

Curtis C. Flood

vs.

70 Civ. 202

Bowie K. Kuhn

New York, New York.

June 8, 1970

10:30 A.M.

(Trial resumed.)

THE COURT: Have you been sitting here since I adjourned court?

MR. HUGHES: Your Honor, Mr. Clark is our next witness and Mr. Hoynes will conduct the direct examination.

THE COURT: Very well.

J O H N C L A R K, J R., called as a witness

by the defense, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HOYNES:

Q Dr. Clark, would you state your name and address, please?

A Dr. John Clark, Jr., Concord, Massachusetts.

Q Would you describe your educational background for the Court?

A In 1940 I received a Bachelor of Science in Business Administration from the University of Arkansas, with honors.

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2 In 1942, I received a Master of Science from
3 the same school.

4 In 1943, I received a degree of industrial
5 administration from Harvard Business School, with
6 distinction;

7 In 1947, I received a Master of Business Admini-
8 stration from the Harvard Business School, with distinction.

9 In 1960, I was awarded a degree of Doctor of
10 Commercial Science from the Harvard Business School.

11 Q Would you describe your employment background?

12 A Well, my first employment was as a graduate
13 assistant in economics at the University of Arkansas in
14 1940-'41, while I was working on my Master's degree.

15 The next outside employment would be the Army
16 from 1943 to 1946. I left the Army and I taught at
17 the University of Arkansas for several years, and I went
18 on leave from there in '49 when I attended the Harvard
19 Business School to work on my doctorate degree at that
20 time and spent two years there on the faculty of the
21 business school while I was working on my degree, and at
22 the conclusion of that period I returned to the University
23 of Arkansas for two more years.

24 I left the University of Arkansas in 1953 and
25 joined Arthur D. Little, Inc., of Cambridge, Massachusetts.

2 I was employed by Arthur D. Little from 1953 until 1966.

3 I left Arthur D. Little and spent an eight-
4 month period of employment with Cresap, McCormick and
5 Paget. I rejoined Arthur D. Little in 1967, and am
6 still employed by Arthur D. Little.

7 Q Would you describe the nature and scope of the
8 business activity of Arthur D. Little?

9 A Well, Arthur D. Little is an engineering and
10 economic consulting organization that does contract research
11 for a wide variety of institutions, governments, businesses
12 both here and abroad. We have approximately 1670
13 employees, about half of which are on the professional staff
14 and the others of course are supporting personnel. We
15 do research and engineering and we do research and develop-
16 ment work in the chemical field.

17 We have a large biological research organiza-
18 tion which does a great deal of cancer research, for
19 example. Approximately 50 per cent of our business is
20 concerned with economic and business consulting, and that
21 is the part of the business I am in. We do planning
22 studies, economic development work, feasibility studies
23 for new ventures, organizational studies, for government.

24 We have worked for -- well, we do a great deal
25 of work for the Federal government. Approximately 25

to 30 per cent, something like that, of our work is for the Federal government, and the rest of it is for non-government both here and abroad.

Q Has the Little organization completed any assignments for organized baseball in the past?

A Yes. This would be the sixth assignment. I have been in charge of four of them and have worked on one of the others, which was the major leagues' promotional organization. But the others, I worked, at the time of the transfer of the Milwaukee team to Atlanta, with the National League on preparing an analysis of the wisdom of the decision from a business standpoint to move or not, what the impact would be, the various factors having to do with baseball attendance, what the outlook would be in Atlanta versus what it was in Milwaukee. In other words, all the various aspects of the economic side that are to be taken into account.

The baseball promotional study was to attempt to improve the promotional activities of the clubs, and we reported and the report has been put into effect. There is an organization under way and we hope that promotional activities will improve.

The other assignment really had to do with reviewing particular club situations, whether the outlook

was good or bad financially, what the comparison would be between alternative locations, and I did several of those, too, for the American League.

Q Dr. Clark, you mentioned performing an assignment in connection with the transfer of the Braves from Milwaukee to Atlanta. Did you testify in the trial in the State Court in Wisconsin concerning that move?

A Yes.

Q Would you describe to the Court your other experiences with Arthur D. Little other than the baseball activities you have just described?

A It has been several different types of assignment. I have done several economic development studies both within the United States and for foreign organizations. The Province of Manitoba in Canada, the Province of Nova Scotia are two of the outside-of-this-country studies that I have done.

I have done, I believe, six antitrust studies in connection with the defense of antitrust charges in several different fields. I have done a great deal of economic feasibility of new ventures and evaluating companies either for prior to underwriting or for acquisition purposes, and I have done a great deal of long-term planning work in which you take a particular organization

1 and look at its role in the industry it is in and the
2 economy, its capabilities, and develop plans for its
3 future course of activities. I am involved in two of
4 those right now.
5

6 Q Have you had prior experience other than in the
7 Wisconsin case as a witness in a legal proceeding in court?

8 A I have made several presentations to the Anti-
9 trust Division of the Department of Justice, but not in
10 court. I have testified before a Congressional committee,
11 I have testified before administrative proceedings of the
12 regulatory agencies, but that was the only court situation.

13 Q Dr. Clark, would you describe your assignment
14 in connection with this matter?

15 A The assignment was essentially to analyze and
16 review the salaries, the benefits, the operating costs of
17 baseball, the financial situation of baseball to find out
18 as much as possible what actually had taken place under
19 the existing structure having to do with the relationships,
20 financial, between players, the game, the profitability
21 of clubs and so on.

22 Q In connection with that assignment, have you made
23 yourself familiar in a general way with the baseball rules and
24 regulations as disclosed in what we call our Blue Book,
25 Plaintiff's Exhibit 6?

A Yes.

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2 Q The Uniform Player Contract, which I believe is
3 Plaintiff's Exhibit 3.

4 A Yes.

5 Q The Major League Baseball Players Benefit Plan
6 introduced on Friday as Defendant Feeney's Exhibit M.

7 A Yes.

8 Q And the Celler Report, so-called, which is Plaintiff's
9 Exhibit 15.

10 A Yes.

11 Q And have you spoken to people in management capac-
12 ities in organized baseball?

13 A Yes, a number of times in these various studies
14 I have had a great deal of contact with the management side
15 of baseball.

16 Q Dr. Clark, have you prepared a report in connection
17 with your assignment?

18 A Yes.

19 MR. HOYNES: I would like to have the report marked,
20 if I may.

21 (Defendant Feeney et al.. Exhibit S marked for
22 identification.)

23 Q Dr. Clark, is this the report entitled Economic
24 Analyses of Certain Aspects of Organized Baseball?

25 A Yes.

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MR. HOYNES: Your Honor, I offer in evidence Defendant Feeney Exhibit S, the report of Dr. Clark.

MR. TOPKIS: May we reserve comment on it, your Honor, until we have had an opportunity to study it?

THE COURT: Certainly.

MR. TOPKIS: Thank you.

MR. HOYNES: Would you please hand that to the Court.

THE COURT: In the meantime it will be referred to as an exhibit for identification.

MR. HOYNES: Your Honor, as we proceed through our testimony, we would like to refer to certain aspects of it. I would like your Honor to review it. I assume the plaintiff has no objection.

MR. TOPKIS: I have no objection to that procedure, your Honor.

THE COURT: Certainly.

MR. HOYNES: Thank you.

THE COURT: We will receive it in evidence at this time. On second thought that would be the better course. And then if Mr. Topkis can show me valid reason for excluding it, we will act upon his application at a later time.

Mark it in evidence, Mr. Clerk.

(Defendant Feeney et al Exhibit S received in evidence.)

Q Dr. Clark, would you briefly describe the contents of your report?

A Yes. The report gives the findings on several particular analyses that I conducted. The first is on salaries and benefits. The second is player development and replacement costs. The third was an economic analysis of baseball operations. The fourth was an analysis of the franchise values and earnings. The fifth is relative financial capability of baseball clubs, and the sixth is the attendance as related to the size of city and performance of club.

THE COURT: Dr. Clark, I am interested in what you have to say, but I am frank to tell you at the outset that when it comes to persons speaking in an expert field, the fact finders, whether it is a judge or a jury, are better enlightened if the witness will assume that the fact finder knows almost nothing about the subject, and therefore do not use polysyllabic expressions; don't be ashamed of breaking it down into simple terminology so that your thoughts can get across to me.

THE WITNESS: Yes, sir.

Q Dr. Clark, turning to your study, have you ascertained the average salaries of major league baseball players for certain recent years?

2 A Yes.

3 Q Would you give us the results of your analysis?

4 A Yes. I took the salaries of the players on the
5 roster as of August 31, 1965 and totalled up the overall
6 salaries and divided by the number of players and got a
7 figure of \$19,500 as the average salary for all players on
8 the roster at that time.

9 I did the same thing for 1969 and the comparable
10 figure was \$24,957. That was an increase of 27.9 per cent
11 over the four-year period.

12 Then for 1970, the most recent year, we made the
13 same calculation and the average salary figure for 1970 is
14 \$28,088.

15 Going back to the '65 figure, this represents an
16 increase of 44 per cent.

17 Q Dr. Clark, focusing for the moment on the 1970
18 figure, which I believe you gave as \$28,088 as an average
19 salary, does that amount include the impact upon salary
20 averages of the recently concluded collective bargaining
21 agreement which raises the minimum salary?

22 A No, it does not, and actually it does not include
23 any world series income which -- well, the winning club, of
24 course, receives a substantial amount. The second place
25 club, the runner-up in the world series, also receives a

2 substantial amount. Then the two divisional winners that
3 did not survive the playoffs in each league receive some-
4 thing, I believe something like 12-1/2 per cent each, and
5 the second and third place clubs in each division also re-
6 ceive a certain percentage of the income from the playoff
7 games and the world series, so, as it turns out, approximate-
8 ly half of the clubs or exactly half of the clubs, the players
9 do receive additional income over and above the averages
10 I gave.

11 It also does not include deferred compensation which
12 in a few cases on our salary records that we use it was
13 clear that there was deferred compensation. On others
14 there was -- I remember one in particular, a player that
15 was receiving a quoted salary of 23,000 but next year's
16 salary negotiations were to be conducted as if he was re-
17 ceiving 57,000, so there was some element of deferred com-
18 pensation there.

19 It also, of course, does not include any bonuses
20 or payments that the player might receive during the year
21 or any offseason income or anything from being used in an
22 ad, an advertisement, or an endorsement. This is just the
23 plain salary that was used, so the actual income for many
24 players is considerably above this. This recent --

25 THE COURT: When you say considerably above this,

2 you mean considerably above the figures that you gave?

3 THE WITNESS: Yes, considerably above the figures
4 that I gave.

5 The value of it, as I recall, the value of the
6 playoff, the world series victory, to the Met players was
7 somewhere around 18,000 per share.

8 Q Do you know, Dr. Clark, what the total players'
9 pool, post season players pool was in 1969?

10 A It was in excess of a million six hundred thousand.

11 Q So that that amount was available to players as
12 additional compensation over and above the average salary
13 figures that you have described?

14 A Yes.

15 Q Dr. Clark, do you know approximately what the impact
16 in dollar terms upon the average salary of the raise in the
17 minimum salary retroactive to the beginning of the 1970
18 season is?

19 A Well, yes, if you take just the players on rosters
20 as at the present time, who are making less than 12,000,
21 it would raise the average for all players \$288.

