

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Judge Cooper

CURTIS C. FLOOD,

Plaintiff,

vs.

BOWIE K. KUHN, individually and
Commissioner of Baseball, et al.:

Defendants.

: Before:

: HON. IRVING BEN COOPER,
: District Judge

: 70 Civ. 202

New York, June 9, 1970

STENOGRAPHER'S MINUTES

SOUTHERN DISTRICT COURT REPORTERS

UNITED STATES COURT HOUSE
FOLEY SQUARE 7, NEW YORK

TELEPHONE: CORTLANDT 7-4580

2 Curtis C. Flood

3 vs.

70 Civ. 202

4 Bowie K. Kuhn, et al.

5 New York, New York.

6 June 9, 1970 - 10:00 A.M.

7
8 (Trial resumed.)

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

10 THE COURT: Good morning.

11 MR. TOPKIS: May I proceed, your Honor?

12 THE COURT: Mr. Topkis, won't you please con-
13 tinue with the cross-examination of Dr. Clark.

14 MR. TOPKIS: Thank you, your Honor.

15 CROSS-EXAMINATION BY MR. TOPKIS (continued):

16 Q Dr. Clark, do you have a copy of your report
17 in front of you?

18 A Yes.

19 Q Could I ask you to turn with me to Page 18,
20 please.

21 A Yes.

22 Q Now, in the second full paragraph on that page,
23 Doctor, the second sentence, do you see it:

24 "Merely earning the equivalent of 5.5 per
25 cent on a savings account..."?

2 A Yes.

3 Q Do you see that?

4 THE COURT: May I interrupt you? I am sorry
5 to do this. I returned to the clerk the copy I had, the
6 original, so it could be given to counsel. Have you
7 one to spare? Or give me the original. I don't care.

8 Let the record show we are talking about Exhibit
9 S.

10 Q Now, you see that sentence, Doctor?

11 A Yes.

12 Q Does that sentence contain an error, Doctor?

13 A Yes.

14 Q The error is in the use of the word "after-
15 tax," isn't that right?

16 A No, the error is in the computation.

17 Q What would you tell me should be the computa-
18 tion?

19 A 5.5 per cent should be \$11 million per year or
20 \$55 million over a five-year period.

21 Q All right. So it is your testimony, Doctor,
22 that if you invest \$200 million and earn 5.5 per cent
23 on it in a savings account you wind up with an after-tax
24 income of \$11 million, is that right?
25

1
2 A No, that is not the intent of the sentence.

3 Q I didn't think so. Would you tell us what the
4 intent is, please?

5 A Yes. I was comparing a situation of alternative
6 investment, a person or an institution with a substantial
7 amount of money to invest and determining what would be the
8 alternative returns from two different investments. One
9 was taken as agreeing with a bank to deposit the money for
10 five years and receiving 5.5 per cent interest, which would
11 be, at the rate, corrected as \$11 million a year or a total
12 of \$55 million a year.

13 Q Before or after taxes?

14 A Just straight interest income.

15 Q Without taxes considered at all?

16 A Without taxes paid by the individual.

17 Q Right.

18 A May I proceed?

19 Q Do you agree with me --

20 THE COURT: He wants to proceed.

21 Q Excuse me, please.

22 A The second alternative was on the assumption
23 that I could buy all 24 major league baseball clubs for
24 \$200 million, what would be the equivalent earnings that
25 they would have to make in order to pay me dividends of

2 \$11 million a year or \$55 million over the five-year period.
3 They would have to have after-tax earnings of \$11 million
4 a year or a total of \$55 million a year in order to again
5 pay me dividends of \$55 million over the five-year period,
6 which again would be subject to tax just as the interest
7 income is. But the organizations would have to pay Federal
8 corporate income tax on their income in order to pay me
9 the net after dividends.

10 Q Doctor, is it your suggestion to us that all of
11 those thoughts are contained in these two sentences:

12 "If all 24 franchises were valid at the average
13 transfer price of \$8,398,000... the total value of all
14 franchises would exceed \$200 million. Merely earning the
15 equivalent of 5.5 per cent on a savings account would
16 indicate an after-tax income of \$11 million per year, or
17 60 million over a five- year period..."

18 THE COURT: Or 55.

19 MR. TOPKIS: " Or \$55 million over a five-year
20 period..."

21 A That was the intent of the discussion. It
22 obviously --

23 Q The use of the words "after-tax income of
24 \$11 million" is just plain wrong, is it not?

25 A No, it is not.

2 Q Doctor, let's suppose you take \$2,000 --

3 A Yes.

4 Q -- and invest it in a savings account at 5-1/2
5 per cent. What is your yield at the end of a year.

6 A Eleven thousand.

7 Q Let's try again. Suppose you take \$2,000 and
8 invest it in a savings --

9 A I am sorry. \$1,100.

10 Q Let's try a third time. Doctor, is arithmetic
11 your forte?

12 A No. May I make a calculation?

13 Q Yes, please do. Do you have a pad?

14 (Witness makes computation.)

15 A \$110.

16 Q All right. So if you invest \$2,000 at 5-1/2
17 per cent you earn \$110, right?

18 A Yes.

19 Q Is that before or after taxes?

20 A It's before taxes.

21 Q Now, if you invest \$200 million at 5-1/2 per
22 cent, Doctor, in a savings account, same savings account,
23 or if you want to invest it in a whole bunch so the FDIC
24 applies, what do you earn on that in one year?

25 A The \$200 million?

Q Yes.

A The \$11 million.

Q Is that before or after taxes?

A That is before tax -- before personal income tax.

Q Yes. And when you say in this sentence "Merely earning the equivalent of 5.5 per cent on a savings account would indicate an after-tax income of \$11 million per year," are you right or wrong in making that statement?

A I am right. In order for the baseball clubs to pay me \$11 million they would have had to pay corporate income taxes on a larger sum with a net amount of \$11 million. In other words, their net after Federal corporate income tax would have to be \$11 million to pay me a comparable amount.

Q And do you think that is the clear reading of this language?

A It could have been clearer.

Q I think I will agree with you. Let me pass to something else.

THE COURT: Before you do, I would suggest that the exhibit be physically changed by consent of all counsel, because whoever picks this exhibit up should have it clearly reflect the testimony of the witness. Do you so move?

1
2 MR. TOPKIS: I am delighted to have that change
3 made, your Honor.

4 MR. HUGHES: Your Honor, I thought the testi-
5 mony of the witness and the explanation he gave makes
6 the text of the report clear.

7 THE COURT: It is the figures.

8 MR. HUGHES: The figures, well, yes, we certainly
9 move that the 12 million be changed to 11, and the 60
10 million to 55. I misunderstood you, your Honor.

11 THE COURT: You may physically change it with
12 the consent of counsel and do so before we forget. I am
13 referring to the change on Page 18 of Exhibit S.

14 MR. TOPKIS: Do you wish the witness to make
15 that correction now?

16 THE COURT: I think it would be an excellent
17 suggestion. Put your initials in the margin, will you,
18 Dr. Clark?

19 THE WITNESS: Yes, sir.

20 THE COURT: And today's date.

21 (Witness writes.)

22 THE COURT: Thank you.

23 Q Doctor, would you say that the statement made
24 on Page 18, which we have just corrected the figures on,
25 is typical in its accuracy of the entire contents of your
report?

1
2 A I hope not.

3 Q Speaking of reports yesterday --

4 MR. TOPKIS: Let me put this on the record, if
5 I may, your Honor. Yesterday I requested my friends from
6 the other side to produce the reports which Dr. Clark's
7 organization had rendered down through the years, and I
8 wonder if I might have a response to that.

