

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

1 began in your basement, how big was your basement?

2 A 400 square -- I guess 500 square feet, sir.

3 Q One floor?

4 A Yes, sir. That was the basement floor.

5 Q These plants you now have that embraces three  
6 acres, is that a multi-story building?

7 A No, sir.

8 Q Still on one floor?

9 A Yes, sir.

10 Q No progress at all. I am sorry to hear it.

11 You went public in 1965, did you say?

12 A Yes, sir.

13 Q How many millions of dollars did you receive for  
14 your stock?

15 A 1965?

16 Q Yes, sir.

17 A Approximately \$2.5 million.

18 Q Have you sold any stock since that time?

19 A Yes, sir.

20 Q How much have you received for that?

21 A Over \$13 million --

22 THE WITNESS: May I correct that, sir?

23 THE COURT: Surely.

24 A \$13 million at one time and \$2 million again  
25

SOUTHERN DISTRICT COURT REPORTERS

UNITED STATES COURT HOUSE

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subsequently.

Q So it is two and a half, thirteen and two?

A Yes, sir.

Q The free enterprise system has worked out pretty well in your case?

A Yes, sir.

Q Would you like the ballplayers to be free to sell their services for what they can get in the open market?

A I think they do, sir.

Q Where is the open market?

A Well, the ballplayers, when they sign their contract, are taught baseball and eventually come on up to the major leagues and they have the opportunity in the negotiations to earn money commensurate with their ability.

Q Where is the open market?

A Define the open market for me, sir.

Q The opportunity to deal with more than one purchaser of one's services would strike me as an appropriate definition. Would you agree with it?

A Possibly, yes, sir.

Q There is no such open market in organized baseball today, is there, Mr. Kauffman?

A I don't believe it can exist with it. Let's say there is not, and I don't believe it can exist with it.

2 Q There is none today?

3 A No, sir, in that definition.

4 Q Tell me, your pharmaceutical business, what do  
5 you do in that business?

6 A What do I do or what does the company do?

7 Q What does the company do?

8 A It is called the ethical pharmaceuticals, where  
9 we manufacture and distribute medications which are pre-  
10 scribed for patients on written prescription of a physician.

11 Q What kind of medications do you in particular  
12 manufacture?

13 A Medications in the treatment of coronary vaso-  
14 dilation, which is commonly called heart attack, and,  
15 secondly, we are leaders in the field of cerebral vaso-  
16 dilation, which is in the field of strokes.

17 Q And do you start from scratch, that is to say,  
18 do you take raw materials and process them into the finished  
19 product or do you take semi-finished materials?

20 A Well, to define it, we would take, in one sense,  
21 a raw material and have the completed capsule or tablet.  
22 The material that we take might be synthetically manufactured  
23 for us by what we would call a bulk chemical manufacturer,  
24 and lots of pharmaceutical companies are in this business.

25 Q It is a rule of business, isn't it, that it is

always a good idea to have two or more suppliers?

A In this instance we only have one, Eli Lilly.

Q You buy only from Eli Lilly?

A In our biggest product, yes, sir.

Q Are there any competitors for Eli Lilly in selling that product?

A Yes, sir.

Q How many?

A I would say three or four.

Q All of them being major drug companies?

A Of varying degrees.

Q You like the fact that if you don't like Lilly's prices you can go to somebody else, don't you?

A The question has never come up, sir.

Q They keep their prices at a reasonable level because they know you can go to somebody else?

A Actually not, sir. They are the only ones capable of manufacturing it in the quantities which we need.

Q I see. And you are a substantial customer of theirs?

A Yes, sir.

Q So they need you as well as you need them?

A Yes, sir, similar to the ballplayers and the owners.



1 Q Oh, just like the ballplayers and the owners.  
2  
3 If a ballplayer wants to deal with another --

4 THE COURT: He anticipated you.

5 MR. TOPKIS: I welcome anticipation from your  
6 Honor and such as I get from the witnesses. A few have been  
7 so kind as Mr. Kauffman, and I thank you, sir.

8 Q You think that there are substantial differences  
9 between the drug business and the baseball business, is  
10 that it, Mr. Kauffman?

11 A Yes, sir, very much so.

12 Q Big enough to make it appropriate, those differ-  
13 ences, for baseball to establish a system where for any player's  
14 services there is only one possible buyer?

15 A Yes, sir.

16 Q You surely would not like a situation in the  
17 drug business where you had only one possible source from  
18 which to buy raw materials that you desperately needed to  
19 run your business, would you?

20 A In certain circumstances I would feel obligated  
21 to buy from one source, sir.

22 Q I say, you wouldn't like it if there were only  
23 one source available?

24 A If these people developed a product, yes, I  
25 will buy it from them and they will be the only one.



Q You would much prefer the situation in which you had a number of sources available as a businessman, isn't that right?

A Yes, sir, as a businessman.

Q And so far as your customers are concerned, you wouldn't like it very much if you had only one possible purchaser for your goods, would you?

A We probably wouldn't be in business; they couldn't use enough of it.

Q You would have to go out of the drug business?

A Yes, sir.

Q That would be your alternative?

A We couldn't sell enough to one person, probably.

Q Right, so you would have to shut down?

A Yes, sir.

Q You wouldn't like that situation where you either had to deal with that one customer or shut down, would you?

A I wouldn't have started the business, sir, if that had been the case.

Q Does a baseball player entering a business under that kind of condition demonstrate that the baseball player's business sense is rather poor?

A Some of them certainly need education in a business sense, but in order to get started in baseball I

think this is a necessary factor that we must have.

Q You do educate them in business, don't you, some of your players?

A I want to.

Q And you do through this academy you are running?

A Yes, sir. I plan to do it in the academy and I plan to offer it to our present major leaguers through career counseling, if they wish.

Q But the first thing you do before you offer them this education is sign them to a contract?

A Yes, sir.

Q After that what good will their business training do them in dealing with you?

A I think it would be of tremendous value.

Q They will still have only you as a possible user of their services, wouldn't they?

A But they have been told that before they sign their contract, sir.

Q Oh, I see. Have you ever told a ballplayer that?