22 Now, whether there would be an effect, if someone
23 is presently making 12,000 and they bring everyone else
24 up to him, whether there will be an adjustment then so that
25 he will be above them relatively speaking, I don't know.

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I would expect that that would happen in a number of cases.

Q But simply adjusting the salary picture to raise those players below the new minimum to the minimum retro-active to the beginning of the season as the new basic agreement requires would increase by \$288 the overall average of all players?

A Yes.

Q I have done the mathematics quickly here. Am I right in saying that would mean that the 1970 average salary would be raised from \$28,088 to \$28,376?

A That is correct.

Q I am always a little leary of my addition. Thank you, Dr. Clark.

Dr. Clark, have you traced the salary history of any particular group of established major league players to note the average increases in their salaries as opposed to the study that you just made of all players averaged each year?

A Yes.

Q Would you describe that study and explain its significance to the Court?

A Yes. In baseball there is a substantial number of new players, first year players entering the league at any given year. It could easily be as much as 70 or 80 or even maybe 90 players a year join the major leagues for the first

time, and obviously most of them are at close to the minimum level, so this tends to bring the average down and obscure what really happens to the salary of the established player. So in an effort to get some idea of what the bargaining result was of the established players, we took the players on the roster as of August 31, 1965, who were on the roster as of August 31, 1969, and were on the roster each year -- in other words, they played each year during the intervening period, meaning there were four bargaining periods during this. Of the 498 players that were on the roster in 1965, 257 met this standard of having gone through five bargaining or four bargaining periods through till 1969. The aggregate salaries paid to this group in 1965 was \$4,735,850, and in 1969, \$9,926,500. Thus, the average salary per player increased from \$18,408 to \$35,823 in 1969. That is an increase of 94.1 per cent over a four-year period.

We carried this on to 1970, and 209 players were on the same basis in '65 and in 1970, having played each year in the meantime, and the increase for those players was 129.4 per cent. And to try to get some more meaning into this, I then made a distribution --

Q Dr. Clark, if I may interrupt you for a moment, I would like to have another piece of paper marked.

MR. HOYNES: This is separate from the report.

This piece of paper is entitled Salaries, Players on 1965 Roster.

(Defendant Feeney et al Exhibit T marked for identification.)

Q Dr. Clark, is this the table that you have prepared and that you were just referring to?

A Yes.

Q Concerning a study of the salaries of players who were on the 1965 rosters and who still are on baseball rosters in 1970?

A Yes.

MR. HOYNES: Your Honor, I offer this in evidence, Defendant Feeney Exhibit T.

MR. TOPPIS: May this be received, your Honor, on the same basis as the prior document?

THE COURT: Yes, it will be received in evidence subject to a motion to strike.

(Defendant Feeney et al Exhibit T received in evidence.)

MR. HOYNES: Your Honor, I will give copies to your clerks, if I may.

THE COURT: Thank you.

Q Dr. Clark, I interrupted you to have this marked in evidence so the Court could follow your testimony. Now,

will you proceed?

A To say that average salaries for these players increased by 129.4 per cent or well over double could be explained partially by a few salaries increasing a great deal and others not going up or the whole ratio not changing much, or there being a few players increases providing for the bigger part of the increase.

So in an effort to find out what the distribution was, I divided the categories into under \$10,000, and then at \$10,00 intervals on up, 10,000 to 19,999, 20,000 to 29,999, and so on up to 120,000, which I have said are over 120,000, and I took the number of players in each of these salary categories, first in 1965, and in 1969, and then in 1965 and in 1970 and, for example, at the first category, under 10,000, in 1965, 75 players received less than 10,000 in the form of salary, and in 1969 there were three in that category. In 1965 there were 60 of the ones who also were playing in 1970, and zero in 1970.

You can do the same calculation for the 10,000 to 19,999. There were 90 in 1965 and 42 in 1969. There were 77 in 1965 and 14 in 1970.

I summarize this down below, again to get some idea of the changes that have taken place. In 1965 there were 64 per cent of the players on this roster that were covered

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2 under 20,000, and this was down to 17-1/2 per cent in '69.
3 The same figures on the comparison with one additional year
4 is 65-1/2 per cent in 1965, 6.7 per cent in '70, and you can
5 see, if you will look on the over 20,000, that of this
6 group of established players who have gone through five
7 bargaining years, ending in 1970, 93.3 per cent of them are
8 making more than 20,000, 67-1/2 per cent of the 209 players
9 were making more than 30,000, and 42.6 per cent were making
10 over 40,000, and I might say that if you look at the over
11 50,000, in 1965, in the right-hand comparison, there were
12 nine players making over \$50,000; in 1970 there were 56.
13 I would say that this indicates --
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THE COURT: Wait. I lost you there.

THE WITNESS: I would be adding up in the right-hand column, the 17, the 15, the 5.

THE COURT: Take it easy. You are talking about the \$50,000, right?

THE WITNESS: Yes, sir.

THE COURT: According to this, there were eight in 1965?

MR. HOYNES: Your Honor, you are looking at the comparison of 1965 to 1969, and Dr. Clark is referring to the next column, 1965 to 1970 comparison.

THE COURT: There were six in '65 and 17 in 1970?

THE WITNESS: Yes, sir. Over 50, you have to add the two that were getting 60,000 to 69,000 just right below it.

THE COURT: Thank you. I understand you.

THE WITNESS: So the 56 refers to the addition of 17, 15, 5, 8, 4, 2, 1, and the 4 who were making over 120,000.

THE COURT: You know this. This is your work, but I am looking at it for the first time. So just go very slowly with me, will you please?

THE WITNESS: Yes, sir.

2 Q Dr. Clark, to make the record clear, those
3 numbers you just read, 15, 5 and so on, are the numbers
4 of players that appear in the categories beginning with
5 50,000, 60,000 and each ascending \$10,000 category up
6 to 120,000 or over, so that the total of 56 is the total
7 of all of these studied players in 1970 who have salaries
8 in excess of \$50,000?

9 THE COURT: Thank you, Mr. Hoyes. If you will
10 on occasion recapitulate the material, it would help me,
11 too.

12 MR. HOYNES: Thank you, your Honor. I would like
13 to clear up one other point that perhaps is obscure. That
14 is the reason for the differences in the numbers appearing
15 in the two columns that are labeled 1965.

16 The first column refers to those players who
17 were active in 1965 and were still active in 1969.

18 The second column labeled 1965 is those players
19 who were active then and who are still active in 1970. A
20 number dropped out in 1969, so that the second 1965 column
21 is smaller in each case than the first.

22 THE COURT: That sort of recapitulation is
23 helpful. Keep doing it after you have elicited the main
24 ingredients from the witness himself.

25 MR. HOYNES: Thank you, your Honor.

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2 THE COURT: Hold it just a minute.

3 (Pause.)

4 THE COURT: Would you suffer a short interrup-
5 tion, gentlemen?

6 MR. HOYNES: Of course, your Honor.

7 (Short recess.)

8 THE COURT: I am sorry, Mr. Hoyn es.

9 MR. HOYNES: It is quite all right your Honor.

10 BY MR. HOYNES:

11 Q Dr. Clark, may I spend a few moments discussing
12 the detail of this Exhibit T. I would like for you to
13 restate, so that we can have the purpose of it clear in
14 our minds, the purpose of this analysis and its relationship
15 to the average salary figures for all players that you
16 gave us earlier.

17 A Because of the rather substantial annual turn-
18 over in players in major league baseball, this leads to the
19 introduction each year of a fairly substantial number
20 of young, new players most of whom are paid at or close
21 to the minimum salary level. This number coming in would
22 tend to depress the average for all baseball salaries
23 of established players who are in the major leagues and who
24 go from year to year negotiating their salaries each year
25 with the owners or managers.

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2 So we took the players who did go through
3 this negotiating process, all of them that met the quali-
4 fication of being on the roster in 1965 and playing each
5 of the next four years, for the first analysis, and signed
6 up for the roster in 1970 / five years, for the second
7 comparison, and then compared how their salaries increased
8 compared with their 1965 salaries.

9 And, as I said, the increase was substantial,
10 just under doubling over a four-year period on the average
11 for the period 1965 to 1969, and more than doubling on the
12 average for the period 1965 to 1970.

13 Q So that during the period when average salaries,
14 including the more or less constant number of new players,
15 was increasing on the order of 40 per cent or slightly over,
16 the established player's average salary was increasing
17 by an order of 130 per cent?

18 A Yes.

19 Q Dr. Clark, have you compared baseball players'
20 salaries and salary increases with the salaries and salary
21 increases common to other occupations?

22 A Yes.

23 Q Would you explain your comparison, giving
24 details, and indicate the page in your report which pertains
25 to that matter so that the Court and counsel can follow you?

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2 A There is a table on Page 3 which presents some
3 income information for a variety of occupations. The years
4 are given vertically and then we have the players on the
5 major league rosters for 1965, 1968 and 1969, giving the
6 average salaries. Then comparable information is given
7 for physicists, linguists -- I say comparable to the
8 extent available. These studies are conducted every two
9 years. Unfortunately, I could not get the up-to-date
10 figures, which would be for 1970.

11 Psychologists, economists, computer sciences,
12 attorneys, accountants, draftsmen, public elementary and
13 secondary school teachers, total manufacturing employment,
14 mining employment and contract construction.

15 In the column on the left entitled "Percentage
16 Increase 1965-1969," we have a figure for that period of
17 27.9 per cent for the baseball players -- I did not use
18 1970 because I could get no 1970 information for the other
19 employment.

20 Q But including 1970, what would that percentage
21 increase have been, to reiterate testimony already given,
22 for baseball?

23 A That would have been 44 per cent.

24 THE COURT: That percentage means what?

25 THE WITNESS: That the average salary in 1969

was 27.9 per cent higher than it was in 1965.

THE COURT: Higher. That is where you get the language that you employ "percentage increase"?

THE WITNESS: Yes, sir.

THE COURT: All right.

A (continuing) For attorneys the increase was 49.6 per cent, but that is for a three-year period. So that clearly was much higher.

For accountants the percentage increase was 20 per cent, but again that was for a three-year period. So actually, if you assume that the increase from 1968 to 1969 was about at the same rate, that would really be about an equivalent increase with baseball, around 27 or so.

Draftsmen --

THE COURT: That would be the equivalent of 27.9 as applied to which group?

THE WITNESS: The accountants, since that was just for three years. Three under 20 would be about 6.6 or 7, so if you added 20 and 7 it would bring it up.

THE COURT: Can you do that for attorneys?

THE WITNESS: Yes. That would be about 17 per cent more.

So that would be up to around 66 per cent, two--

thirds.

Draftsmen, that would be less.

Now public elementary and secondary school teachers. That is for the same period, the same number of years, 1965 to 1969. Any increase was approximately the same. It was 27.8 per cent.

THE COURT: That is almost on the button, isn't it, 27.8 for public elementary and secondary school teachers during the four-year period 1965 to 1969, and 27.9 for the players on the major leagues, right?

THE WITNESS: Yes, sir.

THE COURT: All right.

A (continuing) Total manufacturing was 20.2 per cent for the four-year period. Mining was 25.2, which is also less but fairly close.

Contract construction was 31.3 per cent, which is higher.

