

EWING M. KAUFFMAN, called as a witness
by the defendants, having been first duly sworn,
testified as follows:

DIRECT EXAMINATION BY MR. HADDEN:

Q Mr. Kauffman, where do you live?

A Kansas City, Missouri.

Q And how old are you?

A Fifty-three.

Q Have you lived in Kansas City all your life, sir?

A Well, actually I am in a suburb over in the Kansas
side, half a mile from the Missouri border. It is called
Mission Hills, Kansas, but I have lived in Kansas City since
I was eight years old.

Q Would you describe your education, please, for the
Court?

A Two years of college.

Q And after you finished your college education what
did you do?

A I went to work for a laundry company in the field
of sales, handling their drivers.

Q Would you describe just briefly what your business
career was from that time up until the present?

A Subsequently I went to selling life insurance and
starved to death at age nineteen; then went into accident

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and health insurance; subsequently in the U.S. Navy in January of 1942; came out of the Navy October '45; joined a pharmaceutical company as a salesman and since then I have been in the pharmaceutical business.

Q And what is your present business connection?

A I am president of Marion Laboratories and Pharmaceutical Company in Kansas City, Missouri.

Q And are you the principal owner of Marion Laboratories?

A I was a founder and I still own approximately 40 per cent of it.

Q When did you found Marion Laboratories?

A June 1, 1950.

Q And has Marion Laboratories grown and become successful during that period?

A Yes, sir.

Q Is it a fact that you started that company in your basement?

A Yes, sir.

Q And what kind of plant and facilities do you now have in Kansas City?

A Well, we have a very up-to-date modern pharmaceutical plant of approximately three acres under roof in Kansas City with six subsidiaries scattered throughout the United States.

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Q Would you describe briefly for the Court how it was you came to develop an interest in major league baseball?

A Well, I have always been interested in baseball, but as a child, due to economic circumstances, I only attended when the knothole gang was allowed in for ten cents, but in 1965, when Marion Laboratories went public with our stock and I came into several millions of dollars, why, I subsequently became interested when Kansas City was going to lose its major league franchise in the American League, being approached by the editor of the Kansas City Star and a friend who is vitally interested in baseball wanting one individual to show the American League that there was somebody in Kansas City with finances who could take care of the franchise. This supposedly would help prevent moving a team out of Kansas City.

Q And what did you do then in response to that suggestion or request?

A I told them I would consider it and I got on an airplane and flew to see Bob Reynolds, because he was one of the latest expansion owners, and I wanted to see what the problems were.

I returned to Kansas City and told him that I would put up the money necessary for an expansion team if we could get one.

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Q And did the American League subsequently award to you an expansion franchise in Kansas City?

A Yes, sir.

Q What was the purchase price which you paid for that franchise?

A Well, approximately \$6 million. It varies to 5-1/4 for players, player contracts, plus various other payments, but it is a little under \$6 million.

Q And has there been a need to make further investment in the ball club since that time?

A Yes, sir.

Q That was in 1968, am I correct?

A January 11, 1968, I was awarded it, and we started our minor leagues in '68; we played our first major league season in '69.

Q Are you able to give the Court an estimate of what your aggregate investment in the baseball club is at this time?

A Approximately 9-1/2 million dollars.

Q When you were considering the investment in the Kansas City Royals baseball club were you in a general way familiar with what is known as the baseball reserve system?

A Well, not at first.

Q But prior to the final decision to make the invest-

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ment, did you become familiar?

A My lawyer brought it to my attention when I discussed with him my program or ideas for developing a winning team in Kansas City, and he brought to my attention the so-called reserve clause.

Q And what did you understand the reserve clause to consist of at that time?

A At that time that basically if you spent money in developing players that you had the right to retain their contract for playing baseball.

Q In the discussions which you had with your attorney, was there any discussion of baseball's status under the anti-trust laws?

A Yes, sir. He brought out the fact that there was always the possibility of changes in the player situation due to the Players Association, and he mentioned that baseball as a business -- and I am not sure of my wording being exact, but I believe that it was exempt from the antitrust aspect of business.

Q And as you made your investment in the Kansas City Royals Baseball Club did you rely on your understanding with regard to the antitrust laws which you have just described?

A Yes, I relied on my lawyer's opinion about it, which he stated that in his opinion that I could make such an invest-

ment.

THE COURT: Yes, but it was your money and Mr. Hadden's question to you is, before you parted with that money, before you undertook that investment, did you rely on what you have already told us with regard to the antitrust feature? Was that an inducement? Did that mean something to you? If so, how much did it mean to you?