A We haven't signed --

Q Sir, have you ever told a ballplayer that?

A No, sir. It hasn't been necessary.

Q You have not?

1 A We have signed no academy members yet.

2 Q When you got your franchise from the American  
3 League, did you have to compete with other possible applicants  
4 for the franchise?  
5

6 A Yes, sir.

7 Q How many?

8 A There were three syndicates also competing for it.

9 Q All of them in Kansas City?

10 A Yes, sir.

11 Q And you beat out the others?

12 A Yes, sir.

13 Q You all offered the same price?

14 A Yes, sir.

15 Q All of them were willing to put up the price?

16 A Not in cash, but in partial cash and borrowed  
17 money.

18 Q You were willing to put it up in all cash?

19 A Yes, sir.

20 Q You think that is what made your offer most  
21 attractive?

22 A No, sir.

23 Q What did?

24 A I went at it differently in that I personally  
25 went and called upon eleven -- nine of the ten owners who

2 were going to vote on it and tried to sell them on my  
3 business knowledge, my financial ability and what I intended  
4 to do in baseball.

5 Q But the other people were trying to get the  
6 franchise and they used such techniques as occurred to  
7 them, but you won out, does that sum it up?

8 A Probably a good part being I was a single individ-  
9 ual, and I think baseball felt it could be better operated  
10 by a single individual than by a syndicate.

11 Q But, in any event, you had to beat out these  
12 other competitors to get the franchise?

13 A Yes, sir.

14 Q And all of them were willing to put up either  
15 their own money or borrowed money to get it?

16 A Yes, sir.

17 Q The franchise was regarded as a plum, an unusual  
18 opportunity, is that right?

19 A Well, not financially.

20 Q Not financially. In what way was it regarded  
21 as a desirable opportunity?

22 A Probably from the standpoint of the prestige  
23 of being a club owner and, second, for the fun involved.

24 Q For the fun involved?

25 A Yes, sir.



1  
2 Q Is it your impression that club owners generally  
3 are motivated by the prestige and the fun rather than  
4 by money considerations?

5 A Certainly the ones who have come into it in the  
6 past few years are motivated by the fun involved rather  
7 than the money that can be made.

8 Q Why not do away with the reserve system and  
9 accept whatever economic consequences flow and have your-  
10 selves a ball?

11 A Because I think it would be just the opposite,  
12 sir, that it would be harmful to baseball.

13 Q It would be harmful to baseball because, I  
14 suppose, all the wealthier teams would buy up all the best  
15 players, is that right?

16 A Yes, sir.

17 Q You have testified that you'd buy up all the  
18 players you could find. Wouldn't you?

19 A Yes, sir.

20 Q You have a pretty poor club right now, haven't  
21 you, no unkindness meant?

22 A We have some weak positions we'd like to fill.

23 Q You don't expect to finish first in your division  
24 this year?

25 I withdraw that question, sir. I see no reason

to press you with that.

Your team could stand a good bit of improving, is that right?

A Yes, sir.

Q Well, wouldn't the opportunity to acquire the services of some free agents give you the opportunity to improve your club?

A Yes, sir, very much so.

Q What would be bad about that?

A Because in the long run I think it would be harmful to baseball as a whole.

Q Why?

A It would be helpful to Kansas City for five or six years, possibly, a short term.

Q It would give you that pennant you were after?

A Yes, sir.

Q What would be bad about the long term?

A The long term situation is that you would find one or two teams in the American League, and I can not speak for the National League since I don't have complete knowledge of their finance, coming up with quite superior teams and you would have ten others who would be, as paper New York called us, weak sisters.

Q Why would that be, that two teams would come to

1  
2 dominate the league and the other ten would be weak  
3 sisters?

4 A Because the two teams that were willing to put  
5 the money in to sign the free agents would end up with  
6 quite superior teams, the others would be weak and therefore  
7 your attendance as a whole would suffer. So the players  
8 would be hurt and the owners would be hurt.

9 Q So there would be two teams willing to sign  
10 free agents and ten teams not willing?

11 A Not financially capable of signing them.

12 Q What is the limit on their financial capability?

13 A They don't have the resources.

14 Q They all have turnstiles, don't they?

15 A Half of the American League is losing money.

16 Q Sir, excuse my interrupting, but you don't  
17 know that of your own knowledge, do you? You haven't looked  
18 at their audited financial statements?

19 A I have looked at three audited or at least three  
20 financial statements, and they were losing money.

21 MR. TOPKIS: I move that the answer be stricken,  
22 your Honor. I didn't solicit it.

23 THE COURT: You asked the question. The answer  
24 stands. I would suggest, Mr. Kauffman, though, that you  
25 may get us all into an involvement which we wish to avoid



1 if you volunteer information.

2 THE WITNESS: I see.

3 THE COURT: That is not to hold you back from en-  
4 larging on your thinking, you know, but be careful about  
5 referring to others.  
6

7 THE WITNESS: All right, sir.

8 Q Haven't you known many situations as a business-  
9 man, Mr. Kauffman, where an entity which was losing money  
10 by investing additional sums managed to turn around and  
11 make a lot more money?

12 A Yes, sir.

13 Q No good businessman quits or stops investing  
14 just because he has some red ink on his balance sheet or  
15 P & L statement for a brief period, does he?

16 A Sometimes there needs to be a change in manage-  
17 ment at the same time you add the money, though.

18 Q Agreed. But quite often new management coming  
19 in will put new resources in and turn the business around,  
20 isn't that the history of many American businesses?

21 A Yes, sir.

22 Q What, then, leads you to believe that there  
23 would be two clubs which would use resources to bid for  
24 free agents and there would be ten clubs which wouldn't?

25 A Well, I say two clubs, meaning that there would



be one other besides Kansas City, that I speak with knowledge would put the money in there necessary to get these players.

Q How much money do you think would be necessary?

A To sign free agents?

Q Yes, sir.

A Competing?

Q Yes, sir.

A Hundreds and hundreds of thousands of dollars, maybe two million, three million.

Q Two million, three million per club?

A Over a period of a year, two years or three years, yes.

Q What would be bad about that?

A They don't have it.

Q You have got it?