What I would draw from this is that there were some salaries and incomes increased more than baseball and some increased less. It doesn't seem to be out of line -- particularly higher, particularly lower--for that four-year period.

Q And the comparison here in each case is with

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the percentage increase in average salaries for all major league players, not the percentage increase in the established player's salary as he progresses?

A That is correct.

THE COURT: Will you gentlemen step up? I am sorry to interrupt you. Will you come up for a minute?

(Discussion off the record at the side bar.)

Q Dr. Clark, if the comparison given here had been a comparison to established player's salary increases rather than increases in all player averages, what would this comparison have looked like on that basis?

MR. TOPKIS: Excuse me, your Honor, if I may. May I take it when Mr. Hoynes uses this term "established player's" he means the definition that Dr. Clark has employed previously, namely, those who were on a major league roster for 60 days in each of the years 1965, 1966, 1967, 1968, 1969 and 1970?

MR. HOYNES: To be clear, we did not operate on the basis of 60 days on the roster.

Q Dr. Clark, would you perhaps explain how you did establish what players were on the 1965, 1968, 1969 and 1970 rosters?

A Actually, all players were considered who had signed major league contracts and who played for at

1
2 least 60 days in each of those years.

3 Q You did use that period?

4 A Yes.

5 Q If you did use the established player comparison,
6 as Mr. Topkis has just defined it, what would the percent-
7 age comparison have been on that basis?

8 A The percentage comparison to 1969 was 94.1 per
9 cent. So that would have been much higher.

10 Q That is a larger percentage increase than any
11 of the categories listed on your exhibit?

12 A Yes.

13 Q So that when you compared the increases that the
14 established major league player received, those increases
15 far oustrip the increases of any of the professional and
16 paraprofessional groups listed on your comparison?

17 A Yes.

18 Q Dr. Clark, I notice some additional lines at
19 the bottom of your page 3 concerning U. S. households and the
20 percentage in certain income brackets. Would you care to
21 explain the effect of that comparison?

22 A It indicates that in 1967, 6.9 per cent of the
23 households in the United States had incomes of between
24 \$15,000 to \$25,000, and 2.5 per cent of the households had
25 incomes of over \$25,000.

For 1968, the same comparison was made. The percentage of households in the United States having incomes between \$15,000 and \$25,000 was 8 per cent, those households having income over 25,000 was 2.9 per cent. The average baseball salary, all players on the rosters, is now well in excess of \$25,000.

Q And as such, I take it from this comparison that the average baseball player's salary ranks him with the upper 3 per cent of income for U.S. households?

A Yes.

THE COURT: Mr. Hoynes, would you be good enough to explain the figures in the second column on Page 3? You take players on major league rosters. You have got \$24,957 for 1969. What does that figure mean?

MR. HOYNES: Your Honor, that is the average salary for all of the players on the major league rosters in 1969.

THE COURT: And when you drop down to teachers, public elementary and secondary school teachers, you have got 7908. What does that mean?

MR. HOYNES: I will let Dr. Clark answer it, if I may.

THE WITNESS: That is the average salary for public elementary and secondary school teachers in the

United States.

THE COURT: A year?

THE WITNESS: A year, yes, sir.

THE COURT: And the first figure, 24,957 is the salary for 1969, average salary for 1969?

THE WITNESS: For major league baseball players on the roster.

THE COURT: And yet the percentage of increase from 1965 to 1969 for both players and for teachers is the same. Explain that.

THE WITNESS: You are starting from a base for the teachers of \$6,195 in 1965. That is on the right-hand column.

THE COURT: Right.

THE WITNESS: In 1969, the average salary for the teachers had gone up to \$7,908. So you divide the \$6,195 into the \$7,908, and you get an increase of 27.8 per cent.

THE COURT: Thank you.

MR. HOYNES: Obviously, your Honor, the increase in dollar terms for the baseball players was much larger because the teachers started at a lower base and the percentage increase requires a smaller dollar level to equalize it.

THE COURT: So I noticed.

BY MR. HOYNES:

Q Dr. Clark, have you determined the proportion of baseball's operating revenues which are expended annually in the form of player salaries and benefits?

A Yes.

Q Would you state what that percentage is and how you arrived at it?

A The figures are actually contained on Page 16 of the report, under "operating expense, team operations, salaries and pension funds, the salaries and pension funds part of the team operating expense."

I totaled the amount given in the financial information supplied by the clubs to Arthur Andersen and reported in their material.

MR. HOYNES: Their report, your Honor, is Plaintiff's Exhibit 7, I believe.

Q And that Plaintiff's Exhibit 7, the Arthur Andersen report, Organized Baseball, is the report to which you refer?

A Yes. I totaled together the salary payments and the payments to the pension fund and found that in 1965 these amounted to 18.5 per cent of total operating revenues; in 1966, to 17.2 per cent of total operating revenues;

in 1967, 19.7 per cent; in 1968, 20.8 per cent; and in 1969, 20.5 per cent, which indicates a slight increase in 1968 and 1969 in the percentage of revenues going to salaries and pension benefits.

Q I take it, then, that over the period studied, 1965 through 1969, the proportion of baseball's operating revenues devoted to players was on the increase?

A It was slightly increased, yes.

Q Dr. Clark, have you made any other study of baseball career salary histories other than the studies described to us before?

A Yes.

Q Would you describe these initial studies and explain their significance, again referring to any portions of your report that you would like us to follow?

A Yes. On Page 5 is a table that was prepared and follows: We took the complete salary history to date of 498 players on major league rosters as of the end of August, 1965, in order to try to find out what their overall salary history has been, the length of the careers of these players and the average salaries and pension credit.

Now, on Page 5 I think one of the interesting points that comes out of this is the effect of longevity on the average salary for the career of a ballplayer.

2 The left-hand column gives the length of the
3 career, and a number of these players are still active so
4 to that extent these figures are understated somewhat, but
5 you can see at one year three players had an average salary
6 of \$7,666.

7 Q That would have been the year 1965; I take it?

8 A Yes. It would have to be that year. Those
9 who played two years, there was an average of 10,322, but
10 as you go on down to about the fifth year the average is
11 still rather modest, 8,818, but from that point on if a
12 player is established and stays in the major leagues and
13 his career is longer than four or five years, the average
14 income he has received -- and this is done by totaling up
15 what he receives each year. It could have been in 1950,
16 1951, 1952 and so on. In fact, some of the players had over
17 20-year careers, so some of our salary history goes back
18 to 1950. We totaled up what they made each of those years
19 and divided the number of years into that to get the average
20 leveled out. In other words, he may have made seven thous-
21 and the first year, eight thousand the next year. He may
22 be up to the 60,000, 70,000, 80,000 level in the later
23 years of his career. So if you total up individually
24 each of these salaries received and divided by the number
25 of years played, this gives the average salary he would

2 have received over the period.

3 THE COURT: Take, for example, as the number
4 of years, twelve. You translate that for me.

5 THE WITNESS: There were 45 players who had 12-
6 year careers to date among the 498 players on the roster in
7 August, 1965. They had received an average salary for
8 each of the 12 years of \$22,305.

9 Q That is the average salary that he received for
10 a career which presumably began in the late fifties and --

11 THE COURT: It covers twelve years.

12 Q -- and covers 12 years and is either still going
13 on or ended some time between 1965 and 1969?

14 A That is correct.

15 Q So it covers over a decade of salary history
16 for those individual players?

17 THE COURT: Right?

18 A That's right. For example, there were five
19 players who had 11 year careers down there, and their
20 average salary had gone up to \$36,458. What this really
21 illustrates is that for most players each additional year,
22 if they are an active player, their salary is higher the
23 additional year than the year before. So if you include
24 that in the average it raises the average a little bit.

25 THE COURT: Excuse me, Dr. Clark. I do this

with a great deal of trepidation, but you said as to the group covering 19 years there were five, right?

THE WITNESS: Yes, sir.

THE COURT: You used the expression "going up to" or "went up to" 36,458. 36,458, as I understand you, is the average after you take all the salaries each received for 19 years and divided by 19?

THE WITNESS: Yes, sir.

THE COURT: So it didn't go up to.

THE WITNESS: Let me explain that. One of the players who is in that category is still playing, but he is an over \$100,000 a year man.

THE COURT: When he had 19 years, his average salary for the 19 years was 36,458?

THE WITNESS: But next year, after we make the same calculation, it will be above.

THE COURT: I understand.

THE WITNESS: This part of the analysis, though, really does indicate the effect of longevity and length of career on salaries, the fact that there is an upward trend in average salaries the longer a person stays.

Q It is a comparison that is almost a corollary to the study that you made of increases in established players' salaries. Is that not right?

2 A Yes, that is correct. We also carried this
3 forward into the pension history of these players, and that
4 is on Page 6, and we took the pension records, a printout
5 from the computer of the pension records, the pension years
6 credited to these players, and analyzed these same players
7 as to how many pension years they had credited as of April
8 30, 1970, and the first column on the left on Page 6 gives
9 the number of pension years credited, the second column
10 refers to those players who were not on major league rosters
11 as of the end of 1969, in other words, inactive; the next
12 column is of those players still active -- that is, 254 were
13 on major league rosters at the end of August, 1969; and,
14 of course, the figure in the right-hand column gives the
15 total of the two.

16 You have under the present pension benefit
17 agreement a category for players vested after four years,
18 and, as you can see, I have an asterisk by four showing
19 where the breaking point is.

20 Of the 498 players, 431 were vested, 67 were
21 not vested. Stated as a percentage, 86.5 per cent of
22 these players were vested as of that date, and since there
23 are 254 of them still on active rosters, these will increase
24 the number of pension years with which they are credited.

25 So this again, the 86.5 undoubtedly will go

up somewhat higher in the future.

This indicates that as of any given time, using August 31 -- and the reason we use August 31, this is the date on which the players on the rosters are eligible for participation in the World's Series in case the club wins and qualifies for the World's Series.

We picked the particular date for that purpose. But of these players, of the 498, 86.5 per cent did qualify for a pension.

Q And those are all of the players that were on major league rosters in 1965?

A As of August 31, 1965.

THE COURT: Are you going into something else now?

MR. HOYNES: Yes, I am, your honor.

THE COURT: A short recess, Mr. Clerk.

THE CLERK: Short recess. All rise.

(Recess.)

End 3

t4/1

BY MR. HOYNES:

Q Dr. Clark, are you generally familiar with baseball's reserve system as it is described in the various rules and regulations of baseball that we described earlier in your testimony?

A Yes.

Q Would you just briefly indicate to us your understanding what the reserve system is?

A Well, the essential ingredients of it are that the club who has a contract with the player has an option of signing him for the next year and also has the ability to transfer a contract to another club. In other words, they control the player's contract and the player has to play for them under the contract or to whoever they assign the contract.

Q In effect, that is career-long control at the club's option?

A Yes.

Q Dr. Clark, were you in the courtroom when Mr. Nathan testified for the plaintiff?

A Yes.

Q And have you subsequently reviewed his testimony in transcript form?

A Yes.

jkbr 2

Clark-direct

Q You will recall that Mr. Nathan testified that in his opinion the reserve clause had a depressing effect upon a player's salary levels. I refer to pay 387 of the transcript.

As I also understood Mr. Nathan's testimony, he had no baseball salary data, and therefore had not been analyze that data to test his conclusion. Have you analyzed what you believe to be the relevant data concerning baseball players' salaries?