9 MR. HOYNES: Mr. Topkis, the one report that
10 we had in our office immediately available is the report
11 that Dr. Clark referred to concerning the major league pro-
12 motion. I give you that for your examination (handing).
13 I understand that the report which Dr. Clark rendered in
14 the Milwaukee litigation will be available to us later
15 today. As soon as I have it I will provide it to you.

16 I believe the other reports involved American
17 League matters. I would like to have Mr. Hadden report on
18 that.

19 MR. HADDEN: Your Honor, there were three reports
20 referred to by Dr. Clark. One of those was an oral report.
21 There is no written report to produce. The other two are
22 on their way from my office in Cleveland and, with the
23 U. S. mails' cooperation, I hope they will be here today.

24 THE COURT: This is another outstanding example
25 of the splendid cooperation by counsel. I thank you

gentlemen for your alertness.

MR. TOPKIS: I am sure your Honor knows we appreciate this cooperation wholeheartedly.

THE COURT: Of course you do. It has been characteristic of counsel throughout the trial.

Q And one of the reports, do I gather, Doctor, was oral?

A Yes.

Q Who rendered that?

A I did.

Q And when was that?

A This spring.

Q What was its subject matter?

A Assessment of the financial outlook for the Seattle franchise for this season in Seattle.

Q You rendered it this spring?

A Yes.

Q Was that in connection with some litigation?

A No, this was prior to the decision to transfer the Seattle franchise to Milwaukee.

Q Doctor, did you ever calculate the average earnings of a major league ballplayer during his baseball lifetime?

A Yes.

2 Q Where are those calculations embodied?

3 A In this report.

4 Q Would you show me where, please?

5 THE COURT: Referring to S in evidence.

6 A On Page 5.

7 MR. KRAMER: Your Honor, could I have the pre-
8 ceding question read back, please?

9 THE COURT: Surely. Go back a bit, Mr. Court
10 Reporter, and read it.

11 (Record read.)

12 Q Doctor, you understand my question calls for
13 total earnings during a baseball lifetime. Would you show
14 me where on Page 5 I will find that information?

15 A Well, if you multiply ten times 18,630, the
16 average total earnings for players with ten years would be
17 \$185,300.

18 Q That is the average earnings of a player who
19 lasts ten years in the majors, is that right?

20 A That was the experience that we had, yes.

21 Q There has been testimony here that the average
22 player who comes up to the majors and lasts 60 days, that
23 his average life in major league baseball is about 4-3/4
24 years. Could I then gather that the average lifetime
25 major league earnings of a ballplayer, such an average

1
2 ballplayer, could be found on your table somewhere between
3 four and five years?

4 MR. HUGHES: Your Honor, I object to the form
5 of that question because I am not aware that there was
6 any such testimony. There have been questions propounded
7 to witnesses from time to time on cross-examination which
8 have used that number of years, but I am not aware of any
9 testimony by a witness to that effect made after any
10 study or lack of study.

11 So I object to the form of the question.

12 MR. TOPKIS: I had thought, your Honor, that at
13 least two witnesses on cross-examination agreed with me
14 that that figure was approximately accurate, and I will
15 represent further to the Court that in the course of our
16 rebuttal testimony Mr. Miller will be quite exact on the
17 subject.

18 THE COURT: Put it in the form of an assumption.

19 MR. TOPKIS: Very well.

20 Q Doctor, assuming the average major league
21 life of a player who comes up to the majors and lasts at
22 least sixty days to be approximately 4-3/4 years, would
23 you tell me where in your table on Page 5 I will find his
24 lifetime average earnings?
25

A It will be obtained by multiplying 5 times 8,818.

t2/1

Q So his average major league lifetime earnings would be \$8,818?

A Times 5; \$8,818 times 5.

Q Times 5, about 44,090?

A Well --

THE COURT: What was Mr. Topkis' figure?

(Question read.)

A That is correct.

Q Doctor, is that right?

THE COURT: No, it's not right.

MR. TOPKIS: I don't think so.

THE COURT: Well, you were wrong.

MR. TOPKIS: No, I said, I believe, 44,090.

THE COURT: If you want to correct it we will try it another time.

MR. TOPKIS: We never stop being trial lawyers.

Q Is that the correct figure, Doctor, \$44,090?

A \$44,090.

Q Thank you. Now, actually, Doctor, that figure isn't right, is it?

A Of the players that we checked who had -- there were 29 players in that category who had a major league career of five years, and that is what it came out to, an average salary per year of 8,818 for five years.

Q Doctor, in statistical terms is the way to get the average lifetime earnings of a major league ballplayer -- and let's limit it to one who has been up for 60 days at least -- to look on your table and look at the five-year figure?

A Well, these were calculated by totalling up the actual salaries paid these different players, these 29 players and dividing down to get to the 8,818, so you could build it back up the same way.

Q Now, Doctor, would you try answering my question?

MR. TOPKIS: May I have it repeated, please, your Honor.

THE COURT: Surely. Will you do so, Mr. Court Reporter.

(Question read.)

A If the service is five years, yes. If it is less than five years it would be slightly lower.

Q I am asking you to consider the entire class of major league baseball players who come up to the majors and last 60 days.

A The only figure this applies to is players specific for five years.

Q Right, so this figure that you are showing me on page 5 does not indicate a player's lifetime earnings at

all, does it?

A Four or five-year service.

Q Four or five-year service?

A Yes.

Q But that is not my question. I am asking you about the average player's lifetime earnings, and I am suggesting to you that your table on page 5 does not have that information. Am I not correct?

A You are correct.

Q Thank you.

Now, I ask you again, have you ever made an effort to calculate the average lifetime earnings of a major league ballplayer in baseball, and then I will ask you a further question. So that we understand each other, let me make my point clear, I will ask you a further question about his average lifetime major league earnings. Have you ever calculated either of those? That is the question.

A A major league player, yes, sir. The average major league player, no.

Q You have calculated his average lifetime earnings in neither situation, neither his total earnings nor his earnings from playing major league ball?

A We calculated the average earnings for a large number of individual players, but not an average player.

Q Very well. And have you ever calculated, Doctor, the post baseball earnings of former major league baseball players?

A No.

Q Now, you testified, I think, yesterday, Doctor, that as a result of the adoption of the new minimum wage for major league baseball players there will be a raise in average earnings as previously reported by you of \$288 for this year, is that right?

A Yes.

Q And you testified that you would also expect adjustments to be made for players who are now earning \$12,000, the new minimum, is that right?

A I think it would be a very intelligent thing to do, yes.

Q Well, intelligence aside, did you not testify that that was your expectation?

A Yes.

Q You expected that the owners would --

THE COURT: Yes, but not intelligence aside. The witness testified that that would be his expectation if intelligence was applied. That is an entirely different proposition. Am I right?

THE WITNESS: Yes.

2 THE COURT: Intelligence not aside. Intelligence
3 may be the answer to it. That may be the trouble here.

4 All right.

5 Q Do you expect intelligence to be applied, Doctor?

6 A We will have to see.

7 Q You are not sure right now?

8 A Not positive, no.

9 Q And you have testified, have you not, that you have
10 had a good many conversations with major league baseball
11 club owners?

12 A Yes.

13 Q In the course of those conversations I suppose you
14 have had an opportunity to form a judgment as to how fre-
15 quently they apply intelligence?

16 A Yes.

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

18 THE COURT: Yes, certainly.

19 (Pause.)

20 Q Doctor, do you have a copy of Exhibit T in front of
21 you?

22 A Yes.

23 Q You see the first column headed 1965 on that?

24 A Yes.

25 Q And that is a tabulation of players who were on

1965 rosters and were still active in 1969, is that right?

A Yes.

Q Have you footed that column, Doctor?

A I did earlier, yes.

Q Does it total 257?

A I will see.

That is what I get.

Q And that means that of the players who were on 1965 rosters, 257 were still active in 1969, right?

