard discussions of it. I do not have the figures, no, sir.

Q It has been suggested here that that average life is 4-3/4 years and I will say to you that it was that figure that made me suggest to you the five-year figure that I did on my previous line of questions.

A Yes, that's right, and I understand that, and that would be about right in my judgment.

Q Well, with players average lives in baseball being 4-3/4 years, you do your best, do you not, as a soundly operating manager, to recoup your investment in the player's

development within that 4-3/4 year period, do you not?

A We try to recoup all our investments as quickly as possible, but the average life of the ballplayer, that average is arrived at by taking into account, of course, the fringe ballplayers which are traded frequently, but your club and the fan acceptance is dependent upon the established ballplayer, and among the established group of ballplayers it would be my judgment -- I have no figures on it -- it would be my judgment that the life of the established ballplayers would be, of course, considerably more, and it is the established ballplayers that is the basis for your fan acceptance, and the basis for your performance on the field, too.

Q Well, let us suppose that the assumption we have been operating on, namely, that a player were free at the end of five years to negotiate with the clubs in the other league were modified to this degree, that the club which had employed the player had a first refusal, if you will, or, to be more specific, the right to match the best offer which the player could get from any club in the other league; that would protect the club, would it not?

A It would expose the club, not protect it. It would expose me, for example, if I had an established ballplayer that had been with me for five years, and here I have invested some place between 350,000, \$400,000 to even bring him to the

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Dale-cross

major leagues, and then we work with him for five years and he becomes an established ballplayer and I have promoted him and we have done all of these kinds of things, and then he walks away, and then someone who wants to pick the right cherry off the tree, so to speak, comes in and offers some fantastic price, and then I am forced to match him and we get into a wild jungle which, in my judgment, in the long run, would be very detrimental to the ballplayers as well as to baseball as a whole.

Q Well, that price that was offered by the other club would represent the value of that player's services to the other club and to the player, wouldn't it?

A Not necessarily, no. Many times an offer might be made for other reasons, because of the publicity that is involved in trying to beef up a sagging attendance, et cetera, et cetera. These kind of things might play a part in it, but not necessarily have anything to do -- well, not anything -- would not necessarily be truly related to the player's value.

Q Well, a player's value has relationship to his draw at the box office and his use as a publicity vehicle, doesn't it?

A Yes.

Q Don't you believe that a player ought to be compensated for that part of his value as well as the part which he

contributes with his glove and bat?

A I most certainly do, but, you see, a player that is established on my club for five years, I have some knowledge of what his value is. An outsider who is just bidding blind is running some risk as to what that value is.

Q And presumably would bid lower?

A He may bid just as high because he is willing to take the risk, but I am not willing to risk my investment. You see, if I am going to lose a ballplayer because some wild-eyed guy, who has got a lot more money than I have -- and you must keep in mind you are talking to me, and we are a relatively small franchise; we are not loaded with money, and we try to make the thing operate on its own money without putting in a whole lot of new money in it after we get started here -- there are other owners who have unlimited resources and they are willing to go around and pick all the stars. Then the very thing that I fear would happen with your modification, that is, the rich would get all the stars and the poor would be left with the hindmost, that would happen, and baseball would be destroyed.

Q Well, do you have the idea that the players ought to subsidize the poor clubs?

A I have no such idea whatever.

Q Isn't that what you are suggesting?

jkbr 8

Dale-cross

A Our players receive compensation as high as the other ballplayers, in ranges, I am certain.

Q Really? What is the basic --

A They receive --

Q Excuse me.

A They receive all the accruments that go along with it. They fly in first-class planes, they stay in first-class hotels. We have to pay the same expenses as our competitors do, business expenses, and so that I would resent the implication that because we are a small franchise, perhaps, that our players are any less well treated than the others, because they are not.

Q Well, but aren't you telling me, then, in a system where the players had some greater degree of freedom to negotiate with other clubs, they would be likely to be paid more than you can afford to pay them?