THE WITNESS: May I clarify it in this way, sir: I spend millions of dollars on my judgment plus what my lawyers tell me about certain legal facts and I have done it with this particular law firm, I have done it many, many times, one so than baseball, and when he explained the reserve system to me, I was willing to make the investment under the interpretation I received about the reserve system.

THE COURT: That is what he asked you.

Q And had you not had that understanding with regard to the reserve system and the antitrust laws, would you have proceeded to make the investment?

A I don't believe so, not \$6 million.

THE COURT: May I interrupt.

MR. HADDEN: Surely.

THE COURT: Mr. Reynolds, you are perfectly welcome to stay, but I warn you that if you are in the courtroom you are subject to being recalled to the stand.

MR. REYNOLDS: Thank you, sir. I will leave.

I will leave it to my colleagues to do it.

THE COURT: No, I am sure that is far fetched. Won't you stay at least for ten or fifteen minutes. You won't be called while he is on the stand. Come on in, come on in.

BY MR. HADDEN:

Q Mr. Kauffman, has the Kansas City Royals Club entered into a lease commitment with regard to a new stadium in Kansas City?

A Yes, sir. Not the final lease, but the preliminary one.

Q Would you describe for the Court, please, the principal features of that lease, particularly in respect to the rental which is called for by the lease.

MR. TOPKIS: Objection, your Honor, under the best evidence rule.

THE COURT: What do you say, Mr. Hadden?

MR. HADDEN: Well, I expect the witness to testify that he has personal knowledge of the transaction.

THE COURT: Well, bring that out very positively first.

MR. HADDEN: All right.

MR. TOPKIS: If I may just press the point briefly, your Honor, when I hear a witness talk of a preliminary

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1 lease, to agree that it is a binding commitment becomes
2 questionable, and in consequence I would like to see the lease
3 rather than have the witness testify about what he thinks it
4 means.
5

6 The question, as I perceive, is what does the lease
7 actually provide.

8 THE COURT: Mr. Hadden.

9 MR. HADDEN: Perhaps I can lay a foundation, your
10 Honor.

11 THE COURT: Please.

12 Q Mr. Kauffman, what is the fact as to whether or not
13 negotiations have been carried on between the Kansas City
14 Royals and the municipal authorities in Kansas City with re-
15 ference to a new lease on a stadium?

16 A The Kansas City Royals have signed an agreement to
17 pay \$400,000 per year rental for 25 years. The other pro-
18 visions of the lease have not been solidified except for the
19 payment of \$400,000 rental.

20 Q And under the terms of what has been signed, is that
21 a base rental?

22 A Yes, sir. Guaranteed base rental, whether we play
23 baseball or not, and even if they don't build a new stadium,
24 we still pay \$400,000 a year for 25 years.

25 Q Why were you willing to make that commitment?

MR. TOPKIS: Excuse me, if I may interrupt, your Honor. Now we are in an area where the testimony is quite incomprehensible. Even if they don't build a new stadium. What stadium are we talking about?

I press my point, your Honor, that under the best evidence rule this preliminary document ought to be here rather than the witness testifying about its contents. I can't imagine, really, a lease which is firm on the rental but isn't firm on any of the other provisions. That is an agreement to agree, not an agreement.

MR. HADDEN: May I proceed to further examine the witness with reference to the document?

THE COURT: Yes.

Q Is a letter in existence embodying the substance of the agreement which you have just described?

A Yes, sir.

Q You donot have a copy of that letter with you, I assume?

A No, sir.

Q Is a copy available to be introduced in evidence in Court?

A Yes, sir.

Q It will take a day or so to do so?

A Yes, sir.

MR. HADDEN: May I suggest, your Honor, that the answer stand subject to our production of the document for Mr. Topkis to examine and introduction of it into evidence at that time?

MR. TOPKIS: I will have no objection, your Honor, to the document being introduced in evidence, but I don't think the answer should stand if it is at all at variance with the document. The document is the best evidence.

THE COURT: Well, I think that Mr. Hadden has done well under the circumstances and let us see what he produces, and we will take your motion at the appropriate time to strike any testimony of this witness that you think warrants that disposition.

All right.

Q It is your understanding, Mr. Kauffman, I take it, that a commitment has been entered into which calls for \$400,000 per year rental?

A Yes, sir.

Q Assuming that that is the case, sir, why was the Kansas City Club willing to make such a commitment for 25 years?