A Yes.

Q Does your analysis and study indicate to you that Mr. Nathan's conclusion that players' salaries are depressed by the reserve clause is correct?

A No.

Q Would you explain your answer?

A The analyses that we have just discussed in our report show, first, in respect to average salaries, that the average salary of baseball players on the rosters increased at a reasonable level in respect to other income and salaries in the economy, and in respect to those players who are well established regular players that their salary increases were really quite substantial in absolute terms and in relative terms.

Q Did you find any evidence in that study of this

jkbr 3

Clark-direct

depressive effect that Mr. Nathan referred to?

A In respect to overall salaries, no.

Q Mr. Nathan also testified at page 393 of the transcript that he believed that the bargaining power between a club and the player was, and I quote, "totally and completely unbalanced."

Would you agree with that conclusion?

A No.

Q And would you expand?

A The owner or manager of the club needs to sign contracts particularly with the stars and with the established players. The star, of course, cannot play for anyone else, but his services are substantially needed by the club in question, so that there is a very strong need to not only have the right to bargain with the player, but to come to terms with him. You don't have access -- if you cannot come to terms with that player, it doesn't mean that you can then go out and negotiate with other players belonging to other clubs or who are contracted to other clubs, so it is not a question of, if not coming to terms with him, that you can fill the need some place else easily.

So you really have a very strong need, first, to get the player to come to terms and hopefully in reasonable time so that the player is not completely dissatisfied.

It would be much preferable to have a player who is satisfied with his salary and who is eager to go ahead with the season. Certainly few club owners could really wilfully not come to terms with the star player without substantial player reaction, so there is no question that the players do have some things working for them in this bargaining process.

Q What does the salary study that you made indicate in terms of relative bargaining power to you?

A Well, that established players have received various substantial increases and as warranted by the performance.

Q Dr. Clark, do you believe that collective bargaining can have an impact upon the process of salary determination?

A Yes.

Q In what particulars?

A Well, certainly the collective bargaining by establishing minimum levels or increasing minimum levels raises the overall average by raising the minimum and, of course, you start then on further advances from a higher base. In other words, instead of starting from \$10,000, you will be starting from \$12,000 for future negotiations, so this has an effect which is carried on in future times.

MR. HOYNES: Your Honor, I would like to solicit a

jkbr 5

Clark-direct

stipulation from the plaintiff, if I may, here. We have made no calculation of the dollar effect of the newly announced collective bargaining agreement, but I do understand that the Players Association -- I believe Mr. Miller himself -- has made such a calculation and it has been reported in the newspapers. If there is no objection, I would like to have a stipulation of the amount which the Players Association has calculated to be the effect in dollar terms of that agreement.

THE COURT: Mr. Topkis.

MR. TOPKIS: I will have to confer with Mr. Miller, if I may, your Honor, for a moment?

THE COURT: Certainly. Take your time, Mr. Topkis.

(Pause.)

MR. TOPKIS: If your Honor please, I am advised by Mr. Miller and, of course, his statement is accepted by the plaintiff as entirely accurate, and we are willing so to stipulate, that at a press conference recently he estimated that the total cost to major league baseball of the various increases provided for in the new agreement, for example, such increases as that in the minimum player compensation, increased meal money, increased travelling expenses, at cetera, over the three-year life of the contract, will aggregate approximately \$4 million.

MR. HOYNES: I would like to make one point clear,

and that is that among these various benefits no pension benefits are included. The pension benefits are included in a separate negotiation:

Is that correct, Mr. Miller?

THE COURT: No, don't ask Mr. Miller. Ask counsel.

MR. HOYNES: Mr. Topkis?

MR. TOPKIS: We will so stipulate.

THE COURT: So stipulated.

MR. HOYNES: Thank you.

Q Dr. Clark, what have you observed with respect to the frequency of salary decreases or cuts in your study?

A Well, on the analyses we did of the players on the roster, both in 1965 and '69, there were ten players who received cuts as of '65 and '69, and for the 209 players between '65 and '70, only one player, under the analysis, had a lower salary in 1970 than 1965.

Q Dr. Clark, in answering several of my previous questions about relative bargaining power, you referred to the star player. What is the position of the less-than-star or marginal player under the reserve clause? What, in your view, based upon the study that you have made, is his bargaining position, and what is the effect of the reserve clause on his salary level?

A Well, his bargaining position is obviously not as

great as the stars. In fact, it is not very strong at all. I think it is very possible that he receives certain benefits from the collective bargaining between the Players Association and the clubs, and I think if he stays in the major leagues ordinarily he is given increases from year to year of a modest nature, depending on how fast he improves. But as far as bargaining power goes, the star player obviously has the much greater bargaining power.

Q Would the marginal players' bargaining power be more or less or about the same, in your view, in the system without a reserve clause?

A Well, doing away with the reserve clause wouldn't improve his bargaining position. In fact, the question of bargaining implies that there is always the effort to get the lowest possible salary at which you can get the player to sign, and I don't believe that is the situation in the bargaining that goes on. The player's performance has a great deal to do with what he is offered, and I think the usual situation would be that the star player who does well gets substantial increases as a result, and the marginal player or the new player, as he progresses along, is also given increases, but if it became a question of having to bargain with each star player to the nth degree, I would think that this bargaining would be carried on toward the less gifted player, who is

jkbr 8

Clark-direct

less able to bargain. So I would expect that his position, if anything, would be hurt.

Q Hurt by the abandonment of the reserve system?

A Of the reserve clause, yes.

Q It has been suggested by attorneys for the plaintiff in several of their questions, although I don't believe there has been any testimony to this effect, that somehow the players are asked under the present system to subsidize that system by accepting less money or by relinquishing some of their bargaining power. Do you believe that your study reveals any subsidy by the players of baseball in the present reserve system?

A Well, none of the figures I have would indicate there is any substantial subsidy. In respect to the salary levels of the real star players, I would think that over a period of years, as a player becomes a star and becomes established, his salary does increase each year until it reaches some level, but is rarely cut after that, so his salary level is established and is continual over a period of time.

Q So that his salary level remains high even after the economic bargaining justification for it has diminished?

A Yes; in a sense he is being paid for past performance, but he may still be a considerable fan favorite and help attendance and so on, so he does have a value, although not

perhaps not as great on the playing field.

At the lower level, I think at the minimum level, and slightly above, that it is hard to find a subsidy there because the player isn't as yet producing much more, I would say, than he has been paid. There is an in between point where there is no question but that a number of players who find themselves after two or three or four years in the major leagues and are really quite good, they become stars, there is probably a period of two or three years in which their performance exceeds what under no reserve clause they could get with another club. In other words, there is probably a brief period in there in which the player is contributing more than he really perhaps might be able to --

Q You say a previous period. I take it --

MR. TOPKIS: Could we have the answer finished?

THE COURT: Yes. Would you let the witness finish.

MR. HOYNES: I am sorry.

A In doing the salary analyses and going back to the basic records, I was impressed by the number of instances in which the number of players had very substantial increases over a period of three or four years. Whether, with no reserve clause, it might even have been greater, I don't know. It is possible. But they quickly get up to the -- I can think of several that have gotten up to the 60, 70, 80,000 level

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from a very low level just in a period of three or four years, so they do get up there very quickly. These are the critical players in terms of building a team, in terms of having a strong team, and once they get up to the \$80,000 level, \$70,000 level, \$90,000 level, they are rarely cut back, and so they do benefit over a period of time then for having reached that level.

Q Looking at their careers, the players' careers in their entirety, the beginning years, the years of rapid increase, the years in which their salaries are maintained on into the twilight of their career, do you find overall any subsidy on the part of the players through the reserve system to baseball?

A Well, from the average salaries they receive over their career and from the benefits they received overall, it looks to me like they are reasonably well paid, and how you define a subsidy in those terms, I mean, I just don't see.

Q Dr. Clark, do you see any adverse effect upon the players' collective bargaining power arising from the operation of the reserve system?

A No. As far as I can see, they have an effective collective bargaining setup.

Q Turning again to your report, Dr. Clark, have you made any calculation of the pension benefits of major league

baseball players and the value of those benefits?

A Yes.

Q At what page of the report would you find that comparison?

A Page 7.

Q Would you care to explain your analysis?

A I took several examples of various years of pension vesting, such as 5 years, 10 years, 15 years and 20 years, and using the tables contained in the pension benefit book, put down the retirement benefit at age 50 and at age 65 that a player with five years, 10 years, 15 years and 20 years would be entitled to.

And as you can see on page 7, a person with five years of pension credit, if he retires at age 50, would receive a monthly benefit of \$300. If at age 50 a person wanted to buy the same benefits from the insurance company he would have a single payment that he would make at that time of \$57,900. Well now, obviously, that payment is made at the time of the player's playing, and so I went back to find out what the cost would be if the player completed his five years at age 25 and the payment was made at that time.

Q The payment being the payment that would produce monthly benefits of \$300?

A Producing at the retirement age of 50 \$300 a month.

1 The payment that would be made at that time, at age 25, would
2 be \$18,300.

3
4 If he completed his five years at age 30, since
5 that five years is past and is less time for the payment to
6 be used to earn an income for the insurance company and so
7 on, it would increase to \$22,900.

8 Another example, if you take 20 years of pension
9 credit, retirement at age 50, the monthly benefit would be
10 \$800. The single payment cost that would be made at that
11 time to produce those benefits for the rest of the person's
12 life would be \$157,200, and I assume that the person would
13 probably be close to 40 to complete 20 years of pension
14 credits. If the payment was made at that age, age 40, to
15 produce those benefits, retiring at age 50, it would be
16 \$97,900.

17 The same comparisons were made if the player waited
18 till age 65 to retire. For his five years of pension credit
19 he would then receive, having waited longer to get his pension,
20 he would then receive \$772.56 a month, and I went through the
21 same comparison. If at age 65 he wanted to buy monthly bene-
22 fits of \$772.56, you would have a single payment at that time
23 of \$108,800. However, if you completed your five years at
24 age 25 and then waited until age 65 to receive your benefits,
25 the payment required at age 25 for the future benefits at age

pension is in two parts -- a guaranteed part and a variable part, but this is based on the current assumption of your earnings on the variable part. If this was completed at age 40, the value of that would be a single payment of \$75,900 to obtain those benefits at age 65.

THE COURT: But if you bought it at age 65, it would cost you \$283,000?

THE WITNESS: Yes, sir.

THE COURT: Okay.

Q Dr. Clark, do you know how many years of pension credit the plaintiff, Mr. Flood, has?

A I believe it is 12.

Q With 12 years of pension credit, what would the monthly retirement benefit at age 65 be?

A It is \$1,625.11.

Q And do you know approximately what the single payment cost of that benefit would be at age 65?

A We have to interpolate between the 10 and 15 years here because I only obtained this for the five, ten, fifteen or twenty years, but it would be somewhere around \$230,000

Q And using the same interpolation process, what would the single payment cost of those benefits be if the payment were made at age 32, which I believe is Mr. Flood's current age?

1
2 A That would be interpolating between, on that line
3 between, oh, around 30 and 35, so it would be somewhere around
4 \$40,000.

5 Q Thank you. Dr. Clark, have you analyzed the value
6 of the other benefits included in the player's benefit plan,
7 that is to say, benefits other than pension benefits?