A In my opinion that freedom would be an illusion because in the long run --

Q Would you answer my question, please?

A I am sorry if I did not. Would you read the question again, please, sir?

THE COURT: Would you please, Mr. Court Reporter.

(Question read.)

A The answer is yes, I am telling you that in such a

jkbr 9

Dale-cross

system the poorer or weaker franchises would not be able to compete for the better players and therefore baseball would be destroyed, yes.

Q Baseball in Cincinnati might suffer?

A No, sir, because baseball is a league. Baseball is a unique business. It is not 24 businesses competing with each other. It is a league set-up and you are not going to have a league if the bottom three franchises fall out. That is what happened in the early days of baseball, from my reading of the history. But, you see, when a ballplayer enters into baseball, he just doesn't become a Cincinnati Red. He becomes a member of organized baseball, and he works into that system, and he is entitled to what that system can produce, but if you destroy the system, the ballplayer is going to be deprived of that great opportunity to perform and to participate in this tremendously valuable opportunity for him.

Q And isn't it conceivable that the Cincinnati franchise might be moved to an area where it could, in gate receipts, in market potential, compete with other clubs on a position of relative parity?

A Compete in what way? We are already competing with the other clubs with respect to player salaries and player accruals. In what way do you mean?

Q Are you telling us that you are today financially

1 jkbr 10

Dale-cross

2 able to compete with other clubs and pay your players as much
3 as other clubs pay theirs?

4 A I most certainly am telling you that. We do that.

5 Q In that situation why would you expect that with
6 players having a somewhat higher degree of freedom you would
7 not be able still to compete?

8 A Because, as I have tried to indicate -- I will explain
9 it again -- because after a short while that freedom would
10 be an illusion and the poorer clubs would be destroyed;
11 therefore the leagues would be destroyed and the system would
12 be destroyed, and therefore baseball would be destroyed to the
13 detriment of the ballplayers.

14 Q And that would take remarkably stupid behavior on
15 the part of the other club owners, wouldn't it?

16 A No, no.

17 Q Wouldn't it be to their economic interest to main-
18 tain a position of relative parity with you in bidding for
19 players?

20 A That is exactly why we have the reserve system,
21 because it is in our economic interest to try to keep this
22 balance, but, you see, everyone is going to try to be the top
23 dog, if you have a wild jungle, the survival of the fittest.

24 Q Isn't that what we call the American or free enter-
25 prise system?

jkbr 11

Dale-cross

A Of course it is. No question about it.

Q I thought so. Now, why should baseball get some exclusive treatment? Why should baseball be exempt from the laws which otherwise apply?

A Because in our free enterprise system -- and this is not unique to baseball alone, you must understand, and I am sure you do, because baseball is a unique system, and in recognition of that unique system, the laws have been passed recognizing the possibilities of unique businesses, and therefore not all restraints in trade are illegal, only those that are unreasonable, and we have devised in baseball and have been operating with it for many, many years successfully, to the benefit of the ballplayers, a system which has restraints. Everyone understands that. The question is, are they reasonable? You ask my opinion. They are reasonable. They are working. They are to the great benefit of the ballplayers and to the youth of America.

1
2 Q On what authorities do you rely in giving us
3 what I take it is your legal opinion that baseball's
4 restraints are reasonable?

5 A That is on my own judgment, my own experience
6 in baseball, my knowledge of the game.

7 Q Excuse me, please. My question was on what author-
8 ities do you rely?

9 MR. KRAMER: I object, your Honor.

10 Do you mean by "authorities" legal decisions?

11 MR. TOPKIS: That is what I have in mind.

12 A You mean legal opinions, not my own opinion?

13 Q Yes.

14 THE COURT: I must confess I didn't think you
15 meant that either.

16 MR. TOPKIS: I perhaps should have been clearer.
17 May I rephrase the question, your Honor?

18 THE COURT: Please.

19 Q To your knowledge, Mr. Dale, has any court ever
20 held baseball's total restraint a reasonable restraint?

21 MR. KRAMER: I object, your Honor. That is the
22 question for the Court.

23 THE COURT: That is my job.

24 MR. TOPKIS: This man testified he reached a
25 judgment on the basis of a study of the law.

1
2
3 THE COURT: I will take it. Listening to the
4 witness, the alacrity of his responses, the type of testimony
5 he has given, I will take his answer to that question.