A Jackson County, Missouri voted \$43 million in general obligation bonds to build a stadium for baseball and a separate stadium for football. This was some four years

ago. In the meantime, in letting the contract, buying the land and so forth, construction costs went up and \$43 million will not build both baseball and football stadiums. They were going originally to have a movable roof that would go from one to the other. Finding out that they ran out of money, the Jackson County authorities decided to sell revenue bonds based upon the rent of both baseball and football owners. The only way the stadiums could be built would be to produce money for construction purposes, from our agreement to pay rent, specifically from baseball, \$400,000. Since these are revenue bonds there cannot be any qualifications that if the stadium is not built we don't have to pay the money or if baseball should be abolished ten years from now or an act of war comes, we are still obligated to pay \$400,000 a year for 25 years in order to pay off the revenue bonds.

Q Mr. Kauffman, you are the sole owner, are you, of the Kansas City Royals Baseball Corporation?

A Yes, sir.

Q And would you have been willing to enter into a commitment, a lease commitment of the type you have described if it had not been your understanding that you would continue to have title to the player contracts which your club now holds?

A No, sir, I would not have.

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Q There has been testimony earlier in this trial, Mr. Kauffman, with reference to the Baseball Academy which your club is apparently organizing. Would you please give the Court the benefit of your description of how you came to the concept of a Baseball Academy and what has been done with regard to putting such a scheme in motion?

A This will take three or four minutes.

THE WITNESS: May 17

THE COURT: Surely.

A In buying the Kansas City baseball team, I wanted to build a winning team as rapidly as possible. In checking the present methods of building a team with the free agent draft system you cannot utilize money any more in building a winning team.

The first thing I did was insist on placing extra coaches down at the rookie level and on through to the Triple AAA level so that the ballplayers could get more instruction.

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1 The second thing was to hire Tommy Heinrich as a
2 hitting instructor and have him travel from team to team
3 among the minor leagues teaching hitting, and the same thing
4 with Mr. White as far as pitching was concerned.
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6 We hired the best scouts available so that we could
7 have good scouting and try and be on a level with the best
8 teams in the league. But this would still take a long time
9 to build a winning team, and the only other way I could think
10 of to get good ballplayers was the fact that I felt that there
11 might be another source of ballplayers that wasn't being util-
12 ized.

13 I hired a doctor of research psychology from a
14 technology research institute in Washington to analyze the
15 physical attributes necessary to play baseball. He came up
16 with the following four qualifications:

17 First, speed of foot; second, fast reaction time --
18 the nerve impulses from the eye to the brain and down to the
19 hand; third, tremendous eyesight; and fourth, lateral move-
20 ment of the body.

21 By this time the research grant was running so much
22 that I hired this man full time to work for the Kansas City
23 Royals, figuring it would be cheaper in the long run. He then
24 developed tests to measure these attributes among players.
25 He developed special machines to do it, and we have now tested

160-some players, minor and major leaguers, who are in the
Kansas City organization.

We have definitely proved there is a clear line of demarcation between the minor leaguers and these attributes and the major leaguers. So it is my conclusion that a boy doesn't have to play baseball all his life to learn to be a tremendous major league ballplayer. I feel that if we can take high school graduates who have these four attributes of physical ability -- of speed, reaction time, eyesight, lateral movement -- that we can place them in a baseball academy and we can teach them baseball. This was my primary purpose.

As I got into baseball, I was amazed that so many of the ballplayers had so little financial knowledge. You may be familiar with some of the players who take bankruptcy making 40,000 a year. I saw many of our major leaguers weren't handling their finances properly. So I wanted to teach them financial management. So I wanted that taught at the baseball academy.

This led to the next step, that a major league baseball player should be able to make public speeches and use English correctly. So we have tied this in with a junior college and they receive ten or eleven credits per semester and take baseball in the afternoon and study at night.

We will finish in a matter of four months a million and a half dollar complex at Sarasota, Florida, where this academy will be held. We can't test the high school graduates until they have graduated because of baseball laws, so we have tested a very limited number of players. We can only test five in a group. But we have tested them and we have probably now our first two candidates, one being a track star who isn't quite fast enough to run track for college and get a scholarship, another being a basketball star who is too short to make the college basketball team but we feel he has the physical skills and we can teach him baseball.

Very quickly and briefly, that is it at the present time.

Q What will the curriculum be in terms of months or years for each player who goes into your academy?