8 A Yes.

9 Q Would you describe those benefits briefly and in-
10 dicate their value?

11 A Well, an active player who is on a major league
12 roster for more than 60 days and remains active, meaning
13 on the roster, is entitled to \$50,000 life and an accident
14 and dismemberment insurance coverage.

15 THE COURT: You are going fast. Is entitled to?

16 THE WITNESS: \$50,000 life insurance policy, which
17 also includes coverage for accident and dismemberment in case
18 he is injured.

19 THE COURT: Yes.

20 THE WITNESS: And the premium cost of that is
21 \$216 per player.

22 Q That is assuming a group rate, I take it.

23 A Yes. This is the actual cost of the benefits that
24 the players currently receive.

25 Q The annual cost to the plan?

1
2 A Yes. The player and his family receive health care
3 coverage at a premium cost to the clubs of \$392.

4 Q But again that is an annual cost?

5 A An annual cost, and there is also dental coverage
6 at a premium cost of \$134 annually, so the three premiums have
7 a total value of \$742 annually for each active player.

8 Q So that in addition to pension benefits there are
9 \$742 worth of other benefits purchased on behalf of that
10 player each year?

11 A Yes. It is my understanding that the dental coverage
12 cost is going up.

13 Q Dr. Clark, what amounts have the clubs actually con-
14 tributed to this benefit plan in the most recent years,
15 '67, '8 and '9?

16 A According to the information supplied Arthur
17 Andersen, and which is contained in their report, pension
18 fund payments in 1967 -- this is at the bottom of page 8 --
19 pension fund payments were \$4,132,000 in 1967, \$4,173,000 in
20 1968 and \$5,450,000 in 1969.

21 Now, as a percentage of team salaries which also
22 includes the salaries of managers, coaches and trainers, as
23 reported, pension fund payments were 26.3 per cent of salaries
24 in 1967. They were 25 per cent in 1968 and 27-1/2 per cent
25 in 1969.

Going on to the next page, the roster qualifications for the pension fund up until August 31st each year, you can have 25 players on the roster who are receiving pension credits. In addition, the manager and four coaches and one trainer may also receive credit for pension years as part of their services, so there is not 25 that you would have to take into account here, but 31, 25 plus 4 coaches, plus a manager and a trainer. Well, if you divide the pension fund on a per person basis in 1967 that was \$6,665, in 1968 it was \$6,763 and in 1969 it was \$7,325.

Since the average salary of players on the roster in August 1969 was \$24,957, the average payment here would be about 29 per cent of average salary.

Now, obviously if you are making \$15,000 -- this is dollars a year -- as a player, that is a substantial addition. If you are making 75,000, the payment on your behalf is relatively not as great. But it is a substantial payment on behalf of the players and of the coaches and management, and it should be taken into account in the sense that it applies to these players and some players that are brought up for shorter periods of time and receive credit for all the time they are up there, but it is a part of the salary structure, and it is understandable to me that you would have to have substantial payments to provide the benefits that

are called for in the plan, as baseball players do have a shorter active career than do workers in many other occupations, so it is reasonable to me that this should be a substantial amount. But the benefits are attractive and should be taken into account.

Q And the payments are substantial?

A Yes.

Q Dr. Clark, I want to clarify one point. I believe you alluded to it, but I want to be certain that the Court is clear on this point.

In 1969 you mentioned that for each active person covered by the plan, that is to say the 25 players, plus coaches, manager and trainer, a contribution of the plan of something over \$7,000 was made, but that contribution was not made on behalf of those individuals. Not precisely, no.

Q Because there is a past service liability in the fund and other matters to be considered. Perhaps you could explain that a little more fully.

A Yes. When the benefits were increased, obviously this covered some of the prior service, and so the payments at the current time would cover not only payments being made on behalf of the players currently active, but would increase the benefits for players who are not active at this time, but who qualify under this category for pension benefits.

Q But in terms of payroll, as far as the major league club is concerned, for each active person entitled to pension benefits or actively on its payroll any one time, in fact, there is a contribution of \$7,000 plus going into the pension fund annually.

A There is a relative amount of that amount of his being paid in, not substantially precisely for him, but for the players as a whole.

Q And in terms of the number of active players on a roster, that is the factoryou get by dividing?

A Yes.

Q Dr. Clark, turning to another subject entirely, have you made any analysis of the cost of developing major league baseball players, that is to say, the expenditures associated with developing major league baseball players?

A Yes.

Q Would you explain in detail your analysis and its result, again referring to the pages of your report where we may find the material relevant to that analysis?

A The analysis is described on page 10, starting on page 10. We had to develop some method of determining how many players, in fact, had to be replaced, in other words, new players had to be brought up to fill in for those who are no longer on the roster, and in order to do this, we

the major league rosters as of the end of August for the years 1963, '64, '65, '66, and '67 and traced through those years disappearances from rosters. In other words, how many players over this period of time went off the active roster and did not return, and we also checked the rosters for '68 and '69 to see if some of those who disappeared in '66 and '67, towards the end of the period, reappeared in later years, because it is not uncommon for a player to be off of a major league roster for a year or two years or even three years and eventually show back up on either that team's roster or another team's roster.

t4/5

What we found is shown in the table in the middle of the page, on page 10, that over the five-year period a total of 374 roster places became vacant because players were no longer on the roster. This was an average of 74.8 players a year.

In order to make sure, since 1963 you start in August, this is late in the year, and perhaps the disappearances might be understated and some of the ones who disappeared in 1967 may show up in '71, we also made an analysis using just '64, '65 and '66, and at the top of page 11 it notes that there were 223 disappearances over that three-year period for an average of 74.3 players. So in comparison there

were 74.8 players, and in the other, 74.3 players who disappeared. We then compared these disappearances or the number of roster places that had to be filled with the expenditures over the same period as reported to Arthur Anderson & Company by the major league clubs.

Q That is Plaintiff's Exhibit 7?

A Yes, and this is on page 11, and the table there on that page totals up the reported expenditures as being over the five-year period, \$118,219,000.

THE COURT: No, not \$118 million. A hundred eighteen million?

THE WITNESS: Yes.

MR. HOYNES: Your Honor, the three zeros are indicated above.

THE COURT: Yes, that's right. All right.

A And just for the three years '64, '65 and '66, the figure becomes \$68,796,000.

On the basis of the above figures, clubs were spending at the rate of \$316,000 for each player replaced for the five-year period 1963 to 1967 inclusive.

If you make it for the three-year period, 1964 to 1966 inclusive, clubs spent at the rate of over \$308,000 per player replaced.

Now, obviously their expenditures between '63 and '67

for the most part did not relate to the players actually arriving in the major leagues '63, '64 and '65. The players for whom these expenditures were made would be arriving in '69, '70 and '72, after their training period and their minor league experience.

But this does relate the current rate of expenditures to the current rate of replacements and they are on a current cash basis, so realizing that there is this problem about allocating this player replacement cost and the cost of minor league operations to specific players, nevertheless the rate of expenditure is as given here.

2 Q Dr. Clark, so that the Court will have a full
3 picture of the player development expenses up to the
4 current date, what were the average industry player develop-
5 ment expenses for the years 1968 and 1969, the two years
6 immediately following the years set forth in your table?

7 A Well, what I did, I have taken the three earlier
8 years, '63, '64 and '65, and the average per club expendi-
9 ture for that period was 1,100,000, and if you take the
10 three most recent years, '67, '68 and '69, the average
11 increased per club to 1,300,000.

12 Q And what is the total figure in 1968 and '69
13 for player development expenses?

14 A In 1968 -- this is at the bottom of Page 11 --
15 it was \$7,560,000, and in 1969 \$31,074,000.

16 Q As you have indicated, that represents an average
17 of \$1,300,000 per club as compared to \$1,100,000 in the
18 earlier period of '63 through '65?

19 A Yes.

20 Q Dr. Clark, have you made an analysis of the
21 number of players entering baseball -- now, I don't mean
22 entering major league baseball, which your study has been
23 concerned with up to this point. I mean entering pro-
24 fessional baseball -- and have you observed the rate of
25 players in major league baseball as a percentage of those

2 that entered total baseball with the hope of getting into
3 the majors?

4 A I have taken the figure for baseball players
5 signed in 1964, 1965 and 1966. This is on Page 11, the
6 next to the last paragraph. There were a total of 3,350 new
7 players signed in those years. This is from information
8 supplied by the National Association of Professional Baseball
9 Leagues.

10 Q And these are players who are signing their
11 very first professional baseball contract?

12 A Yes. And if the disappearance rates remain
13 about the same in the future as they have for the years we
14 have studied, this would mean that something like less than
15 7 per cent of these players will appear on a major league
16 roster as of the end of August.

17 Q So according to this study, approximately 7
18 per cent of the players that enter professional baseball make
19 it to the major leagues and appear on a regular roster?

20 A Yes.

21 Q Dr. Clark, did you make any analysis of the
22 career length of players who disappeared, as you put it,
23 during the 1963-1967 period that you studied?

24 A Yes.

25 Q Would you give us the result of that analysis

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2 and its significance?

3 A Well, on Page 13 it shows the breakdown by
4 years of service for those players who did disappear over
5 this period, the precise ones who did disappear. In other
6 words, the 374 players who did not appear on rosters any
7 more, we got their pension records. The only difference
8 between this pension analysis and the earlier ones is that
9 since we wanted actual playing time in the major leagues,
10 we did not include any credit for military service. Under
11 the pension plan, players do get credit for military service.

12 On the other charts that was included. In
13 this chart we removed that military service credit. So this
14 is actual major league time.

15 I think what the meaning of the table shows
16 is that these players had an average of six years
17 of playing service; if you take the 374 players and take
18 the cumulative years of service involved, that the average
19 becomes six years of service.

20 Q If you limit yourself to those players who have
21 at least two full years of service, what is the average
22 career of those players?

23 A Well, that goes up to 7.4 years. That's on the
24 bottom of Page 12. Then actually we made another --
25 just to see -- four years being the vesting period -- what

2 the average was for those players, and it becomes 9.2 years.

3 Now, since this doesn't include military service,
4 the actual pension benefits that will be received by
5 these players will be somewhat higher than this.

6 Q Because many of them, I take it, according to
7 the records you observed, had some military service?

8 A Yes. I would like to point out that the
9 percentage vested here, if you would look on Page 13, ob-
10 viously would not be as high as if you take the players on
11 the rosters at a given time, because this includes the
12 players who disappeared between '63 and '64, the players
13 who disappeared between '64 and '65. In other words,
14 you accumulated the players who came up and had a very short
15 major league career. It may be a one-year career, it may
16 be a two-year career. But you don't include the players
17 who came up and stayed, only the ones who disappeared.

18 So this is not really comparable on that
19 basis to the other pension study.

20 Q The other study I take it gives the truer pic-
21 ture of the number or the proportion of major league players
22 who have vested pension benefits?

23 A I don't think I would use the word "truer,"
24 because I don't know how you can get true or false out of
25 this. What the first one does is to give a cross section

1 of pension benefits for the players on a roster as of a
2 given date. This one is on a different basis. It takes
3 into account the cumulative disappearance for several years
4 and without taking on the addition of the people coming in.
5 I would say that is somewhere between the two, and it would
6 be worthwhile, I think, to do an analysis of this over a
7 period of time to find out what the actual experience is
8 between these two areas.
9

10 But neither one is truer or falsier than the other.
11 It is just that they show different things.

12 Q Dr. Clark, have you made a calculation of the
13 cost to baseball or of the cost related to developing a
14 baseball player if you limit your analysis to those players
15 who accumulate at least two years of service, major league
16 service?