6 Read the question, Mr. Court Reporter.

7 (Question read.)

8 THE COURT: Be careful.

9 A I have some quarrel with the question, your Honor.
10 If I may express it before I answer the question.

11 THE WITNESS: May I, please?

12 THE COURT: Certainly.

13 A I do not agree that it is total restraint.

14 Q Strike the word "total."

15 A If your question is has that issue been raised
16 in a court before, my understanding is that it has not.

17 Q Ever hear of the Gardella case?

18 A I have heard of it, but I am not familiar with it.

19 Q Ever heard of the Chase case?

20 A Are those baseball cases?

21 Q Yes. You didn't study these cases in forming
22 your judgment as to the legality of baseball under the anti-
23 trust laws?

24 A I don't believe I ever said that I --

25 MR. HUGHES: Your Honor, I object to the form of

the question.

THE COURT: No. I think it is proper cross.

Objection overruled.

A I did not study the legality of the reserve system except with respect to Ohio. What I discovered in my investigation was that baseball is exempt by reason of the Toolson case, and that if anything were to be done about the reserve system that it would probably be done by Congress and not by courts, and that was the conclusion I reached. I did not try to be the judge in all the future cases.

Q That was a conclusion that you reached under Federal law, is that right?

A And on that basis, among other bases, we made our investment, yes, sir.

Q On the basis of your reading Federal law?

A Yes.

Q Now, so far as State law is concerned, when you were considering the legality of the reserve system under the laws of Ohio, Ohio has an antitrust law, doesn't it?

A Yes.

Q And restraints which are unreasonable are unlawful under that law?

A In general. It is a unique law.

1
2 Q And I ask you, sir, whether in determining, as
3 you told us you did, that baseball's restraints are not
4 unreasonable under the laws of Ohio, you considered only
5 Ohio cases?

6 A There were no cases in Ohio on this issue.

7 Q That is my understanding. Did you go outside?

8 A I concluded that if a case were brought and if
9 the case got to issue in Ohio that the reasonableness of
10 the baseball reserve system would be recognized by courts
11 and therefore the reserve system would not be illegal.

12 I was under the impression at that time and I am
13 fuzzy as to the chronology here, but I believe that the Mil-
14 waukee courts have held that the State antitrust laws
15 did not apply in this matter. I believe that was about
16 this time. The chronology of my memory is bad there.

17 Q And I say to you, sir, in considering how the
18 courts of Ohio might apply the Ohio antitrust laws to base-
19 ball, did you consider the Chase case?

20 A No, sir, I did not.

21 Q Did you consider any cases?

22 A Outside of Ohio?

23 Q Yes.

24 A No other State cases, no, sir, except as I have
25

indicated, the Milwaukee situation.

Q Did you consider the writings of the Supreme Court on the subject of the antitrust laws and baseball other than as set forth in the Toolson and Federal baseball cases?

MR. KRAMER: Your Honor, first I object. Second, he said the Supreme Court. The defendant Kuhn is only a defendant in the first count. Does he mean the Supreme Court of Ohio or of the United States?

THE COURT: That is a good observation.

MR. TOPKIS: I had reference, sir, only to what I think of as our Supreme Court, namely, that of the United States.

MR. KRAMER: You see, I am from Cincinnati originally.

MR. TOPKIS: But you moved to Washington.

THE WITNESS: Local pride.

MR. HUGHES: Your Honor, may we have the question, please?