A They commence August 15th and they go through the baseball academy until the following June 1st. At that time they go into a rookie league, which it is my hope will be entirely staffed by academy members playing June, July and August for the rookie league, come back again at the end of August for the academy and stay again at the baseball academy and attending junior college until the following April 1st. At that time it is my viewpoint now, although it is subject to change, that they should be capable of going into the

Royals' baseball organization and going either to A or double A or, I hope, Triple A.

Q Will these players or students be under contract and be paid by your organization during the time that they are in the academy?

A Yes, sir. They receive a salary and all expenses of the dormitory, et cetera, and they sign a baseball contract.

Q What is your hope or expectation with reference to the length of time necessary once a player has graduated from your academy until you hope and expect that he would be on the Royals' team?

A Well, I'd like to see some of them -- one or two make it the first year, but that may be wishful thinking. But every one of them must make it within three and a half years to a major league roster or they are subject to draft by other major league teams, and it is my belief in three and a half years we will have a sufficient number make it to the major league 40-man roster, which gives us protection that we won't lose our best players.

Q When your academy is operating full steam, so to speak, what expectation do you have as to the number of players who will be graduating annually and coming into organized baseball?

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2 A We will start with 50 players, 50 academy people.
3 I think that we will have --

4 THE COURT: Mr. Hadden, will you let me interrupt
5 you. I don't want you to rush it. We will take luncheon
6 and give you a chance to get your man to continue.

7 2:15.

8 THE CLERK: Recess until 2:15. All rise.

9 (Luncheon recess.)
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2:15 P.M.

2 THE COURT: Please be seated. I think that
3 we ought to clear up that little -- it would interrupt you --
4 no, I think we should clear up that little matter of
5 Exhibit No. 31 for identification.

6
7 Would you mind, Mr. Hadden?

8 Mr. Court Reporter, would you please read what
9 the record reveals with respect to the question that was put
10 by Mr. Topkis to Mr. Reynolds.

11 (Record read.)

12 THE COURT: So, you see, that the witness answered
13 the question involving the quote from the newspaper item,
14 Exhibit 31 for identification, "I don't know." Therefore,
15 I will entertain your motion to strike the question.

16 MR. HUGHES: Your Honor, let me give some
17 consideration to it.

18 THE COURT: All right. Let's go on with the
19 witnesses.

20 E W I N G K A U F F M A N resumed.

21 DIRECT EXAMINATION BY MR. HADDEN (continued):

22 Q Mr. Kauffman, before lunch I believe we were
23 having some testimony about your baseball academy and I
24 believe also that you had given some testimony as to the
25 capital investment which you have made or will make in that

enterprise. I don't believe, however, I asked you about the proposed or prospective operating costs of the academy. Will you tell us, please, what that is expected to be?

A Twelve month operation of the baseball academy will cost between \$500,000 and \$600,000 annually.

Q And have you made commitments to continue the operation of that academy over some period of time?

A I have made a public commitment to do it for three years, thinking that it may take that long a time to determine the value thereof.

Q Are you generally familiar, sir, with what the farm system expense, that is, development player expense for the Kansas City Royals was in the year 1969?

A Yes, sir.

Q Could you give the Court the benefit of your information about that?

A Approximately 1.3 million dollars minor league player development expense.

Q And is any part of the expense included in that item, does it overlap to any extent with additional expense you mentioned regarding the baseball academy?

A No, sir. They are two different things. I run the baseball academy and Mr. Tallis runs the expenditure

1
2 in the minor leagues.

3 Q Do you expect player development expense run by
4 Mr. Tallis will continue to be at or near the same level
5 as in 1969?

6 A Yes, sir.

7 Q So would it be a fair assumption that the two items
8 of cost taken together would be close to \$2 million?

9 A Yes, sir.

10 Q That is annually?

11 A Yes, sir.

12 Q What type of young men or boys do you hope to
13 acquire or to attract, rather, to the academy?

14 A I think there are three types of young men who
15 would be attracted to the academy, all of them having these
16 physical attributes for which we are looking. Number 1,
17 the boy of the lower economic circumstance who can not afford
18 to go to higher education and college; Number 2, the high
19 school graduate who does not have the intellectual background
20 that would qualify him for college; and Number 3, the
21 pure athletic boy who is so interested in athletics that
22 he would want to take this opportunity to be developed into
23 a major league player.

24 MR. TOPKIS: If your Honor please, could I have
25 Number 3 read back, please.

THE COURT: Please, Mr. Court Reporter.

(Record read.)

Q Now perhaps there may be some confusion, Mr. Kauffman, regarding the stadium situation in Kansas City. I think that might be clarified.