A Yes, and had played each of the years.

Q Right. Now, how many players were there on the 1965 rosters?

A 498.

Q So that 241 of the 498 were no longer active in baseball four years later, is that right?

A They may have skipped a year, but essentially that is correct, yes. They were not on active rosters.

Q Not on active rosters?

A Major league.

Q What was the beginning of your response? I didn't quite understand it.

A There were several that would not be included in this because they were out a year, and then returned. They had to be on the -- they had to play each of the years in

2 question.

3 Q I see. And it is possible that there was some
4 player who was on the roster in '65 but not in '66 and came
5 back '67, '68, '69. I see.

6 A Yes.

7 Q All right. But no great number of those are in-
8 volved, is that right?

9 A No.

10 Q So that in rough terms approximately half of those
11 who were active in 1965 were still active in 1969 and the
12 other half had fallen by the wayside?

13 A Slightly over half, yes.

14 THE COURT: And played each of those years?

15 MR. TOPKIS: Right.

2 16 Q And coming over to your next pair of columns,
17 Doctor, which compares 1965 to 1970, have you footed that
18 column, the 1965 column?

19 A I will again.

20 Q Would you please?

21 A Yes. 209.

22 Q So that in that one additional year between '69 and
23 '70, 48 of the 257 have left baseball, is that right?

24 A Yes.

25 Q About 18 per cent?

2 A Slightly over 18 per cent, yes.

3 Q Doctor, you testified a couple of minutes ago,
4 I believe, that you have made no study of post baseball
5 earnings of players.

6 A That is correct.

7 Q From your experience would you expect that they
8 would suffer a drop in their earnings on leaving baseball?

9 A Many would, yes.

10 Q On the average?

11 A You mean more than half of the players?

12 Q Well, I meant the average, but I will take more than
13 half.

14 A I certainly would think more than half the players
15 would.

16 Q Suffer a drop in their earnings?

17 A Yes.

18 Q Would you think it might be as high as 90 to 95
19 per cent of them?

20 A I would expect it to be as high as 90.

21 Q You testified yesterday, I believe, that your
22 category of experienced ballplayers had a larger average
23 gain in income than any other category with which you com-
24 pared them, computer people and lawyers, accountants and so
25 on; is that right?

2 A If you are referring to the 209 and the 257, yes.

3 Q But in none of the other groups with which you
4 compared experienced ballplayers had there been any winnowing
5 done of the kind which you did in developing your figures
6 for experienced ballplayers, had there?

7 A That is correct.

8 Q Doctor, down through the years have you had the
9 opportunity to review financial statements of many business
10 enterprises?

11 A Yes.

12 Q Has it been your experience that when you were deal-
13 ing with a relatively small operation -- and by that I mean
14 one with annual income of under, let us say, \$10 million --
15 it is fairly easy to turn a profit statement into a loss
16 by padding payroll?

17 A In some small companies there has been instances
18 of that, yes.

19 Q It is fairly easy to do, isn't it?

20 A It is not awfully easy to do, but it has been done.

21 Q All you have to do is put a few cousins and aunts
22 on the payroll and that will do it, is that right?

23 A Somewhat.

24 Q Doctor, have you calculated the proportion of
25 baseball players who receive the minimum wage?

2 A I have a fairly close idea, yes.

3 Q What is that idea?

4 A It would be close to 80.

5 Q Close to?

6 A 80.

7 Q And would you put that in percentage terms for me,
8 please?

9 A It would be over 13 per cent.

10 Q Do you know of any other industry where 13 per cent
11 of the workers received the minimum wage permitted in that
12 industry?

13 A No.

14 Q You testified yesterday, Doctor, that the reserve
15 clause, in your judgment, had no depressant effect on ball-
16 players' salaries. Do I record your thoughts correctly?

17 A That is not precisely what I testified.

18 Q Would you correct me, please.

19 A It did not have a seriously depressing effect.

20 Q And the basis for that judgment of yours is that
21 players' salaries have risen in the years between 1965 and
22 1969, is that right?

23 A That and the analysis I did of the players who had
24 gone through four or five bargaining years.

25 Q But the reserve clause was operating in '65 and

all the way through, through '69, wasn't it?

A Yes.

Q So if the salaries had been depressed at the beginning of the period by operation of the reserve clause or any other circumstance, there is no reason to expect that that depression would have been corrected in the intervening years, is there?

A No.

Q Wouldn't the decline in the proportion of club revenues which we have seen in the last 30 or 40 years, according to the figures I asked you about yesterday in the Celler Report, wouldn't that decline in the proportion of club revenues going to players' salaries suggest that players do not have equal bargaining power with management?

A There have been a great deal of changes in the income structure and in the minor league operations, the cost of minor league operations, the cost of player development, so that you cannot just look at it without taking into consideration the changes.

Q You have had a good deal of experience with wage negotiations, Doctor?

A Not a great deal, no.

Q Have you had any?

A Yes.

Q Have you studied wage patterns, industrial wage patterns in industry by industry?

A In the course of working particular industries, yes, I am familiar with the wage patterns in a number.

Q Isn't it regarded as one index of labor's bargaining power, its ability to obtain a fixed or even a rising percentage of an industry's total revenues by way of wages?

A There is a distinction between wage rates and total wages paid. For example, in the coal industry there has been a tremendous increase in productivity per worker with the introduction of more machinery in the mines and certainly coal wage rates have gone up substantially, but the total wages paid have not.

Q Because of the introduction of labor-saving machinery?

A Yes.

Q To your knowledge has baseball introduced any labor-saving machinery?

A No.

Q So wouldn't you agree that there being no labor-saving machinery to consider it would be a fair index of the effectiveness of ballplayers' bargaining to look to the proportion of baseball's revenues which they have been able to achieve by way of salaries?

2 A Taking into account the whole other expenditure
3 picture, yes.

4 Q And what is the whole other expenditure picture to
5 which you have reference?

6 A In particular, the cost of player development, the
7 amount spent on minor league operations, which is certainly
8 a substantial amount.

9 Q You have a chart somewhere in your report, haven't
10 you, Doctor?

11 A Yes.

12 Q And where is that, Doctor, would you tell us?

13 A On page 16.

14 Q Right. In the last five years there has been an
15 inconsequential change in player development in minor league
16 operations costs according to that page, isn't that right?

17 A Yes, in the past five years, that is correct.

18 Q And have you charted that cost for a longer period
19 than those five years?

20 A No. I charted just the cost there and the team
21 operations, salaries and pension funds for a comparable
22 period.

23 Q Yes, I see that. Now, Doctor, referring to this
24 table on page 16, I see there an increase in selling,
25 general and administrative expenses from 14.8 to 19.2

per cent. Do you see that?

A Yes.

Q That is an increase, using the 14.8 as a base, of 29.6 per cent, isn't it?

A It would be just under 30 per cent, yes.

Q So that selling, general and administrative expenses, or more accurately the proportion of club revenues which have gone to selling, general and administrative expenses has gone up a shade under 30 per cent in five years, right?

A That is correct.

Q Now, will you agree with me also that the category marked "Other" which has increased from 6 per cent to 8.6 per cent has gone up, using the 6 per cent as a base, approximately 23 per cent?

A Approximately 43 -- from 6 to 8 -- let me look at the figures again to make sure. I don't know if I heard you correctly. From 6 up to 8.6.

Q Yes, and that in percentage terms.

A Yes, those are percentages.

Q But what is the percentage increase?

A That is what I am rechecking. I get 43 per cent.

Q Very good, 43 per cent. I am sorry, my figure was off. So that other expenses have gone up 43 per cent in selling, general and administrative expenses have gone up

30 per cent.

Now, will you tell us, Doctor, what are the components of selling, general and administrative expenses? Are they predominantly salaries or are they predominantly something else?