THE COURT: Certainly. Please, Mr. Court Reporter.

(Question read.)

A I did not consider any other opinions of the Supreme Court, no, sir. I considered other writings.

Q Very well. That answers my question, I believe.

MR. TOPKIS: Your Honor, may the witness be directed not to volunteer. The witness is a lawyer. We are all prone to do that.

THE COURT: We have to bear in mind it is difficult for a lawyer as a witness not to expand.

Would you watch it, please, Mr. Dale?

THE WITNESS: I am sorry.

THE COURT: All right.

Q For tax purposes, Mr. Dale, how do you depreciate player development costs?

MR. HUGHES: I object to that as incompetent, irrelevant and immaterial. It is certainly not within the scope of the direct. We didn't go into this subject on direct.

THE COURT: I will take it, Mr. Hughes, in general terms. No specific figures.

Can you answer that question, Mr. Dale?

A They are expense.

Q Immediately on being incurred?

A Yes, sir.

THE COURT: All right.

Q You bought the Cincinnati club from Mr. DeWitt, didn't you?

1
2 A Yes, sir.

3 Q Do you know what he paid for it?

4 A No, sir, I do not.

5 Q Did you inquire into that in any way?

6 A In a general way. He had owned the club for
7 several years and had bought it under unusual circumstances
8 and I did not inquire specifically.

9 Q Didn't you learn that he had bought it four years
10 before?

11 A I don't remember the date. I am sorry.

12 Q Is that within the approximate range?

13 A Yes.

14 Q Didn't you hear and wasn't it reported to you
15 that he had paid about \$2 million?

16 A My memory is that it was about twice that, but I
17 don't know.

18 Q Four million?

19 A That is my memory, but I do not really know.

20 Q That is what was reported to you?

21 A That is what I gleaned from general information,
22 but I emphasize again I do not know.

23 Q You were speaking before or we were speaking
24 before about the information that is available to players
25

1 in salary negotiations. Do you remember that?

2 A Yes, sir.

3 Q Now, financial information on how well or how
4 poorly the club has done is not available to the players,
5 is it?

6 A Specific information is not, no, sir.

7 Q Any kind of information?

8 A There is speculation in the newspapers that the
9 ball club is not doing well or is doing well.

10 THE COURT: The question is whether that is
11 officially furnished to the player. That is all he wants
12 to know.

13 THE WITNESS: I am sorry.

14 A No information is furnished by the management,
15 no, sir.

16 Q But that information is available, of course,
17 to the clubowner?

18 A Yes. It is their business, yes.

19 Q Now, you bought in after the 1966 season, is that
20 right?

21 A Yes, sir, January 9, 1967.

22 Q Who was the starter on the Reds at the end of
23 of 1966 in right field?

24 A I don't know.

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Q A man named Harper?

A I think that is probably so.

Q And Cardenas was the shortstop, wasn't he?

A Yes, sir.

Q And Vada Pinson was the center fielder?

A Yes, sir.

Q And Donald Johnson was the left fielder?

A Deron Johnson.

Q Deron Johnson, is that right?

A I think he played third for us. I don't think he was in left field. He was on the club.

Q As a starter?

A Yes.

Q And John Edwards was the catcher?

A Yes, sir.

Q Since you have been with the club all of those starters have been traded, haven't they?

A Yes, sir.

Q And of the starters on the 1966 club only three are still with Cincinnati, isn't that right?

A I would assume that is the conclusion from your previous statement, but I really do not know the details of that.

Q You don't know. All right. Now, at the end or

1
2 as of August 31, 1966, Cincinnati of course had a 25 player
3 roster in accordance with the rules?