Is there an existing stadium in Kansas City?

A Yes, sir. We are now playing in an old stadium of approximately 40-some years.

Q Do you have a term lease on that facility?

A Yes, sir.

Q What is the term of that lease, if you recall?

A We are now playing in the city of Kansas City, Missouri, in their stadium. Our future stadium is being built in the county outside the city limits. The city has been kind enough to give us a lease which is automatically canceled when the new stadium is built.

Q As you indicate, the new stadium is actually under construction at the present time?

A Yes, sir, the football stadium is to be completed for play next year, and I am quite -- and baseball in 1972. However, there is a construction strike now that may delay it.

Q In relation to the permanent financing of your acquisition of the Kansas City Royals' franchise and the

1 operation of it, was any of the money which you invested
2 in the club obtained through the proceeds of any loan?

3 A No, sir.

4 Q From what source did it come?

5 A From my private funds.

6 Q Mr. Kauffman, have you made any public statements
7 in Kansas City or to the people of Kansas City regarding
8 your hopes and expectations as to the time when you will
9 have a pennant winning team in Kansas City?

10 A Yes, sir.

11 Q What have you said, sir, in that connection?

12 A I made public statements at various speeches I
13 have made in Kansas City that within six years Kansas City
14 fans will have a pennant winner.

15 Q In your effort to build a pennant winning club
16 have you ever made any cash offers to any other clubs to
17 obtain player contracts?

18 A Yes, sir.

19 Q What have you done in that way?

20 A Prior to the baseball season of 1969 I offered
21 one club owner \$1 million for the contract to one player.
22 Prior to this year I offered one club owner \$3 million
23 for any four players we might want to choose from his team.

24 Q Have either of those offers been accepted?

2 A No, sir.

3 Q If, as a result of some change in the reserve
4 system, a supply of free agents became available from time
5 to time or on an annual basis, would you compete to acquire
6 the contracts of those players?

7 A Very much so.

8 Q Are you prepared to spend dollars above and
9 beyond the revenues of your club which may be earned through
10 gate receipts and other sources of income --

11 A I have in the past and I will in the future.

12 Q I am not sure that I finished the question. Let
13 me complete the question.

14 I will withdraw it and start again.

15 Are you prepared to spend dollars over and above
16 the revenues which the baseball operation of the Kansas
17 City Royals may earn through whatever source of revenue
18 to acquire talent and pay salaries to acquire talent?

19 A Yes, sir.

20 Q Would the additional funds for that purpose to
21 the extent they were necessary come from your personal
22 financing?

23 A Yes, sir.

24 Q Mr. Kauffman, you have been in court this morning,
25 I take it?

1
2 A Yes, sir.

3 Q And you were here for the cross-examination
4 of Mr. Reynolds?

5 A Yes, sir.

6 Q A number of questions were put to Mr. Reynolds
7 which I would like to put to you now. I would like you to
8 assume that the present reserve system remains in all
9 respects the same except that in relation to the determination
10 of salaries of individual ballplayers if a dispute arose
11 which could not be settled by mutual agreement, such a
12 dispute could be submitted to an outside arbitrator who
13 would be required to accept and enter as an award either
14 one of two figures, one submitted by the player and one
15 submitted by the management.

16 What is your view as to the impact of such an
17 arrangement on major league baseball?

18 A I believe it would be harmful.
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Q Will you tell the Court why, please?

A At least two reasons. No. 1, although the ball-player and the club management have goals, they also have one mutual goal and that is to build a winning team. So that in this endeavor they are associates. Any time you bring a third party in between these two I believe it is harmful in their drive towards a mutual goal.

No. 2, an outside arbitrator, in deciding on a salary, takes into consideration, more or less, I would believe, the statistical record involved, and I believe there are other factors involved where a player might be entitled to greater compensation than his statistics indicate because of his moral building to the team or the fact that he may help a player playing next to him, in guiding him and helping him play better ball, and the reverse is true, that that player may not be entitled to as much as his statistics would show because of his harmful actions on the field, off the field or in the club house.

So I do not feel an outside arbitrator could give a just decision on it.

Q If it were concluded through the process of collective bargaining that an arbitration system such as I have described should be adopted between the clubs and the Players Association, do you believe that that would be totally

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destructive of the fabric of baseball as we now know it?

MR. TOPKIS: If your Honor please, a little bit of leading I don't mind, but that, I think, transgresses.

MR. HADDEN: Your Honor, that question does not suggest an answer. It is a question to which the answer is known to the witness only.