A Salaries are -- well, let's take general and administrative salaries.

Q Salaries, that is what we are talking about under selling, general and administrative expenses.

A I don't have a breakdown on selling, general and administrative in detail, but I did get a breakout on general and administrative, and they average out to around \$220,000 a club.

Q Yes, but all my question is, Doctor, is this: The cost of selling, general and administrative expenses, that is almost exclusively a salary item, isn't it?

A It would be a heavy item, yes.

Q Well, there is nothing else, is there? I mean, when you are running a selling organization, an administrative organization --

A Well, you have a lot of stuff printed, ads and brochures, give-aways.

Q Well, just roughly, you would agree with me that salaries account for --

2 A Is a major item, yes.

3 Q -- the vast preponderance, isn't that right, of
4 such?

5 A This is a substantial part. I would have to look
6 at the figures to know for sure.

7 Q How about other expenses, Doctor?

8 A Well, other -- go ahead.

9 Q They are predominantly salaries, too, aren't they?

10 A No, in that case there is a great deal of travel
11 expense, uniform expense, equipment expense, meal money
12 expense, travel back and forth when players are sent out
13 and brought back, so there the expense is much less.

14 Q You mean salary expense?

15 A The salary expense is very small there.

16 Q So that the other category is made up of things
17 which the club must buy in order to service its team, and
18 salaries which it must pay?

19 A And the cost of traveling, getting the team there,
20 which is a major item.

21 Q Cost of traveling?

22 A Right.

23 Q And the other expenses have gone up 43 per cent and
24 the selling, general and administrative expense has gone
25 up a shade under 30 per cent. Now, would you calculate for

me, please, the percentage increase in team operation costs, meaning salaries of players and pension funds.

THE COURT: What page is that on?

THE WITNESS: This is still on page 16.

THE COURT: Thank you, yes.

A 11 per cent.

Q 11 per cent, so that the player expenses, salaries and pension funds have gone up 11 per cent in those five years, other expenses have gone up 43 per cent, and selling, general and administrative expenses have gone up around 30 per cent, right?

A Yes.

Q Doctor, would you say that those figures reveal a strong bargaining position on the part of players?

A I think they reveal -- no, they do not.

Q They reveal the contrary, do they not?

A They reveal a great deal of changes that have taken place over the period in traveling costs and other costs. In other words, they don't necessarily go up at the same rate.

Q Well, let's focus on the selling, general and administrative expenses. We agreed a moment ago, I think, that that is predominantly a salary item.

A Yes.

Q So that the office workers have done three times

as well or almost three times as well as the players in their salary negotiations in terms of winning increases, is that correct?

A I would have to look at the detailed figures which I have never had broken down.

Q Have you asked for them?

A No.

Q On the figures we have, my statement is correct, isn't it?

A Yes.

Q Now, of course, there is no reserve clause operating on employees in the sales, general and administrative categories, is there?

A No.

Q Do you adhere to your belief that the reserve clause does not operate with a depressant effect on players' salaries?

A Based on my analyses, I still think that the level of salaries and the increases that I have looked at were pretty good.

Q Well, what do you believe, then, about the selling, general and administrative people? Do you think they are extraordinarily talented bargainers or do you have no explanation?

2 A I am sorry, I really would have to know what the
3 complete breakdown was before I could make a statement on
4 that.

5 Q Very well. Now, you suggested, I believe, some-
6 thing like the following: "I don't believe that management
7 always tries to get a player for as little as possible."

8 Are my notes approximately accurate?

9 A I think that is true, yes.

10 Q What is the basis of that belief on your part?

11 A That some of the marginal players who have made
12 some contribution to the club are given increases that they
13 could not bargain for themselves.

14 Q How do you know?

15 A I don't know. That is an opinion.

16 Q If that is your idea of an opinion, I will pass to
17 another subject. You said --

18 A And, incidentally, that is based on seeing a large
19 number of salary records.

20 Q Do you pose, Doctor, as a man of qualification
21 in judging whether a ballplayer is marginal or not?

22 MR. KRAMER: Objection, the word "pose," your Honor.

23 MR. TOPKIS: I didn't mean it unkindly.

24 Q Do you assert yourself to be a man qualified to
25 give expert opinions on ballplayers' competence on the field?

1 A No.

2 Q You testified yesterday, I think, Doctor, that a
3 player, as he gets older, and as his playing skills perhaps
4 decline, will simultaneously, however, tend to have an in-
5 crease in his value to the club in terms of his attraction
6 at the gate. Did I record my notes accurately or roughly
7 accurately?
8

9 A Well, a number of superstars certainly have a value
10 at the gate.

11 Q Well, wasn't it your testimony that older players
12 are often paid in some degree for their past performances?

13 A Yes.

14 Q And didn't you go on to say that the player as well
15 has a value in fan affection if not so much on the playing
16 field?

17 A Yes.

18 Q And you didn't limit yourself there to superstars,
19 did you?

20 A I really referring to the well-established star.

21 Q Well, when you talk about a player who has been
22 around for ten or twelve years, is that what you mean by a
23 superstar?

24 A Superstar, I was really thinking of the category of
25 Willie Mays and Hank Aaron and --

Q You are living in New York right now?

A No, I am living in Cambridge.

Q You are living in Cambridge, I am sorry. I had forgotten that. Well, you did live in New York for quite a while?

A Yes.

Q What lured you to move to Cambridge, money?

A No.

Q Some personal consideration?

A No, my job.

Q Oh, but you went to Cambridge to accept employment with Arthur D. Little?

A Yes.

Q You wanted to go back to the Little organization, is that it?

A Yes.

Q But you left New York fairly recently. What I am leading up to, Doctor, I would like to get a more precise understanding of your notion of a superstar, and so I will put to you the question: Do the Yankees today have any superstars?

A Not one that I would say.

Q So you don't think there is anybody on the Yankees who has any appreciable value at the gate?

2 A Not as much as someone like when Mickey Mantel
3 was there.

4 Q That is not my question now. My question is, do
5 you think that there is anybody, or when you use the term
6 superstar do you use it to exclude the entire roster of
7 the New York Yankees?

8 A No, obviously not.

9 Q There are some players in that category, as you
10 use the term, right?

11 A There are some players who obviously are attractions,
12 yes.

13 Q And each club will have some players like that, isn't
14 that right?

15 A Yes, they will have some better players and some --

16 Q The better players on the club will be in that
17 category as you use the term?

18 A They will be the fan attraction, yes.

19 Q Doctor, you testified yesterday, I think, in terms
20 of the effect of the reserve system on the marginal player,
21 by saying that a marginal player, as you used the term, would
22 not be in a strong bargaining position whether he was bar-
23 gaining with one club or several; is that right?

24 A Yes.

25 Q That is because his skills are relatively modest?

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A Yes.

Q And he is fairly interchangeable?

A Yes.

2 Q But if one club needed a left-handed hitting
3 pinchhitter and didn't have one and another club had two,
4 you would expect that a player who was free to deal with
5 both clubs, that is to say, a left-handed hitting pinchhitter
6 would be able to do somewhat better with the club that
7 had none than the club which had two, is that true?

8 A It is conceivable.

9 Q It is conceivable or extremely likely?

10 A It depends on how hard the bargaining is, in
11 other words, how badly they need a left-handed pinchhitter.

12 Q You know enough about baseball to know that most
13 clubs like to have a left-handed pinchhitter, don't you?

14 A Yes.

15 Q And wouldn't you expect that my left-handed
16 pinchhitter would do better negotiating with the club which
17 had no lefty pinchhitters than negotiating with the club
18 which had two?