A The economics of the situation dictate it.

Q You have got it?

A Yes, sir.

Q And you believe it would be good business for you to spend that kind of money for you to get a winning ball club?

A Not exactly good business, but I do it because of a desire to bring a championship to Kansas City, and a will to win.

1 Q And don't you think there are other people  
2 who care as much about the will to win and bringing a  
3 championship to their city as you do?  
4

5 A But they don't have the financial resources, sir.

6 Q Have you examined their resources? Answer yes  
7 or no, please.

8 A No, sir.

9 Q Then how can you possibly know whether they have  
10 the resources?

11 A From the way they run their club and the money  
12 they spend in player development.

13 Q You mean some of the clubs are run pretty much  
14 on the cheap?

15 A Because of lack of finances.

16 Q Now wait. We have agreed that you haven't examined  
17 their finances and I asked you how did you know whether  
18 they would be able to spend money and you said because of the  
19 way they run their clubs.

20 A Yes, sir.

21 Q That's all you know?

22 A Well, I know they have very low income at the  
23 gate, their attendance is low. I have heard --

24 Q Who has --

25 THE COURT: No, no, let him finish. He made it

very clear that he can't give you first-hand information, but he is trying to explain that there are other indicia by which a businessman may make a very strong inference as to what is going on, and I am going to let him go on since you asked him.

Now you go ahead and finish.

A I can see from other clubs in the American League that they are not spending the money in the player development when you think that the Kansas City Royals started only two years ago and, as I understand, today we have the fourth largest minor league system in the American League. So I have seen clubs that have low attendance, that have very poor minor leagues and player development, and I tie the two together.

Q You believe that there are many clubs in the American League which don't spend as much money as you do on player development?

A Yes, sir.

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

THE COURT: Oh, of course.

(Pause.)

Q How much did you say you spent in 1969?

A Over a million dollars. I believe the figure is close to 1.3 million.

FOURTH JUDICIAL DISTRICT REPORTER

UNITED STATES DISTRICT COURT

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2 Q According to a document which is in evidence,  
3 you spent --

4 THE COURT: Which exhibit it, please?

5 MR. TOPKIS: That is what I am looking, your  
6 Honor.

7 Which exhibit is this?

8 MR. CARROLL: It isn't in. You said you were  
9 going to put it in but you didn't.

10 MR. TOPKIS: I ask that this be marked for identi-  
11 fication, your Honor.

12 Your Honor, I have here a document in five  
13 sheets, each sheet being headed "Organized Baseball Condensed  
14 Schedule of Cost of Player Development and Minor League  
15 Operations by Club," and the five sheets cover the years  
16 1965 through 1969, and they were furnished to me by my friends  
17 on the other side.

18 xxx

19 (Plaintiff's Exhibit 32 marked for identifica-  
20 tion.)

21 MR. TOPKIS: Your Honor, this is a coded docu-  
22 ment. Let me append to it -- perhaps it may all be marked  
23 as Exhibit 32 -- the code sheet.

24 THE COURT: Fine.

25 MR. HUGHES: Are you going to physically attach  
it?



MR. TOPKIS: Yes. It will all be part of Exhibit 32.

If I have a question pending, may it be stricken, your Honor?

THE COURT: Surely.

Q Mr. Kauffman, what teams strike you as operating their player development systems at a relatively impecunious level?

A You want me to name individual teams?

Q Please.

A In the first place, there is two sides to this player development, and I am speaking of the minor league development and not signing of bonus players and college scholarships. On this basis, I am talking about such teams as Chicago White Sox, Oakland, Athletics. Those are the two in particular.

Q White Sox, Oakland and who else?

A That's all I mentioned, sir.

Q These are two clubs that strike you as running their minor league operations quite inexpensively, is that right?

A Yes, sir.

Q According to these figures that I have here --

THE COURT: As reflected in Exhibit --

MR. TOPKIS: As reflected in Exhibit 32, your Honor, and I thank you, 32 for identification.

Q You seem to have made \$286,000 in 1969 operating your minor league clubs which you own, and spent \$805,000 on working agreements and had spring training camp expenses for your minor league clubs of \$100,000.

Does that accord with your recollection?

A No, sir. We have no working agreements, sir.

Q You had no working agreements?

A No, sir. It is my understanding we own all of our minor leagues.

Q Excuse me a second. I seem to have misled --

THE COURT: Suppose we give you a chance to straighten that out.

A short recess, Mr. Clerk.

THE CLERK: Short recess. All rise.

(Recess.)

t4/1

MR. TOPKIS: May I proceed, your Honor?

THE COURT: Oh, yes, indeed.

MR. TOPKIS: Thank you very much.

BY MR. TOPKIS:

Q You testified, I believe, on direct examination, Mr. Kauffman, that in your belief there is relative equality of bargaining power between the player and the club. Did I hear you correctly?

A No, sir.

Q There is inequality?

A No, I did not use the word equality in my statement. My statement was that there was great bargaining power on the part of the player based upon so and so and so.

Q The club has rather more bargaining power, doesn't it?

A No, sir, I wouldn't say so.

Q You think they are on relatively equal terms?

A I believe so, yes, sir.

Q That is your sworn testimony?

A Yes, sir.

Q Let me ask you to consider this situation: At the start of a season or shortly prior to the start of a season, you sit down with your roster, don't you, and start thinking about salary negotiations?

STATEMENT OF THE WITNESS

STATEMENT OF THE WITNESS

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2 A No, sir.

3 Q Are you telling me that you have no part in salary  
4 negotiations?

5 A No, sir.

6 Q You do conduct salary negotiations for your club?

7 A I have a part in it, sir.

8 Q You have a part?

9 A I will explain what I mean by that if you wish.

10 Q I would appreciate it, any time.

11 A Whether it is in business or in baseball, I don't  
12 believe that you can wait until the end of a set period and  
13 give an equitable salary increase. I think to get an equit-  
14 able salary increase, whether it is business or baseball,  
15 judgment should be made periodically -- in baseball, every  
16 60 days -- as to the salary increase for the next year, because  
17 your mind can be affected so much by what happens the last  
18 period of the season. The last two months this man may have  
19 inadvertently or because of mental problems played badly and  
20 therefore you let it affect your judgment as to the whole  
21 season. I believe the only true method of doing it that  
22 is fair is to have periodic thoughts about what this man should  
23 get next year.