17 A Yes. If you relate just the players we have
18 here on the disappearances who had at least two full years
19 of pension credit, the remaining players, the cost for those
20 players in relationship to the expenditures for development
21 and minor league operations would be just under \$400,000
22 per player, and if you say your real major leaguer is one
23 who gets at least four full years in and qualifies for a
24 pension by virtue of doing so, these players, on our
25 analysis, related to the total player development cost and

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the cost of minor league operations, would come out to \$537,000 per player. That is on Page 14.

In other words, to really have a well established four-year or more player, there has been at the current rate of expenditure associated expense of approximately \$537,000. It indicates the value, in a sense, of the sunk cost in these players.

You obviously do not get as much value if someone comes up and only stays one season than if he comes up and stays two seasons. You have not too much back.

Q The player that stays less than two years is a player who presumably has not made a major contribution to his club?

A I think that would be a good assumption, yes.

Q And when you limit it to the players that have made what could be called significant contributions, that is to say, they have stayed on a roster four years, long enough to be vested in the pension plan, and then computed the costs associated with the development of a player who makes it to that degree, you are talking about a cost factor of \$537,000 per year?

A Yes.

Q Dr. Clark, have you studied Plaintiff's Exhibit 7, the Arthur Andersen report on organized baseball --

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2 A Yes.

3 Q -- the operating results of the clubs individ-
4 ually and in the aggregate for the period 1965 through 1969?

5 A I have the clubs in the aggregate by year and
6 there is a sheet, the first sheet, in the report with
7 figures on it which gives the net income before extraordinary
8 income and taxes and after this, but I did not have individ-
9 ual club operating data.

10 Q Other than that?

11 A Other than that.

12 Q From that information, Dr. Clark, did you make
13 an analysis of the proportion of operating revenues expended
14 to meet expenses directly related to playing the game of
15 baseball?

16 A Yes, and this is shown on a table on Page 16.

17 Q Would you explain the significance of the in-
18 formation contained on your table wherein you have developed
19 what I believe is called the gross margin and net margin
20 of operation?

21 A The first figures on the table break down revenue
22 by source; ticket sales, TV and radio, concessions and
23 advertising, to total 100 per cent of revenues from
24 operations.

25 The first item, salaries and pension funds, is

1 for players and for coaches and managers directly involved
2 in playing baseball. So that was included as part of
3 the direct operating expense.
4

5 "Other" includes other team operation costs
6 including travel expense, really having again directly
7 to do with the team.

8 The next item is the stadium cost, whether it
9 is rental, whether it is amortization of a stadium, and
10 takes into account the real estate taxes associated with
11 those costs.

12 Ground operation and maintenance refers to the
13 operation of the playing grounds and the maintenance of
14 the grounds and the stands.

15 Game and ticket office would be the people
16 employed at the park and selling tickets. In other words,
17 all of this is directly related to putting on the game
18 and having the game take place, and the total cost in 1965,
19 an amount equal to 47.7 per cent of gross revenues, operating
20 revenues, in '66, 46.2 per cent of gross operating
21 revenues; and in 1967, 51 per cent; in '68, 51.6 per cent;
22 and in '69, 51.9 per cent. In other words, as a percentage
23 of revenues, these direct game expenses have been increasing

24 The gross margin is obtained by subtracting
25 the expenses from the gross revenues, in other words, 47.7

per cent from 100 per cent gives you 52.3 per cent.

Q That is 1965?

A For 1965, yes. And you can see in '66 it was 53.8 per cent gross margin, 49 per cent in '67, 48.4 per cent in '68, and 48.1 per cent in 1969.

I then subtracted the selling, general and administrative expenses from the gross margin to obtain a net margin on games, and that for '65 was 37-1/2 per cent, for '66, 39.1 per cent; '67, 32.8 per cent; '68, the net margin on games is 31.6 per cent, and in '69, 28.9 per cent.

The significance of this is that the net margin is declining at that point, and then when you deduct the player development and minor league operation figures, you end up with the net margin on the games after player replacement expenses and all expenses completely related to the game, and in '65 you had this net margin from operations before taxes and any extraordinary items of 12.5 percent; in 1966 it was 14.5 per cent; and then in '67, '68 and '69 you have a decline, to 5.2 per cent in '67, to 4.2 per cent in 1968, and 3.7 per cent in 1969.

Now, this really refers to the net margin the clubs have over their operations after they pay all the player costs, all of the traveling costs, the administrative costs, the selling costs and provide for player replace-

1 ment. In other words, the normal business of baseball
2 has declined to a level of 3.7 per cent in '69 and that is
3 a narrow enough margin that I would say it is really at
4 the level of whether it is enough or not to be secure
5 in your operations. It is really at a marginal level
6 of operations. Income is exceeding the costs associated
7 with the game by a very narrow margin in the last three
8 years.
9

10 MR. HOYNES: Your Honor, may I approach the
11 bench?

12 THE COURT: Surely.

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

14 THE COURT: Thank you, gentlemen. Announce
15 a recess, Mr. Clerk.

16 THE CLERK: Recess to 2:30. All rise.

17 (Luncheon recess.)
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Pages 171⁴.. 172⁴ Sealed by The Court

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(In open court.)

J O H N C L A R K, JR., resumed.

THE COURT: Please proceed, and won't you be good enough to keep your voice up, Dr. Clark.

BY MR. HOYNES:

Q Dr. Clark, Mr. Nathan in his testimony indicated that the salary offer which a player received, were he free to choose his employer, would be the principal determinant in his selection process. Would you agree with that conclusion?

A Yes.

MR. HOYNES: I refer, your Honor, to page 430 of the transcript of Mr. Nathan's testimony for that point.

Q Dr. Clark, from your experiences in baseball, your observation and reading of some of the testimony in this case and your discussions with baseball owners, what would you conclude about the desire of each club to build up field the best possible team?

A I think there is a very strong desire to field the strongest team that one can.

Q There has been testimony in this case from other baseball witnesses, with which I am sure you are familiar, to the effect that if the players were free agents, that is, able to choose their employer, there is the possibility that

2 the better players would be attracted to the more wealthier
3 clubs and that competition would be unbalanced.

4 Do you agree with that conclusion?

5 A Yes.

6 Q What effect does your study of the revenues and
7 profitability of the various major league clubs indicate with
8 respect to that conclusion?

9 A Well, there is a wide divergence in the income
10 available to the various clubs to spend on players.

11 Q Dr. Clark, it has been suggested, again I think
12 not in testimony but more in questions from counsel for the
13 plaintiff, that if the wealthier clubs' activities, that is
14 to say, these efforts to attract the better ballplayers,
15 would, in fact, cause the better ballplayers to be concentrated
16 in a few clubs, and if this in turn would cause league com-
17 petition to decay and the league to die, the wealthier clubs
18 would have enough business sense not to pursue their efforts
19 to the fullest in getting these better players, so that the
20 league could prosper. Notwithstanding their ability to
21 attract the players, they simply would not use it to the fullest
22 and would exercise a kind of self-restraint in order to keep
23 competition alive. As a business consultant, familiar with
24 baseball operations and business practices generally, do you
25 believe that balanced league competition could be maintained

2 through a process of self-restraint of the kind I have de-
3 scribed?

4 A No.

5 Q Would you explain why not?

6 A There is an overwhelming desire among the clubs
7 I have observed and the managers I have talked with to win,
8 and they may realize it would be nice if the race were a little
9 closer, but if they have a choice of making sure that they
10 win or having someone else possibly beat them, I think their
11 choice would more or less inescapably be, "Well, let's make
12 sure that we win, and we'll worry about the rest later."
13 Certainly, in industry, generally, I don't see much from the
14 structure of industry that indicates that concerns hope that
15 other concerns are strong and more competitive and are more
16 effective competitors for a given organization. The whole
17 system, as I understand it, seems to be based on trying to
18 improve your position and to be, in effect, a competitor.

19 MR. TOPKIS: If your Honor please, I move to strike
20 so much of the witness' answer as, as was testified to, had
21 been based on his conversations with club owners. It seems
22 to me that is hearsay.

23 THE COURT: What do you say?

24 MR. HOYNES: Your Honor, I believe Mr. Clark relied
25 only on his conversation with club owners to get some feel

2 for the way that they approach this game and for the way in
3 which they try to build their clubs. He is not economic
4 repeating economic conclusions that they may have given him,
5 but I think he must take into account the kind of people that
6 operate this industry in arriving at his conclusions.

7 THE COURT: Does Mr. Hoynes state accurately the
8 factors that went into your answer, Dr. Clark?

9 THE WITNESS: Yes.

10 THE COURT: I will let it stand.

11 MR. TOPKIS: As your Honor will.

12 Q Dr. Clark, I would like to interrupt myself for
13 just a moment to ask you a couple of questions that occurred
14 to me over the noon hour relating to this morning's testi-
15 mony that I would like to have cleared up, and I think we are
16 just between subjects at the moment.

17 I think we failed to bring out this morning the
18 source of your information with respect to the various
19 analyses that you made concerning players' salaries. Would
20 you give the Court the source of that data?

21 A Yes. The source of the salary data was official
22 league records in the two major league offices. In the case
23 of San Francisco, we asked to have the records Xeroxed
24 and mailed to us for convenience.

25 Q That would be the National League office in San

Diego?

A Yes. The American League office is in the same region that we are located in. We went down to the American League office and worked with their records directly.

Q And may I ask you about the source of your information that you characterized as being pension data this morning?

A That was the official pension information at the Equitable Insurance Company. We visited their offices and for one of the studies worked on the information in their office. That had to do with where military service was involved because the machine record printout which gives the other information does not distinguish between pension credits from whatever source. For that we actually took the printout and took it back to Cambridge and worked on that part of it in Cambridge.

Q That was an order to eliminate the military service, the non-playing time that is credited to the pension service?

A For the part we did in our offices, that was to eliminate the military service time.

Q Thank you. It also occurred to me during the noon hour that although you had answered in several different occasions the question where I put to you, I think, more than once about the effect of the reserve system on the so-

called marginal player, that perhaps some of your answer was spread and scattered over the testimony, and that it might be clarified if I would ask you the question again and ask you to state your answer in a more summary manner.

So may I ask you now, Dr. Clark, to give us your opinion as to the effect of the reserve system on the marginal or fringe major league player as opposed to the star player?

A It was my opinion that the marginal player would not be in a particularly strong bargaining position, whether he was bargaining with one club or several clubs; that actually to the extent that he has a career of several years extending on to six or seven years with a given club, the general practice that I observed in the salary histories is to pay him at least as much as he made last year and with some fairly regular increases of a modest amount, so it was my opinion that I thought perhaps he fared as well if not better under this system as he would if he had to bargain individually with a given number of clubs.

Q Dr. Clark, as a business analyst who has observed the baseball scene with some closeness and care, have you observed any unique features of baseball as an economic enterprise?

A Yes.

Q Would you describe to the Court and explain their

experience and the economic analysis of baseball?