19 A Yes.

20 Q Thank you. Doctor, you were testifying yesterday
21 as to the respects in which baseball is unique, and I
22 think you agreed with Mr. Nathan's testimony that the cost
23 of player development was very high judged by standards of
24 other industries, right?

25 A Yes.

Q Do you know any industry selling services and nothing but services where the labor cost is only 20 per cent or less of the revenues?

A I had looked at some information along that line. Some of the other entertainment areas are low. I have some figures in my bag from the Department of Commerce which indicate that the total salary, not just players, they don't collect it that way, but the total salary cost for baseball was approximately 50 per cent of the total receipts, and that is not an unlikely figure.

MR. TOPKIS: Could I have that answer back, please, your Honor? I am not sure I understand it.

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

(Record read.)

Q You mean, Doctor, according to this data which you have salaries paid to people other than ballplayers in baseball aggregate approximately 30 per cent of baseball's receipts, whereas salaries paid to players aggregate only 20 per cent?

A The total salary cost as they reported it for -- not recent years, this was some years back -- was 50 per cent for each -- I mean 50 per cent of the total receipts and how that broke down I do not know.

Q You know that in the last five years player salaries have been around the 18 to 20 per cent figure, right?

A Yes.

Q And according to the Celler report in the years before this 5-year period that you studied intensively the figure was 22, 23 per cent, is that right?

A Yes.

Q So that the salaries paid by baseball to non-players would aggregate more than the salaries paid by baseball to players?

A Yes, I think that is correct.

Q Do you have any idea who these extraordinarily valuable people are?

A This includes the whole scouting organization, the whole game operation, the general administrative, selling tickets, groundkeepers and you know, as I said, scouts, any people employed in the minor leagues by them would all be part of this cost. This is all baseball.

Q And it would also include club executives?

A Yes.

Q And wouldn't you expect that the predominant charge would be for club executives rather than for groundkeepers?

1
2 A Well, I think I mentioned earlier that the
3 average cost per club at the present time for general and
4 administrative salaries, which includes the general manager,
5 the assistant general manager, club executives, a treasurer,
6 if there is one, accountants, clerks in the office, and
7 so on, approximates \$220,000 per club.

8 Q And that is the category that has gone up
9 fastest, of the three we studied, in the last five years?

10 A Together with selling, general and administrative
11 yes.

12 Q Doctor, I think you testified yesterday that
13 if 24 competitors were free to compete in all respects
14 over a period of time the chances would be slim that
15 all would wind up of equal strength.

16 A Yes.

17 Q Applying that rule to baseball, you said that
18 you would expect some clubs would disappear.

19 A Yes.

20 Q Well, Doctor, actually, of course, in recent
21 years a number of ball clubs have moved, haven't they?

22 A Yes.

23 Q As an economist, you would believe that the
24 principal reason for their move was to buttress their
25 competitive position by adding to their revenues, is that

1 gwb-5

Clark-cross

2 right?

3 A It is to improve their revenue position, yes.

4 Q To improve their revenue position. Very well.

5 Do you believe that the clubs which have moved
6 have so improved their revenue position?

7 A Yes.

8 Q Are the 24 major league ball clubs today, Doctor,
9 in the 24 best marketing areas?

10 A I don't think so, no.

11 Q Which ones are in weaker areas?

12 A I would think the Dallas-Fort Worth area is a
13 very attractive area.

14 MR. HUGHES: What was that?

15 THE WITNESS: The Dallas-Forth Worth area is
16 an attractive area.

17 Q Are there any others today unrepresented in
18 major league baseball which you regard as very attractive?

19 A That is by far the most attractive. It tapers
20 off rather quickly after that.

21 Q And are there any major league clubs which are
22 today operating in areas which are far below the average in
23 terms of marketing strength?

24 A There are some, yes.

25 Q Which ones?

2 A San Diego.

3 Q Any other?

4 A Well, some clubs are in areas that baseball
5 appears to have fallen into not too good a game condition.
6 The White Sox are suffering very badly at the gate.

7 MR. TOPKIS: Could I have that answer read back,
8 your Honor?

9 THE COURT: Please, Mr. Court Reporter.

10 (Answer read.)

11 Q What do you mean by that, Doctor? I am not
12 sure I understand you.

13 A Attendance is way down at the gate for the
14 White Sox.

15 Q Chicago is one of the strongest marketing areas
16 in the country?

17 A Yes, but there is another team there, and in
18 a two-team city once one team does a lot better than the
19 other team, the second team has very substantial declines
20 in attendance.

21 Q I see. And that would, of course, tend to
22 diminish the resources which the club had available to
23 meet its obligations, wouldn't it?

24 A Yes.

25 Q Including player salaries?

A It could.

Q Wouldn't you expect that players playing for such a disadvantaged team would suffer a depressed effect on their salaries by reason of that disadvantage which the team was experiencing?

A From the salary information I looked at, the major relationship to team salaries was the winning and how well they were doing. In other words, there were several clubs with attendance of less than a million that really paid quite substantial salaries because the team had a good season professionally.

Q You haven't made any correlation of that?

A I haven't made a team by team correlation, no.

THE COURT: May I inquire, Mr. Topkis, about how much more time you think you will need for cross?

MR. TOPKIS: Perhaps half an hour or so, your Honor.

THE COURT: Announce a short recess, Mr. Clerk.

THE CLERK: Short recess. All rise.

(Recess.)

THE COURT: Please proceed.

BY MR. TOPKIS:

Q Dr. Clark, I think you testified before the recess that it was your understanding that approximately

13 per cent of the ballplayers in the major leagues receive the minimum salary. Could you tell me the source of that information?

A I counted up the players at the minimum. As I recall, it was somewhere in that area.

Q It has been suggested to me that as of the 1969 season, of the 600 players on major league rosters in late August, 109 were receiving \$10,000.

A I thought you meant as of 1970.

Q No, I meant 1969.

A There were more in 1969 because of the expansion clubs.

Q You would accept, then, the figure of 109?

A I would have to count it to be exactly right, but it is certainly in that general area, yes.

MR. TOPKIS: May I have a moment to confer with Mr. Hughes, your Honor?

THE COURT: Certainly.

(Counsel confer.)

MR. TOPKIS: If your Honor please, I am advised by my friends, and again I thank them for their help, that they are prepared to stipulate that in the 1969 season 109 of the 600 players on the active rosters were receiving the \$10,000 salary minimum.

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Clark-cross

2 MR. HOYNES: That is correct, your Honor,
3 we so stipulate.

4 THE COURT: Thank you again, gentlemen.

5 Q Roughly that is about 18 per cent, isn't it,
6 Doctor?

7 A Yes.

8 Q Now, Doctor, you testified yesterday, I think,
9 that it was your belief that a player will do better in
10 terms of income in New York than he will in San Diego, and
11 similarly will do better in Los Angeles than he will in
12 San Diego.

13 A In outside income.

14 Q In outside income, right.

15 A Yes.

16 Q So that a player would, if he were motivated
17 by a desire for maximizing his income, would prefer to
18 play in New York or Los Angeles rather than San Diego, is
19 that right?

20 A I would think so, yes.

21 Q Of course, players aren't free to move from
22 San Diego to New York or Los Angeles, are they?

23 A No.

24 Q Would you think it then accurate to say that
25 players on the San Diego club are, in effect, subsidizing

1 the operations of the San Diego club by playing there and
2 accepting the diminished outside income which you have
3 testified must be their fate?

4
5 A I think the question you have to get into
6 there is whether you can have organized baseball as we know
7 it if everyone in San Diego would migrate to Los Angeles
8 or New York.

9 Q Would you now answer my question, Doctor? I
10 thank you for your observation.

11 MR. TOPKIS: May it be reread to the witness,
12 your Honor?

13 THE COURT: Would you read it, Mr. Court
14 Reporter.

15 (Question read.)