24 Q And that is the way you run your club?

25 A Yes, sir.



Q And to your knowledge does any other ball club operate that way?

A I don't know.

Q Nevertheless, when you do begin to prepare to sit down with the players and negotiate against the background of the on-going review that you have just described, you do more or less rank your players, don't you, in terms of the salaries that you think appropriate for them?

A You rank them as to the man you are going to pay the most to?

Q Yes, something like that.

A No, sir.

Q Well, there are some players whom you think of as being your stars, worthy of the highest compensation, and on your 26-man roster there are a half dozen at the bottom, I suppose, whom you think of as being journeyman ballplayers, deserving of the lower or lowest level of compensation, isn't that right?

A To a certain extent, but I believe you take into consideration their past pay and what they should get in the future rather than ranking this as a star and the star gets so much and this is a fringe major leaguer and he gets so much. I think you take into consideration this man received so much last year; is he worthy of a raise? If so, how much is he

2 worthy of? And the same thing is true with the star.

3 Q By whatever means you arrive at it, you do arrive  
4 at the conclusion, don't you, that there are a few of your  
5 ballplayers who are worthy of the lowest level of compen-  
6 sation on your club?

7 A Yes, sir.

8 Q That is just logic, isn't it?

9 A Yes, sir.

10 Q Now, let us talk about some of those men. They  
11 would be the thirty-sixth through fortieth members of your  
12 roster, let us say.

13 A Yes, sir.

14 Q You could rather easily pick up replacements for  
15 them, couldn't you?

16 A I don't believe you could easily.

17 Q Well, they are men whom you are thinking of sending  
18 to your minor league clubs?

19 A Yes, sir.

20 Q And you could bring somebody else up from your minor  
21 league clubs or really you are going to be leaving them on  
22 your minor league clubs, right?

23 A Yes, correct.

24 Q That is to say, you feel that you can dispense with  
25 their services as part of your starting 25 men for that sea-

2 bargaining power with you because they know that the club  
3 has put so much money into their development, is that right?  
4 Did I understand your testimony correctly?

5 A I made the statement that they have bargaining  
6 power because of the investment we have in them. I didn't  
7 say that they know this, although the Kansas City players  
8 are made aware of it because I believe in their knowing  
9 this type of situation.

10 Q I see.

11 A But, they have that plus the requirement that we  
12 have to fill a certain position, which they may do, plus  
13 the fact that public opinion is a pressure on us and usually  
14 it is almost always on the side of the player, plus the fact  
15 that we need to field a team, to build up attendance, and  
16 et cetera.

17 Q Those are all factors operating in the player's  
18 favor?

19 A Yes, sir.

20 Q And operator's in the club's favor is the fact that  
21 the player cannot deal with any other club, that he must  
22 either sign with the club or leave organized baseball?

23 A That balances it out, yes, sir.

24 Q And you think of that as establishing relative  
25 parity of bargaining power except in the cases of those

Honor?

THE COURT: Yes, would you please, Mr. Court Reporter.

(Question read.)

Q With Curt Flood.

A May I ask some questions about him?

Q Surely. We will switch roles for a minute.

A How old is he?

Q Thirty-two.

A That's a strike against him.

Q Call them as you see them, Mr. Umpire.

A I would need to know something about his personality, how he gets along with his teammates and things like that, because in my belief that is quite important to building a cohesive team. You would have to give me a lot more information about him.

Q What information would you like? I might tell you, by the way, that he is co-captain or was co-captain of the Cardinals last year. I suppose that is a --

THE COURT: Well, Mr. Topkis, really, this is interesting, but I wonder whether there is enough basis for any answer he gives with regard to Mr. Flood?

MR. TOPKIS: Well, your Honor, that is perhaps a problem that would be faced by Mr. Flood, but the only way



that we can prove damages or one of the most effective ways, I should think, would be by eliciting from such fair-minded witnesses as Mr. Kaufman what their estimate is of his salary.

THE COURT: Yes, but he has got to have certain basics with which to deal. He has already expressed himself as in need of valuable material in order to make a decision.

Am I wrong?

THE WITNESS: No, sir, you are right.

THE COURT: And what you really are doing is just giving us your impression based on what you have picked up in a general way. I tell you that if you were really interested in getting Mr. Flood you would really make a study of him, wouldn't you?

THE WITNESS: Very much, sir.

THE COURT: All right. Well, you go ahead, but I really wonder whether this is going to help us very much.

MR. TOPKIS: I will try, if I may, your Honor, with just a couple of questions.

THE COURT: Mr. Topkis, you have all done so well that with other lawyers less capable and less cooperative I would say no, but to you I say proceed.

MR. TOPKIS: I thank you, your Honor, on behalf of all of us.

Q Mr. Kauffman, you signed a whole roster of ball-players last year, didn't you, for your new expansion club?

A In 1968, sir, we did.

Q Right, I apologize.

A Yes.

Q The start of the '69 season or prior thereto?

A Yes, sir.

Q None of those did you know any better than you knew Curt Flood, did you?

A No, but we had to take those, and you are now making an offer and asking for more money than it is possible that we had to do then.

MR. KRAMER: The witness should be told, your Honor, whether or not counsel is making an offer. If Mr. Flood is offering to play for the Kansas City team I want to know it right now because it will certainly affect the way I conduct on behalf of the Commissioner and the rest of this litigation.

MR. TOPKIS: Well, I had understood, your Honor, that Mr. Flood had asked the Commissioner of Baseball to advise all of the clubs in major league baseball and that would include Mr. Kauffman's Kansas City club, that he was available for negotiations with any and every club. That statement still goes.

MR. KRAMER: Thank you.

THE COURT: Are you content, Mr. Kramer?

MR. KRAMER: I am indeed.

THE COURT: Would you please suffer an interruption?  
I think I am getting an important call.

(Pause.)

THE COURT: Thank you. Please go on.