THE COURT: I am going to allow it to stand, although there is something to what Mr. Topkis says. I will allow it to stand because it is the question that has been put to witnesses in one form or another ever since we began the proceeding.

What is your answer to it?

MR. TOPKIS: Could I have the question read back, your Honor?

THE COURT: Certainly.

(Question read.)

A Harmful, but not destructive.

Q Thank you. Now I will ask you to assume, Mr. Kauffman, that the reserve system again remains unchanged except in one other particular, that being that at the end of five years of major league service, a ballplayer would have the right to declare himself a free agent and to contract with any club in the opposite league of his original club; what would a change of that nature have as its effect on organized

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baseball?

A It would probably be destructive and beneficial to the Kansas City Royals.

Q Would you explain your answer, please?

A Well, Kansas City would be quite active in going after these players, being willing to put out the money necessary to get them, so for a short period of time we would come up with the best ball team, but in the long run I believe it would be quite destructive to baseball.

Q Can you give the Court an estimate of what change, if any, that might bring about in your estimate of a six-year pennant?

A Five-year, free agents, we should do it in three years.

Q Would your answer be any different, Mr. Kauffman, if as an additional feature of such a change it were required that one team could acquire only one free agent per year?

A It would just take a little longer, sir.

Q Would it have the same destructive effects, in your opinion, over the long run?

A Less destructive, but I believe it would in the long run, sir.

Q A further suggestion, Mr. Kauffman, is that the reserve clause or reserve system be changed through the

1 adoption of a salary escalation scheme, such that an opening
2 or entering minimum were to be established in the first year
3 to be followed by a higher minimum the next year and so on,
4 apparently indefinitely.

5
6 What is your opinion as to the effect that that would
7 have on baseball?

8 A I don't believe it would help baseball in any way,
9 shape or form, and it would be equitable as long as it was
10 part of a negotiation with the Players Association.

11 Q And would it depend to any extent on the amounts
12 of dollars involved and the term of years involved?

13 A Naturally.

14 Q A further suggestion has been made, Mr. Kauffman,
15 that in order to prevent the acquisition by the richer
16 clubs of an excess amount of talent through being able to
17 outbid the weaker clubs it might be appropriate to equalize
18 the sources of income of the respective clubs by requiring
19 them to pool their available income both from gate receipts
20 and from radio and television and to draw equally from that
21 pool, thereby substantially equalizing their income. What
22 is your opinion on that proposal?

23 A I think that is as ridiculous as asking Curt Flood
24 to share his hundred thousand dollars a year with the poor
25 fringe players on the St. Louis Cardinals.

Q Can you elaborate as to why you think it would be bad in the operation of the major league clubs?

A Well, I believe that if you start that type of program so that you equalize the competition, that you are turning baseball more into an exhibition like ballet, and you know what their attendance is, and I think we both would lose in the long run. And one other point being that at the present time it is conducive to each owner and their management to promote baseball in their area because when they attend the home game they receive a majority of the proceeds, so some clubs will promote baseball and attendance at the games more so than others. This we do in Kansas City, and to my knowledge I am the only owner who annually sells over 1,000 season tickets to baseball, and I go out and call on the customers each and every season and do it.

Q You yourself do it?

A Yes, sir, and I wouldn't do that if I have to share receipts with other clubs.

Q Now, Mr. Kauffman, what would your reaction be to the establishment in organized baseball of the football one-year option provision together with the clause of the option arrangement which permits and requires the Commissioner of Football to award to the club who acquires the contract of a free agent who has played out his option compensation in

the form of players or draft selections which the Commissioner in his sole discretion deems fair and equitable?

A I would be completely opposed to that.

Q Will you tell the Court why, please?

A Well, there could be examples of where you would have a pennant, a team driving for the pennant, and next year would be the year that you could do it and you lost your shortstop with no replacement, or it could be a second baseman or et cetera, but it would be a few, three or four particular positions, and it is humanly impossible to replace that shortstop with somebody from the team to which he went because if they had that type of player they wouldn't be taking ours. So you could not make a fair and just retribution in that respect.

No. 2, the reason I feel that this rule would not work is the club taking the player from another one, team B takes a player from team A on this one-year option payout, team B isn't going to do it but in a rare circumstance because theoretically they are giving a blank check to the arbitrator or the Commissioner, whoever it is, and as a result I believe in football they don't do it very often because they don't want to give this blank check, and if they knew ahead of time --

MR. TOPKIS: Objection, your Honor.