16 A They are foregoing outside income, certainly,
17 yes.

18 Q And the same would be true of players on the
19 Cincinnati club, isn't that right?

20 A Yes, in respect to outside income, yes.

21 Q And the same would be true of players on the
22 Philadelphia club, isn't that right?

23 A I would say any clubs outside of New York and
24 Los Angeles.

25 Q How about Detroit?

2 A I think that would be the case there, too.

3 Q That is to say, the players there receive less
4 outside income than players in New York and Los Angeles?

5 A I think the opportunities in Los Angeles and
6 New York are very great.

7 Q Would you compare Chicago's opportunities with
8 those in New York and Los Angeles?

9 A Chicago is a larger city than some of the others
10 we have mentioned but I would still think Los Angeles and
11 New York would be better.

12 Q In Chicago the players' opportunities for out-
13 side income would be diluted by the fact that there are two
14 clubs in Chicago, isn't that right?

15 A There would be more players, yes.

16 Q And the effect would be to dilute a player's
17 opportunities to earn outside income?

18 A There would be more competition, yes.

19 Q Doctor, I think you said yesterday that it
20 would be difficult for baseball to sell television rights
21 on a national basis, is that right?

22 A No . They do sell national television rights
23 on a national basis now.

24 Q Didn't you say that it is difficult to find
25 national advertisers to sponsor baseball or something like

that?

A No. I pointed out that much of the local radio and TV is by local advertisers.

Q Much of the local -- what effect do you see that having on the possible division of television and radio revenues?

A It would be more difficult to administer from a central control organization than a national television contract is.

Q So the thrust of your testimony, then, is that as an administrative matter a national contract selling television rights would be simpler in operation than selling television rights --

A And radio locally, yes.

Q Radio locally. I see. But such problems are dealt with and handled effectively by radio and television constantly, aren't they?

A On the local station basis they sell advertising locally, yes.

Q And even on a national basis, so-called regional spot announcements are regularly sold, aren't they?

A Largely on a network basis.

Q Largely on a network basis?

A Yes.

Q But to some degree on a regional basis?

A The stations on the network, yes.

Q Doctor, going to your report, at Page 1 you report that between 1965 and 1969 the average salary of ballplayers on the rosters at the end of August increased by 27.9 per cent, right?

A Between August, 1965, and August, 1969, yes.

Q Have you compared that increase, Doctor, with the increase in the consumer price index?

A No.

Q It is suggested to me that the consumer price index in 1965 stood at 110, the base being 100 in 1958, and in 1969 it stood at 125.

Does that accord with your recollection?

A I don't know.

Q Do you have that data with you?

A No.

Q You computed the average salary in both August, '65, and August, 1969. Did you by any chance compute the median salary?

A Yes.

Q What was that?

A 17,000 in 1965 and 20,000 in 1969.

Q 17,000 even?

2 A Yes.

3 Q And 20,000?

4 A Yes.

5 Q And could you, just so that the record may
6 be absolutely plain, explain to us what the median means?

7 A Yes. The median is the middle person in the
8 array. You just count down to that person and find out
9 what his salary is.

10 Q Could you calculate for us in percentage terms
11 the increase in median income between 1965 and 1969?

12 A Yes.

13 (Witness makes computation.)

14 A It is nearly 18 per cent.

15 Q Could you carry it to the decimal, please, so
16 we can have the exact comparison?

17 (Witness makes computation.)

18 A 17.7 per cent.

19 Q 17.7 per cent. That was the increase in median
20 income between '65 and '69?

21 A Yes.

22 Q Now, did you also establish the mode for 1965
23 and 1969?

24 A No.

25 Q You also testified yesterday about 1970, didn't

you, Doctor?

A Yes.

Q What was the average player's salary or what is the average player's salary as of today?

A \$28,088.

Q And could you tell us, Doctor, what the median salary is today?

A I do not have the details to count.

Q You did not have the details to count?

A Each person's salary, I did not have for that. The league supplied the total.

Q I see. You didn't verify it yourself?

A I didn't have the individual figures to verify.

Q So you didn't verify it?

A Right.

Q Doctor, further down on Page 1 of your report you state that the average salary for what you term established players increased between 1965 and 1969. Do you see that?

A Yes.

Q Did you compute the median salary or identify the median salary?

A No.

Q Why not, Doctor? Isn't that a standard statis-

2 tical technique?

3 A This was a particular comparison. I would be
4 very happy to compute it, but I did not.

5 Q Do you have the information with you from which
6 you can compute it?

7 A Let's see. I could compute it within the
8 range of the 10,000 ranges on Exhibit 1.

9 Q That I don't think would be very precise. You
10 don't have the information from which you could compute the
11 median exactly?

12 A No.

13 MR. TOPKIS: Might I ask that we be supplied
14 with that information, your Honor?

15 THE COURT: I am sure counsel will do their
16 best to get it for you.

17 MR. HOYNES: At the recess I assume we can
18 discuss the details.

19 MR. TOPKIS: Fine.

20 Q And I take it you equally did not compute or
21 establish the median salary for 1970?

22 A That is correct.

23 Q Doctor, going to Page 6 of your report, do you
24 see the total at the bottom of the first two columns which
25 are totaled 244 under the heading "Inactive April 30, 1970,"

and 254 under the heading "Active, April 30, 1970"; right?

A Yes.

Q And that traces back players who were on major league rosters as of August 31, 1965, is that correct?

A Yes.

Q Would I be right in concluding from those figures that of the players on the rosters as of August 31, 1965, nearly half were out of baseball or out of major league baseball by April 30, 1970?

A Out of major league baseball, yes.

Q Doctor, on Page 10 of your report at the end of the first full paragraph you have the statement:

"If a player never was on a major league roster at the end of August, he clearly was not a major league ballplayer during the period in question."

Do you see that statement?

A Yes.

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Q And now, what you mean by that, I take it, that he was not a major league ballplayer of very substantial duration, is that right?

A Established, yes.

Q Yes, but he could have come up and started the season and lasted for two or three months and then be sent down to the minors, isn't that right, after having been given a careful examination?

A Yes.

Q And you would agree with me, would you not, that the opportunity to bring a player up and have him on a major league roster and have him play for the major league team and have an opportunity to examine his abilities and his potential, those are opportunities of value to a major league club, are they not?

A Yes.

Q Now, Doctor, over on page 13 of your report, you have there tabulated disappearances from major league baseball rosters between '63 and '67, that is correct, isn't it?

A Yes, summary.

Q Now, the middle column there headed "Total," do you see that?

A Yes.

Q If I make a cumulative total, as I add downwards through players having five years of service, the total I get is 200. Does that accord with your calculation?

A Yes.

Q And the overall total is 374, right?

A Yes.

Q So that of the 374 players whom you studied, 200 lasted five years or less in major league baseball, is that right?

A Yes.

Q Over on the next page of your report, Doctor, Page 14, your last sentence there, you say: "If the experience of the replacements" -- and by that you mean replacements for players who have disappeared from major league baseball; I am right, am I not?

A Yes.

Q "If the experience of the replacements is the same as that of the players who disappeared, the rate of expenditure for players with two or more years of service would be just under \$400,000 per player for the 1963-1967 period," and let's stop right there.

Now, in order to get that figure just under \$400,000, Doctor, you have to allocate no cost whatsoever to the development of players who had less than two years of service, is

2 that right?

3 A That's correct.

4 Q So in your calculation the club got them for free?

5 A No. It is the same calculation that you would ap-
6 ply in these allocations to the players who make it to the
7 major league rosters. The entire cost of training in the
8 minor leagues, for bonuses and everything else, was considered
9 as not being productive. The productive cost was the people
10 who made it. In this case, we would say that someone who
11 came up for one or two years was not a long enough productive
12 period to return this much value, so I did not assign any
13 cost to them.