BY MR. TOPKIS:

Q Mr. Kauffman, I think you said that some teams spend less than others on their farm systems or player development arrangements and that demonstrates to you the inequality of their resources, is that right?

A The resources they are willing to spend, yes, sir.

Q According to Plaintiff's Exhibit 32 for identification, Mr. Kauffman, the total cost of player development and minor league operations by club for your club as it is arrayed on this table -- and you have seen this table, haven't you?

A Yes, sir, casually.

Q -- for the year 1969 was \$1,247,000.

MR. KRAMER: Objection, your Honor.

May I be heard?

THE COURT: Yes, certainly.

MR. KRAMER: Mr. Topkis stated that Plaintiff's Exhibit 32 was for identification. I had thought, but I am

RECORDED BY THE COURT REPORTER,

JOHN J. KELLY, JR.

1000 KANSAS STREET, N.W.

WASHINGTON, D.C. 20004

not sure, that it was in evidence. If it is not in evidence, I would, of course, suppose it should be offered in evidence before he reads from it.

THE COURT: Oh, you are absolutely right. I thank you for calling that to our attention.

MR. TOPKIS: Your Honor, I will gladly put it in. I would utter, in connection with it, however, only this caveat that, of course, we have not had an opportunity to examine the underlying data. All of these sheets bear on their face the statement "Prepared from submitted data without audit," and so I cannot vouch for the figures here contained. I can say only that these were figures furnished to me by the other side.

THE COURT: And you have no doubt that they were furnished with the greatest care that time made possible?

MR. TOPKIS: I have no doubt of that at all. I merely say that I don't vouch for them.

THE COURT: Very well.

Mark it in evidence.

(Plaintiff's Exhibit 32 received in evidence.)

Q Now, as I was saying before, Mr. Kauffman, according to Plaintiff's Exhibit 32, your club spent in the year 1969 \$1,247,000 on various aspects of player development and minor league operations.



A I think that's right, sir.

Q The Yankees spent \$1,537,000 according to this same schedule.

A Yes, sir.

Q Would you say that those two figures, yours and the Yankees' are an accurate index of the relative resources of yourself or your club and the Columbia Broadcasting System?

A No, sir. Might I say, sir, that we have very small amounts in there for college scholarship, for bonuses to players, because this is the first year going on today that we have had early draft choice, and this makes a lot of difference in your minor league development. All of our expenses were practically for players in the field and not for these bonuses and college scholarships.

Q And so you anticipate that when you are free to spend more money on bonuses and scholarships you will do so?

A Hundreds of thousands of dollars.

Q You expect to be right in there competing with the Yankees and, let us say, the Mets?

A Very much so.

Q And every other club in baseball?

A Yes, sir.

Q Now, you told me before, I think, that you thought of the White Sox and Oakland as being teams that were running

their minor league operations on a very, very skimpy basis. I don't mean to use the word unkindly, but give me a replacement word if you wish.

A Whatever word you might use -- less than what others were, yes, I mentioned those two clubs.

Q Well, I notice again, according to this exhibit that I have in front of me, Exhibit 32, that on the operations of minor league clubs, whether owned or those tied to working agreements and minor league spring training camp expenses, you spent \$619,000 last year and the White Sox spent \$712,000.

A On what expenses, sir?

Q The heading is Net Cost of Operating Owned Minor League Clubs Working Agreements with Non-Owned Minor League Clubs, and I understand that for your club those two figures are lumped together, and Minor League Spring Training Camp Expenses.

A Are those the only figures involved in your total end figure of 1,247,000 that we spent?

Q No, sir. I took out of that, because you told me that you were talking only about minor league operating costs and not about such things as bonuses and scholarships and scouts and so on.

A Of course, scouts are an integral part of it, sir.

Q Oh, well, then, you regard the total figure as being the one best to use for comparison, is that right?

A Minus the scholarships.

Q Minus the scholarships.

A And bonus payments.

Q Bonuses and scholarships, all right. We will try to pull those out.

MR. TORRES: Oh, no, I think there is no need to bother, your Honor. We can do the calculations for your Honor in our brief.

THE COURT: Very good. Very good.

MR. FRAMER: Your Honor, would it be impertinent for me to observe that there has been a lot of brief writing in this case already?

THE COURT: You are not capable of any impertinence.

MR. FRAMER: Thank you, your Honor.

THE COURT: And if there has been what you suggest, I am grateful for it.

Q Mr. Kauffman, you testified, I believe in response to questions from me, I think, that your primary interests in baseball were bringing a pennant to Kansas City and having the prestige and pleasure of owning and operating a major league club and that the less dominating influence was the desire to make money.



Do I recall your testimony correctly?

A No, sir.

Q Would you repeat it, then, for me and straighten me out?

A My number one reason for buying a baseball club was to help Kansas City retain it, and this was an opportunity for me to return to my community some of the benefits which I had reaped.

No. 2 would be the pleasure involved in being a major league owner.

No. 3 would be the prestige, and I presume this is approximate.

And No. 4 would be because I felt that I could make it profitable over a period of time when I moved into the new stadium. I knew I would lose money to start with.

Q Right. The old stadium or the current stadium kind of boxed you in; you couldn't possibly make money there?

A No, sir.

Q Well now, you testified also, I think, that revenue sharing by the clubs of gate receipts and television and radio receipts would be unworkable because it would rule out the profit motive; is that right?

A It not only rules out the profit motive, but it rules out some of the desire to build your own organization so that



it brings in revenue which you can subsequently use to build a better team than the other people have, and it goes against the fact that one owner will do more to build attendance in his home town than other owners will, and you will negate that factor.

Q Well, those consequences would follow only if revenues only from the gate and from television and radio were split equally, wouldn't it? For example --

A Or differently than we are now, close to 50-50.

Q Well, suppose they were split 60-40 in favor of the home team. That would still give you a very significant profit motive, wouldn't it?

A No, sir.

Q 60 per cent of the take isn't enough?

A No, sir, not with the expenses we have.

Q Well, might you tailor your expenses to your cloth?

A Well, then you can't pay the players the salaries or pay the bonuses they would like to have and we are willing to do.

Q You couldn't do that today?