A One of the main things that strikes me about baseball is that in business generally or in industry each organization is an entity to itself more or less. It is seeking to profit as well as it can and attempts to compete more effectively than the other companies in the field, and its main concern is with improving its own earnings and having a good, strong growing company. In other words, it looks out for itself pretty much.

In baseball, for the leagues to be successful, you have to maintain teams, playing rather lengthy schedules, and there is a strong desire to win, and yet there has to be this concept of not having too many weak teams in the field. There has to be a balance between wanting to win and trying to make sure that you win as a clubowner and at the same time maintaining conditions in which the weaker clubs don't get too weak because certainly one of the effective factors which increase attendance is a close race and competition.

So it is a unique situation in that you both want to beat your competitor and yet at the same time you want to keep him reasonably effective. That is the main difference.

I think other organized team sports may have the same situation, but in respect of baseball it has been more of my concern than the other sports.

2 Q Are there also unique aspects of the baseball business
3 in terms of the cost and manner of developing personnel?

4 A Yes. For the five-year period covered by the
5 Arthur Andersen figures, player development costs and cost
6 of managing minor league operations together accounted for
7 26 per cent of operating revenues. This is so far larger
8 than any other organization that I am familiar with that
9 it impresses me as being a unique characteristic where one-
10 quarter or more of both leagues' revenues are dedicated to
11 developing new players and bringing them up to major league
12 status. This is quite different than the ordinary industry.

13 Q Mr. Nathan testified at pages 436 and 437 of the
14 transcript that he knew of no other business enterprise with
15 a training cost approaching that of baseball. Is that
16 true in your experience as well?

17 A Yes.

18 Q With respect to your testimony about the proportion
19 of trainees who graduate to become effective major league
20 employees, is there any uniqueness to baseball in that regard?

21 A Yes. As I mentioned in the report, if the experience
22 in the future is anything like it has been for the years we
23 studied on player disappearances, something like 7 per cent
24 or less of the players who are initially signed up will make
25 it to major league rosters, and the roster date I am speaking

of is as of August 31, 1965. That is a remarkably small percentage. I would think in our experience within the company, on a training basis, that we expect at least 50 per cent success, and there is a success ratio of 7 per cent.

Q Perhaps I misunderstood you. Did you say that the data was based on the number of players that made the major league roster in August 1965 or for several years?

A No, it is over the period, but each year was as of the same date.

Q I thought you mentioned only the one year 1965. You meant the range of years.

A Yes, the range of years.

Q Dr. Clark, Mr. Nathan observed in his testimony at page 391 of the transcript that player-club relations in baseball were, in his experience, a unique form of employee-employer relationship. Do you agree with that and do you know why?

A Well, I agree, yes, I do agree, and it does relate to the question of the problem of maintaining control over players and training players and having put a great deal into the training of the player and trying to maintain team operation.

Q In other words, these unique factors that you mentioned before?

2 A Just what we have been talking about. It is a
3 question of trying to maintain competitive team operations,
4 and the fact that a great deal has been put into player
5 development costs and there is a need to try to maintain
6 a balance.

7 Q And you think these factors offer the reason for
8 the unique player-club relationship that we find in base-
9 ball?

10 A Yes.

11 Q Dr. Clark, turning to your report again, have you
12 made an analysis of baseball attendance over a period of
13 recent years as a function of certain criteria, including
14 the population of the various major league cities and the
15 performance records of the clubs?

16 A Yes. Starting on page 26 we made an analysis,
17 dividing city sizes as over 4 million, 2 to 4 million,
18 and under 2 million, and the city population is defined as
19 it is defined by the bureau of the census of the metropolitan
20 area population. The variation between attendance and standing
21 is fairly substantial. On page 26 I point out that for
22 cities of over 4 million population 36 first division finishes
23 between 1960 and 1968 resulted in attendance of over
24 1 million 27 times or 75 per cent of the time.

25 If you go on down a couple of lines for cities with

less than 2 million population, 27 first division finishes resulted in attendance of over 1 million 15 times or 56 per cent of the time, in other words, something over half the time for the smaller city and three-quarters of the time for the larger city.

Actually, at the bottom of the page, I point out that overall, teams in cities of over 4 million population enjoyed attendance of over 1 million 41 times and less than 1 million 25 times over that 1960 to '68 period.

However, if you go to the cities below 4 million, you have attendance of over one million 47 times and attendance of less than one million 61 times. In other words, four more attendances of less than one million than in the case of the larger city. Actually, this is summarized somewhat on page 28 in which the cities are divided into the population and this shows on the chart, for example, just what I quoted a while ago: Under two million, the first division is over one million attendance 15 times, and then if you go over in the column to under one million attendance in the first division 12 times. That was the 15 and 12 referred to earlier. Just as for the four million size city, over four million, in the first column you had first division finishes that resulted in over one million attendance 27 times and under one million nine times. That was the same figures referred to earlier.

2 I think one of the things that comes out of
3 this is the importance of some of the new franchises and
4 new stadiums.

5 If you notice, on the first line there is a
6 second division finish under two million population ten
7 times despite a second division finish that was over 1 million
8 attendance. That was accounted for mainly by the Astros
9 and the Astrodome and the Minnesota team and the new loca-
10 tion in Minnesota.

11 In the over four million, you see nine second
12 division finishes which resulted in over a million attendance
13 despite the fact it was second division. Many of those
14 are for the New York Mets in this location and with a
15 new stadium, one attendance of over a million before the
16 new stadium, all of them after the new stadium. And when
17 the California Angels were in Los Angeles they had some
18 over million attendance despite the fact they were in
19 the second division.

20 But it really illustrates the tremendous impact
21 of a new stadium, particularly in a location like the
22 Astrodome.

23 Q What does it indicate in terms of the variations
24 in potential revenue and profit pictures for the major league
25

clubs?

A For the teams in very large cities over four million, the prospects for profit from attendance are much greater than they are in the smaller cities. When you go to cities below two million, you frequently do not even have over a million attendance even if you are in the first division.

So there is again a great difference in the capability of clubs in those regions to earn money from attendance.

Q Dr. Clark, if 24 competitors in baseball or in any other kind of enterprise were free to compete in all respects over a period, say a decade or longer, as a professional business analyst, what do you think would be the chance that after this period of time had occurred that the 24 entrants or competitors in the field would find themselves of roughly equal force in the market place?

A Well, I think it would be unlikely. It hasn't been the case in industry generally or any form of competitive enterprise that I know of that everything ends up just equal.

Q What is the tendency normally in a competitive situation?

A The tendency is for several organizations, clubs, companies to become quite large and account for a

substantial part of the revenue. There would be an intermediate number of secondary size, of less capability, and several would disappear. A number would disappear.

Q If that were to happen in baseball, that would mean certain clubs would disappear and the pleasures of major league baseball would be denied to the cities where those clubs were located, is that true?

A Yes.

Q Now focusing on the baseball situation particularly, to particularize the general question, given the attendance analysis you have made and the revenue analysis you have made and testified to, what in your opinion is the likelihood that the major league baseball clubs would stay in relative competitive balance without artificial rules and restraints to even out their activities?

A Taking into account the substantial differences in revenue available from operations and the desire of clubs to win, I would expect that there would be an emergence of several very, very strong clubs and others much less strong.

Q Would you expect the disappearance of some clubs?

A Yes, I would think so.

Q What, then, in your opinion is the position in terms of necessity and appropriateness to the baseball

industry of the present reserve system arrangement?

A I think the reserve system has contributed to the maintenance of league play and has helped to prevent the disappearance of clubs from completely being unable to compete.

Q Dr. Clark, as a professional business consultant and analyst, what would be your opinion of the result that would ensue if the reserve clause were to be eliminated entirely as Mr. Flood has asked and every player were declared a free agent able to negotiate at any time with the club of his choice?

A I think that unquestionably the stronger clubs would become stronger and the weaker clubs would become weaker and perhaps not be able to operate any longer.

Q In your view, Dr. Clark, is the choice limited to or the competition limited to the ability of the individual club to pay or are there other aspects involved such as business opportunities in various cities and other matters of that sort?

A Well, I think it is clear that a player who is a star in the New York area, for example, has opportunities for a desirable income just because of the opportunities available in New York as a very major city on advertising and appearances and speeches that he would not get

1 in San Diego. And again, Los Angeles versus San Diego
2 or Los Angeles versus Milwaukee or Chicago versus Seattle.

3 Q So that even with equal salary offers there
4 may be other factors such as the opportunities for outside
5 income that a player would consider, in your opinion?
6

7 A Yes, definitely.

8 Q But isn't it true, Dr. Clark, that in order
9 to maintain a league, someone, including a number of highly
10 skilled players, must in fact play in San Diego or Philadel-
11 phia, if you will?

12 A Yes.

13 Q At various times during the course of this
14 trial, Dr. Clark, the plaintiff's attorneys have suggested
15 a number of modifications or variations in the reserve
16 system. I would like to take you one by one through those
17 proposed modifications and get the benefit of your
18 analysis of each one of them strictly as a business analyst
19 and economist.

20 For example, it has been suggested that instead
21 of declaring all of the players free agents at one time
22 so there would be 600 free agents tomorrow or at the end
23 of the season, on the major league baseball market, that the
24 players would become free agents only once or a limited
25 number of times during their career, at certain intervals

1 in their career. I believe five-year service has been
2 mentioned by the plaintiff. Would you comment on that
3 variation?
4

5 A Actually, a five-year interval or assuming
6 it is after a player has had five years of organized base-
7 ball he becomes a free agent, certainly a number of the
8 players whose salary history I have reviewed, that's a
9 very critical time in their career. It is quite frequently
10 the time they do start receiving very substantial increased
11 salaries. In other words, by that time they have either
12 proven that they have capabilities or they probably don't
13 have superior capabilities.

14 Q Dr. Clark, are you referring to five years
15 of baseball service or five years of major league service?

16 A It depends how long it takes a player to get
17 to the major leagues. It could vary. Certainly three,
18 four and five years after you have been in the major leagues
19 that's the time in which you really demonstrate in many
20 cases whether you are going to be a real star, a super-
21 star or more or less less of a star player, an ordinary
22 player.

23 Q What would be the effect of having players of
24 that level become free agents?

25 A This would be a time --

1
2 THE COURT: Sorry, Doctor. Your mind is so alert
3 that you anticipate the complete question and you are
4 looking at the questioner and he at you and you don't
5 see the sad expression on the face of the court reporter
6 who is appealing to me. So go slowly.

7 THE WITNESS: Yes, sir.

8 Q Would you like the question reread, Doctor?

9 A No. This is a period of time in which the player
10 has demonstrated his capabilities and so, if it is at
11 the same time he becomes a free agent, this would be very
12 ideal for the wealthy club, the club that could attract
13 him to do it. So I would think that as compared with
14 declaring everyone a free agent at once or doing it at the
15 end of five years, it would have the same effect over a period
16 of time.

17 In other words, the wealthy club would get the
18 good players except this time they wouldn't make any mistakes.

19 Q I take it you mean by that they would know which
20 players were going to make the best contribution?

21 A They would have a very good idea, yes.

22 Q Dr. Clark, it has been suggested that some of
23 the ill effects that could be caused by that sort of a
24 system would be eliminated if the original club had a right
25 of first refusal, that is to say, the right to meet any

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salary offer that a player might receive as he shopped around and therefore retained the player's services. In your view, would such a right of first refusal cure the ill effects which you have described?