14 Q Using that same method, Doctor, if you had a player
15 who lasted 20 years in the majors and he was the only player
16 on his club who did, and during those 20 years his club
17 spent \$20 million in player development, you would say that
18 it cost \$20 million to develop that player?

19 A That is not what I did.

20 Q Well, isn't that what you did with players of two
21 or more years of service?

22 A No. I was giving an allocation of the players who
23 lasted longer, what the average rate of expenditure was for
24 those players who did last a longer period of time.

25 Q Not allocating any expenditure at all to the devel-

opment of players who did not last so long?

A Right.

Q And the same thing is true of your figure for the cost of players with four or more years of playing service, right?

A Yes.

Q Now, Doctor, over on page 15, at the bottom, you say, "It is these revenues as distributed and expended which support baseball organizations and players," and you are referring to the game revenues --

THE COURT: I am sorry, but would you start again for the sake of the Court Reporter. He doesn't know what you are reading and what you are interpolating, you see.

MR. TOPKIS: Certainly.

THE COURT: First read it and then comment.

MR. TOPKIS: Certainly, your Honor.

Q You say there, Dr. Clark, "It is these revenues as distributed and expended which support baseball organizations and players. The reduced net margins in the last three years indicate that baseball is at a marginal level in generating operating revenue to pay operating expenses."

You made that statement, right?

A Yes.

Q Do you regard baseball as being on the verge of

2 bankruptcy?

3 A I think the financial structure is not extraordin-
4 arily sound, yes, for many clubs.

5 Q For many clubs?

6 MR.KRAMER: Could I have the question and answer
7 read back?

8 THE COURT: Of course.

9 (Record read.)

10 Q Now, Doctor, the accuracy of that statement would
11 depend on the accuracy of the figures, the unaudited figures
12 which were submitted to you, isn't that right?

13 A Yes.

14 Q And would depend also on the number of relatives
15 and other non-earners on the payrolls of the clubs?

16 A It could depend on the actual expenses of the clubs,
17 yes.

18 THE COURT: Mr. Topkis, I hear no objection, but
19 that doesn't silence the Court. Really, I know of no evidence
20 before me dealing with relatives, and I wonder whether or
21 not it is the better part of wisdom to constantly inject
22 that as though it were a proven fact. I know that you don't
23 suggest that it is, but I have such respect for your fact-
24 finder ability that unless you can give me a good reason,
25 I think I must ask you to refrain from incorporating that

2 any more in your questions.

3 MR. TOPKIS: I will so refrain, your Honor. But
4 I hope your Honor will understand that I am dealing here with
5 figures which I not only have not had an opportunity to
6 analyze in detail but which the proponent states are unaudited.

7 THE COURT: I recognize that.

8 MR. KRAMER: I think in view of that remark, your
9 Honor, we ought to explain on the record the situation under
10 which these figures were furnished, the time limitations and
11 so on.

12 THE COURT: I thought I had already done so, but
13 I think the statement should come from the Judge and not from
14 counsel, and let's put it on the record.

15 In the desire to bring about an early trial, counsel
16 on both sides of the controversy were put enormous strain to
17 prepare for trial. The keenness of the lawyers is a matter
18 that I have commented on quite often. It was perfectly
19 natural then that almost at the last moment ideas would sug-
20 gest themselves to plaintiff's counsel to make demands upon
21 defendants' counsel for material, material such as already
22 has gone into evidence. The lawyers for the defendants applied
23 themselves under great strain to get the material together
24 in time and almost breathlessly -- and that is the distinct
25 impression I gained -- they got this material together and

made it very clear that if they had had more time there would have been a more meticulous double checking, so to speak.

They have done the best that time permitted. I am sure that recognizing that these figures or the material submitted by defense counsel would be used upon the trial, they have given as accurate a picture as time permitted. In other words, none of these figures I do not consider as way off, and if they are way off, I should be told about it promptly. I am sure that counsel will see to it that that is done.

But let me add this. If counsel can by some method get this double checking accuracy in order to make it a part of the record, I have the power, even after the close of the testimony, to open up the case to receive such additional evidence, and I hold myself as being ready to receive such additional evidence by way of exhibits. If that will please counsel for the plaintiff -- and I am sure he would like to have the record as complete as possible -- that might close the record on the accuracy of the exhibits beyond caveat.

MR. TOPKIS: Well, so that I may make my position perfectly clear, your Honor, we don't regard any of these figures on the expenditures of the clubs as being figures that we vouch for. We have no idea whether they are accurate

or inaccurate, and when your Honor says that you don't consider them way off, I would hope that your Honor would have in mind the proposition that they are both unaudited and unexamined by us. But since we don't care about them, I have not thought it part of my task to inquire into them and since --

THE COURT: But you are using them and you are fault-finding them, as you properly should.

MR. TOPKIS: I am not using them, your Honor. I am attacking the witness' use of them.

THE COURT: Precisely.

MR. TOPKIS: And it would seem to me that the proponent of these figures has the obligation, if he so desires, to come forward and prove their accuracy.

THE COURT: Mr. Topkis, all I did was place upon the record what is due counsel for the defense. I have done so. That is all I attempted to do. I even went further and said that after we close the testimony I am ready to open up the case to receive the audited material or such other material as will make it more definite and certain that these exhibits are within the realm of accuracy. I can't do anything more.

MR. HUGHES: Your Honor, I would assume that once the case is closed and both sides have rested we are going through the intensive task of briefing, that your Honor

2 would not lightly reopen the case and would only do so for
3 good cause shown and with an opportunity on our part to be
4 heard.

5 THE COURT: Why, of course.

6 MR. HUGHES: Right.

7 THE COURT: But I assume that you are having your
8 accountants go over this material, or if you aren't, might
9 it not be a good suggestion that you do? What's wrong with
10 it?

11 MR. HOYNES: Your Honor, may I address myself to
12 that?

13 THE COURT: Sure.

14 MR. HOYNES: For almost all of the clubs there has
15 been no audited financial information available for any of
16 these years, and your Honor, I am sure, is familiar with
17 accounting practices, to have an audit made of these 24
18 clubs for this period would be a task that would consume
19 many months and many, many thousands of dollars. It is not
20 a task to which we intended to set ourselves and it is not
21 a task to which we have set ourselves.

22 We have asked each of the clubs, as I believe we
23 have described in connection with earlier proceedings, to
24 report their information on a standardized questionnaire
25 or form which the Arthur Andersen firm prepared. The an-

2 swers to those questions have then been checked back by our
3 accountants in telephone and personal contacts with each
4 club in an effort to insure the accuracy of the responses
5 to the questionnaire.

6 I think we have made every effort. The Arthur
7 Andersen people for the last three or four weeks before the
8 trial had eight people working full-time on this task and
9 at very considerable effort to verify the information, to
10 put it into form that was comparable as among the 24 clubs,
11 and we certainly have no reason to believe that there is any
12 inaccuracy of any magnitude in the figures, and to that ex-
13 tent, your Honor, I think we certainly stand here and vouch
14 for the figures as we have presented them both to the plaintiff
15 and to your Honor.

16 THE COURT: I accept that. What you have pointed
17 out, though, is that I am engaging in wishful thinking if
18 I expect that there can be any audited material as a part
19 of this record, and I take that back, and I like to dream
20 sometimes, and sometimes the dream is beyond the realm of
21 the practicality.

22 Very well.

23 MR. HOYNES: Thank you, your Honor.

24 BY MR. TOPKIS:

25 Q Dr. Clark, would you turn to page 18 of your re-

2 port.

3 A Yes.

4 Q In making the calculations there involved, you
5 excluded the first acquisition of the Seattle franchise,
6 didn't you?