A We couldn't do it with a hundred per cent of the money we took in in '69 over what we will take in this year.

Q Well, today, after all, there is only so much money received by all the major league clubs from the gate, from

2 MR. TOPKIS: Could I have it read back to remind  
3 me?

4 THE COURT: All right.

5 (Question read.)

6 THE COURT: What is your reaction to that?

4 7 A You would have to put another rule in, another  
8 clause in there that no owner could put any more money in,  
9 and you must live from your revenues, and if that happens  
10 the players aren't going to get near as much money as they  
11 are getting now.

12 Q Is it your impression that in recent years the  
13 owners on a net basis have been plowing money into baseball?

14 A I cannot speak for over recent years, but I know  
15 that since the expansion clubs have been in that with the  
16 price that you have to pay for baseball, and to those clubs  
17 who do not have the equity money to put in, they cannot oper-  
18 ate good baseball clubs and as a result it requires additional  
19 money being put in.

2 Q Well, that could be solved, couldn't it, by  
3 giving your expansion club the right to put in additional  
4 moneys for a few years in order to build themselves up,  
5 couldn't it?

6 A No, because you get back to the same point. If  
7 you are going to equalize all the teams you are headed toward  
8 a ballet exhibition and they don't get attendance and I  
9 don't think baseball would.

10 Q Is it your belief that baseball's attendance  
11 depends on the amount of money that the club owner plows  
12 into his club?

13 A In the long run, yes, because that determines  
14 the quality of the team that is fielded. The Mets may be  
15 an exception. And that is not disrespectful of the Mets.  
16 It is a compliment of the fans to this great area because  
17 they went when they did not have as high a quality team  
18 as they do now.

19 MR. TOPKIS: I think we could go into that, but  
20 I think we can do it on the briefs, your Honor.

21 THE COURT: Let me express my gratitude in  
22 advance.

23 Gentlemen, would you oblige me by stepping up  
24 for a minute?

25 (Discussion off the record at the side bar.)



BY MR. TOPKIS:

Q Mr. Kauffman, I think you testified before that you offered one owner a million dollars for one player.

What owner was that?

A Charles C. Finley of the Oakland Athletics.

Q What was the player? Who was the player?

Pardon me, I shouldn't treat him as property.

MR. HUGHES: Do we really need this?

MR. TOPKIS: I don't know otherwise why it was gone into on direct.

A Any player that we chose from his 40-man roster, sir.

Q That is, you were to have the right to pick the man from his 40-man roster?

A Yes, sir.

Q And you offered another owner \$3 million for any four players?

A Yes, sir.

Q What owner was that?

A Same one, sir, Mr. Finley.

Q Those were four players, according to my notes, whom he would name?

A No, sir.

Q I thought I misunderstood you. You were to name



gwb-3

Kauffman-cross

2 them?

3 A Yes, sir. At the time I made the offer, sir,  
4 I did not have Mr. Tallis, as general manager, and it was  
5 necessary to use his judgment in addition to mine in  
6 naming the players. So no names were made. It was any  
7 four we would choose from his team.

8 THE COURT: Period. Next question.

9 Q Right. And I dare say you would make that same  
10 offer to the Mets, wouldn't you?

11 A I don't know, sir. Being in the American League,  
12 I don't know that much about the Mets, but I imagine I would,  
13 sir.

14 Q You testified that you talked with your attorney  
15 before or some time in connection with making your bid  
16 for the franchise. Did you talk with him before or after  
17 you made your bid for the franchise?

18 A Before, sir.

19 Q And did you talk with Mr. Reynolds first or  
20 with your attorney?

21 A I believe it was Mr. Reynolds, to get some  
22 information financially, etc. on an expansion team since  
23 his was the last expansion team in the American League.

24 Q By the way, who is the attorney to whom you refer?

25 A Hoskins, King & McGannon, of Missouri City, Mr.

McGannon specifically.

Q And you testified, I think, that he advised you in connection with the health of the reserve system under the Federal antitrust laws, is that right?

A At the time I was making this investment and talking to Mr. Reynolds, I came to the conclusion in order to develop a winning team you had to spend so much in player development, and I came to the conclusion it would be necessary to put in at that time I thought another million. It was proved erroneous; it takes more than that in player development. And in discussing this with Mr. McGannon and his associates, he said, "Well, if you are going to spend money like this" -- and he brought out the reserve clause situation -- "I think you should be aware of the reserve clause."

And he went into a little detail on it and subsequently stated that -- a very off-the-cuff opinion -- we could rely in this investing that the players we would develop would belong to the Kansas City Royals.

That is vague testimony, but that is as well as I remember it.

Q And he talked to you about the Federal antitrust laws, I suppose?

A He didn't tell me anything about the antitrust

1 except to say at the present time it was indicated that  
2 baseball was exempt from business antitrust, words to that  
3 effect, something like that.  
4

5 Q You didn't know what antitrust laws he was talking  
6 about?

7 A Well, I know about the antitrust laws because  
8 we have them in our pharmaceutical business.

9 Q That is just what I was thinking about. They  
10 are familiar to people in the pharmaceutical business,  
11 aren't they?

12 A Yes.

13 Q You are familiar with Federal antitrust laws in  
14 that connection, Sherman Act?

15 A I don't know them word for word, but I know enough  
16 about them when we buy another company we take them into  
17 consideration, primarily our acquisition people do, and we  
18 get a legal opinion before acquiring it.

19 Q You didn't get a written legal opinion on the  
20 antitrust laws on acquiring property in baseball, did you?

21 A No, sir.

22 Q Did Mr. McGannon advise you in connection with  
23 the possible application of the Thirteenth Amendment in  
24 baseball?

25 A No, sir, it never came.

gwb-c

Kaufman-cwasa

Q Did he advise you in connection with the anti-peonage statutes?

A No, sir.

Q Did he advise you in connection with the law of the state of New York relating to restraints on trade?

A No, sir.

Q Did he advise you in connection with the law of the state of California relating to restraints on trade?

A I don't believe he advised me anything other than what I have told you.

Q Very well. Now, you told us about these machines that your psychologist developed. What was his name again?