4 A Yes.

5 Q Do you know how many of those 25 players are
6 still with Cincinnati?

7 A No, sir, I do not.

8 Q Jim Maloney, isn't he?

9 A Yes, sir. He is now on the disabled list.

10 Q And Tommy Helms, isn't he?

11 A Yes, sir.

12 Q Tony Perez is?

13 A Yes, sir.

14 Q And Pete Rose is?

15 A Yes, sir.

16 Q Can you name for us any other player on the 1966
17 roster as of August 31, who is still with the club?

18 A If you could show me a roster of 1966, I can do
19 so, I am sure.

20 Q Gladly. This one is marked up. I will get you
21 a fresh one.

22 MR. TOPKIS: May this be marked for identifica-
23 tion, please?

24 (Plaintiff's Exhibit 30 marked for identifica-
25 tion.)

1
2 MR. TOPKIS: Your Honor, we have had marked
3 for identification as Plaintiff's Exhibit 30 a document
4 with a number of pages marked major league rosters 1960-'69,
5 which my friends on the other side were kind enough to furn-
6 ish.

7 Q I turn to the page headed 1966 roster, 8-3-66,
8 and you see the Cincinnati roster there. Other than
9 the four players we have just mentioned, are any of them
10 still with the club?

11 A Clay Carroll is still with the club.

12 Q Who?

13 A Clay Carroll, a pitcher.

14 Q Is that the right page?

15 A Excuse me. I was looking at the top of the page
16 where the Braves are. Excuse me.

17 Q He has gone from Cincinnati to the Braves?

18 A No. He is now with us but he wasn't with us then.

19 Q Right.

20 A I believe two of the players on that roster
21 have since retired from baseball and the other players are
22 playing elsewhere now.

23 Q Two of the other 21 players have retired from
24 baseball and the balance are playing elsewhere, is that
25 your testimony?

1

2 A Yes, sir.

3 Q You have traded them all away?

4 A Yes, sir. I am sorry. Three of them. Coker is
5 also retired. Coker, Nuxhall and Coleman have retired from
6 active play, and I believe the others have all been traded.7 Q Very well. Now, have you made all of those
8 trades in an effort to maintain fan loyalty and devotion
9 to the club?

10 A Partly, yes, and to improve the club.

11 Q You testified, didn't you, that getting a roster
12 of players who were known to and held in warm regard by
13 the Cincinnati fans was one of the indispensable conditions
14 of your making your investment?

15 A Yes.

16 Q But you, shortly after making your investment or
17 three years since making your investment, have traded away
18 about 80 per cent of those players?19 A Not all players are known to and warmly held in
20 high regard by all fans. Indeed, many of them are held
21 in disregard.22 Q Is Jim Maloney held in extraordinarily high
23 regard by the Cincinnati fans?

24 A Yes. He is a very fine pitcher.

25 Q And Tommy Helms?

1
2 A Yes. He has been an All Star second baseman
3 and is held in high regard.

4 Q Tony Perez?

5 A In very high regard.

6 Q What is his position?

7 A He plays third base and is now leading the league
8 in home runs and runs batted in, and has been an exceptionally
9 fine ballplayer.

10 Q And Pete Rose?

11 A Two-time major league batting champion, Cincinnati
12 boy, held in high regard.

13 Q Cardenas, the shortstop on that club, he was held
14 in pretty high regard, too, wasn't he?

15 A Yes, he is.

16 Q And Vada Pinson, the center fielder, was held in
17 extraordinarily high regard, wouldn't you agree?

18 A He was held in high regard. Not the greatest
19 center fielder in the major leagues at all. We received
20 for him another player that was also held -- is now held
21 in high regard equally with him.

22 Q And Johnny Edwards?

23 A Johnny Edwards was held in high regard, but not
24 a superstar as we have in place of him now.
25

2 Q As you have what?

3 A As we have in place of him now. I am trying
4 to imply to you, sir, that trades are made -- you don't
5 refuse to trade a ballplayer solely because he is held in
6 high regard. Sometimes you have to give up a ballplayer
7 who is held in high regard to get another one who will be
8 held in even higher regard.