7 A The expansion, yes.

8 Q I am sorry?

9 A The expansion.

10 Q Right. And had you included that figure, the
11 effect would have been to reduce the total value of all
12 franchises as calculated by you, isn't that right?

13 A Yes, but the fact that that franchise changed hands
14 at a later date I thought that was a more accurate evaluation
15 of the person who bought the franchise from the Seattle
16 owners.

17 Q But you valued the Kansas City franchise on the
18 basis of its expansion cost, didn't you?

19 A There has been no market price established for that
20 by a transfer.

21 Q Now, Doctor, over on page 25 of your report, you
22 have there a chart of five-year total income or loss before
23 taxes and extraordinary items, 1965 to 1969, right?

24 A Yes.

25 Q Would you tell me, how did the expansion clubs

1
2 treat their franchise acquisition cost at arriving at their
3 final profit or loss figure?

4 A Well, in this particular instance, that figure is
5 not included in this. This is the operating loss.

6 Q I see.

7 A In addition, in arriving at the net income after
8 taxes and extraordinary items, that would have been in-
9 cluded, and I assume it would have increased the amount of
10 the loss.

11 Q Do you know that, Doctor?

12 A Yes.

13 Q What is the basis of your statement?

14 A The statements, the information prepared by Arthur
15 Andersen.

16 Q Could you --

17 A It is not in that. I don't know that it is in
18 that.

19 Q Are you referring to Exhibit 7?

20 A Excuse me. I have got it. I don't know how you
21 number your exhibits.

22 Q I beg your pardon.--

23 THE COURT: Would you show him 7, please.

24 Q I show you a copy of Exhibit 7, Doctor, and ask
25 you whether this is the document that you have in mind.

2 A Yes.

3 THE COURT: All right.

4 Q Now, would you tell me where in Exhibit 7 you find
5 indication of the treatment of the franchise acquisition cost
6 by the expansion clubs?

7 A Under "Other Income and Expense."

8 Q Page, please?

9 A Page 2.

10 Q Oh, on the second folded-out page headed Organized
11 Baseball Combined Statement of Income for the Five Years
12 Ended 1969?

13 A Yes.

14 Q Is the entry there for amortization of player
15 contracts the --

16 A That is correct.

17 Q That is the franchise acquisition cost?

18 A That is the write-off of some of the player cost.

19 Q And that figure --

20 A Is included.

21 Q Is included where?

22 A In the net income before taxes and extraordinary
23 items.

24 Q So that in your chart on page 25 of your report
25 where you report how well or poorly the various clubs did,

the entries for the expansion clubs are based on inclusion of their franchise acquisition cost?

A Yes, that is correct.

Q Now, going over to page 27 of your report, Doctor, where you mention the impact of a new stadium on attendance, would it be a fair summation of your testimony to say that success in baseball in attendance terms depends on three factors, the size of the city, the newness of the stadium and the success of the club on the ball field?

A There are many other factors involved; competition with other entertainment sports in the region, the size of the stadium, the existence of star players or no star players, the closeness of the race at different times of the year, how successful promotions on bat day and so on are. I say the most important factors over a long period of time would be winning and the closeness of the race and the size of the city.

There is an impact for a several-year period of a new stadium which is quite distinct. There is an increase when there is a new stadium which lasts for several years.

Q All right, Doctor, you have testified, I believe, that the reserve clause, in your judgment, operates to produce a tendency toward equalization of competition on the playing field, is that right?

2 A It attempts to, yes.

3 Q It attempts to. In your judgment has it been success-
4 ful?

5 A I would say during the long stretch in the late
6 '40s and '50s in which the New York Yankees dominated the
7 American League, that it was not operating successfully.
8 In the last five years there have been four different clubs,
9 '65, '66, '67, '68 and '69, four different clubs in the
10 American League have won pennants. In the National League
11 three different clubs. This is an improvement, but as to
12 whether it is completely successful I think is yet to be
13 determined.

14 MR. TOPKIS: Well, excuse me just a second, your
15 Honor. May I confer?

16 THE COURT: Yes, sir.

17 (Pause.)

18 Q Doctor, you say that in the last five years the
19 reserve system has operated reasonably well, is that right?

20 A There has been an improvement in the situation, the
21 previous situation in which there was such a dominance in
22 the American League by one club.

23 Q Well, actually, Doctor, in the years '65 to '69,
24 how many clubs were there in organized baseball, major league
25 clubs?

2 A Major league clubs, for the first four years, there
3 were ten in each league and for the year '69 there were
4 12 in either league.

5 Q So that for the first four years there were 20 major
6 league clubs and in 1969 there were 24 major league clubs,
7 right?

8 A Yes.

9 Q Now, Doctor, according to my understanding of the
10 facts, three clubs won 60 per cent of the pennants in those
11 five years, isn't that right?

12 A Yes.

13 Q Doctor, if you regard that as a time when the re-
14 serve clause or system was operating reasonably well, what
15 would be your notion of a time when it was operating poorly?

16 A I said it was operating better. Poorly would be dur-
17 ing the long stretch of the '40s and '50s when the Yankees
18 were dominant.

19 Q Would you regard 50 years as an appropriate length
20 of time in which to measure the success or failure of a
21 system, Doctor?

22 A I have no particular opinion on that.

23 Q You have no particular opinion?

24 A It could be 20 years. It depends. What I think
25 is happening in the change in the experience in more recent

2 years, is there have been some changes in the player selection,
3 in the draft, which attempts to give advantages to the weaker
4 teams. This combined with the other restrictions of the
5 reserve clause are directed towards improving the competitive
6 nature of the game. Whether these are beginning to have
7 an effect, there is some hope that they are by the fact that
8 in the American League Baltimore has won twice, Detroit once,
9 Minnesota once, then Boston once in the last five years and --

10 Q Dr. Clark -- excuse me.

11 A I was just going to give the National League; two
12 for Los Angeles, two for the Cardinals and one for the Mets.

13 Q Well, you would agree, would you not, that the re-
14 serve system has not produced any reasonable spread of com-
15 petitive ability in the last five years?

16 A I would say the last five years is more reasonable
17 than earlier.

Q The last five years, we saw just a moment ago, three teams won 60 per cent of the pennants, right?

A Yes.

Q And I am told that in the last 50 years four teams won 63 pennants, that is, 63 per cent of the pennants. So there is no significant difference, is there?

A The other teams -- what I would hope in a longer period of time is as it goes along the dispersion that we have had in the American League the last few years will continue, that there will be a change from one to the other.

Q But as a matter of history, the reserve system has not operated to produce any reasonable level of competition on the field, isn't that right?

A Not a satisfactory level.

MR. TOPKIS: Thank you very much, Doctor. I have no further questions, but if I may have a moment to confer with my clients, your Honor.

THE COURT: Surely.

(Pause.)

Q Do you happen to know, Doctor, over what period of time franchise acquisition costs are written off by major league clubs?

A No, I don't.

MR. TOPKIS: No further questions, your Honor.

Thank you very much, Doctor.

THE COURT: Any redirect, Mr. Hoynes?

MR. HOYNES: Yes, your Honor. In order to save the Court's time, I believe, in the long run I would appreciate it if we could have a very short recess and then I could complete my redirect long before the luncheon break.

THE COURT: Don't rush. You are under a heavy burden.

We will take a recess and counsel will advise me when you are ready to proceed.

THE CLERK: Recess. All rise.

(Recess.)

MR. TOPKIS: If your Honor please, I don't mean to interrupt Mr. Hoynes, but during the recess we had an opportunity to confer on a subject. I understand that defense counsel have a set of club directories and I would like to request that they be shown to us.

MR. HUGHES: May I have it, please?

I think this is what you are referring to, the American League Red Book and the other is described as 1970 National League Green Book. I produce them to you (handing).