A Dr. Ray Bailey.

THE COURT: Mr. Tophis, I know you will understand this, because you undoubtedly share it with me. Where a lawyer is not here and his client is asked to testify, I kind of feel we are on extremely sensitive ground. Don't you see, he may very well have given to his client here the ultimate, the conclusion, having taken into consideration all the factors to which you alluded in the course of your question. So that the very fact that this witness can't tell us whether his lawyer -- rather, he says no to such questions as to whether his lawyer talked to him about



2 A Yes, sir.

3 Q And has he advised you that a certain proportion  
4 of the population meet the requirements to be professional  
5 baseball players?

6 A No, sir.

7 Q What advice has he given you in connection with  
8 how often you are likely to find people qualified to be  
9 professional baseball players?

10 A Nothing in that respect.

11 Q He has never told you how frequently a test might  
12 pan out?

13 A You are asking me to quote percentages and how  
14 many people out of the hundreds of thousands of high  
15 school graduates we might see at the time that might  
16 graduate, and we test, so many would be at this level of  
17 physical attributes?

18 Q I was looking for information in that area of  
19 whatever kind he had given you, whether it was in percentage  
20 terms, precise numbers or whatever.

21 A The following information he has given me and  
22 the following facts have been deducted from these tests  
23 of 160 ballplayers both by himself and by myself, and by  
24 Mr. Thrift, the director of the academy.

25 Number 1, these tests show a definite parallel

2 between a boy who has lower physical attributes between  
3 the minor leaguers and the major leaguers; Number 2, we  
4 can find our major league ballplayers who are now playing  
5 who are batting 270 above have one trait in order to be  
6 up there, and that seems to be fast reaction time. This  
7 will vary between two players hitting 270 and above.

8 The boy hitting 270 who has slower reaction time,  
9 even though it is good, but slower than this other one,  
10 we test his eyes and we find his eyes are better and he  
11 can pick that ball up 10 feet sooner.

12 So, therefore, with his reaction time a little  
13 slower than the other player, he has time to hit the ball.

14 What we are looking for, and I am sure that we  
15 can find it among thousands and hundreds of thousands of  
16 17, 18, 19-year old boys in the United States is the speed  
17 of Maury Wills, the reaction time of Yastrzemski, the eye-  
18 sight of a person like Ted Williams, and the body movement  
19 of Brooks Robinson. I know we can find 50 of them and when  
20 we give them the finest in baseball coaching, I am con-  
21 vinced many of them will become major league baseball players  
22 to the extent that I am betting this investment I am making,  
23 plus \$600,000 a year.

24 ) End 5a  
25

Q I think we are all very encouraged by the application of such scientific techniques to baseball, Mr. Kauffman. You haven't heard of any other ball club owners using this kind of investigative technique?

A No, sir, but several of them are interested in it. Several of them are worried about it.

Q They are worried that you might steal a march on them?

A Yes, sir, gimmick.

Q Have you tested a group of high school ballplayers who haven't had any professional experience?

A Yes, sir.

Q And how large a group was that?

A So far we have been limited to testing five in a group. It's against the baseball rules to test more than five. This is an archaic baseball rule which I think baseball is willing to change, but because we had to rush it, it's taken a little longer.

This ties in with agreeing not to bother the high school baseball players. What we were testing was non-baseball players. We tested baseball players also. We probably have tested high school seniors 150 so far.

Q And how many of them have panned out as possessing the four elements that mark a baseball player to the degree

which would warrant you in hoping or expecting that they might become players of major league caliber?

A Two.

Q Of the 150?

A Yes. However, rest assured this 150 were somewhat screened a little bit beforehand. This would not be the normal 150 high school graduates of this age. They had some preliminary screening.

Q I see. How large a group had you started with?

A This is an approximation, but probably 10,000.

Q I see. And you expect to be able to get for your Kansas City team about 50 players?

A We are looking for 48, to be exact, because we lost one room in our dormitory so we can only put 48 in.

Q You don't have the idea that by finding those 48 for yourselves you will be any means exhaust the supply, do you?

A No, I think there are probably others. If they are not here in the United States, I am willing to go to other places to find them: Europe, Canada, et cetera.

Q Japan?

A No, sir. It's a different culture. I don't believe they would tie in very well.

Q Are we talking about cultural factors here or



purely physical factors?

A The reason I mentioned culture is that a baseball player from another culture than the western civilization is not as happy and content playing here as would be somebody from Europe or Canada, Australia. Nothing against the Japanese, who are very fine people, no more than I want to go to Japan and work, et cetera.

Q I see. Well, do you have any idea right now, Mr. Kauffman, among the hundreds of thousands or possibly -- well, hundreds of thousands and possibly into the low millions of high school seniors how many would test out on your machines as possessing the skills necessary to forecast their development into major league ballplayers?

A I don't have any idea of the number. We are holding over 100 tryouts, and everybody that comes for this tryout supposedly comes knowing he must run 60 yards in 6.9 seconds or better. So there is one qualification that should have been met before they come.

Q But you really have no precise idea of how many people there might be who would measure up to the tests?

A No, sir.

Q It is entirely possible that around the United States and the various foreign countries that you would regard as culturally adaptable there might be many thousands?

1  
2 A Yes, sir.

3 Q You testified in connection with the possible use  
4 of an arbitration system in baseball as a supplement to the  
5 reserve system. Do you recall that testimony?

6 A Yes, sir.

7 Q And you testified, I think, that statistics alone  
8 would be considered by the arbitrator and non-statistical  
9 factors are important.

10 A Yes, sir.

11 Q Why would the arbitrator have to consider statistical  
12 factors alone?

13 A Because this is the only concrete evidence he has on  
14 which he can base his decision and anything else would be based  
15 upon the testimony of, for instance, the baseball manager or  
16 owner, which would be in his opinion, and the arbitrator  
17 could not give that as much weight as he would bare mathe-  
18 matical figures.

19 Q You are not suggesting in this court that the  
20 testimony of baseball owners is unreliable, are you?

21 A No, sir, in no way, shape or form have I done that.

22 Q Why couldn't the arbitrator rely on it every bit as  
23 much as his Honor would?

24 A It would be my feeling the arbitrator would rely  
25 more on the mathematical figures, sir.

Q If he were a skilled baseball man say like Bowie Ruhn, would you abide by that view?