9 Q So what you do is trade for hopes and expectations,
10 is that right?

11 A Yes. Skill is the commodity that you are dealing
12 with in baseball.

13 Q Skill is the commodity?

14 A Yes.

15 Q Not affection for the player? You expect the
16 affection will follow the skill, is that right?

17 A Yes, that's right.

18 Q What was the last time Cincinnati won a pennant?

19 A 1961.

20 Q And how many of the starters on that club are today
21 playing for other clubs?

22 A I have no idea.

23 Q That is a club that was held in extraordinarily
24 high regard by the people of Cincinnati, wasn't it?

25 A Yes, sir.

Q A pennant winner and World Series participant?

A Yes.

Q Did Cincinnati win or lose the World Series?

A Yes.

Q But nevertheless the town loved the club?

A Yes.

Q Frank Robinson was on that club, wasn't he?

A Yes.

Q He was and is one of the superstars of baseball,
isn't that right?

A Yes.

Q He was traded away?

A Not by me, by the previous owner.

Q By Mr. DeWitt?

A Yes.

Q Vada Pinson was on that club?

A Yes.

Q As a starter?

A Yes.

Q He was traded away by you?

A Yes.

Q And Lou Cardenas was the shortstop on that club?

A I am not clear whether he was a starter or not,

but I will take your word for it if the record shows it.

Q I believe that the record does so indicate that he was starter at least in the series games.

A I would be glad to take that.

Q He was traded away by you?

A Yes.

Q And Johnny Edwards was?

A Yes.

Q The first baseman on that club was -- no, I beg your pardon.

Well -- never mind.

A Gordy Coleman, I believe.

Q He is retired?

A Yes, sir. Now with the club.

MR. KRAMER: What was the last part of the witness's answer?

THE WITNESS: He is now working with the club.

Q In an executive capacity?

A He is head of our Speakers Bureau.

Q He is head of your Speakers Bureau?

A Yes.

Q You said you spent about \$990,000 on player development in 1969, is that right?

2 A Yes, sir.

3 Q How much did you receive for the sale of players
4 for the 1969 expansion?

5 A The total expansion payment to the previous clubs
6 was \$2 million each. We have not received it all yet.

7 Q Was part of that allocated to the sale of players?

8 A Yes.

9 Q It is suggested to me that 700,000 was. Is that
10 right?

11 A I am sorry, that doesn't sound right to me, but
12 I don't have the figure.

13 Q How many players did you sell to the expansion
14 team?

15 A I am sorry, I don't know.

16 Q The figure is suggested to me of four.

17 A I would think that would be -- four to six would
18 be my guess. I believe that is correct.

19 Q Do you know who they were?

20 A No, s ir, I do not now.

21 Q They surely were not among your stars?

22 A No, sir.

23 Q They were ordinary run-of-the-mine ballplayers,
24 not meaning to downgrade them personally?

25 A They were not our stars.

1
2 Q Didn't you testify that it takes a long time
3 to obtain public acceptance of a player?

4 A I think it does generally, an established ball-
5 player, yes, sir.

6 Q Now the fans in Cincinnati are rather warm in
7 their regard of Bernie Carbo, aren't they?

8 A Yes, they are.

9 Q And Dave Concepcion?

10 A Yes.

11 Q How long have those players been in Cincinnati?

12 A This is their rookie year.

13 Q They have been there nine weeks, haven't they?

14 A Yes, sir.

15 MR. TOPKIS: A moment, if I may, your Honor?

16 THE COURT: Surely.

17 (Pause.)

18 MR. TOPKIS: We have no further questions. You
19 may inquire.

20 THE COURT: Any redirect, Mr. Hughes?

21 MR. HUGHES: Yes.

22 REDIRECT EXAMINATION BY MR. HUGHES:

23 Q Mr. Dale, on your cross-examination you were
24 asked about your investment in the Cincinnati Bengals, the
25 football club, and you started to indicate to the Court your