A Well, with the difference in the level of resources that I have referred to several times, I would think that the wealthier club would still be able to outbid the other club, the weaker club, for the key players that they want. So I don't see that that would necessarily relieve the situation.

Q Dr. Clark, it has also been suggested as another check on the ill effects of the proposed modification to eliminate the possibility that the wealthier clubs might corner the talent that a limit be placed upon the number of players, free agent players, which a club could sign.

Suppose, for example, two a year or one a year. What would be the effect, in your view, of that sort of a limitation upon the proposal? Would it eliminate the ill effects we have considered before?

A Well, if it's two a year over a five-year period, you would be able to select ten very choice players. I would think that that would be all you would really need to really strengthen your club a great deal. If it's one a year, it would take you longer, but there still would

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be an advantage to the strong club just as in the other situation.

Q It has been suggested, Dr. Clark, that the reserve system could be modified to the players' benefit if the two leagues that have been joined together for the last 60 years or more, the American and National leagues, were separated and would compete one against the other not only for new player talent, but for existing player talent in the major leagues.

What would be your view of such an arrangement?

A Well, the same disparity exists between the income available to clubs whether you are competing with the league or inter-league, and I would think the same effect would result, that the stronger clubs would emerge much stronger and the weaker clubs much weaker. So I really don't see that that would have any different effect.

Q Another possibility suggested by the plaintiff, Dr. Clark, is something that we have called in a shorthand way a salary minimum escalation system, that is to say, a series of levels, fixed levels. As you know, as you have testified, in major league baseball today there is a minimum salary, a floor. It has been proposed there could be various steps above that tied into longevity and that if a club chose not to pay the player the salary appropriate

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to the length of his service in baseball, that player would become a free agent. Would you give us your view of that possible system?

A The analysis I did of increases in salaries over a career time for players and for the players on the rosters of 1965, who were also on the roster in 1969, and '70 --

Q That would be your Exhibit T?

A Yes.

Q Defendant Feeney Exhibit T.

A -- the progression there was fairly substantial. If the escalation was \$5,000 a year, in other words, you start off with 12,000 and the next year the player had to get 17,000 and the next year 22,000 or he would become a free agent, I suspect a number of players would become free agents under that setup because some of the marginal players just would not be paid that much. So a number of players would then become free agents and if they had to sign at that level with another club, it is a question of whether they might be employable at 17,000 for a second-year man, 22,000 for a third-year man, and so on. So there might be more turnover than there is at the present time and some of the marginal players might not stay around.

1 If you are talking about an escalation of 13,000
2 the second year and 14, 000 the next year, and 15,000 the
3 next year, I don't see how that would have a particularly
4 negative effect to either party. In the first place,
5 the escalation for most players is greater than that,
6 and if it isn't, I don't see how it would be terribly
7 serious for either side.
8

9 Q Would it have a significant positive effect for
10 either party?

11 A I don't think it would have a really big posi-
12 tive effect, but I don't see how it would hurt things so
13 badly either. If a number of players were characteristic-
14 ally being kept at this low level, I would say it might have
15 a positive effect in increasing their income.

16 Q Have you noted any such characteristic?

17 A Generally speaking, on the analyses I did, the
18 escalation was more than that. So I don't know that the
19 rule would be affected, but if it was established I don't see
20 how it would hurt either party particularly.

21 Q So if the minimum salaries established at the
22 various levels was consistent with the lower reaches of cur-
23 rent salary escalations there would be really little
24 effect on the system altogether, and if those escalations
25 were fixed at substantially higher levels there would be

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a risk, in your view, that certain of the fringe or marginal players would continue to be unemployable, I think that is the expression you used.

A That is the point, and I don't know what the breaking point would be, but I think many of the marginal players want to become vested, which would be a four-year period --

Q That is vested in connection with the pension plan?

A Pension. So anything that was set so high it might discourage players being kept on long enough to make the pension vesting period might work to their disadvantage. But this is not something to me that is going to result in the end of league play.

Q It seems to me from your answer that there is a delicate balance there as to the levels, if any, to be adopted. May I not ask whether in your experience as a business analyst those levels and their effect are the kind of matter that could be resolved most effectively in bargaining between the parties? Is that not a typical subject of bargaining?

A Yes, I would think so.

Q Another proposal or suggestion, Dr. Clark, is what we have called, for shorthand, the football system.

2 Let me give you a hypothetical example:

3 Suppose that at the end of any year a player
4 were free to announce that the next year would be his
5 last with that club and that at the end of that next year
6 the player were free to bargain with any other club in
7 organized baseball subject to the right in the Commissioner
8 of Baseball or some panel to compensate his original club
9 for his loss and that such compensation would be assessed
10 against the club with which he contracted after becoming
11 a free agent.

12 What would be your view of that sort of a system
13 being adopted by baseball?

14 A I think it would depend on how many times it
15 happened. If it happened highly infrequently, really
16 highly infrequently, I would think it wouldn't have too
17 much effect. If it happened quite frequently, it would in
18 effect be the same as absolutely open season on players
19 each year.

20 So it would be between the two extremes. It
21 would either have little effect or a great deal of effect.
22 I think the only problem is when you are putting it in,
23 I don't know how you can forecast what would be the
24 experience. So if you put in such a plan and there
25 were a very large number of players playing out their con-

tracts, it would really be quite serious, and from the standpoint of maintaining quality of competition, again the stronger clubs would attract the better players.

Q In other words, if a few players played out their options and the system were not availed of to any degree, to any significant degree, by the players you see little if no harmful effect?

A Right.

Q But if the system were used by a large number of players to obtain their free agency, the effect would be similar to that you observed in the general free agency suggestions we have discussed earlier?

A Yes.

Q And do you see any way to predict or can you give us and the Court any assurance as to the number of players that might avail themselves over a period of a few years were this opportunity made available in baseball?

A No, I don't know.

Q Do you think that anyone could predict that?

A No, I don't know on what basis they could predict it.

Q Another proposal, Dr. Clark, that has been discussed here often has been the possibility of salary arbitration, that is to say, individual salary arbitration,

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so that when a player and a general manager reached an impasse of some sort in salary discussions that the matter could be submitted to a third party for arbitration.

Would you comment upon the possibility and feasibility of that working in the baseball context?

A Well, from the salary reviews, again, that I did, I could see no indication of whether there were a large number or a very small number of serious disputes about salaries or not. I got really no feeling either way that there were a large number of salary disputes or a small number.

I would say that I could see some examples of where a star player was involved and things had reached an impasse, I can't see that it would be so serious to go to arbitration or get some advice or opinions on it. But I don't see any tremendous need for it that I ran into in looking at the salary information. The salaries have gone up rather substantially, as I discussed earlier, and if there have been a very large number of disputes which would have led to a need for frequent arbitration, I am not aware of it. But that is a question that again I don't see that necessarily this would be so harmful that some version of it, you know, could not be used.

Q Dr. Clark, is not arbitration another one of those

2 matters about which employees and employers bargain
3 collectively in the normal course?

4 A Yes.

5 Q Another thought that plaintiff has given us,
6 Dr. Clark, and one which I would like to have your comments
7 on, concerns the possibility of equalizing the revenues
8 of the various clubs. As you have pointed out and as I
9 believe the plaintiff has recognized, there are wide varia-
10 tions in gross revenues and possibilities among the major
11 league clubs which produced this situation where we have
12 wealthier and poorer clubs, each with their own ability
13 to attract player talent in a free market.

14 It has been suggested, for example, that gate
15 receipts could be shared on something more closely approx-
16 imating a 50-50 basis between the visiting club and the
17 home club, and it has been suggested that radio and tele-
18 vision revenues might be shared on an equal basis among
19 the 24 clubs.

20 Would you comment on the feasibility and
21 appropriateness of such a step?

22 A It is my understanding that national TV income
23 is at the present time shared equally on a per club basis.

24 Q Excuse me just for a moment. Do you know what
25 proportion the actual TV income is of overall broadcasting

income to baseball?

A It is slightly less than 50 per cent. I don't know exactly, but maybe 40 per cent, something like that. It is less than half.

Q Go ahead.

A I think there are several problems in that, one being that the clubs as they presently exist have commitments on stadium leases and have built up organizations with certain expenses, and these are not equivalent one city to another, and yet the clubs are committed to this. There might be a question as to whether some of the clubs under that arrangement could indeed meet all of their commitments.

There is a second case of how much incentive would you remove from a club owner to do the best promotion job in a city if he knew that no matter what he did half of the benefits of his labor would go to the visiting club. I think that really refers to the local TV and radio arrangements, too, that it would discourage a club owner from doing the best job he could.

It would raise a question as to what he might feel or demand that a club owner in another city could do over which he had no control. I don't know what the balance would be, but I know on an equal level it

certainly would have a substantial effect on the activities of some of the clubs. So I would think that there are some difficulties in solving everything by splitting revenues 50-50 all the way down the line.

Actually, I think I mentioned earlier the fact that a number of players would much rather play in New York or Los Angeles, the major cities. There still would be an attraction insofar as which clubs could attract the best players. The factor of outside employment opportunities in New York is greater than elsewhere.

Finally, while I think that a club should depend on the revenue from baseball operations to cover its baseball costs, I am quite sure that there must be some variation as to capabilities among the owners as to what non-operating investment they might make, in other words, out of their own resources, to again buy players.

But I am not familiar with what the different resources are. I just suspect they are not all equal.

Q I take it that reaching outside for resources you suggest you could unbalance the wealth of clubs just as surely as the different levels of operating revenue?

A I think that if some clubs did have unequal capital resources that they would have an advantage

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there. I said earlier, I think that overall it would be desirable to try to cover your operating expenses out of your operating income and not have a continual input of capital, but obviously some clubs do who are losing money and still continue to make some of these investments in players.

Q Dr. Clark, with respect to the local television and broadcasting arrangements that the clubs have, I know that you are familiar with them in general, in a general way. Do they lend themselves to a national partnership perhaps similar to a network or otherwise which could be neatly devised into 24 parts?

A There is a tremendous variation from city to city as to the hinterland served by the radio and TV network, and advertisers generally speaking are motivated in the sense they are going to advertise in the particular region served. I am not saying it would be absolutely impossible to set up some sort of centralized device, but it would not be easy. It would be quite difficult. In other words, what I am saying is it is not impossible but it would be very difficult to try to market this thing nationally in the same way that the national TV account is.

MR. HOYNES: Your Honor, may I have a moment, please?

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THE COURT: Surely.

(Pause.)

MR. HOYNES: Your Honor, I have no further questions.

THE COURT: Would you like a little recess before you begin cross-examination, Mr. Topkis?

MR. TOPKIS: I think it would be a good time if it would please your Honor. Does Mr. Kramer have any questions, could I know?

THE COURT: Mr. Kramer, I beg your pardon.

MR. KRAMER: Not at all. None, your Honor.

THE COURT: I beg your pardon. I think you know how meticulously I have endeavored to recognize you and I think in anticipation of the recess I didn't stop long enough to remember. Thank you, Mr. Topkis, for reminding me.

MR. TOPKIS: I live in fear, your Honor. One day he is going to let loose that weapon and it is going to be awe-inspiring.

THE COURT: Mr. Kramer's effectiveness lies in his failure or, rather, his decision not to spend time on tiny gains. He seems to go after big stuff. A short recess.

(Recess.)