A I think Bowie is a skilled baseball man, but I would not want to rely upon him to arbitrate salaries for me.

Q You wouldn't like to rely on anybody to arbitrate salaries for you, is that right?

A I think you will find the Kansas City players very pleased and very happy to be with the Kansas City Royals and that we have practically no complaints on salary.

MR. TOPPIS: Your Honor, with respect, may that answer be stricken as not responsive? It was volunteered. I don't think it should be binding on us.

THE COURT: Granted. Stricken.

Q In your pharmaceutical business, do you have a number of employees whom you regard particularly highly?

A Yes, sir.

Q Has it been your practice to give some of them stock options?

A No, sir.

Q No stock options in your company?

A No, sir. You said "some." Every employee that works for me owns stock in our company.

Q Except those who work for you as ballplayers?

A And I would do that but you can't do it. It's against



2 the rules, and owning ball stock is not profitable. They would  
3 lose money if they owned stock in the corporation.

4 Q Do you want to sell me some of your stock?

5 A No, I don't want any partners because I lose money  
6 at it and I want to operate it the way I want to operate it  
7 and not because somebody wants to make money out of it.

8 Q You did testify over the long term you hope to make  
9 money out of it, though?

10 A Yes, sir.

2 11 Q Have you suggested to the major league club owners  
12 that the rule forbidding player ownership of stock in a club  
13 be rescinded?

14 A No, sir. There are lots of other places to put their  
15 money that are better.

16 Q I think my question has been answered.

17 A Okay.

18 Q You testified, I think, Mr. Kauffman, that if there  
19 were a system in baseball akin to football's rule whereby a  
20 player is permitted to play out his option that that would  
21 be a very bad thing for baseball because there couldn't be  
22 compensation for the loss of a star shortstop.

23 A Well, not only a shortstop but for many star -- many  
24 positions, yes, sir.

25 Q Football gets along with that rule, doesn't it?



A I don't believe so, because they don't seem to utilize it much.

Q Then it doesn't hurt them?

A It may not.

MR. FRAMER: What did he say?

THE COURT: "It may not."

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

THE COURT: Please take your time, Mr. Topkis.

(Pause.)

MR. TOPKIS: Your Honor, my colleagues advise me that if Mr. Kauffman won't sell us any stock there is no sense continuing this examination.

Excuse me. I found one other note on the back of an envelope. Let me check.

Q Oh, yes, I think you testified, Mr. Kauffman, that you relied on the advice you received from your counsel in connection with the application of the antitrust laws to baseball in making your investment.

A Yes, sir.

Q Did you rely also on the number of home games which you knew your team would be permitted to play?

A I don't believe I specifically took into consideration that we would play X number of home games per se by itself.

1  
2 Q You knew that there was a number of home games  
3 specified in the rules as they stood at the time, didn't  
4 you?

5 A Probably, yes.

6 Q And you knew that they wouldn't be changed -- that  
7 that number wouldn't be changed except by operation of the  
8 good sense of the major league owners, right?

9 A Yes, sir.

10 Q And you trusted their good sense and that is what  
11 you relied on, isn't that right?

12 A I relied on the general operation of baseball at  
13 that time with the revenue that it produced to offset the  
14 expenses. As it was operating at that time is the basis on  
15 which I made my investment, plus these other factors I talked  
16 about.

17 Q Actually that number of games could be changed by  
18 action of the major league club owners, couldn't it?

19 A Yes, sir.

20 Q So really what you were relying on --

21 A And agreement with the players.

22 Q I am sorry.

23 A And agreement with the Players Association also.

24 Q So really what you were relying on was their good  
25 judgment in the final analysis?

A I guess so, yes.

Q Are you unwilling to rely on their good judgment in place of the complete reserve system as it exists today?

MR. HUGHES: Your Honor, I object to that question because I don't understand it. Therefore, I feel that I ought to object.

THE COURT: I have a little difficulty with it myself, Mr. Topkis.

MR. TOPKIS: I won't press it. Your Honor, I will withdraw it.

THE COURT: Withdrawn. Mr. Hadden?

REDIRECT EXAMINATION BY MR. HADDEN:

Q Mr. Kauffman, just before the recess, I believe, or just before your cross examination, rather, there was a question pending. Do you have that question in mind?

A I think so, but rephrase it so I will be sure I understand exactly what you mean.

Q The question related to a proposal for an alleged modification of the reserve system which would take the form of disassociating the two major leagues one from the other and having them operate completely separately and, I presume, part of that would be also separation of the player acquisition and development functions of the two leagues from each other.

A It is my understanding he is not free to contract.

Q And in giving your testimony on cross examination regarding your evaluation, I want to clarify one aspect of that. You did indicate that you would need additional information, additional facts before you could come to a considered judgment about that.

A Correct.

Q Would it be a fair inference that those additional facts would be needed for a one-year contract, a five-year contract or whatever?

A Yes. It makes a difference between one year and five years.

MR. HADDEN: Thank you. No further questions.

MR. KRAMER: Anything?

MR. KRAMER: No, your Honor.

THE COURT: Mr. Topkis?

MR. TOPKIS: No recross.

THE COURT: Then we can tell Mr. Kauffman he is finished and can go on his way.

MR. TOPKIS: Excepting we are expecting from Mr. Kauffman or some other person the letter relating to that lease.

THE WITNESS: I have made a call.

THE COURT: Step up a minute.

Announce an adjournment.

I can't give you very much time on this. We will have to come right to the point.



Announce an adjournment to tomorrow morning promptly  
at 10 o'clock.

THE CLERK: Adjournment to ten o'clock. All rise.

(Adjourned to June 5, 1970, at 10 a.m.)

WITNESS INDEX

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Robert A. Reynolds	1388			
	1426	1439		1441
Ewing M. Kauffman	1448	1488	1543	

EXHIBIT INDEX

<u>Plaintiff</u>	<u>Identification</u>	<u>Evidence</u>
32	1504	