Q Would you restrict your answer to baseball, please?

MR. TOPKIS: And may that portion of the witness' testimony be stricken?

THE COURT: We will strike that portion dealing with football.

A I believe in baseball that it would not work because the team taking the one-year option player would hate to have some outside person arbitrarily take players from them. If they knew ahead of time they would probably agree to it, but to find out after the act is done, I don't believe they would do it.

Q Are you familiar with the testimony which the Commissioner of Football gave in this court, in this trial, to the effect that --

MR. TOPKIS: Excuse me. May the question stop right there and not lead the witness? If he is familiar with the testimony then he is, but he should not be asked, "Are you familiar with the testimony which ran as follows."

MR. HADDEN: How am I able to direct the witness' attention to the subject matter unless I refer to it, your Honor?

THE COURT: Yes, but it looked as though, with your keen incisive mind, you were very likely to sum it up.

MR. HADDEN: Can I have a minute and I will get the

testimony, your Honor?

MR. TOPKIS: I will object to that, your Honor.

THE COURT: See if you can't just suggest by a few words what it is you want to address the witness' attention to. Try it.

MR. HADDEN: Well, your Honor, am I to understand that I am not permitted to read to the witness testimony from other witnesses in this case?

THE COURT: I didn't say so.

MR. HADDEN: May I do so?

THE COURT: Would you prefer to do it your way?

MR. HADDEN: I would prefer to do so.

THE COURT: Would you try mine and if you fail, why, then we will resort to yours.

MR. HADDEN: All right.

Q Are you familiar with the fact --

THE COURT: Ask him generally about the testimony of the Commissioner.

Q Are you familiar with the fact, Mr. Kauffman, that the Commissioner of Baseball has testified in this litigation --

A Yes.

Q Football, excuse me.

A I was here for the Baseball Commissioner. I read of the Football Commissioner's testimony.

2 Q And do you know whether the Commissioner of Football
3 gave any testimony with regard to the subject of the number
4 of players who have played out their option and whose having
5 done so has resulted in an award of compensation by a
6 Commissioner?

7 A I don't know how many. I just read there were a
8 case or two.

9 THE COURT: Mr. Kauffman, you read it in the newspaper
10 account?

11 THE WITNESS: Yes, sir, of Commissioner Rozelle's
12 testimony, that there was a case or two.

13 Q You have not heard the testimony itself or read it?

14 A No, sir.

15 MR. HADDEN: May I now refer to the testimony, your
16 Honor?

17 MR. TOPPIS: I object, your Honor. What for?

18 THE COURT: Why can't you ask him directly the point
19 that the Commissioner testified on?

20 MR. HADDEN: Well, your Honor, my purpose is to lay
21 a foundation to ask the witness --

22 THE COURT: Would you let us see what it is that
23 you have in mind? What page number? Let me take a look
24 at it.

25 MR. HADDEN: It will take a moment, your Honor.

THE COURT: Surely. Take your time.

(Pause.)

MR. HADDEN: May I approach the bench, your Honor?

THE COURT: Surely. Just give it to the clerk.

What page is it?

MR. HADDEN: Page 468 of the transcript.

THE COURT: Where do you want to ask him, what line?

MR. HADDEN: It would be line --

THE COURT: About the middle?

MR. HADDEN: Line 17, starting line 17, page 468,
going over to line 9 of page 469.

MR. TOPKIS: Could I have those pages again, please?

THE COURT: 468, the middle, going over to about the
middle of the following page.

(Pause.)

THE COURT: Do you still raise an objection, having
read it?

MR. TOPKIS: No, your Honor, I will withdraw the
objection.

THE COURT: Proceed.

MR. HADDEN: Your Honor, I wonder if I may refer to
a question or two before that because I neglected to note
that the testimony which I described refers to the testimony
that preceded it.

THE COURT: Certainly.

BY MR. HADDEN:

Q The question was preceded on page 466 by Mr. Tophis reading into the record the provisions of Article XII, 1 F of the National Football League Constitution, which are the provisions which permit the Commissioner to award compensation, and the Commissioner testified that that amendment was adopted in about 1961 or '62, and then reading from the transcript:

"Q Now, during that time, Commissioner (referring to a time since 1961 or '62) there have been occasions, have there, when a free agent has been signed by a new club?

"A (By the Commissioner) There have been occasions where a player has played out his option and later signed with another team.

"Q In some of those occasions have the two clubs been able to work out a mutually satisfactory arrangement?

"A Yes.

"Q And in other occasions have they not?

"A Yes.

"Q And in those latter occasions, about how many of them have there been in the last eight years or nine years, whatever time this rule has been on the books?

"A Occasions where the clubs have not agreed, not reached a mutually satisfactory conclusion to the problem?

"Q That is right, Commissioner.

"A Three or four, I would estimate.

"Q And in those three or four situations have you stepped in and performed under Subparagraph H?

"A Yes, sir."

Now, that was the testimony of the Commissioner of Football, Mr. Kauffman, and I will ask you whether those questions and answers confirm you in your view that the football one-year option provision would be undesirable in baseball?

MR. TOPKIS: Objection, your Honor. Are we running a school here to educate this witness? That question is totally incompetent.

MR. HADDEN: I submit, your Honor, that there has been plentiful testimony in this case as to what the reserve systems in other sports have been and their adaptability or conformability to baseball, and I believe that it is perfectly proper to ask this witness to express an opinion based on testimony in this case as to whether the system in football would be a workable one in baseball.

MR. TOPKIS: Your Honor, I am sorry, I don't understand this. The witness either has an opinion or he doesn't have an opinion. I can't educate him by reading him passages either from this record or from an encyclopedia or an inter-

esting article I happened to pick up out of Sports Illustrated and ask him if that educates him to the point where he is willing to express an opinion. Besides, he has already expressed his opinion. I -- I'm lost.

THE COURT: Were you going to say anything further, Mr. Hadden?

MR. HADDEN: I am content with whatever your Honor cares -- wait a second.

THE COURT: Well, you seem to be conferring with your associates and I will wait.

MR. HADDEN: Perhaps I could frame another question, your Honor.

THE COURT: All right.

Q Is there anything in the testimony of Commissioner Rozelle which I have read to you, Mr. Kauffman, that would cause you to change your opinion already stated?

MR. TOPKIS: Objection, Your Honor.

THE COURT: Overruled. Answer the question.

A No, sir.

Q One final question, Mr. Kauffman. Would you give the Court the benefit of your experience as to whether or not the players, as individuals, in salary negotiations are at a disadvantage in relation to their bargaining power with the clubs?

A I think the players have a considerable amount of bargaining power with the clubs based upon one or two factors.

Q What are those?

A Number 1, the investment that the club has in this player and if the club does not come to terms with him they lose this investment completely. This can be hundreds of thousands of dollars.

Number 2, they have pressure put on them from the public, which usually sides with the players against the club owners, and I think the attendance factor is affected and therefore the player has great bargaining power on his side. This is especially true the closer you get to

spring training because you want that player who is going to fill a valuable position in your club, you want him to take his spring training and be ready to play when the season starts.

Q An afterthought. A further suggestion for change in the reserve system is to split major league baseball into two separate leagues. What, in your opinion, would be the effect of a change such as that?

A I don't understand it.

Q Two leagues which had no affiliation with each other whatsoever.

A I'd have to study that to give a good opinion on it.

THE COURT: I'd like you to do so, because, you see, you bring to your testimony something that is really a little unusual. You have had quite a considerable business experience and I don't know what ultimate weight I will give it, but I would like you to give that thought and be prepared to come back and testify on it.

All right.

THE WITNESS: I'd be happy to give it some thought now.

THE COURT: I mean come back to the stand. You can do it this afternoon. I didn't mean to go back to

1 Kansas City and come back. Heaven forbid.

2
3 MR. HADDEN: Perhaps if I put a more detailed
4 question, your Honor, the witness --

5 THE COURT: Give him a chance to think it out.
6 Let him sit quietly and dope it out and put him back on the
7 stand.

8 MR. HADDEN: All right.

9 THE COURT: I don't overrule often, but when
10 I say something -- I don't want you to feel everything I
11 say is the last word, but don't quibble with me over things
12 like this. Let the witness alone to think it out and
13 when he says to you, "I have thought it out and I am ready,
14 put me back on the stand," let's do it.

15 MR. HADDEN: This completes my direct examination.
16 May we excuse the witness?

17 THE COURT: No. I think we can go on with
18 cross and then give him a chance to be put back on the stand.

19 MR. HADDEN: Very well, your Honor.

20 THE COURT: Any questions from you, Mr. Kramer?

21 MR. KRAMER: No, your Honor, not at this time.

22 THE COURT: Mr. Topkis?

23 MR. TOPKIS: If your Honor please.

24 CROSS-EXAMINATION BY MR. TOPKIS:

25 Q Mr. K auuffman, this pharmaceutical business you